

REFINITIV

DELTA REPORT

10-Q

DHCNI - DIVERSIFIED HEALTHCARE TR

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	6443
CHANGES	245
DELETIONS	3624
ADDITIONS	2574

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
FORM 10-Q

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

For the quarterly period ended September 30, 2023 March 31, 2024

OR

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

Commission File Number 1-15319

DIVERSIFIED HEALTHCARE TRUST
(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or Other Jurisdiction of Incorporation or
Organization)

04-3445278
(IRS Employer Identification No.)

Two Newton Place, 255 Washington Street, Suite 300, Newton, MA 02458-1634
(Address of Principal Executive Offices) (Zip Code)
617 - 796 - 8350
(Registrant's Telephone Number, Including Area Code)

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

Title Of Each Class	Trading Symbol(s)	Name Of Each Exchange On Which Registered
Common Shares of Beneficial Interest	DHC	The Nasdaq Stock Market LLC
5.625% Senior Notes due 2042	DHCNI	The Nasdaq Stock Market LLC
6.25% Senior Notes due 2046	DHCNL	The Nasdaq Stock Market LLC

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

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

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

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

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

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

Number of registrant's common shares outstanding as of October 27, 2023 May 1, 2024: 240,450,349 240,393,722

DIVERSIFIED HEALTHCARE TRUST
FORM 10-Q

September 30, 2023 March 31, 2024

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References in this Quarterly Report on Form 10-Q to the Company, we, us or our include Diversified Healthcare Trust and its consolidated subsidiaries unless otherwise expressly stated or the context indicates otherwise.

PART I. Financial Information

Item 1. Financial Statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED BALANCE SHEETS
(dollars in thousands, except share data)
(unaudited)

		September 30, 2023	December 31, 2022		March 31, 2024	December 31, 2023
<u>Assets</u>	<u>Assets</u>			<u>Assets</u>		
Real estate properties:	Real estate properties:			Real estate properties:		
Land	Land	\$ 652,707	\$ 668,918			
Buildings and improvements	Buildings and improvements	6,114,398	6,023,625			
Total real estate properties, gross	Total real estate properties, gross	6,767,105	6,692,543			
Accumulated depreciation	Accumulated depreciation	(1,965,948)	(1,828,352)			
Total real estate properties, net	Total real estate properties, net	4,801,157	4,864,191			
Investments in unconsolidated joint ventures	Investments in unconsolidated joint ventures	153,744	155,477			
Investments in unconsolidated joint ventures						
Investments in unconsolidated joint ventures						
Assets of properties held for sale	Assets of properties held for sale	24,643	385			
Cash and cash equivalents	Cash and cash equivalents	278,122	658,065			
Restricted cash	Restricted cash	983	30,237			
Equity method investment						
Acquired real estate leases and other intangible assets, net	Acquired real estate leases and other intangible assets, net	36,605	45,351			
Other assets, net	Other assets, net	235,002	248,387			
Total assets	Total assets	\$5,530,256	\$6,002,093			
<u>Liabilities and Shareholders' Equity</u>	<u>Liabilities and Shareholders' Equity</u>					
Secured credit facility		\$ 450,000	\$ 700,000			

Liabilities and Shareholders' Equity			
Liabilities and Shareholders' Equity			
Senior secured notes, net			
Senior secured notes, net			
Senior secured notes, net			
Senior unsecured notes, net	Senior unsecured notes, net	2,321,320	2,317,700
Secured debt and finance leases, net	Secured debt and finance leases, net	13,660	30,177
Liabilities of properties held for sale	Liabilities of properties held for sale	427	—
Accrued interest	Accrued interest	32,045	29,417
Other liabilities	Other liabilities	271,278	286,188
Total liabilities	Total liabilities	3,088,730	3,363,482
Commitments and contingencies			
Commitments and contingencies			
Shareholders' equity:			
Shareholders' equity:			
Common shares of beneficial interest, \$.01 par value: 300,000,000 shares authorized, 240,457,549 and 239,694,842 shares issued and outstanding, respectively			
		2,405	2,397
Shareholders' equity:			
Shareholders' equity:			
Common shares of beneficial interest, \$.01 par value: 300,000,000 shares authorized, 240,393,722 and 240,423,898 shares issued and outstanding, respectively			
Additional paid in capital	Additional paid in capital	4,618,138	4,617,031
Cumulative net income	Cumulative net income	1,880,842	2,071,850
Cumulative other comprehensive loss			
Cumulative distributions	Cumulative distributions	(4,059,859)	(4,052,667)

Total shareholders' equity	Total shareholders' equity	2,441,526	2,638,611
Total shareholders' equity			
Total shareholders' equity			
Total liabilities and shareholders' equity	Total liabilities and shareholders' equity	\$5,530,256	\$6,002,093

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(amounts in thousands, except per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenues:				
Rental income	\$ 63,390	\$ 63,960	\$ 191,201	\$ 191,767
Residents fees and services	293,134	258,960	857,572	754,914
Total revenues	356,524	322,920	1,048,773	946,681
Expenses:				
Property operating expenses	298,432	289,096	870,740	823,904
Depreciation and amortization	67,236	60,407	200,430	175,927
General and administrative	6,954	6,179	20,111	20,671
Acquisition and certain other transaction related costs	3,676	289	9,812	1,826
Impairment of assets	1,156	—	18,380	—
Total expenses	377,454	355,971	1,119,473	1,022,328
(Loss) gain on sale of properties	—	(5,044)	1,233	322,064
Gains and losses on equity securities, net	—	(2,674)	8,126	(21,384)
Interest and other income	3,243	4,099	12,572	6,760
Interest expense (including net amortization of debt premiums, discounts and issuance costs of \$2,293, \$1,908, \$6,616 and \$6,698, respectively)	(47,758)	(46,936)	(142,922)	(160,042)
Loss on modification or early extinguishment of debt	—	—	(1,075)	(30,043)
(Loss) income before income tax expense and equity in net (losses) earnings of investees	(65,445)	(83,606)	(192,766)	41,708
Income tax expense	(189)	(13)	(379)	(845)
Equity in net (losses) earnings of investees	(145)	2,127	2,137	8,685
Net (loss) income	\$ (65,779)	\$ (81,492)	\$ (191,008)	\$ 49,548
Revenues:				
Revenues:				
Revenues:				
Rental income				
Rental income				

Rental income
Residents fees and services
Residents fees and services
Residents fees and services
Total revenues
Total revenues
Total revenues
Expenses:
Expenses:
Expenses:
Property operating expenses
Property operating expenses
Property operating expenses
Depreciation and amortization
Depreciation and amortization
Depreciation and amortization
General and administrative
General and administrative
General and administrative
Acquisition and certain other transaction related costs
Acquisition and certain other transaction related costs
Acquisition and certain other transaction related costs
Impairment of assets
Impairment of assets
Impairment of assets
Total expenses
Total expenses
Total expenses
(Loss) gain on sale of properties
(Loss) gain on sale of properties
(Loss) gain on sale of properties
Gains and losses on equity securities, net
Gains and losses on equity securities, net
Gains and losses on equity securities, net
Interest and other income
Interest and other income
Interest and other income
Interest expense (including net amortization of debt discounts, premiums and issuance costs of \$24,863 and \$2,074, respectively)
Interest expense (including net amortization of debt discounts, premiums and issuance costs of \$24,863 and \$2,074, respectively)
Interest expense (including net amortization of debt discounts, premiums and issuance costs of \$24,863 and \$2,074, respectively)

Loss on modification or early extinguishment of debt					
Loss on modification or early extinguishment of debt					
Loss on modification or early extinguishment of debt					
Loss before income tax (expense) benefit and equity in net earnings (losses) of investees					
Loss before income tax (expense) benefit and equity in net earnings (losses) of investees					
Loss before income tax (expense) benefit and equity in net earnings (losses) of investees					
Income tax (expense) benefit					
Income tax (expense) benefit					
Income tax (expense) benefit					
Equity in net earnings (losses) of investees					
Equity in net earnings (losses) of investees					
Equity in net earnings (losses) of investees					
Net loss					
Net loss					
Net loss					
Other comprehensive loss:					
Other comprehensive loss:					
Other comprehensive loss:					
Equity in unrealized losses of an investee					
Equity in unrealized losses of an investee					
Equity in unrealized losses of an investee					
Other comprehensive loss					
Other comprehensive loss					
Other comprehensive loss					
Comprehensive loss					
Comprehensive loss					
Comprehensive loss					
Weighted average common shares outstanding (basic and diluted)					
Weighted average common shares outstanding (basic and diluted)					
Weighted average common shares outstanding (basic and diluted)	Weighted average common shares outstanding (basic and diluted)	238,892	238,344	238,722	238,231
<u>Per common share amounts (basic and diluted);</u>	<u>Per common share amounts (basic and diluted);</u>				

Net (loss) income	\$	(0.28)	\$	(0.34)	\$	(0.80)	\$	0.21
Per common share amounts (basic and diluted):								
Per common share amounts (basic and diluted):								
Net loss								
Net loss								
Net loss								

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(dollars in thousands)
(unaudited)

		Additional					
		Number of Shares	Common Shares	Paid In Capital	Cumulative Net Income	Cumulative Distributions	Total Equity
Balance at December 31, 2022:		239,694,842	\$ 2,397	\$4,617,031	\$2,071,850	\$ (4,052,667)	\$2,638,611
		Number of Shares	Common Shares	Paid In Capital	Cumulative Net Income	Cumulative Distributions	Total Equity
Balance at December 31, 2023:							
Net loss	Net loss	—	—	—	(52,658)	—	(52,658)
Equity in unrealized losses of an investee							
Distributions	Distributions	—	—	—	—	(2,397)	(2,397)
Share grants	Share grants	—	—	270	—	—	270
Share repurchases	Share repurchases	(5,975)	—	(6)	—	—	(6)
Share forfeitures	Share forfeitures	(6,400)	—	(1)	—	—	(1)
Balance at March 31, 2023:		239,682,467	2,397	4,617,294	2,019,192	(4,055,064)	2,583,819
Net loss		—	—	—	(72,571)	—	(72,571)
Distributions		—	—	—	—	(2,397)	(2,397)
Share grants		140,000	1	567	—	—	568
Share repurchases		(24,513)	—	(27)	—	—	(27)
Share forfeitures		(5,600)	—	(3)	—	—	(3)
Balance at June 30, 2023:		239,792,354	2,398	4,617,831	1,946,621	(4,057,461)	2,509,389
Net loss		—	—	—	(65,779)	—	(65,779)
Distributions		—	—	—	—	(2,398)	(2,398)
Share grants		820,000	8	662	—	—	670
Share repurchases		(151,405)	(1)	(352)	—	—	(353)
Share forfeitures		(3,400)	—	(3)	—	—	(3)
Balance at September 30, 2023:		240,457,549	\$ 2,405	\$4,618,138	\$1,880,842	\$ (4,059,859)	\$2,441,526

Balance at March 31, 2024:
Balance at March 31, 2024:
Balance at March 31, 2024:
Balance at December 31, 2022:
Balance at December 31, 2022:
Balance at December 31, 2022:
Net loss
Distributions
Share grants
Share repurchases
Share forfeitures
Balance at March 31, 2023:

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (CONTINUED)
(dollars in thousands)
(unaudited)

	Number of Shares	Common Shares	Additional Paid In Capital	Cumulative Net Income	Cumulative Distributions	Total Equity
Balance at December 31, 2021:	238,994,894	\$ 2,390	\$ 4,615,475	\$ 2,087,624	\$ (4,043,099)	\$ 2,662,390
Net income	—	—	—	240,423	—	240,423
Distributions	—	—	—	—	(2,390)	(2,390)
Share grants	—	—	318	—	—	318
Share repurchases	(1,698)	—	(5)	—	—	(5)
Share forfeitures	(4,900)	—	(3)	—	—	(3)
Balance at March 31, 2022:	238,988,296	2,390	4,615,785	2,328,047	(4,045,489)	2,900,733
Net loss	—	—	—	(109,383)	—	(109,383)
Distributions	—	—	—	—	(2,390)	(2,390)
Share grants	140,000	1	668	—	—	669
Share forfeitures	(4,800)	—	(4)	—	—	(4)
Balance at June 30, 2022:	239,123,496	2,391	4,616,449	2,218,664	(4,047,879)	2,789,625
Net loss	—	—	—	(81,492)	—	(81,492)
Distributions	—	—	—	—	(2,391)	(2,391)
Share grants	707,000	7	470	—	—	477
Share repurchases	(122,403)	(1)	(159)	—	—	(160)
Share forfeitures	(3,600)	—	(4)	—	—	(4)
Balance at September 30, 2022:	239,704,493	\$ 2,397	\$ 4,616,756	\$ 2,137,172	\$ (4,050,270)	\$ 2,706,055

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(dollars in thousands)
(unaudited)

		Nine Months Ended September 30,		Three Months Ended March 31,	
		2023	2022	2024	2023
Cash flows from operating activities:	Cash flows from operating activities:				
Net (loss) income		\$(191,008)	\$ 49,548		
Adjustments to reconcile net (loss) income to cash provided by (used in) operating activities:					
Net loss					
Adjustments to reconcile net loss to cash provided by operating activities:					
Depreciation and amortization	Depreciation and amortization	200,430	175,927		
Net amortization of debt premiums, discounts and issuance costs		6,616	6,698		
Net amortization of debt discounts, premiums and issuance costs					
Straight line rental income	Straight line rental income	1,333	(7,193)		
Amortization of acquired real estate leases		(264)	204		
Amortization of acquired real estate leases and other intangible assets, net					
Loss on modification or early extinguishment of debt	Loss on modification or early extinguishment of debt	1,075	30,043		
Impairment of assets	Impairment of assets	18,380	—		
Gain on sale of properties		(1,233)	(322,064)		
Impairment of assets					
Impairment of assets					

Loss (gain) on sale of properties			
Gains and losses on equity securities, net	Gains and losses on equity securities, net	(8,126)	21,384
Other non-cash adjustments, net	Other non-cash adjustments, net	(1,328)	(1,376)
Unconsolidated joint venture distributions	Unconsolidated joint venture distributions	3,870	7,400
Equity in net earnings of investees		(2,137)	(8,685)
Equity in net (earnings) losses of investees			
Change in assets and liabilities:			
Change in assets and liabilities:			
Change in assets and liabilities:	Change in assets and liabilities:		
Deferred leasing costs, net	Deferred leasing costs, net	(7,995)	(6,188)
Other assets	Other assets	4,315	9,809
Accrued interest	Accrued interest	2,628	2,312
Other liabilities	Other liabilities	(8,864)	5,233
Net cash provided by (used in) operating activities		17,692	(36,948)
Net cash provided by operating activities			
Cash flows from investing activities:	Cash flows from investing activities:		
Real estate acquisitions		—	(75,105)
Cash flows from investing activities:			
Cash flows from investing activities:			
Real estate improvements			
Real estate improvements			
Real estate improvements	Real estate improvements	(168,400)	(189,118)
Proceeds from sale of properties, net	Proceeds from sale of properties, net	3,548	822
Proceeds from sale of properties to joint venture, net		—	638,488

Proceeds from sale of interest in joint venture, net	—	108,626
Proceeds from AlerisLife Inc. tender offer	14,006	—
Net cash (used in) provided by investing activities	(150,846)	483,713

Investment in AlerisLife Inc.

Investment in AlerisLife Inc.

Investment in AlerisLife Inc.

Net cash used in investing activities

Net cash used in investing activities

Net cash used in investing activities

Cash flows from financing activities:

Cash flows from financing activities:

Cash flows from financing activities:	Cash flows from financing activities:		
Repayments of borrowings on credit facility	Repayments of borrowings on credit facility	(250,000)	(100,000)
Redemption of senior unsecured notes		—	(500,000)

Repayments of borrowings on credit facility

Repayments of borrowings on credit facility

Repayment of other debt	Repayment of other debt	(16,408)	(28,373)
Loss on early extinguishment of debt settled in cash		—	(24,375)

Repayment of other debt

Repayment of other debt

Payment of debt issuance costs

Payment of debt issuance costs

Payment of debt issuance costs	Payment of debt issuance costs	(2,057)	(2,821)
Repurchase of common shares	Repurchase of common shares	(386)	(165)
Distributions to shareholders	Distributions to shareholders	(7,192)	(7,171)

Distributions to shareholders

Distributions to shareholders

Net cash used in financing activities	Net cash used in financing activities	(276,043)	(662,905)
Decrease in cash and cash equivalents and restricted cash	Decrease in cash and cash equivalents and restricted cash	(409,197)	(216,140)

Decrease in cash and cash equivalents and restricted cash			
Decrease in cash and cash equivalents and restricted cash			
Cash and cash equivalents and restricted cash at beginning of period	Cash and cash equivalents and restricted cash at beginning of period	688,302	1,016,945
Cash and cash equivalents and restricted cash at end of period	Cash and cash equivalents and restricted cash at end of period	\$ 279,105	\$ 800,805

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)
(dollars in thousands)
(unaudited)

		Nine Months Ended September 30,			
		2023	2022		
		Three Months Ended March 31,		Three Months Ended March 31,	
		2024		2024	2023
Supplemental cash flow information:	Supplemental cash flow information:			Supplemental cash flow information:	
Interest paid	Interest paid	\$ 133,695	\$ 151,032		
Income taxes paid	Income taxes paid	\$ 677	\$ 905		
Non-cash investing activities:	Non-cash investing activities:				
Non-cash investing activities:					
Receivable from AlerisLife Inc. tender offer					
Receivable from AlerisLife Inc. tender offer					
Receivable from AlerisLife Inc. tender offer					
Decrease in real estate, net resulting from the deconsolidation of investments that were previously consolidated		\$ —	\$(355,669)		
Real estate improvements accrued, not paid	Real estate improvements accrued, not paid	\$ 29,560	\$ 24,218		
Capitalized interest		\$ 17	\$ —		

Real estate improvements accrued, not paid
Real estate improvements accrued, not paid

Supplemental disclosure of cash and cash equivalents and restricted cash:

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within our condensed consolidated balance sheets to the amount shown in our condensed consolidated statements of cash flows:

		As of September 30,	
		2023	2022
		As of March 31,	
		2024	As of March 31, 2023
Cash and cash equivalents	Cash and cash equivalents	\$ 278,122	\$691,040
Restricted cash ⁽¹⁾	Restricted cash ⁽¹⁾	983	109,765
Total cash and cash equivalents and restricted cash shown in our condensed consolidated statements of cash flows	Total cash and cash equivalents and restricted cash shown in our condensed consolidated statements of cash flows	\$ 279,105	\$800,805

(1) As of September 30, 2022, restricted cash consisted of proceeds from the sale of assets and proceeds from the sale of joint venture interests held as collateral pursuant to the agreement governing our credit facility, or our credit agreement. Subsequently, these funds were used to pay for approved expenditures in accordance with our credit agreement. Restricted cash also consists of amounts escrowed for real estate taxes, insurance and capital expenditures at certain of our mortgaged properties.

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
(dollar amounts in thousands, except per share data or as otherwise stated)

Note 1. Basis of Presentation

The accompanying condensed consolidated financial statements of Diversified Healthcare Trust and its subsidiaries, or we, us, or our, are unaudited. Certain information and disclosures required by U.S. generally accepted accounting principles, or GAAP, for complete financial statements have been condensed or omitted. We believe the disclosures made are adequate to make the information presented not misleading. However, the accompanying condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes contained in our Annual Report on Form 10-K for the year ended **December 31, 2022** **December 31, 2023**, or our Annual Report.

In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair statement of results for the interim period have been included. All intercompany transactions and balances with or among our consolidated subsidiaries have been eliminated. Operating results for interim periods are not necessarily indicative of the results that may be expected for the full year.

The preparation of these financial statements in conformity with GAAP requires us to make estimates and assumptions that affect reported amounts. Actual results could differ from those estimates. Significant estimates in our condensed consolidated financial statements include purchase price allocations, useful lives of fixed assets and impairments of real estate and intangible assets.

We have been, are currently, and expect in the future to be involved in claims, lawsuits, and regulatory and other governmental audits, investigations and proceedings arising in the ordinary course of our business, some of which may involve material amounts. Also, the defense and resolution of these claims, lawsuits, and regulatory and other governmental audits, investigations and proceedings may require us to incur significant expense. We account for claims and litigation losses in accordance with the Financial Accounting

Standards Board, or FASB, Accounting Standards Codification Topic 450, *Contingencies*, or ASC 450. Under ASC 450, loss contingency provisions are recorded for probable and estimable losses at our best estimate of a loss or, when a best estimate cannot be made, at our estimate of the minimum loss. These estimates are often developed prior to knowing the amount of the ultimate loss, require the application of considerable judgment, and are refined as additional information becomes known. Accordingly, we are often initially unable to develop a best estimate of loss and therefore the estimated minimum loss amount, which could be zero, is recorded; and then, as information becomes known, the minimum loss amount is updated, as appropriate. A minimum or best estimate amount may be increased or decreased when events result in a changed expectation.

Going Concern

The senior living industry has been adversely affected Note 2. Recent Accounting Pronouncements

On November 27, 2023, the FASB issued Accounting Standards Update, or ASU, No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, or ASU No. 2023-07, which requires public entities to: (i) provide disclosures of significant segment expenses and other segment items if they are regularly provided to the Chief Operating Decision Maker, or the CODM, and included in each reported measure of segment profit or loss; (ii) provide all annual disclosures about a reportable segment's profit or loss and assets currently required by a slow recovery from ASC 280, Segment Reporting, or ASC 280, in interim periods; and (iii) disclose the COVID-19 pandemic, CODM's title and position, as well as economic an explanation of how the CODM uses the reported measures and market conditions. These conditions continue other disclosures. Public entities with a single reportable segment must apply all the disclosure requirements of ASU No. 2023-07, as well as all the existing segment disclosures under ASC 280. The amendments in ASU No. 2023-07 are incremental to have the requirements in ASC 280 and do not change how a significant negative public entity identifies its operating segments, aggregates those operating segments, or applies the quantitative thresholds to determine its reportable segments. ASU No. 2023-07 should be applied retrospectively to all prior periods presented in the financial statements and is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. We are currently evaluating the impact ASU No. 2023-07 will have on our results of operations, financial position and cash flows. Although there have been signs of recovery and increased demand when compared to the low levels during the COVID-19 pandemic, the recovery of our senior housing operating portfolio, or SHOP, segment has been slower than previously anticipated and uneven, and we cannot be sure when or if the senior living business will return to historic pre-pandemic levels. To mitigate the effects of the slow recovery coming from the COVID-19 pandemic and the increased variability in operating cash flows from our SHOP communities, we continue to work with our senior living operators to manage costs, especially labor costs, and to increase rates and occupancy. However, increased operating costs resulting from difficult labor market conditions, wage and commodity price inflation and increased insurance costs, among other things, continue to negatively impact margins. Additionally, while our senior living operators have increased rates, those rates are increasing gradually and are not increasing at the same pace as our costs, putting further pressure on our margins. In order to increase the probability of a recovery of our cash flows, we have continued to invest capital in our SHOP segment, which has reduced our cash balances since the filing of our Annual Report on March 1, 2023. As a result of our decreased cash balances, we have deferred, and may continue to defer, future capital expenditures to preserve liquidity, which may slow the pace of any recovery of our cash flows. As of September 30, 2023, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our credit agreement and our public debt covenants, and we cannot be certain how long this ratio will remain below 1.5x. We are unable to refinance existing or maturing debt or issue new debt until this ratio is at or above 1.5x on a pro forma basis. As of September 30, 2023, we had \$278,122 of cash and cash equivalents and \$700,000 of outstanding debt due within one year from the date of issuance of these financial statements including \$450,000 and disclosures.

On December 14, 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, or ASU No. 2023-09, which requires public entities to enhance their annual income tax disclosures by requiring: (i) consistent categories and greater disaggregation of information in outstanding borrowings under our credit facility, which matures on January 15, 2024, the rate reconciliation, and \$250,000 of senior notes that mature (ii) income taxes paid disaggregated by jurisdiction. ASU No. 2023-09 should be applied prospectively but entities have the option to apply it retrospectively to all prior periods presented in the financial statements. ASU No. 2023-09 is effective for annual periods

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on May 1, 2024. Our credit facility is secured by 62 properties which had an appraised value of approximately \$1,114,270 based on appraisals completed in 2023.

Based on the challenges described above, as well as our reduced cash balances, additional capital commitments in both our Office Portfolio and SHOP segments and upcoming debt maturities, we have concluded that there is substantial doubt about our ability to continue as a going concern for at least one year from the date of issuance of these financial statements. In September 2023, subsequent to the termination of our proposed merger beginning after December 15, 2024, with Office Properties Income Trust, or OPI, we engaged B. Riley Securities, Inc., or B. Riley, as a financial advisor to help us evaluate our options to address our near term capital needs, including the upcoming debt maturities described above. Among the alternatives being considered to address our near term capital needs are raising permissible new capital, including by selling assets, as well as seeking an extension of the maturity date of our credit facility. Regarding any new capital that may be raised, we are limited in the type of financings we can pursue as we cannot currently refinance existing or maturing debt or issue new debt, as described above, early adoption permitted. We are also engaging in discussions with currently evaluating the lenders under impact ASU No. 2023-09 will have on our \$450,000 credit facility regarding an amendment to our credit agreement to extend the maturity date of the facility, amend certain covenants and allow us to repay maturing debt, among other things. While we believe that the new capital we expect to raise, including proceeds from our planned asset sales, and the possible extension of the maturity date of our credit facility, will alleviate the substantial doubt about our ability to continue as a going concern, we cannot provide assurance that we will raise new capital or sell assets or that any new capital raised, including proceeds from our planned asset sales, will be sufficient to repay our maturing debt or that our lenders will agree to an extension of the maturity date of our credit facility. Due to challenging capital market conditions, in particular with respect to commercial real estate, we do not believe that it is probable, as of the date of issuance of these financial statements, that we will raise sufficient new capital, including proceeds from our planned asset sales, to meet our upcoming contractual commitments. As of November 1, 2023, we cannot demonstrate that our management's plans to alleviate the substantial doubt about our ability to continue as a going concern will be probable in mitigating the conditions that raise the substantial doubt because our plan to raise permissible new capital, including proceeds from our planned asset sales, and to extend the maturity date of our credit facility, is subject to market conditions and lender approvals, among other things, which are beyond our control.

Our condensed consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty. disclosures.

Termination of Merger Agreement with Office Properties Income Trust

On April 11, 2023, we and OPI entered into an Agreement and Plan of Merger, or the Merger Agreement, pursuant to which we and OPI agreed that we would merge with and into OPI, with OPI as the surviving entity in the merger, subject to the terms and conditions of the Merger Agreement. On September 1, 2023, we and OPI mutually agreed to terminate the Merger Agreement and entered into a termination agreement, or the Termination Agreement. The mutual termination of the Merger Agreement was separately recommended by special committees of our and OPI's respective board of trustees and approved by our and OPI's respective board of trustees.

Pursuant to the Termination Agreement, the termination of the Merger Agreement was effective as of September 1, 2023. Neither we nor OPI are required to pay any termination fee as a result of the mutual decision to terminate the Merger Agreement. We and OPI will bear our and its respective costs and expenses related to the Merger Agreement and the transactions contemplated thereby in accordance with the terms of the Merger Agreement.

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Note 2, 3. Real Estate and Other Investments

As of September 30, 2023 March 31, 2024, we wholly owned 376 371 properties located in 36 states and Washington, D.C., including six four properties classified as held for sale and five two closed senior living communities, and we owned an equity interest in each of two unconsolidated joint ventures that own medical office and life science properties located in five states.

Joint Venture Activities:

As of September 30, 2023, we had equity investments in joint ventures as follows:

Joint Venture	DHC Ownership	DHC Carrying Value of Investment at September 30, 2023	Number of Properties	Location	Square Feet
Seaport Innovation LLC	10%	\$ 107,773	1	MA	1,134,479
The LSMD Fund REIT LLC	20%	45,971	10	CA, MA, NY, TX, WA	1,068,763
		\$ 153,744	11		2,203,242

The following table provides a summary of the mortgage debts of these joint ventures:

Joint Venture	Coupon Rate	Maturity Date	Principal Balance at September 30, 2023 ⁽¹⁾
Mortgage Notes Payable (secured by one property in Massachusetts) ⁽²⁾	3.53%	8/6/2026	\$ 620,000
Mortgage Notes Payable (secured by nine properties in five states) ⁽³⁾	3.46%	2/11/2032	189,800
Mortgage Notes Payable (secured by one property in California) ^{(3) (4)}	5.90%	2/9/2024	266,825
	4.10%		\$ 1,076,625

(1) Amounts are not adjusted for our minority equity interest.

(2) Following the deconsolidation in December 2021 of the net assets of an unconsolidated joint venture that owns a life science property located in Boston, Massachusetts, or the Seaport JV, we no longer include this \$620,000 of secured debt financing in our condensed consolidated balance sheet; however, we continue to provide certain guaranties on this debt.

(3) The debt securing these properties is non-recourse to us.

(4) The maturity date of February 9, 2024 is subject to three, one year extension options and requires interest to be paid at an annual rate based on the secured overnight financing rate, or SOFR, plus a premium of 1.90%. The interest rate is as of September 30, 2023. This joint venture has also purchased an interest rate cap through February 2024 with a SOFR strike rate equal to 4.00%.

In December 2021, we sold an additional 35% equity interest from our then remaining 55% equity interest in the Seaport JV to another third party institutional investor for \$378,000, before closing costs and other adjustments. Effective as of the date of the sale, we deconsolidated this joint venture and we now account for this joint venture using the equity method of accounting under the fair value option. In June 2022, we sold an additional 10% equity interest from our then remaining 20% equity interest in the Seaport JV to an existing joint venture investor for \$108,000, before closing costs and other adjustments. We recognized a net loss on sale of \$1,226 related to this transaction during the nine months ended September 30, 2022, which is included in (loss) gain on sale of properties in our condensed consolidated statements of comprehensive income (loss). After giving effect to these sales, we continue to own a 10% equity interest in this joint venture. Our initial investment amount was based on a property valuation of \$1,700,000, less \$620,000 of existing mortgage debts on the property that this joint venture assumed. See Note 5 for more information regarding the valuation of our investment in this joint venture.

In January 2022, we entered into a joint venture with two unrelated third party institutional investors for 10 medical office and life science properties we owned, or the LSMD JV. We sold equity interests in this joint venture to those investors for aggregate proceeds, before closing costs and other adjustments, of approximately \$653,300. We deconsolidated the net assets of these properties effective as of the date of the sale and recognized a net gain on sale of \$322,468 related to this transaction during the nine months ended

September 30, 2022, which is included in (loss) gain on sale of properties in our condensed consolidated statements of comprehensive income (loss). The equity interests that the investors acquired from us equaled 41% and 39%, respectively, of the total equity interests in the joint venture and we retained a 20% equity interest in the joint venture. Following the sale, we account for this joint venture using the equity method of accounting under the fair value option. The initial investment amounts were based upon a property valuation of approximately \$702,500, less approximately \$456,600 of secured debt on the properties incurred by this joint venture. See Note 5 for more information regarding the valuation of our investment in this joint venture.

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Acquisitions and Dispositions:

We did not acquire any properties during the nine three months ended September 30, 2023 March 31, 2024.

During the nine three months ended September 30, 2023 March 31, 2024, we sold three properties one property for an aggregate a sales price of \$2,800, \$3,600, excluding closing costs, as presented in the table below. The sales sale of these properties do this property does not represent a significant dispositions, individually or in the aggregate, disposition and we do not believe these sales represent this sale represents a strategic shift in our business. As a result, the results of operations for these properties this property are included in continuing operations through the date of sale of such properties property in our condensed consolidated statements of comprehensive income (loss).

Date of Sale	Date of Sale	Location	Type of Property	Number of Properties	Sales Price (1)	Gain on Sale
February 2023		Pennsylvania and South Carolina	Senior Living	3	\$ 2,800	\$ 293
Date of Sale						
Date of Sale						
March 2024						
March 2024						
March 2024						

(1) Sales price excludes closing costs.

During the nine months ended September 30, 2023, we recognized a gain of \$940 related to the sales of skilled nursing bed licenses at certain of our senior living communities.

As of September 30, 2023 March 31, 2024, we had six four properties classified as held for sale in our condensed consolidated balance sheet as follows:

Type of Property	Type of Property	Number of Properties	Real Estate Properties, Net
Life Science and Medical Office		4	\$ 21,372
Type of Property			
Type of Property			
Medical Office and Life Science			
Medical Office and Life Science			
Medical Office and Life Science			
Senior Living	Senior Living	2	2,740
		6	\$ 24,112
Senior Living			
Senior Living			
		4	
		4	
		4	

In October 2023, As of May 2, 2024, we had two of the four life science and medical office properties and one of the two senior living communities, which were classified as held for sale in the table above, were sold under agreements to sell for an aggregate sales price of \$10,830, excluding closing costs.

As of October 27, 2023, we had one property under an agreement to sell for a sales price of approximately \$1,800, \$10,375, excluding closing costs. We may not complete the sales of any or all of the properties we currently plan to sell. Also, we may sell some or all of these properties at amounts that are less than currently expected and/or less than the carrying values of such properties and we may incur losses on any such sales as a result.

Impairment:

We regularly evaluate our assets for indicators of impairment. Impairment indicators may include declining tenant or resident occupancy, weak or declining profitability from the property, decreasing tenant cash flows or liquidity, our decision to dispose of an asset before the end of its estimated useful life, and legislative, market or industry changes that could permanently reduce the value of an asset. If indicators of impairment are present, we evaluate the carrying value of the affected assets by comparing it to the expected future undiscounted cash flows to be generated from those assets. The future cash flows are subjective and are based in part on assumptions regarding hold periods, market rents and terminal capitalization rates. If the sum of these expected future cash flows is less than the carrying value, we reduce the net carrying value of the asset to its estimated fair value.

During the **nine** months ended **September 30, 2023** **March 31, 2024**, we recorded impairment charges of **\$14,763** **\$12,142** related to **four life science** and **two** medical office properties **and one senior living community** that were classified as held for sale as of **September 30, 2023** **March 31, 2024**.

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Equity Method Investments in Unconsolidated Joint Ventures:

As of March 31, 2024, we had equity investments in unconsolidated joint ventures as follows:

Joint Venture	DHC Ownership	DHC Carrying Value of Investment at March 31, 2024	Number of Properties	Location	Square Feet
Seaport Innovation LLC	10%	\$ 85,922	1	MA	1,134,479
The LSMD Fund REIT LLC	20%	44,377	10	CA, MA, NY, TX, WA	1,068,763
		<u>\$ 130,299</u>	<u>11</u>		<u>2,203,242</u>

The following table provides a summary of the mortgage debts of these joint ventures:

Joint Venture	Coupon Rate	Maturity Date	Principal Balance at March 31, 2024 ⁽¹⁾
Mortgage Notes Payable (secured by one property in Massachusetts) ^{(2) (3)}	3.53%	11/6/2028	\$ 620,000
Mortgage Notes Payable (secured by nine properties in five states) ⁽⁴⁾	3.46%	2/11/2032	189,800
Mortgage Notes Payable (secured by one property in California) ^{(4) (5)}	6.38%	2/9/2025	266,825
	4.22%		<u>\$ 1,076,625</u>

(1) Amounts are not adjusted for our minority equity interest.

(2) We provide certain guaranties on this debt.

(3) This mortgage loan requires interest only payments until the anticipated repayment date on August 6, 2026, at which time all accrued and unpaid interest along with the principal balance of \$620,000 is expected to be repaid. This mortgage loan matures on November 6, 2028 and any unpaid principal from the anticipated repayment date through the maturity date bears interest at a variable rate of the greater of 6.53% or the then effective U.S. swap rate for the swap terminating on the maturity date plus 5.00%.

(4) The debt securing these properties is non-recourse to us.

(5) This mortgage loan matures on February 9, 2025 and requires interest to be paid at an annual rate of the one month term secured overnight financing rate, or SOFR, plus a premium of 1.90%. This joint venture has also purchased an interest rate cap through February 2025 with a SOFR strike rate equal to 4.48% and an initial premium of \$1,200. The maturity date of this mortgage loan is subject to two remaining one-year extension options.

We **also recorded impairment charges** account for the unconsolidated joint venture for 10 medical office and life science properties in which we own a 20% equity interest, or the LSMD JV, and the unconsolidated joint venture for a life science property located in Boston, Massachusetts in which we own a 10% equity interest, or the Seaport JV, using the equity method of **\$3,617 to adjust** accounting under the fair value option. During the three months ended March 31, 2024 and 2023, respectively, we recognized a \$1,613 and \$(647) change in the fair value of our investments in our unconsolidated joint ventures. These amounts are included in equity in net earnings (losses) of investees in our condensed consolidated statements of comprehensive income (loss). See Note 6 for further information regarding the valuation of our investment in these joint ventures.

Equity Method Investment in AlerisLife:

As of March 31, 2024, we owned approximately 34.0% of the outstanding common shares of AlerisLife Inc., or AlerisLife. We account for our 34.0% non-controlling interest in AlerisLife using the equity method of accounting.

As of March 31, 2024, our investment in AlerisLife had a carrying value of **one senior living community** \$15,740. The cost basis of our investment in AlerisLife exceeded our proportionate share of AlerisLife's total stockholders' equity book value on the date of acquisition of our initial interest in AlerisLife, which was February 16, 2024, by an aggregate of \$29,500. As required under GAAP, we are amortizing this difference to **its estimated fair value**, equity in earnings of an investee over 21 years, the weighted average remaining useful life of the real estate assets owned by AlerisLife and the intangible contract asset with us as of the date of acquisition. We recorded amortization of the basis difference of \$174 for the three months ended March 31, 2024. We recognized income of \$111 related to our investment in AlerisLife for the three months ended March 31, 2024. These amounts are included in equity in net earnings (losses) of investees in our condensed consolidated statements of comprehensive income (loss). See Note 11 for further information regarding our investment in AlerisLife.

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Note 3, 4. Leases

We are a lessor of medical office and life science properties, senior living communities and other healthcare related properties. Our leases provide our tenants with the contractual right to use and economically benefit from all of the premises demised under the leases; therefore, we have determined to evaluate our leases as lease arrangements.

Our leases provide for base rent payments and, in addition, may include variable payments. Rental income from operating leases, including any payments derived by index or market based indices, is recognized on a straight line basis over the lease term when we have determined that the collectability of substantially all of the lease payments is probable. Some of our leases have options to extend or terminate the lease exercisable at the option of our tenants, which are considered when determining the lease term.

We increased rental income to record revenue on a straight line basis by \$676,291 and \$2,738, \$2,448 for the three months ended September 30, 2023, March 31, 2024 and 2022, respectively, and \$7,193 for the nine months ended September 30, 2022. We decreased rental income to record revenue on a straight line basis by \$1,333 for the nine months ended September 30, 2023, 2023, respectively. Rents receivable, excluding receivables related to our properties classified as held for sale, if any, include \$74,884, \$74,704 and \$76,363, \$75,306 of straight line rent receivables at September 30, 2023, March 31, 2024 and December 31, 2022, December 31, 2023, respectively, and are included in other assets, net in our condensed consolidated balance sheets.

We do not include in our measurement of our lease receivables certain variable payments, including changes in the index or market based indices after the inception of the lease, certain tenant reimbursements and other income until the specific events that trigger the variable payments have occurred. Such payments totaled \$12,018, \$11,350 and \$11,312, \$11,986 for the three months ended September 30, 2023, March 31, 2024 and 2022, 2023, respectively, of which tenant reimbursements totaled \$11,965, \$11,284 and \$11,263, respectively, and \$36,579 and \$32,450 for the nine months ended September 30, 2023 and 2022, respectively, of which tenant reimbursements totaled \$36,414 and \$32,276, \$11,924, respectively.

Right of Use Asset and Lease Liability: For leases where we are the lessee, we recognized a right of use asset and a lease liability equal to the present value of the minimum lease payments with rental payments being applied to the lease liability and the right of use asset being amortized over the term of the lease. The values of the right of use assets and related liabilities representing our future obligation under the respective lease arrangements for which we are the lessee were \$24,163, \$22,555 and \$24,545, \$22,937, respectively, as of September 30, 2023, March 31, 2024, and \$26,508, \$23,366 and \$26,889, \$23,748, respectively, as of December 31, 2022, December 31, 2023. The right of use assets and related lease liabilities are included within other assets, net and other liabilities, respectively, within our condensed consolidated balance sheets. In addition, we lease equipment at certain of our managed senior living communities. These leases are short term in nature, are cancelable with no fee or do not result in an annual expense in excess of our capitalization policy and, as a result, are not recorded on our condensed consolidated balance sheets.

Note 4, 5. Indebtedness

Our principal debt obligations, excluding any debt obligations of our joint ventures, at September 30, 2023, March 31, 2024 were: (1) \$450,000 of outstanding borrowings under our credit facility; (2) \$2,350,000, \$2,100,000 outstanding principal amount of senior unsecured notes; and (3) \$9,504, (2) \$940,534 outstanding principal amount of a senior secured notes; and (3) \$8,669 principal amount of mortgage note debt secured by one property. This The mortgaged property had a net book value of \$12,962, \$13,466 at September 30, 2023, March 31, 2024. We also had two properties subject to finance leases that expire in 2026 with lease obligations totaling \$4,156, \$3,528 at September 30, 2023, March 31, 2024; these two properties had an aggregate net book value of \$23,140 and \$22,347, \$22,365 at September 30, 2023 and December 31, 2022, March 31, 2024.

Until its repayment in full on December 21, 2023, respectively.

We have had a \$450,000 credit facility that is used for general business purposes and matures in January 2024. We are required to pay interest on the amount outstanding under was fully drawn. As of December 21, 2023, our former credit facility at a rate of SOFR plus a premium, which was 290 basis points per annum at September 30, 2023. As of September 30, 2023, our paid off in full and the related credit facility required interest to be paid on borrowings at the annual rate of 8.3%, plus a facility fee of \$338 per quarter, agreement was terminated. The weighted average annual interest rates rate for borrowings under our former credit facility were 8.3% and 4.8%, was 7.6% for the three months ended September 30, 2023 and 2022, respectively, and 7.8% and 3.8% for March 31, 2023. In January 2023, pursuant to the nine months ended September 30, 2023 and 2022, respectively. As of September 30, 2022 and October 27, 2023, credit agreement, we were fully drawn repaid \$113,627 in outstanding borrowings under our credit facility. We are also engaging in discussions with the lenders under our \$450,000 former credit facility regarding an amendment and the commitments were reduced to \$586,373. In February 2023, we and our lenders amended the credit agreement to extend reduce the maturity date commitments from \$586,373 to \$450,000 following our repayment of \$136,373 in outstanding borrowings under our former credit facility, and as a result of that reduction in commitments, we recorded a loss on modification or early extinguishment of debt of \$1,075 for the facility, amend three months ended March 31, 2023.

As of March 31, 2024, all \$940,534 of our senior secured notes due 2026 are fully and unconditionally guaranteed, on a joint, several and senior secured basis, by certain covenants of our subsidiaries that own 95 properties, or the Collateral Guarantors, and allow us to repay maturing debt, among on a joint, several and unsecured basis, by all our subsidiaries other things, than the Collateral Guarantors and certain excluded subsidiaries, and all \$500,000 of our 9.75% senior notes due 2025 and all \$500,000 of our 4.375% senior notes due 2031 were fully and unconditionally guaranteed, on a joint, several and unsecured basis, by all of our subsidiaries, except for certain excluded subsidiaries. The notes and related guarantees (other than our senior secured notes and the guarantees provided by the

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As of September 30, 2023, all \$500,000 of our 9.75% senior notes due 2025 and all \$500,000 of our 4.375% senior notes due 2031 were fully and unconditionally guaranteed, on a joint and several basis and on a senior unsecured basis, by all of our subsidiaries, except for certain excluded subsidiaries, including pledged subsidiaries under our credit agreement. The notes and the guarantees (Collateral Guarantors) are effectively subordinated to all of our and the subsidiary guarantors' secured indebtedness, respectively, to the extent of the value of the collateral securing such secured indebtedness, and the notes and related guarantees are structurally subordinated to all indebtedness and other liabilities and any preferred equity of any of our subsidiaries that do not guarantee the notes. Our remaining \$1,350,000 \$1,100,000 of senior unsecured notes do not have the benefit of any guarantees as of September 30, 2023 March 31, 2024.

In January 2023, pursuant to our credit agreement, we repaid \$113,627 in outstanding borrowings under our credit facility Our senior secured notes due 2026 and the facility commitments were reduced to \$586,373.

In February 2023, we guarantees provided by the Collateral Guarantors are secured by a first priority lien and our lenders further amended our credit agreement. Pursuant to the amendment:

- the waiver security interest in each of the fixed charge coverage ratio covenant has been extended through collateral properties and 100% of the equity interests in each of the Collateral Guarantors. No cash interest will accrue on these notes prior to maturity. The accreted value of these notes will increase at a rate of 11.25% per annum compounded semiannually on January 15 and July 15 of each year, such that the accreted value will equal the principal amount at maturity. During the three months ended March 31, 2024, we recognized discount accretion of \$20,659 for our senior secured notes due 2026 in interest expense in our condensed consolidated statements of comprehensive income (loss). We have a one-time option to extend the maturity date of our credit facility, or January 15, 2024;
- the minimum liquidity requirement was decreased from \$200,000 these notes by one year, to \$100,000;
- the facility commitments were reduced from \$586,373 to \$450,000 following our repayment of \$136,373 in then outstanding borrowings, and as a result of the reduction in commitments, we recorded a loss on modification or early extinguishment of debt of \$1,075 for the nine months ended September 30, 2023;
- the feature of our credit facility permitting us to reborrow any repaid funds was eliminated;
- we continue to have the ability to fund \$400,000 of capital expenditures per year and we are restricted in our ability to acquire real property as defined in the credit agreement;
- SOFR was established as the replacement benchmark rate in place of LIBOR to calculate interest payable on amounts outstanding under our credit facility, and the interest premium under our credit facility was increased by 40 basis points; and
- we are required to repay outstanding amounts under our credit facility with excess cash flow, and certain financial covenants and restrictions on distributions to common shareholders, share repurchases, capital expenditures, acquiring additional properties and incurring additional indebtedness (in each case January 15, 2027, subject to various exceptions) will remain in place through the maturity date satisfaction of our credit facility.

Pursuant to our credit agreement, we pledged certain equity interests of subsidiaries owning properties to secure our obligations under our credit agreement conditions and have provided first mortgage liens on 62 medical office and life science properties with an aggregate net book value of \$826,780 as of September 30, 2023 to secure our obligations, which pledges and/or mortgage liens may be removed or new ones may be added based on outstanding debt amounts, among other things.

Our credit agreement requires us to maintain collateral properties with an aggregate appraised value of at least \$1,090,909, and allows Wells Fargo Bank, National Association, as administrative agent under our credit facility, or the Administrative Agent, to periodically reappraise the collateral properties. On June 23, 2023, the Administrative Agent notified us that the reappraised value of the then 61 medical office and life science properties securing our credit facility since September 2021 had declined from \$1,337,200 to \$1,046,770, below the \$1,090,909 threshold required under our credit agreement. Failure to meet the required threshold constitutes a non-monetary event of default under our credit agreement. In July 2023, we obtained a limited waiver from the Administrative Agent and requisite lenders under our credit facility, which waived the event of default and decreased the required appraised value of the collateral properties through September 30, 2023. In September 2023, we pledged the equity interests payment of an additional subsidiary owning one medical office property to secure our obligations under our credit agreement and provided a first mortgage lien on such medical office property. As of September 30, 2023, extension fee. If we believe we were in compliance with exercise this covenant.

In April 2023, we prepaid a mortgage note secured by one of our senior living communities with option, interest payments will be due semiannually during the extension period at an outstanding principal balance of approximately \$14,565, a maturity date in June 2023 and an annual initial interest rate of 6.64% using cash on hand.

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Our credit agreement and our senior unsecured 11.25% with increases of 50 basis points every 90 days these notes indentures and their supplements provide for acceleration of payment of all amounts outstanding upon the occurrence and continuation of certain events of default, such as, in the case of our credit agreement, a change of control of us, as defined, which includes The RMR Group LLC, or RMR, ceasing to act as our business and property manager. Our senior unsecured notes indentures and their supplements and our credit agreement also contain covenants that restrict our ability to incur debts, including debts secured by mortgages on our properties, in excess of calculated amounts and require us to maintain various financial ratios, and our credit agreement contains covenants that restrict our ability to make distributions to our shareholders in certain circumstances. As of

September 30, 2023, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our credit agreement and our public debt covenants as the effects of the slower than anticipated and uneven recovery of our SHOP business from the COVID-19 pandemic, wage and commodity price inflation, rising interest rates, increased insurance costs, geopolitical risks and other economic, market and industry conditions continued to adversely impact our operations. We are unable to refinance existing or maturing debt or issue new debt until this ratio is at or above 1.5x on a pro forma basis. As of September 30, 2023, we believe we were in compliance with all of the other covenants under our senior unsecured notes indentures and their supplements, our credit agreement and our other debt obligations, subject to the waivers described above. Although we continue to take steps to enhance our ability to maintain sufficient liquidity, a protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from wage or commodity price inflation, rising or sustained high interest rates, increased insurance costs, geopolitical risks or other economic, market or industry conditions, including the delayed and uneven recovery of the senior housing industry, downturns or recessions, may cause increased pressure on our ability to satisfy financial and other covenants. If our operating results and financial condition are significantly negatively impacted by economic conditions or otherwise, we may fail to satisfy covenants and conditions under our credit agreement or fail to satisfy our public debt covenants. In addition, we may be unable to repay the \$450,000 in outstanding borrowings under our credit facility if we do not succeed in realizing our plan to address the uncertainty of our ability to continue as a going concern or if that plan is not successful. Further, if we believe we will not be able to satisfy our financial or other covenants, we expect that we would seek waivers or amendments prior to any covenant violation or seek other financing alternatives. Any such waiver or amendment may result in increased costs and interest rates, additional restrictive covenants or other lender protections imposed on us. For example, we are currently engaging in discussions with the lenders under our credit facility regarding a possible extension and amendment of that facility, as described above. remain outstanding.

Note 5.6. Fair Value of Assets and Liabilities

The following table presents certain of our assets that are measured at fair value at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, categorized by the level of inputs as defined in the fair value hierarchy under GAAP, used in the valuation of each asset.

As of March 31, 2024	As of March 31, 2024	As of March 31, 2024	As of December 31, 2023
Description			
Recurring Fair Value Measurements Assets:			
Recurring Fair Value Measurements Assets:			
Recurring Fair Value Measurements Assets:			
Investment in unconsolidated joint venture (Level 3) (1)			
Investment in unconsolidated joint venture (Level 3) (1)			
Investment in unconsolidated joint venture (Level 3) (1)			
Investment in unconsolidated joint venture (Level 3) (2)			

Investment in unconsolidated joint venture (Level 3) ⁽²⁾
Investment in unconsolidated joint venture (Level 3) ⁽²⁾
Non-Recurring Fair Value Measurements Assets: Non-Recurring Fair Value Measurements Assets: Non-Recurring Fair Value Measurements Assets: Real estate properties held for sale (Level 2) ⁽³⁾ Real estate properties held for sale (Level 2) ⁽³⁾ Real estate properties held for sale (Level 2) ⁽³⁾

	As of September 30, 2023		As of December 31, 2022	
Description	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Recurring Fair Value Measurements				
Assets:				
Investment in AlerisLife (Level 1) ⁽¹⁾				
	\$ —	\$ —	\$ 5,880	\$ 5,880
Investment in unconsolidated joint venture (Level 3) ⁽²⁾				
	\$107,773	\$ 107,773	\$104,697	\$ 104,697
Investment in unconsolidated joint venture (Level 3) ⁽³⁾				
	\$ 45,971	\$ 45,971	\$ 50,780	\$ 50,780
Non-Recurring Fair Value Measurements				
Assets:				

Real estate
properties held
for sale (Level

2) (4) \$ 6,586 \$ 6,586 \$ — \$ —

- (1) On February 2, 2023, in connection with the proposed acquisition of AlerisLife Inc., or AlerisLife, by a subsidiary of ABP Trust, which is the controlling shareholder of The RMR Group Inc., or RMR Inc., we agreed to tender all of the 10,691,658 shares of common stock of AlerisLife, we owned at a price of \$1.31 per share, and the acquisition was completed on March 20, 2023. Prior to March 20, 2023, these AlerisLife common shares were included in other assets, net in our condensed consolidated balance sheets, and were reported at fair value, which was based upon quoted market prices on The Nasdaq Stock Market LLC, or Nasdaq, (Level 1 inputs). During the three months ended September 30, 2022, we recorded an unrealized loss of \$2,674, and during the nine months ended September 30, 2023 and 2022, we recorded an unrealized gain of \$8,126 and an unrealized loss of \$21,384, respectively, which are included in gains and losses on equity securities, net in our condensed consolidated statements of comprehensive income (loss), to adjust the carrying value of our former investment in AlerisLife common shares to their fair value. See Note 10 for further information about our investment in AlerisLife.
- (2) The 10% equity interest we own in the Seaport JV is included in investments in unconsolidated joint ventures in our condensed consolidated balance sheet, and is reported at fair value, which is based on significant unobservable inputs

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(Level) (Level 3 inputs). The significant unobservable inputs used in the fair value analysis are a discount rate of 6.50% 8.00%, an exit capitalization rate of 6.00%, a holding period of 10 years and market rents. The assumptions made in the fair value analysis are based on the location, type and nature of the property, and current and anticipated market conditions, which are derived from appraisers. See Note 2 3 for further information regarding this joint venture.

- (3) (2) The 20% equity interest we own in the LSMD JV is included in investments in unconsolidated joint ventures in our condensed consolidated balance sheet, and is reported at fair value, which is based on significant unobservable inputs (Level 3 inputs). The significant unobservable inputs used in the fair value analysis are discount rates of between 6.25% 6.50% and 8.00%, exit capitalization rates of between 4.75% and 7.00%, holding periods of 10 years and market rents. The assumptions we made in the fair value analysis are based on the location, type and nature of each property, and current and anticipated market conditions, which are derived from appraisers. See Note 2 3 for further information regarding this joint venture.

- (4) (3) We have assets in our condensed consolidated balance sheets that are measured at fair value on a non-recurring basis. During the three months ended September 30, 2023 March 31, 2024, we recorded impairment charges of \$427 \$12,142 to reduce the carrying value of one life science property two medical office properties that is are classified as held for sale to its their estimated sales price, less estimated costs to sell, of \$5,845 \$19,744 under an agreement agreements to sell that we have entered into with a third party. During the three months ended September 30, 2023, we also recorded impairment charges of \$729 to reduce the carrying value of one senior living community that is classified as held for sale to its estimated sales price, less estimated costs to sell, of \$741 under an agreement to sell that we have entered into with a third party. parties. See Note 2 3 for further information about impairment charges and the properties we have classified as held for sale.

In addition to the assets described in the table above, our financial instruments at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 included cash and cash equivalents, restricted cash, certain other assets, our credit facility, senior unsecured notes, senior secured notes, secured debt and finance leases and certain other unsecured obligations and liabilities. The fair values of these financial instruments approximated their carrying values in our condensed consolidated financial statements as of such dates, except as follows:

Description	As of September 30, 2023		As of December 31, 2022	
	Carrying Amount (1)	Estimated Fair Value	Carrying Amount (1)	Estimated Fair Value
Senior unsecured notes, 4.750% coupon rate, due 2024	\$ 249,837	\$ 236,225	\$ 249,628	\$ 211,250
Senior unsecured notes, 9.750% coupon rate, due 2025	497,019	481,350	495,710	478,985
Senior unsecured notes, 4.750% coupon rate, due 2028	494,428	364,555	493,473	284,375
Senior unsecured notes, 4.375% coupon rate, due 2031	493,630	346,180	492,986	317,130
Senior unsecured notes, 5.625% coupon rate, due 2042	342,851	201,600	342,565	151,200
Senior unsecured notes, 6.250% coupon rate, due 2046	243,555	154,700	243,338	115,300
Secured debts (2)	13,660	12,491	30,177	28,275
	<u>\$ 2,334,980</u>	<u>\$ 1,797,101</u>	<u>\$ 2,347,877</u>	<u>\$ 1,586,515</u>

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Description	As of March 31, 2024		As of December 31, 2023	
	Carrying Amount ⁽¹⁾	Estimated Fair Value	Carrying Amount ⁽¹⁾	Estimated Fair Value
Senior unsecured notes, 9.750% coupon rate, due 2025	\$ 497,892	\$ 500,350	\$ 497,454	\$ 490,750
Senior secured notes, zero coupon rate, due 2026	751,890	798,419	731,211	771,981
Senior unsecured notes, 4.750% coupon rate, due 2028	495,065	405,400	494,746	384,110
Senior unsecured notes, 4.375% coupon rate, due 2031	494,060	374,350	493,845	375,000
Senior unsecured notes, 5.625% coupon rate, due 2042	343,041	200,480	342,946	211,400
Senior unsecured notes, 6.250% coupon rate, due 2046	243,699	153,600	243,627	154,000
Secured debt and finance leases ⁽²⁾	12,197	11,638	13,020	12,284
	<u>\$ 2,837,844</u>	<u>\$ 2,444,237</u>	<u>\$ 2,816,849</u>	<u>\$ 2,399,525</u>

(1) Includes unamortized net discounts, premiums and debt issuance costs, premiums and discounts, costs.

(2) We assumed certain of these secured debts in connection with our acquisition of certain properties. We recorded the assumed mortgage notes at estimated fair value on the date of acquisition and we are amortizing the fair value adjustments, if any, to interest expense over the respective terms of the mortgage notes to adjust interest expense to the estimated market interest rates as of the date of acquisition.

We estimated the fair values of our two issuances of senior unsecured notes due 2042 and 2046 based on the closing price on The Nasdaq Stock Market LLC, or Nasdaq, (Level 1 inputs) inputs as defined in the fair value hierarchy under GAAP) as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023. We estimated the fair values of our four three issuances of senior unsecured notes due 2024, 2025, 2028 and 2031 and our issuance of senior secured notes due 2026 using an average of the bid and ask price on Nasdaq on or about September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 (Level 2 inputs as defined in the fair value hierarchy under GAAP). We estimated the fair values of our secured debts by using discounted cash flows analyses and currently prevailing market terms as of the measurement date (Level 3 inputs as defined in the fair value hierarchy under GAAP). Because Level 3 inputs are unobservable, our estimated fair values may differ materially from the actual fair values.

Note 7. Shareholders' Equity

Common Share Purchases:

During the three months ended March 31, 2024, we purchased an aggregate of 30,176 of our common shares, valued at a weighted average share price of \$2.58 per common share, from certain former employees of RMR in satisfaction of tax withholding and payment obligations in connection with the vesting of prior awards of our common shares. We withheld and purchased these common shares at their fair market values based upon the trading prices of our common shares at the close of trading on Nasdaq on the applicable purchase dates.

Distributions:

During the three months ended March 31, 2024, we declared and paid quarterly distributions to common shareholders as follows:

Declaration Date	Record Date	Payment Date	Distribution Per Share	Total Distributions
January 11, 2024	January 22, 2024	February 15, 2024	\$ 0.01	\$ 2,404

On April 11, 2024, we declared a quarterly distribution to common shareholders of record on April 22, 2024 of \$0.01 per share, or approximately \$2,404. We expect to pay this distribution on or about May 16, 2024 using cash on hand.

Note 8. Segment Reporting

We operate in, and report financial information for, the following two segments: Medical Office and Life Science Portfolio and senior housing operating portfolio, or SHOP. We aggregate the operating results of our properties in these two reporting segments based on their similar operating and economic characteristics. Our Medical Office and Life Science Portfolio segment primarily consists of medical office properties leased to medical providers and other medical related businesses, as well as life science properties primarily leased to biotech laboratories and other similar tenants. Our SHOP segment consists of managed

DIVERSIFIED HEALTHCARE TRUST NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) (dollar amounts in thousands, except per share data or as otherwise stated)

Note 6. Shareholders' Equity

Common Share Awards:

On June 5, 2023, in accordance with our Trustee compensation arrangements, we awarded to each of our then seven Trustees 20,000 of our common shares, valued at \$1.74 per share, the closing price of our common shares on Nasdaq on that day.

On September 13, 2023, we awarded under our equity compensation plan an aggregate of 800,000 of our common shares, valued at \$2.33 per share, the closing price of our common shares on Nasdaq on that day, to our officers and certain other employees of RMR.

On September 26, 2023, in accordance with our Trustee compensation arrangements, we awarded 20,000 of our common shares in connection with the election of one of our Trustees in September 2023, valued at \$2.23 per share, the closing price of our common shares on Nasdaq on that day.

Common Share Purchases:

During the three and nine months ended September 30, 2023, we purchased an aggregate of 151,405 and 181,893 of our common shares, respectively, valued at a weighted average share price of \$2.33 and \$2.12 per common share, respectively, from our officers and certain current and former officers and employees of RMR in satisfaction of tax withholding and payment obligations in connection with the vesting of awards of our common shares.

Distributions:

During the nine months ended September 30, 2023, we declared and paid quarterly distributions to common shareholders as follows:

Declaration Date	Record Date	Payment Date	Distribution Per Share	Total Distributions
January 12, 2023	January 23, 2023	February 16, 2023	\$ 0.01	\$ 2,397
April 13, 2023	April 24, 2023	May 18, 2023	0.01	2,397
July 13, 2023	July 24, 2023	August 17, 2023	0.01	2,398
			<u>\$ 0.03</u>	<u>\$ 7,192</u>

On October 12, 2023, we declared a quarterly distribution to common shareholders of record on October 23, 2023 of \$0.01 per share, or approximately \$2,405. We expect to pay this distribution on or about November 16, 2023.

Note 7. Segment Reporting

We operate in, and report financial information for, the following two segments: Office Portfolio and SHOP. We aggregate each of these two reporting segments based on their similar operating and economic characteristics. Our Office Portfolio segment consists of medical office properties leased to medical providers and other medical related businesses, as well as life science properties leased to biotech laboratories and other similar tenants. Our SHOP segment consists of managed senior living communities that provide short term and long term residential living and, in some instances, care and other services for residents where we pay fees to managers to operate the communities on our behalf.

We also report “non-segment” operations, which consists of triple net leased senior living communities and wellness centers that are leased to third party operators from which we receive rents, which we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.

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	For the Three Months Ended March 31, 2024			
	Medical Office and Life Science Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 54,149	\$ —	\$ 8,501	\$ 62,650
Residents fees and services	—	308,126	—	308,126
Total revenues	54,149	308,126	8,501	370,776
Expenses:				
Property operating expenses	23,897	283,416	291	307,604
Depreciation and amortization	20,740	46,922	2,471	70,133
General and administrative	—	—	7,568	7,568
Acquisition and certain other transaction related costs	—	—	86	86
Impairment of assets	12,142	—	—	12,142
Total expenses	56,779	330,338	10,416	397,533
Loss on sale of properties	(5,874)	—	—	(5,874)
Gains on equity securities, net	—	—	—	—
Interest and other income	—	—	2,237	2,237
Interest expense	(222)	(68)	(57,286)	(57,576)
Loss before income tax expense and equity in net earnings of investees	(8,726)	(22,280)	(56,964)	(87,970)
Income tax expense	—	—	(187)	(187)
Equity in net earnings of investees	1,613	—	285	1,898
Net loss	<u>\$ (7,113)</u>	<u>\$ (22,280)</u>	<u>\$ (56,866)</u>	<u>\$ (86,259)</u>

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	For the Three Months Ended September 30, 2023			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 55,058	\$ —	\$ 8,332	\$ 63,390
Residents fees and services	—	293,134	—	293,134
Total revenues	55,058	293,134	8,332	356,524
Expenses:				
Property operating expenses	25,784	272,445	203	298,432
Depreciation and amortization	20,175	44,587	2,474	67,236
General and administrative	—	—	6,954	6,954
Acquisition and certain other transaction related costs	—	—	3,676	3,676
Impairment of assets	427	729	—	1,156
Total expenses	46,386	317,761	13,307	377,454
Interest and other income	—	115	3,128	3,243
Interest expense	(119)	(79)	(47,560)	(47,758)
Income (loss) before income tax expense and equity in net losses of investees	8,553	(24,591)	(49,407)	(65,445)
Income tax expense	—	—	(189)	(189)
Equity in net losses of investees	(145)	—	—	(145)
Net income (loss)	\$ 8,408	\$ (24,591)	\$ (49,596)	\$ (65,779)

	As of March 31, 2024			
	Medical Office and Life Science Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 1,834,609	\$ 3,103,540	\$ 409,888	\$ 5,348,037

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	For the Nine Months Ended September 30, 2023			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 165,448	\$ —	\$ 25,753	\$ 191,201
Residents fees and services	—	857,572	—	857,572
Total revenues	165,448	857,572	25,753	1,048,773
Expenses:				
Property operating expenses	73,237	796,733	770	870,740
Depreciation and amortization	63,065	129,891	7,474	200,430
General and administrative	—	—	20,111	20,111
Acquisition and certain other transaction related costs	—	—	9,812	9,812
Impairment of assets	14,034	4,346	—	18,380
Total expenses	150,336	930,970	38,167	1,119,473
Gain on sale of properties	—	1,233	—	1,233
Gains on equity securities, net	—	—	8,126	8,126
Interest and other income	—	1,581	10,991	12,572

Interest expense	(344)	(502)	(142,076)	(142,922)
Loss on modification or early extinguishment of debt	—	—	(1,075)	(1,075)
Income (loss) before income tax expense and equity in net earnings of investees	14,768	(71,086)	(136,448)	(192,766)
Income tax expense	—	—	(379)	(379)
Equity in net earnings of investees	2,137	—	—	2,137
Net income (loss)	\$ 16,905	\$ (71,086)	\$ (136,827)	\$ (191,008)

Under the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, the U.S. Department of Health and Human Services established a Provider Relief Fund. Subsequently, the American Rescue Plan Act, or ARPA, was enacted. Retention and use of the funds received under the CARES Act and ARPA are subject to certain terms and conditions. The terms and conditions require that the funds be utilized to compensate for lost revenues that are attributable to the COVID-19 pandemic and for eligible costs to prevent, prepare for and respond to the COVID-19 pandemic that are not covered by other sources. Further, fund recipients are required to be participating in Medicare at the time of distribution and are subject to certain other terms and conditions, including quarterly reporting requirements. In addition, fund recipients are required to have billed Medicare during 2019 and to continue to provide care after January 31, 2020 for diagnosis, testing or care for individuals with possible or actual COVID-19 cases. Any funds not used in accordance with the terms and conditions must be returned. We recognize income from government grants on a systematic and rational basis over the period in which we recognize the related expenses or loss of revenues for which the grants are intended to compensate when there is reasonable assurance that we will comply with the applicable terms and conditions of the grant and there is reasonable assurance that the grant will be received. We have received funds related to certain programs under the CARES Act, ARPA and various state programs in which certain of our communities in our SHOP segment are located. We have recognized \$1,581 and \$1,084 with respect to those funds we received as interest and other income in our condensed consolidated statements of comprehensive income (loss) with respect to our SHOP segment for the nine months ended September 30, 2023 and 2022, respectively.

	For the Three Months Ended March 31, 2023			
	Medical Office and Life Science Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 57,022	\$ —	\$ 9,416	\$ 66,438
Residents fees and services	—	279,592	—	279,592
Total revenues	57,022	279,592	9,416	346,030
Expenses:				
Property operating expenses	23,515	262,329	236	286,080
Depreciation and amortization	20,035	42,152	2,613	64,800
General and administrative	—	—	5,873	5,873
Acquisition and certain other transaction related costs	—	—	93	93
Impairment of assets	2,308	3,617	—	5,925
Total expenses	45,858	308,098	8,815	362,771
Gain on sale of properties	—	1,233	—	1,233
Gains on equity securities, net	—	—	8,126	8,126
Interest and other income	—	—	4,195	4,195
Interest expense	(109)	(271)	(47,400)	(47,780)
Loss on modification or early extinguishment of debt	—	—	(1,075)	(1,075)
Income (loss) before income tax benefit and equity in net losses of investees	11,055	(27,544)	(35,553)	(52,042)
Income tax benefit	—	—	31	31
Equity in net losses of investees	(647)	—	—	(647)
Net income (loss)	\$ 10,408	\$ (27,544)	\$ (35,522)	\$ (52,658)

	As of September 30, 2023			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 1,918,452	\$ 3,132,120	\$ 479,684	\$ 5,530,256

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For the Three Months Ended September 30, 2022

	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 55,254	\$ —	\$ 8,706	\$ 63,960
Residents fees and services	—	258,960	—	258,960
Total revenues	55,254	258,960	8,706	322,920
Expenses:				
Property operating expenses	24,179	264,722	195	289,096
Depreciation and amortization	19,037	38,484	2,886	60,407
General and administrative	—	—	6,179	6,179
Acquisition and certain other transaction related costs	—	—	289	289
Total expenses	43,216	303,206	9,549	355,971
(Loss) gain on sale of properties	(5,074)	30	—	(5,044)
Losses on equity securities, net	—	—	(2,674)	(2,674)
Interest and other income	—	125	3,974	4,099
Interest expense	(217)	(298)	(46,421)	(46,936)
Income (loss) before income tax expense and equity in net earnings of investees	6,747	(44,389)	(45,964)	(83,606)
Income tax expense	—	—	(13)	(13)
Equity in net earnings of investees	2,127	—	—	2,127
Net income (loss)	\$ 8,874	\$ (44,389)	\$ (45,977)	\$ (81,492)

	For the Nine Months Ended September 30, 2022			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 162,861	\$ —	\$ 28,906	\$ 191,767
Residents fees and services	—	754,914	—	754,914
Total revenues	162,861	754,914	28,906	946,681
Expenses:				
Property operating expenses	69,652	754,057	195	823,904
Depreciation and amortization	55,424	111,836	8,667	175,927
General and administrative	—	—	20,671	20,671
Acquisition and certain other transaction related costs	—	—	1,826	1,826
Total expenses	125,076	865,893	31,359	1,022,328
Gain on sale of properties	321,242	822	—	322,064
Losses on equity securities, net	—	—	(21,384)	(21,384)
Interest and other income	—	1,084	5,676	6,760
Interest expense	(798)	(1,283)	(157,961)	(160,042)
Gain (loss) on modification or early extinguishment of debt	16	—	(30,059)	(30,043)
Income (loss) before income tax expense and equity in net earnings of investees	358,245	(110,356)	(206,181)	41,708
Income tax expense	—	—	(845)	(845)
Equity in net earnings of investees	8,685	—	—	8,685
Net income (loss)	\$ 366,930	\$ (110,356)	\$ (207,026)	\$ 49,548

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As of December 31, 2022				
	Office Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 1,967,244	\$ 3,147,785	\$ 887,064	\$ 6,002,093

As of December 31, 2023				
	Medical Office and Life Science Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 1,866,422	\$ 3,134,978	\$ 444,736	\$ 5,446,136

Note 8.9. Senior Living Community Management Agreements

Our managed senior living communities are operated by third parties pursuant to management agreements. Five Star Senior Living, or Five Star, which is an operating division of AlerisLife, manages many of our SHOP communities. Five Star manages these communities for us pursuant to a master management agreement that we and Five Star are party to. AlerisLife guarantees the payment and performance of each of its applicable subsidiary's obligations under the applicable management agreements.

In February 2022, we closed a senior living community that had previously been managed by Five Star. We are assessing opportunities to redevelop that property. This community was one of the 108 communities that we and Five Star agreed in 2021 to transition to other third party managers or close. As of December 31, 2021, we had transitioned the other 107 senior living communities, containing 7,340 living units, from Five Star to other third party managers. We incurred costs related to retention and other transition costs for these communities. We recorded \$220 and \$1,665 for the three and nine months ended September 30, 2022, respectively, of these costs to acquisition and certain other transaction related costs in our condensed consolidated statements of comprehensive income (loss).

In connection with ABP Trust's acquisition of AlerisLife as described in Note 10, on March 20, 2023, we entered into a consent and amendment agreement on February 2, 2023, pursuant to which, among other things, we agreed to amend our amended the master management agreement with Five Star, AlerisLife to eliminate any change of control default or event of default provisions. See Note 10.11 for further information regarding ABP Trust's acquisition of AlerisLife, including the related amendment to the master management agreement, AlerisLife.

Our Senior Living Communities Managed by Five Star. Five Star managed 119 and 120 of our senior living communities as of September 30, 2023 both March 31, 2024 and 2022, respectively, 2023. We lease our senior living communities that are managed by Five Star to our taxable REIT subsidiaries, or TRSs.

We incurred management fees payable to Five Star of \$10,058 \$10,407 and \$9,477 \$10,014 for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$29,962 and \$27,380 for the nine months ended September 30, 2023 and 2022, 2023, respectively. For the three months ended September 30, 2023 March 31, 2024 and 2022, \$9,457 2023, \$9,998 and \$8,601, \$9,137, respectively, of the total management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$601 \$409 and \$876, respectively, were capitalized in our condensed consolidated balance sheets. For the nine months ended September 30, 2023 and 2022, \$27,909 and \$25,017, respectively, of the total management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$2,053 and \$2,363, \$877, respectively, were capitalized in our condensed consolidated balance sheets. The amounts capitalized are being depreciated over the estimated useful lives of the related capital assets.

DIVERSIFIED HEALTHCARE TRUST NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED) (dollar amounts in thousands, except per share data or as otherwise stated)

We incurred fees of \$0 \$10 and \$1,590 \$879 for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$1,213 and \$5,242 for the nine months ended September 30, 2023 and 2022, 2023, respectively, with respect to rehabilitation services Five Star provided at our senior living communities that are payable by us. These amounts are included in property operating expenses in our condensed consolidated statements of comprehensive income (loss).

We lease to Five Star space at certain of our senior living communities, which it uses to provide certain outpatient rehabilitation and wellness services.

Our Senior Living Communities Managed by Other Third Party Managers. Several other third party managers managed 111 and 107 of our senior living communities as of September 30, 2023 both March 31, 2024 and 2022, respectively, 2023. We lease our senior living communities that are managed by these third party managers to our TRSs.

In March 2024, we terminated our management agreement with one of our third party managers which manages certain of our communities located in Wisconsin and Illinois. We have transitioned these communities to another third party manager which we have an existing relationship with. The terms of the management agreement for these communities are generally consistent with the terms of the existing management agreements with our other third party managers. We paid termination and other fees of \$1,106 during the second quarter of 2024, and expect to incur additional costs during 2024, related to the transition of these communities.

We incurred management fees payable to these third party managers of \$5,635 \$5,725 and \$5,108 \$5,238 for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$16,230 and \$15,434 for the nine months ended September 30, 2023 and 2022, 2023, respectively. These amounts are included in property operating expenses in our condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
(dollar amounts in thousands, except per share data or as otherwise stated)

statements of comprehensive income (loss).

The following table presents residents fees and services revenue from all of our managed senior living communities disaggregated by the type of contract and payer:

		Three Months Ended September 30,		Nine Months Ended September 30,	
		Three Months Ended March 31,		Three Months Ended March 31,	
		Three Months Ended March 31,		Three Months Ended March 31,	
		Three Months Ended March 31,		Three Months Ended March 31,	
Revenue from contracts with customers:					
Revenue from contracts with customers:					
Revenue from contracts with customers:	Revenue from contracts with customers:	2023	2022	2023	2022
Basic housing and support services	Basic housing and support services	\$ 232,805	\$ 204,842	\$ 681,598	\$ 594,715
Basic housing and support services					
Basic housing and support services					
Medicare and Medicaid programs					
Medicare and Medicaid programs					
Medicare and Medicaid programs	Medicare and Medicaid programs	22,568	21,370	65,965	60,153
Private pay and other third party payer SNF services	Private pay and other third party payer SNF services	37,761	32,748	110,009	100,046
Private pay and other third party payer SNF services					
Private pay and other third party payer SNF services					
Total residents fees and services	Total residents fees and services	\$ 293,134	\$ 258,960	\$ 857,572	\$ 754,914
Total residents fees and services					
Total residents fees and services					

Note 9, 10. Business and Property Management Agreements with RMR

We have no employees. The personnel and various services we require to operate our business are provided to us by RMR. We have two agreements with RMR to provide management services to us: (1) a business management agreement, which relates to our business generally; and (2) a property management agreement, which relates to the property level operations of many of our properties, including our medical office and life science properties, and major renovation or repositioning activities at our senior living communities that we may request RMR to manage from time to time. See Note 10 11 for further information regarding our relationship, agreements and transactions with RMR.

We recognized net business management fees of \$3,692 \$4,878 and \$3,763 \$3,270 for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$10,283 and \$13,082 2023, respectively. The net business management fees we recognized for the nine three months ended September 30, 2023 and 2022, respectively. Based March 31, 2024 include \$849 of estimated incentive fees based on our common share total return, as defined in our business management agreement, as of each of September 30, 2023 and 2022, no agreement. Although we recognized estimated incentive fees are included in accordance with GAAP, the net business management fees we recognized for the three or nine months ended September 30, 2023 or 2022. The actual amount of annual incentive fees for 2023, 2024, if any, will be based on our common share total return as defined in our business management agreement, for the three-year period ending December 31, 2023 December 31, 2024, and will be payable in January 2024, 2025. We did not incur any incentive fee payable for the year ended December 31, 2022 December 31, 2023. We recognize business management and incentive fees in general and administrative expenses in our condensed consolidated statements of comprehensive income (loss).

We recognized aggregate net property management and construction supervision fees of \$2,209 \$1,904 and \$2,658 \$1,992 for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$6,403 and \$7,567 for the nine months ended September 30, 2023 and 2022, 2023, respectively. For the three months ended September 30, 2023 March 31, 2024 and 2022, \$1,363 2023, \$1,538 and \$1,521, \$1,463, respectively, of the total property management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$846 \$366 and \$1,137, \$529, respectively, were capitalized as building improvements

DIVERSIFIED HEALTHCARE TRUST
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

(dollar amounts in our condensed consolidated balance sheets. For the nine months ended September 30, 2023 and 2022, \$4,226 and \$4,142, respectively, of the total property management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$2,177 and \$3,425, respectively, were capitalized thousands, except per share data or as building otherwise stated)

improvements in our condensed consolidated balance sheets. The amounts capitalized are being depreciated over the estimated useful lives of the related capital assets.

We are generally responsible for all our operating expenses, including certain expenses incurred or arranged by RMR on our behalf. We are generally not responsible for payment of RMR's employment, office or administrative expenses incurred to provide management services to us, except for the employment and related expenses of RMR's employees assigned to work exclusively or partly at our properties, our share of the wages, benefits and other related costs of RMR's centralized accounting personnel, our share of RMR's costs for providing our internal audit function, or as otherwise agreed. Our property level operating expenses are generally incorporated into the rents charged to our tenants, including certain payroll and related costs incurred by RMR. We reimbursed RMR \$3,671 \$3,728 and \$3,498 \$3,533 for these expenses and costs for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$10,765 and \$9,573 for the nine months ended September 30, 2023 and 2022, 2023, respectively. These amounts are included in property operating expenses or general and administrative expenses, as applicable, in our condensed consolidated statements of comprehensive income (loss) for these periods.

In connection with the Merger Agreement, we, OPI and RMR entered into a letter agreement pursuant to which we and RMR acknowledged and agreed that, effective upon consummation of the merger, we shall have terminated our business and property management agreements with RMR for convenience, and RMR shall have waived its right to receive payment of the

DIVERSIFIED HEALTHCARE TRUST
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(dollar amounts in thousands, except per share data or as otherwise stated)

termination fee pursuant to each such agreement upon such termination. On September 1, 2023, we and OPI mutually agreed to terminate the Merger Agreement. Since the merger was not consummated, our business and property management agreements with RMR were not terminated and remain in effect.

Management Agreements Between Our between our Joint Ventures and RMR. We have two separate joint venture arrangements with third party institutional investors, the Seaport JV and the LSMD JV. RMR provides management services to both of these joint ventures. Our joint ventures are not our consolidated subsidiaries and, as a result, we are not obligated to pay management fees to RMR under our management agreements with RMR for the services it provides regarding the joint ventures. We wholly owned the 10 medical office and life science properties included in the LSMD JV until the contribution of these properties to the LSMD JV in January 2022, and we paid management fees to RMR for the management services it provided to us for those properties until the contribution of those properties to the LSMD JV.

Note 10, 11. Related Person Transactions

We have relationships and historical and continuing transactions with RMR, RMR Inc., AlerisLife (including Five Star) and others related to them, including other companies to which RMR or its subsidiaries provide management services and some of which have trustees, directors or officers who are also our Trustees or officers. RMR Inc. is the managing member majority owned subsidiary of RMR. The Chair of our Board of Trustees and one of our Managing Trustees, Adam D. Portnoy, is the sole trustee, an officer and the controlling shareholder of ABP Trust, which is the controlling shareholder of RMR Inc. and AlerisLife, the chair of the board of directors, a managing director and the president and chief executive officer of RMR Inc., an officer and employee of RMR and, until the acquisition of AlerisLife by ABP Trust on March 20, 2023, the chair of the board of directors and a managing director of AlerisLife, and currently the sole director of AlerisLife. Jennifer F. Francis, our other Managing Trustee, our former President and our Chief Executive Officer and a former managing director of AlerisLife served as an officer of RMR until December 31, 2023 and will remain an employee of RMR until her retirement on July 1, 2024. Our current President and Chief Executive Officer and our Chief Financial Officer and Treasurer are also officers employees and employees officers of RMR. Jennifer B. Clark, our Secretary and former Managing Trustee, also serves as a managing director and the executive vice president, general counsel and secretary of RMR Inc., an officer and employee of RMR, an officer of ABP Trust and secretary of AlerisLife and, until March 20, 2023, a managing director of AlerisLife. Certain of AlerisLife's officers are officers and employees of RMR. Some of our Independent Trustees also serve as independent trustees of other public companies to which RMR or its subsidiaries provide management services. Mr. Portnoy serves as the chair of the board and as a managing trustee of these companies. Other officers of RMR, including Ms. Clark and certain of our officers, serve as managing trustees or officers of certain of these companies. In addition, officers of RMR and RMR Inc. serve as our officers and officers of other companies to which RMR or its subsidiaries provide management services.

See Note 6 for information relating to awards As of March 31, 2024, ABP Trust and Mr. Portnoy owned 9.8% of our outstanding common shares we made in September 2023 to our officers and certain other employees of RMR and our repurchase of common shares from our officers and certain current and former officers and employees of RMR in satisfaction of tax withholding and payment obligations owed in connection with the vesting of awards of our common shares to them. We include amounts recognized as expense for common share awards to our officers and RMR officers and employees in general and administrative expenses in our condensed consolidated statements of comprehensive income (loss) shares.

AlerisLife. Until March 20, 2023, we were AlerisLife's largest stockholder, owning approximately 31.9% of AlerisLife's outstanding common shares, and ABP Acquisition LLC, or ABP Acquisition, a subsidiary of ABP Trust, together with ABP Trust, owned approximately 6.1% of AlerisLife's outstanding common shares. Five Star is an operating division of AlerisLife. Five Star manages certain of the senior living communities we own. RMR provides management services to both us and AlerisLife.

On February 2, 2023, AlerisLife entered into an Agreement and Plan of Merger, or the ALR Merger Agreement, with certain subsidiaries of ABP Acquisition, and its wholly owned subsidiary, Trust, pursuant to which ABP Acquisition 2 LLC, or ABP Acquisition 2. Pursuant to the ALR Merger Agreement, ABP Acquisition 2 commenced a tender offer to acquire Trust acquired all of the publicly held outstanding AlerisLife common shares (other than the AlerisLife common shares held by ABP Trust, ABP Acquisition or their subsidiaries), at a price of \$1.31 per share net to the seller in cash, without interest, subject to any withholding of taxes. Following the consummation of the by tender offer, on March 20, 2023, ABP Acquisition 2 merged with and into AlerisLife, with AlerisLife as the surviving entity. We refer to the transactions contemplated by the ALR Merger Agreement as the AlerisLife Transaction. offer.

In connection with the ALR Merger Agreement, on February 2, 2023, we agreed to tender all the AlerisLife common shares that we and our subsidiary then owned, into the tender offer at the tender offer price, subject to the right, but not the obligation, to purchase, on or before December 31, 2023, AlerisLife common shares at the tender offer price, and otherwise pursuant to a stockholders agreement to be entered into a consent agreement with ABP Acquisition 2, ABP Acquisition, at the time of any such purchase. On December 20, 2023, we and ABP Trust and Adam D. Portnoy, or, collectively, the ABP Parties. Pursuant extended our right to the consent agreement, we: (1) consented to AlerisLife's granting of certain exceptions to the ownership restrictions set forth in its charter purchase AlerisLife common shares until March 31, 2024.

DIVERSIFIED HEALTHCARE TRUST

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

(dollar amounts in thousands, except per share data or as otherwise stated)

to On February 16, 2024, we exercised this purchase right and acquired, together with our applicable TRS, approximately 34.0% of the ABP Parties in connection with the AlerisLife Transaction, (2) waived any default under our master management agreement with Five Star arising or resulting from the AlerisLife Transaction, (3) agreed to tender all the then outstanding AlerisLife common shares that we and our subsidiary owned, into the tender offer from ABP Trust at the tender offer price, subject to the right, but not the obligation, to for a total purchase in a single private transaction, on or before December 31, 2023, a number price of shares of common stock of the surviving entity in the \$14,890, and we, our applicable TRS, ABP Trust and AlerisLife Transaction constituting a percentage up to 31.9% of the then issued and outstanding shares of the common stock of the surviving entity based on the tender offer price and otherwise pursuant to entered into a stockholders agreement to be entered into at agreement. Following this acquisition, ABP Trust owns the time remaining approximately 66.0% of any such purchase on such terms as are negotiated and mutually agreed by the parties, and (4) agreed to amend our master management agreement with Five Star to eliminate any change of control default or event of default provisions effective upon the consummation of the AlerisLife Transaction. AlerisLife.

See Note 8 9 for further information regarding our relationships, agreements and transactions with AlerisLife (including Five Star) and Note 5 for further information regarding our investment in AlerisLife.

Termination of the Merger Agreement with Office Properties Income Trust. As described further in Note 1, on September 1, 2023, we and OPI mutually agreed to terminate the Merger Agreement and entered into the Termination Agreement. Neither we nor OPI are required to pay any termination fee as a result of the mutual decision to terminate the Merger Agreement. We and OPI will bear our and its respective costs and expenses related to the Merger Agreement and the transactions contemplated thereby in accordance with the terms of the Merger Agreement..

Our Joint Ventures. In connection with our entering into the LSMD JV in January 2022, we paid mortgage escrow amounts and closing costs that were payable by that joint venture. The remaining costs totaled \$6,080 as of September 30, 2023 March 31, 2024 and are included in other assets, net, in our condensed consolidated balance sheet. RMR provides management services to each of the Seaport JV and the LSMD JV. See Note 9 10 for further information regarding those management agreements with RMR.

Our Manager, RMR. We have two agreements with RMR to provide management services to us. See Note 9 10 for further information regarding our management agreements with RMR.

Leases with RMR. We lease office space to RMR in certain of our properties for RMR's property management offices. Pursuant to our lease agreements with RMR, we We recognized rental income from RMR for this leased office space of \$58 \$109 and \$77 \$61 for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$132 and \$225 for the nine months ended September 30, 2023 and 2022, 2023, respectively.

For further information about these and other such relationships and certain other related person transactions, see our Annual Report.

Note 11, 12. Income Taxes

We have elected to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended, and, as such, are generally not subject to federal and most state income taxation on our operating income provided we distribute our taxable income to our shareholders and meet certain organization and operating requirements. We do, however, lease our managed senior living communities to our wholly owned TRSs that, unlike most of our subsidiaries, file a separate consolidated federal corporate income tax return and are subject to federal and state income taxes. Our consolidated income tax provision includes the income tax provision related to the operations of our TRSs and certain state income taxes we incur despite our taxation as a REIT. Our current income tax expense (or benefit) fluctuates from period to period based primarily on the timing of our income, including gains on the disposition of properties or losses in a particular quarter. For the three months ended September 30, 2023 March 31, 2024 and 2022, 2023, we recognized income tax expense of \$189 \$187 and \$13, respectively, and for the nine months ended September 30, 2023 and 2022, we recognized income tax expense benefit of \$379 and \$845, \$31, respectively.

Note 12, 13. Weighted Average Common Shares (share amounts in thousands)

We calculate basic earnings per common share using the two class method. We calculate diluted earnings per share using the more dilutive of the two class method or the treasury stock method. Unvested share awards and other potentially dilutive common shares, together with the related impact on earnings, are considered when calculating diluted earnings per share.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with our condensed consolidated financial statements and notes thereto included in this Quarterly Report on Form 10-Q and with our Annual Report.

OVERVIEW

We are a REIT organized under Maryland law and which that primarily owns medical office and life science properties, senior living communities and other healthcare related properties throughout the United States. As of September 30, 2023 March 31, 2024, we wholly owned 376 371 properties located in 36 states and Washington, D.C., including six four properties classified as held for sale and five two closed senior living communities. At September 30, 2023 March 31, 2024, the gross book value of our real estate assets at cost plus certain acquisition costs, before depreciation and purchase price allocations and less impairment write downs, was \$7.2 billion.

On April 11, 2023, we and OPI entered into the Merger Agreement, pursuant to which we and OPI agreed that we would merge with and into OPI, with OPI as the surviving entity in the merger, subject to the terms and conditions of the Merger Agreement. On September 1, 2023, we and OPI mutually agreed to terminate the Merger Agreement and entered into the Termination Agreement. The mutual termination of the Merger Agreement was separately recommended by special committees of our and OPI's respective board of trustees and approved by our and OPI's respective board of trustees. Pursuant to the Termination Agreement, the termination of the Merger Agreement was effective as of September 1, 2023. Neither we nor OPI are required to pay any termination fee as a result of the mutual decision to terminate the Merger Agreement. We and OPI will bear our and its respective costs and expenses related to the Merger Agreement and the transactions contemplated thereby in accordance with the terms of the Merger Agreement. For more information regarding the merger, see Note 1 to our condensed consolidated financial statements included in Part 1, Item 1 of this Quarterly Report on Form 10-Q.

As of September 30, 2023 March 31, 2024, we owned an equity interest in each of the Seaport JV and the LSMD JV that own medical office and life science properties located in five states with an aggregate of approximately 2.2 million rentable square feet that were 99% 98% leased with an average (by annualized rental income) remaining lease term of 5.5 5.1 years.

We are closely monitoring the impacts of the current economic and market conditions on all aspects of our business, including, but not limited to, labor availability constraints, wage and commodity price inflation, rising or sustained high interest rates, increased insurance costs, prolonged high inflation, labor market challenges, supply chain disruptions, volatility in the public equity and debt markets, geopolitical risks, and economic downturns or recessions. a possible recession and changes in real estate utilization. We expect to experience continued volatility in labor, insurance and food costs to continue to increase with respect to in our SHOP segment.

In response to inflationary pressures, significant and prolonged increases in inflation, the U.S. Federal Reserve has significantly increased the federal funds rate raised interest rates multiple times since the beginning of 2022 2022. Although the U.S. Federal Reserve has indicated that it may lower interest rates in 2024, we cannot be sure that it will do so, and it is unclear whether there will be additional increases. interest rates may remain at the current high levels or continue to increase. These inflationary pressures and rising interest rates in the United States, and globally, and as well as global geopolitical hostilities instability and tensions, have given rise to concerns that the U.S. economy may soon enter an uncertainty regarding economic downturn downturns or a possible recession and they have caused potential disruptions in the financial markets. An economic recession, or continued or intensified disruptions in the financial markets, could adversely affect our financial condition and that of our managers, operators and tenants, could adversely impact the ability or willingness of our managers, operators, tenants or residents to pay the contractual amounts of returns, rents or other obligations due owed to us, could impair our ability to effectively deploy our capital or realize our target returns on our investments, may restrict our access to, and would likely increase our cost of, capital, and may cause the values of our properties and of our securities to decline.

The senior living industry experienced significant disruptions during. We are encouraged by positive trends, including increases in rates and in the aftermath of, the COVID-19 pandemic. Although our and certain of our managers' and other operators' and tenants' businesses have improved from low points experienced during the COVID-19 pandemic, the recovery of our SHOP segment has been slower than previously anticipated and uneven, and we cannot be sure when or if the senior housing business will return to historic pre-pandemic levels due to changed market practices, delayed returns to prior market practices, current market and economic conditions, such as rising or sustained high interest rates, wage and commodity price inflation, limited labor availability, increased insurance costs, geopolitical risks and economic downturns or recessions, or otherwise. For example, although occupancy, in our SHOP segment has segment. Additionally, we expect that favorable supply and demand dynamics in the senior living industry will enable our managers to generate better returns at our communities than we experienced in the years following the COVID-19 pandemic. While certain costs, primarily labor, insurance and food costs, have increased, we expect these cost increases to moderate, which will provide our managers the rate opportunity to increase rates in excess of occupancy growth has been slower than previously anticipated and uneven and increased operating increases in costs, resulting from wage and commodity price inflation, limited labor availability and increased insurance costs, among other things, continue in improving returns to negatively impact margins. As a result of these uncertainties, we are unable to determine what the ultimate impacts of the COVID-19 pandemic will be on our, our managers', operators', our tenants' and other stakeholders' businesses, operations, financial results and financial position. us.

For further information and risks relating to these economic uncertainties, including changes related to the COVID-19 pandemic, and their impact on our business and financial condition, see Part I, Item 1, "Business" and Part I, Item 1A, "Risk Factors" in our Annual Report.

PORTFOLIO OVERVIEW

The following tables present an overview of our portfolio (dollars in thousands, except investment per square foot or unit data):

As of September 30, 2023	Number of Properties	Square Feet or Number of Units	% of Total Gross Book Value Investment									
			of Real Estate Assets ⁽¹⁾	of Real Estate Assets	per Square Foot or Unit ⁽²⁾	Revenues		NOI ⁽³⁾		% of Q3 2023 NOI		
						Q3 2023	Q3 2023	Q3 2023	Q3 2023			
											Revenues	Revenues
sq.												
Office Portfolio ⁽⁴⁾	105	8,809,062 ft.	\$2,305,097	32.1 %	\$ 262	\$ 55,058	15.4 %	\$29,274	50.4 %			

											Gross Book Value of Real Estate Assets ⁽¹⁾	% of T Gross B Value of Estate Asse
As of March 31, 2024												
Medical Office and Life Science Portfolio ⁽⁴⁾											sq.	
Portfolio ⁽⁴⁾											102	3
SHOP	SHOP	234	25,302 units	4,490,177	62.5 %	\$ 177,463	293,134	82.2 %	20,689	35.6 %		
Triple net leased senior living communities	Triple net leased senior living communities	27	2,062 units	203,106	2.8 %	\$ 98,500	5,209	1.5 %	5,209	9.0 %		
Wellness centers	Wellness centers	10	812,000 ft.	182,566	2.6 %	\$ 225	3,123	0.9 %	2,920	5.0 %		
Total	Total	376		\$7,180,946	100.0 %		\$356,524	100.0 %	\$58,092	100.0 %		\$7,201,5

											Occupancy	
											As of and For the Three Months Ended September 30,	
											2023	2022
Office Portfolio ⁽⁵⁾											85.8 %	85.9 %
SHOP											78.4 %	74.7 %
Triple net leased senior living communities ⁽⁶⁾⁽⁷⁾											79.6 %	80.3 %
Wellness centers											100.0 %	100.0 %

											Occupancy	
											As of and For the Three Months Ended March 31,	
											2024	2023
Medical Office and Life Science Portfolio ⁽⁵⁾											82.9 %	85.1 %
SHOP											78.9 %	76.9 %
Triple net leased senior living communities											100.0 %	100.0 %
Wellness centers											100.0 %	100.0 %

- (1) Represents gross book value of real estate assets at cost plus certain acquisition costs, before depreciation and purchase price allocations and less impairment write downs, if any.
- (2) Represents gross book value of real estate assets divided by number of rentable square feet or living units, as applicable.
- (3) We calculate our NOI on a consolidated basis and by reportable segment. Our definition of NOI and our reconciliation of net income (loss) to NOI are included below under the heading "Non-GAAP Financial Measures".
- (4) Our medical office and life science property leases include some triple net leases where, in addition to paying fixed rents, the tenants assume the obligation to operate and maintain the properties at their expense, and some net and modified gross leases where we are responsible for the operation and maintenance of the properties and we

charge tenants for some or all of the property operating costs. A small percentage portion of our medical office and life science property leases are full-service leases where we receive fixed rent from our tenants and no reimbursement for our property operating costs.

- (5) Medical office and life science property occupancy data is as of September 30, 2023 March 31, 2024 and 2022 2023 and includes (i) out of service assets undergoing redevelopment, (ii) space which is leased but is not occupied or is being offered for sublease by tenants and (iii) space being fitted out for occupancy.
- (6) Excludes data for properties sold or classified as held for sale, if any, and data for which there was a transfer of operations during the periods presented.
- (7) Operating data for triple net leased senior living communities leased to third party operators and wellness centers are presented based upon the operating results provided by our tenants for During the three months ended June 30, 2023 and 2022, or the most recent prior period for which tenant operating results are made available to us. We have not independently verified tenant operating data.

During the three and nine months ended September 30, 2023 March 31, 2024, we entered into new and renewal leases at our medical office and life science properties in our Medical Office and Life Science Portfolio segment as summarized in the following tables table (dollars and square feet in thousands, except per square foot amounts):

	Three Months Ended September 30, 2023		
	New Leases	Renewals	Total
Square feet leased during the quarter	45	244	289
Weighted average rental rate change (by rentable square feet)	25.7 %	12.1 %	14.8 %
Weighted average lease term (years) ⁽¹⁾	14.8	6.2	8.1
Total leasing costs and concession commitments ⁽²⁾	\$ 8,054	\$ 6,533	\$ 14,587
Total leasing costs and concession commitments per square foot ⁽²⁾	\$ 175.80	\$ 26.85	\$ 50.45
Total leasing costs and concession commitments per square foot per year ⁽²⁾	\$ 11.87	\$ 4.31	\$ 6.24

	Nine Months Ended September 30, 2023		
	New Leases	Renewals	Total
Square feet leased during the period	246	439	685
Weighted average rental rate change (by rentable square feet)	9.9 %	8.4 %	8.9 %
Weighted average lease term (years) ⁽¹⁾	10.6	6.0	7.7
Total leasing costs and concession commitments ⁽²⁾	\$ 20,826	\$ 9,297	\$ 30,123
Total leasing costs and concession commitments per square foot ⁽²⁾	\$ 84.54	\$ 21.18	\$ 43.96
Total leasing costs and concession commitments per square foot per year ⁽²⁾	\$ 7.99	\$ 3.55	\$ 5.73

	Three Months Ended March 31, 2024		
	New Leases	Renewals	Total
Square feet leased during the quarter	25	76	101
Weighted average rental rate change (by rentable square feet)	35.3 %	7.0 %	11.5 %
Weighted average lease term (years)	6.3	2.9	3.6
Total leasing costs and concession commitments ⁽¹⁾	\$ 1,418	\$ 696	\$ 2,114
Total leasing costs and concession commitments per square foot ⁽¹⁾	\$ 56.49	\$ 9.18	\$ 20.95
Total leasing costs and concession commitments per square foot per year ⁽¹⁾	\$ 8.97	\$ 3.16	\$ 5.88

- (1) Weighted based on annualized rental income pursuant to existing leases as of September 30, 2023, including straight line rent adjustments and estimated recurring expense reimbursements, and excluding lease value amortization.

- (2) Includes commitments made for leasing expenditures and concessions, such as tenant improvements, leasing commissions, tenant reimbursements and free rent.

During the three months ended March 31, 2024, we entered into renewal leases at three of our wellness centers totaling 129,600 square feet at rates that were 7.5% higher than prior rents for the same space at a weighted average lease term of five years. We did not incur any leasing costs or concessions commitments for these renewals.

Lease Expiration Schedules

As of **September 30, 2023** **March 31, 2024**, lease expirations at our medical office and life science properties in our **Medical Office and Life Science** Portfolio segment were as follows (dollars in thousands):

Year	Year	Number of Tenants	Square Feet Leased	Percent of Total	Cumulative		Annualized Rental Income ⁽¹⁾	Cumulative	
					Percent of Total	Percent of Total		Percent of Total	Percent of Total
2023		27	334,564	4.4 %	4.4 %	\$ 10,156	4.5 %	4.5 %	
Year									
Year	Year	Number of Tenants	Square Feet Leased	Percent of Total	Cumulative		Annualized Rental Income ⁽¹⁾	Cumulative	
					Percent of Total	Percent of Total		Percent of Total	Percent of Total
2024	2024	64	795,519	10.5 %	14.9 %	18,899	8.5 %	13.0 %	
2025	2025	78	640,587	8.5 %	23.4 %	17,759	8.0 %	21.0 %	
2026	2026	60	776,502	10.3 %	33.7 %	24,064	10.8 %	31.8 %	
2027	2027	59	877,338	11.6 %	45.3 %	21,574	9.7 %	41.5 %	
2028	2028	58	1,207,537	16.0 %	61.3 %	33,938	15.2 %	56.7 %	
2029	2029	42	502,621	6.6 %	67.9 %	14,747	6.6 %	63.3 %	
2030	2030	22	287,954	3.8 %	71.7 %	7,206	3.2 %	66.5 %	
2031	2031	18	901,438	11.9 %	83.6 %	26,163	11.7 %	78.2 %	
2032 and thereafter		54	1,235,742	16.4 %	100.0 %	48,737	21.8 %	100.0 %	
Total									
Weighted average remaining lease term (in years)									
5.1									
5.5									
Weighted average remaining lease term (in years)									
Weighted average remaining lease term (in years)									

(1) Annualized rental income is based on rents pursuant to existing leases as of **September 30, 2023** **March 31, 2024**, including straight line rent adjustments and estimated recurring expense reimbursements for certain net and modified gross leases and excluding lease value amortization at certain of our medical office and life science properties.

As of **September 30, 2023** **March 31, 2024**, lease expirations at our triple net leased senior living communities and wellness centers that are leased to third party operators and wellness centers were as follows (dollars in thousands):

Year	Year	Number of Properties	Square Feet	Annualized Rental Income ⁽¹⁾	Percent of Total	Cumulative Percent of Total	Year	Number of Properties	Square Feet	Annualized Rental Income ⁽¹⁾	Percent of Total	Cumulative Percent of Total
2023		—	—	\$ —	— %	— %						
2024	2024	—	—	—	— %	— %	2024	—	—	\$ —	— %	— %
			129,500									
2025	2025	3	sq. ft.	1,458	3.7 %	3.7 %	2025	—	—	—	— %	— %

2026	2026	—	—	—	— %	3.7 %	2026	—	—	—	—	—	—	— %	— %
			533												
2027	2027	4	units	4,539	11.6 %	15.3 %	2027	4	533 units	533 units		4,612	11.8	11.8 %	11.8 %
2028	2028	—	—	—	— %	15.3 %	2028	—	—	—	—	—	—	— %	11.8 %
			155												
2029	2029	1	units	547	1.4 %	16.7 %	2029	1	155 units	155 units		547	1.4	1.4 %	13.2 %
									283 units	283 units					
									and	and					
			283						129,500	129,500					
2030	2030	2	units	3,496	8.9 %	25.6 %	2030	5	sq. ft.	sq. ft.		5,046	12.9	12.9 %	26.1 %
2031 (2)		1	—	—	— %	25.6 %									
			1,091												
			units												
			and												
2032 and			682,500												
thereafter		26	sq. ft.	29,160	74.4 %	100.0 %									
2031	2031	—	—	—	— %	26.1 %									
2032	2032	18	876 units	9,836	25.1 %	51.2 %									
			215 units												
			and												
2033 and	2033 and		682,500												
thereafter	thereafter	9	sq. ft.	19,148	48.8 %	100.0 %									
Total	Total	37	\$	39,200	100.0 %										

(1) Annualized rental income is based on rents pursuant to existing leases as of September 30, 2023, including March 31, 2024. Annualized rental income includes estimated percentage rents and straight line rent adjustments and excluding excludes lease value amortization.

(2) Excludes annualized rental income from our lease with a tenant of one closed senior living community. As of September 30, 2023, the tenant was in default on its obligations to us under this lease.

RESULTS OF OPERATIONS (dollars and square feet in thousands, unless otherwise noted)

We operate in, and report financial information for, the following two segments: Medical Office and Life Science Portfolio and SHOP. We aggregate each the operating results of our properties in these two reporting segments based on their similar operating and economic characteristics. Our Medical Office and Life Science Portfolio segment primarily consists of medical office properties leased to medical providers and other medical related businesses, as well as life science properties primarily leased to biotech laboratories and other similar tenants. Our SHOP segment consists of managed senior living communities that provide short term and long term residential living and, in some instances, care and other services for residents where we pay fees to managers to operate the communities on our behalf.

We also report "non-segment" operations, which consists of triple net leased senior living communities and wellness centers that are leased to third party operators from which we receive rents, which we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.

The following table summarizes the results of operations of each of our segments for the three and nine months ended September 30, 2023, March 31, 2024 and 2022; 2023:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Three Months Ended March 31,				
Three Months Ended March 31,				
Three Months Ended March 31,				
2024				
2024				
2024				
Revenues:	Revenues:			
Office Portfolio	\$	55,058	\$	55,254
			\$	165,448
			\$	162,861
Revenues:				
Revenues:				
Medical Office and Life Science				
Portfolio				

Medical Office and Life Science Portfolio					
Medical Office and Life Science Portfolio					
SHOP					
SHOP					
SHOP	SHOP	293,134	258,960	857,572	754,914
Non-Segment	Non-Segment	8,332	8,706	25,753	28,906
Non-Segment					
Non-Segment					
Total revenues					
Total revenues					
Total revenues	Total revenues	\$ 356,524	\$ 322,920	\$ 1,048,773	\$ 946,681
Net income (loss):	Net income (loss):				
Office Portfolio		\$ 8,408	\$ 8,874	\$ 16,905	\$ 366,930
Net income (loss):					
Net income (loss):					
Medical Office and Life Science Portfolio					
Medical Office and Life Science Portfolio					
Medical Office and Life Science Portfolio					
SHOP					
SHOP					
SHOP	SHOP	(24,591)	(44,389)	(71,086)	(110,356)
Non-Segment	Non-Segment	(49,596)	(45,977)	(136,827)	(207,026)
Net income (loss)		\$ (65,779)	\$ (81,492)	\$ (191,008)	\$ 49,548
Non-Segment					
Non-Segment					
Net loss					
Net loss					
Net loss					

The following sections analyze section analyzes and discuss discusses the results of operations of each of our segments for the periods presented.

Three Months Ended September 30, 2023 March 31, 2024 Compared to Three Months Ended September 30, 2022 March 31, 2023 (dollars and square feet in thousands, except average monthly rate):

Unless otherwise indicated, references in this section to changes or comparisons of results, income or expenses refer to comparisons of the results for the three months ended September 30, 2023 March 31, 2024 to the three months ended September 30, 2022 March 31, 2023. Our definition of net operating income, or NOI, and our reconciliation of net income (loss) to NOI and a description of why we believe NOI is an appropriate supplemental measure are included below under the heading "Non-GAAP Financial Measures."

		Three Months Ended September 30,							
				\$	%				
		2023	2022	Change	Change				
		Three Months Ended March 31,				Three Months Ended March 31,			
								\$	%
		2024				2024	2023	Change	Change
NOI by segment:	NOI by segment:								
Office Portfolio		\$ 29,274	\$ 31,075	\$ (1,801)	(5.8)%				
Medical Office and Life Science Portfolio									

Medical Office and Life Science Portfolio															
Medical Office and Life Science Portfolio															
						\$ 30,252		\$ 33,507		\$ (3,255)		(9.7)%			
SHOP	SHOP	20,689	(5,762)	26,451	nm	SHOP	24,710	17,263	17,263	7,447		7,447	43.1		43.1 %
Non-Segment	Non-Segment	8,129	8,511	(382)	(4.5)%	Non-Segment	8,210	9,180	9,180	(970)		(970)	(10.6)		(10.6)%
Total NOI	Total NOI	58,092	33,824	24,268	71.7 %	Total NOI	63,172	59,950	59,950	3,222		3,222	5.4		5.4 %
Depreciation and amortization	Depreciation and amortization	67,236	60,407	6,829	11.3 %										
Depreciation and amortization															
Depreciation and amortization						70,133		64,800		5,333		8.2 %			
General and administrative	General and administrative	6,954	6,179	775	12.5 %	General and administrative	7,568	5,873	5,873	1,695		1,695	28.9		28.9 %
Acquisition and certain other transaction related costs	Acquisition and certain other transaction related costs	3,676	289	3,387	nm	Acquisition and certain other transaction related costs	86	93	93	(7)		(7)	(7.5)		(7.5)%
Impairment of assets	Impairment of assets	1,156	—	1,156	nm	Impairment of assets	12,142	5,925	5,925	6,217		6,217	104.9		104.9 %
Loss on sale of properties		—	(5,044)	5,044	(100.0)%										
Losses on equity securities, net		—	(2,674)	2,674	(100.0)%										
(Loss) gain on sale of properties						(Loss) gain on sale of properties		(5,874)		1,233		(7,107)		nm	
Gains and losses on equity securities, net						Gains and losses on equity securities, net		—		8,126		(8,126)		(100.0)%	
Interest and other income	Interest and other income	3,243	4,099	(856)	(20.9)%	Interest and other income	2,237	4,195	4,195	(1,958)		(1,958)	(46.7)		(46.7)%
Interest expense	Interest expense	(47,758)	(46,936)	(822)	1.8 %	Interest expense	(57,576)	(47,780)	(47,780)	(9,796)		(9,796)	20.5		20.5 %
Loss before income tax expense and equity in net (losses) earnings of investees															
		(65,445)	(83,606)	18,161	(21.7)%										
Income tax expense		(189)	(13)	(176)	nm										
Equity in net (losses) earnings of investees		(145)	2,127	(2,272)	(106.8)%										
Loss on modification or early extinguishment of debt															
Loss on modification or early extinguishment of debt															
Loss on modification or early extinguishment of debt						—		(1,075)		1,075		(100.0)%			

Loss before income tax (expense) benefit and equity in net earnings (losses) of investees						Loss before income tax (expense) benefit and equity in net earnings (losses) of investees	(87,970)	(52,042)	(35,928)	69.0 %
Income tax (expense) benefit						Income tax (expense) benefit	(187)	31	(218)	nm
Equity in net earnings (losses) of investees						Equity in net earnings (losses) of investees	1,898	(647)	2,545	nm
Net loss	Net loss	\$	(65,779)	\$(81,492)	\$15,713	(19.3)%				
Net loss										
Net loss							\$(86,259)	\$ (52,658)	\$ (33,601)	63.8 %
nm - not meaningful										

Medical Office and Life Science Portfolio:

		Comparable Properties						Comparable Properties ⁽¹⁾						All Properties			
		⁽¹⁾		All Properties													
		As of September 30,		As of September 30,						As of March 31,							
		2023	2022	2023	2022			2024		2023		2024		2023		2024	
Total buildings		91	91	105	105												
Total properties																	
Total square feet	Total square feet	7,677	7,689	8,809	8,811												
Occupancy	Occupancy	93.0 %	92.2 %	85.8 %	85.9 %	Occupancy		89.8 %		92.9 %		82.9 %		85.1 %			
Three Months Ended September 30,																	
		Comparable ⁽¹⁾				Non-Comparable Properties				Consolidated Properties Results							
		Properties Results		Results		Results		Results		Results		Results					
		\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Three Months Ended March 31,																	
		Comparable ⁽¹⁾															
		Properties Results															
		Properties Results															
		Properties Results															
		\$								\$				\$			
		2023	2022	Change	Change	2023	2022	2023	2022	Change	Change	2024	2023	Change	2024	2023	Change
Rental income	Rental income	\$49,778	\$49,616	\$ 162	0.3 %	\$5,280	\$5,638	\$55,058	\$55,254	\$ (196)	(0.4) %	\$52,344	\$ 53,560	\$ (1,216)	\$1,805	\$ 3,462	\$
Property operating expenses	Property operating expenses	(22,258)	(20,577)	1,681	8.2 %	(3,526)	(3,602)	(25,784)	(24,179)	1,605	6.6 %	(21,771)	(20,671)	(20,671)	(2,126)	(2,844)	(2,844)
NOI	NOI	\$27,520	\$29,039	\$(1,519)	(5.2) %	\$1,754	\$2,036	\$29,274	\$31,075	\$(1,801)	(5.8) %	\$30,573	\$ 32,889	\$ (2,316)	\$ (321)	\$ 618	\$

(1) Consists of medical office and life science properties that we have owned and which have been in service continuously since July 1, 2022 January 1, 2023; excludes properties classified as held for sale or out of service undergoing redevelopment, if any, and properties owned by unconsolidated joint ventures in each of which we own an equity interest.

Rental income. Rental income decreased at our comparable properties primarily due to vacancies at certain of our properties, partially offset by increased parking revenue at one of our properties. Rental income also decreased at our non-comparable

properties primarily due to a tenant default at one of our properties, and certain of our properties being taken out of service and/or currently undergoing redevelopment, partially offset by an increase in rental income at certain one of our recently redeveloped properties, our acquisition of one property since July 1, 2022 and an increase in rental income at our comparable properties. Rental income increased at our comparable properties primarily due to an increase in occupancy, higher

average rents resulting from our new and renewal leasing activity, increased parking revenue at certain of our comparable properties and increases in property operating expense reimbursements at certain of our comparable properties.

Property operating expenses. Property operating expenses consist of real estate taxes, utility expenses, insurance, management fees, salaries and benefit costs of property level personnel, repairs and maintenance expense, cleaning expense and other direct costs of operating these properties. The increase in property operating expenses at our comparable properties is primarily due to an increase in property operating expenses at our comparable properties repairs and our acquisition of one property since July 1, 2022, partially offset by certain of our properties being taken out of service and/or currently undergoing redevelopment, maintenance expense, real estate taxes and other direct costs. Property operating expenses decreased at our comparable non-comparable properties increased primarily due to increases in utility expenses, insurance expense and other direct costs at certain of our comparable properties, partially offset by decreases in real estate taxes, dispositions since January 1, 2023.

Net operating income. The change in NOI reflects the net changes in rental income and property operating expenses described above.

SHOP:

		Comparable Properties ⁽¹⁾				All Properties					Comparable Properties ⁽¹⁾				All Properties			
		As of and For the Three Months				As of and For the Three Months						As of and For the Three Months						
		Ended September 30,				Ended September 30,						Ended March 31,						
		2023	2022			2023	2022				2024		2023			2024		2023
Total properties	Total properties	225		225		234		234										
Number of units	Number of units	24,592		24,592		25,302		25,078										
Occupancy	Occupancy	79.0 %		74.8 %		78.4 %		74.7 %		Occupancy	79.0 %		77.1 %		78.9 %		76.9 %	
Average monthly rate ⁽²⁾	Average monthly rate ⁽²⁾	\$ 4,832		\$ 4,538		\$ 4,826		\$ 4,509										
Three Months Ended September 30,																		
Non-Comparable Properties																		
Properties Results Results Consolidated Properties Results																		
\$ % \$ %																		
Three Months Ended March 31,																		
Comparable ⁽¹⁾																		
Properties Results																		
Properties Results																		
Properties Results																		
Properties Results																		
\$																		
		2023	2022	Change	Change	2023	2022	2023	2022	Change	Change	2024	2023	Change	Change	2024	2023	
Residents fees and services	Residents fees and services	\$287,984	\$256,300	\$31,684	12.4 %	\$5,150	\$ 2,660	\$293,134	\$258,960	\$34,174	13.2 %	\$308,111	\$ 279,416	\$28,695	10.3 %	\$ 15	\$	
Property operating expenses	Property operating expenses	(267,008)	(258,096)	8,912	3.5 %	(5,437)	(6,626)	(272,445)	(264,722)	7,723	2.9 %	(282,820)	(261,805)	(261,805)	21,015	21,015	8.0 %	
NOI	NOI	\$ 20,976	\$ (1,796)	\$22,772	1,267.9 %	\$ (287)	\$(3,966)	\$ 20,689	\$ (5,762)	\$26,451	459.1 %	\$ 25,291	\$ 17,611	\$ 7,680	43.6 %	43.6 %	\$(581)	

(1) Consists of senior living communities that we have owned and which have been in service, reported in the same segment and operated by the same operator continuously since July 1, 2022 January 1, 2023; excludes communities classified as held for sale, closed or out of service, if any.

(2) Average monthly rate is calculated by taking reflects the average daily rate, which is defined as total monthly residents fees and services divided by per occupied units unit for the period presented. The average monthly rate is calculated based on the actual number of days during the period, and multiplying it by 30 days. period.

Residents fees and services. Residents fees and services are the revenues earned at our managed senior living communities. We recognize these revenues as services are provided and related fees are accrued. Residents fees and services increased **at our comparable properties** primarily due to increases in occupancy and average monthly rate at our communities and the transfer of three previously leased communities to our SHOP segment as described below, partially offset by one community that was taken out of service due to damage sustained by Hurricane Ian. **communities.**

Property operating expenses. Property operating expenses consist of real estate taxes, utility expenses, insurance, wages and benefit costs of community level personnel, repairs and maintenance expense, management fees, cleaning expense and other direct costs of operating these communities. Property operating expenses increased **at our comparable properties** primarily due to increases in labor costs, **dietary expenses**, insurance costs **increased sales** and **marketing other direct costs**, **to improve occupancy and the transfer of three previously leased communities to our SHOP segment as described below**, partially offset by **one community that was taken out of service due to damage sustained by Hurricane Ian. reduced contract labor.**

Net operating income. The change in NOI reflects the net changes in residents fees and services and property operating expenses described above.

Non-Segment⁽¹⁾:

		Comparable Properties ⁽²⁾		All Properties		Comparable Properties ⁽²⁾		All Properties	
		As of and For the Three Months Ended September 30,	As of and For the Three Months Ended September 30,	As of and For the Three Months Ended September 30,	As of and For the Three Months Ended September 30,	As of and For the Three Months Ended September 30,	As of and For the Three Months Ended September 30,	As of and For the Three Months Ended September 30,	As of and For the Three Months Ended September 30,
		2023	2022	2023	2022	2023	2022	2023	2022
Total properties:	Total properties:								
Triple net leased senior living communities	Triple net leased senior living communities	26	26	27	30				
Triple net leased senior living communities	Triple net leased senior living communities								
Wellness centers	Wellness centers	10	10	10	10				
Rent coverage:	Rent coverage:								
Triple net leased senior living communities ⁽³⁾	Triple net leased senior living communities ⁽³⁾								
Triple net leased senior living communities ⁽³⁾	Triple net leased senior living communities ⁽³⁾								
Triple net leased senior living communities ⁽³⁾	Triple net leased senior living communities ⁽³⁾					1.49	x	1.47	x
Wellness centers ⁽³⁾	Wellness centers ⁽³⁾					1.67	x	1.72	x
Three Months Ended September 30,									
Non-Comparable Properties									
Properties Results Results Consolidated Properties Results									
\$ % \$ %									
Three Months Ended March 31,									
Comparable ⁽²⁾									
Properties Results									

Properties Results											
Properties Results											
\$											
	2023	2022	Change	Change	2023	2022	2023	2022	Change	Change	
Rental											
Rental income	\$8,332	\$7,980	\$ 352	4.4 %	\$ —	\$ 726	\$8,332	\$8,706	\$ (374)	(4.3) %	
Property operating expenses	(203)	(195)	8	4.1 %	—	(203)	(195)	8	4.1 %		
NOI	\$8,129	\$7,785	\$ 344	4.4 %	\$ —	\$ 726	\$8,129	\$8,511	\$ (382)	(4.5) %	
Properties Results											
Consolidated Properties Results											
\$											
	2024	2023			2024	2023			2024	2023	
Rental income	\$8,360	\$9,416	\$ (1,056)	(11.2) %	\$141	\$ —			\$8,501	\$ —	
Property operating expenses	(250)	(236)	(236)	14	(41)	—			(291)	(291)	(236)
NOI	\$8,110	\$9,180	\$ (1,070)	(11.7) %	\$100	\$ —			\$8,210	\$ —	

- (1) Non-segment operations consists of all of our other operations, including certain senior living communities and wellness centers that are leased to third party operators, which segment we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.
- (2) Consists of properties that we have owned and which have been reported in the same segment and leased to the same operator continuously since July 1, 2022 January 1, 2023; excludes properties classified as held for sale, if any.
- (3) All tenant operating data presented are based upon the operating results provided by our tenants for the most recent prior period for which tenant operating results are available to us. Rent coverage is calculated using the annualized operating cash flows from our triple net lease tenants' operations of our properties, before subordinated charges, if any, divided by annualized rental income. We have not independently verified tenant operating data. Excludes data for historical periods prior to our ownership of certain properties, as well as data for properties sold or classified as held for sale, if any, or for which there was a transfer of operations during the periods presented. Excludes rent coverage for one of our closed senior living communities, the tenant of which was in default under the applicable lease with us as of March 31, 2024.

Rental income. Rental income decreased at our comparable properties primarily due to a cash settlement and higher cash rents received during the termination three months ended March 31, 2023 from a tenant previously in default under leases for six of the lease agreements for three of our senior living communities which were replaced with management agreements under our TRS structure in October 2022, partially offset by an increase in rental income at our comparable properties. The increase in comparable properties rental income was primarily due to the net leasing activity at our wellness centers. In January 2023, we agreed to amend the lease for three of our these wellness centers and repossess the remaining three wellness centers. The three wellness centers from a tenant previously in default under leases for six of our wellness centers. In February 2023, we entered into a 15 year lease, which commenced in June 2023, with a private operator for one of these repossessed wellness centers. In March 2023, we entered into two separate 20 year leases, which are expected were subsequently re-leased to commence in 2024, with an operator for the remaining two repossessed wellness centers. other tenants.

Property operating expenses. Property operating expenses consist of real estate taxes, insurance and other expenses we that are not paid on behalf of directly by our tenants. There was not a tenant previously significant change in default under leases for six of our wellness centers. Pursuant to an agreement with this tenant in January 2023, we expect to continue to incur real estate taxes and other direct costs for three of these wellness centers. We will also continue to pay real estate taxes and other direct costs for two wellness centers until the leases commence, which we expect to occur in 2024. property operating expenses.

Net operating income. The change in NOI reflects the net changes in rental income and property operating expenses described above.

Consolidated:

Depreciation and amortization expense. Depreciation and amortization expense increased primarily due to the purchase of capital improvements at certain of our properties, and our acquisition of one property since July 1, 2022. Increases in depreciation and amortization expenses were partially offset by certain depreciable assets becoming fully depreciated and dispositions since July 1, 2022 January 1, 2023.

General and administrative expense. General and administrative expense consists of fees paid to RMR under our business management agreement, legal and accounting fees, fees and expenses of our Trustees, equity compensation expense and other costs relating to our status as a publicly traded company. General and administrative expense increased primarily due to an increase in legal fees, partially offset by a decrease in our base \$849 of estimated business management incentive fees expense that we recognized for the three months ended March 31, 2024 as a result of lower consolidated indebtedness our total shareholder return exceeding the returns for the MSCI U.S. REIT/Health Care REIT Index over the applicable measurement period and lower trading prices for an increase in our common shares during the three months ended September 30, 2023 compared to the three months ended September 30, 2022, business management fees of \$759.

Acquisition and certain other transaction related costs. For the three months ended September 30, 2023, acquisition Acquisition and certain other transaction related costs primarily represent costs incurred in connection with our terminated merger with OPI, acquisitions and non-recurring transactions that we expensed under GAAP.

Impairment of assets. For information about our asset impairment charges, see Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Loss on sale of properties. Loss on sale of properties during the three months ended September 30, 2022 reflects final adjustments related to the sale of 10 medical office and life science properties to the LSMD JV in which we retained a 20% equity interest. For further information regarding loss on sale of properties, see Note 23 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q and Note 3 to our consolidated financial statements included in Part IV, Item 15 of our Annual Report.

Losses (Loss) gain on sale of properties. For information regarding (loss) gain on sale of properties, see Note 3 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q and Note 3 to our consolidated financial statements included in Part IV, Item 15 of our Annual Report.

Gains and losses on equity securities, net. Losses Gains and losses on equity securities, net, represent the net unrealized losses to adjust our former investment in AlerisLife to its fair value. For further information regarding our former investment in AlerisLife, see Notes 5 and 10 Note 11 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Interest and other income. The decrease in interest and other income is primarily due to lower average invested cash balances, partially offset by increased interest rates on invested cash balances during the three months ended September 30, 2023 March 31, 2024 compared to the three months ended September 30, 2022 March 31, 2023.

Interest expense. Interest expense increased primarily due to an the issuance of \$940,534 of our senior secured notes due 2026 in December 2023, resulting in discount accretion of \$20,659 in the 2024 period. This increase in interest rates under our credit facility, which was partially offset by a decrease in average borrowings under the repayment and termination of our former credit facility and the redemption of \$250,000 of our senior notes that were scheduled to mature in connection with May 2024. The net proceeds from our \$940,534 senior secured notes due 2026 were used to make these repayments aggregating \$250,000 related to amendments of our credit facility, \$700,000.

Income tax expense (expense) benefit. Income tax expense is the result of operating income we earned in certain jurisdictions where we are subject to state income taxes.

Equity in net (losses) earnings of investees. Equity in net (losses) earnings of investees is the change in the fair value of our investments in our joint ventures.

Nine Months Ended September 30, 2023 Compared to Nine Months Ended September 30, 2022 (dollars and square feet in thousands, except average monthly rate):

Unless otherwise indicated, references in this section to changes or comparisons of results, income or expenses refer to comparisons of the results for the nine months ended September 30, 2023 to the nine months ended September 30, 2022. Our definition of NOI and our reconciliation of net income (loss) to NOI and a description of why we believe NOI is an appropriate supplemental measure are included below under the heading "Non-GAAP Financial Measures."

	Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change
NOI by segment:				
Office Portfolio	\$ 92,211	\$ 93,209	\$ (998)	(1.1)%
SHOP	60,839	857	59,982	nm
Non-Segment	24,983	28,711	(3,728)	(13.0)%
Total NOI	178,033	122,777	55,256	45.0 %
Depreciation and amortization	200,430	175,927	24,503	13.9 %
General and administrative	20,111	20,671	(560)	(2.7)%
Acquisition and certain other transaction related costs	9,812	1,826	7,986	nm
Impairment of assets	18,380	—	18,380	nm
Gain on sale of properties	1,233	322,064	(320,831)	(99.6)%
Gains and losses on equity securities, net	8,126	(21,384)	29,510	(138.0)%
Interest and other income	12,572	6,760	5,812	86.0 %
Interest expense	(142,922)	(160,042)	17,120	(10.7)%
Loss on modification or early extinguishment of debt	(1,075)	(30,043)	28,968	(96.4)%
(Loss) income before income tax expense and equity in net earnings of investees	(192,766)	41,708	(234,474)	nm
Income tax expense	(379)	(845)	466	(55.1)%
Equity in net earnings of investees	2,137	8,685	(6,548)	(75.4)%
Net (loss) income	\$ (191,008)	\$ 49,548	\$ (240,556)	nm

nm - not meaningful

Office Portfolio:

	Comparable Properties ⁽¹⁾		All Properties	
	As of September 30,		As of September 30,	
	2023	2022	2023	2022
Total buildings	91	91	105	105
Total square feet	7,677	7,689	8,809	8,811
Occupancy	93.0 %	92.2 %	85.8 %	85.9 %

Nine Months Ended September 30,			
Comparable ⁽¹⁾		Non-Comparable	
Properties Results		Properties Results	Consolidated Properties Results

	\$				%				\$				%			
	2023	2022	Change	Change	2023	2022	Change	Change	2023	2022	Change	Change	2023	2022	Change	Change
Rental income	\$ 148,635	\$ 145,397	\$ 3,238	2.2 %	\$ 16,813	\$ 17,464	\$ 165,448	\$ 162,861	\$ 2,587	1.6 %						
Property operating expenses	(61,953)	(58,944)	3,009	5.1 %	(11,284)	(10,708)	(73,237)	(69,652)	3,585	5.1 %						
NOI	\$ 86,682	\$ 86,453	\$ 229	0.3 %	\$ 5,529	\$ 6,756	\$ 92,211	\$ 93,209	\$ (998)	(1.1) %						

(1) Consists of medical office and life science properties that we have owned and which have been in service continuously since January 1, 2022; excludes properties classified as held for sale or out of service undergoing redevelopment, if any, and properties owned by unconsolidated joint ventures in each of which we own an equity interest.

Rental income. Rental income increased primarily due to our acquisition of one property since January 1, 2022 and an increase in rental income at our comparable properties and at certain of our recently redeveloped properties, partially offset by a tenant default at one of our properties resulting in a write off of the corresponding unamortized straight line rent receivable, the

deconsolidation of 10 medical office and life science properties currently owned by an unconsolidated joint venture in which we own an equity interest and certain of our properties being taken out of service and/or currently undergoing redevelopment. Rental income increased at our comparable properties primarily due to increases in occupancy, higher average rents resulting from our new and renewal leasing activity, increases in property operating expense reimbursements at certain of our comparable properties and increased parking revenue at certain of our comparable properties.

Property operating expenses. The increase in property operating expenses is primarily due to an increase in property operating expenses at our comparable properties, at certain of our recently redeveloped properties and our acquisition of one property since January 1, 2022, partially offset by the deconsolidation of 10 medical office and life science properties currently owned by an unconsolidated joint venture in which we own an equity interest. Property operating expenses at our comparable properties increased primarily due to increases in insurance expense, utility expenses, repairs and maintenance expense and other direct costs at certain of our comparable properties, partially offset by decreases in landscaping expenses.

Net operating income. The change in NOI reflects the net changes in rental income and property operating expenses described above.

SHOP:

	Comparable Properties ⁽¹⁾				All Properties			
	As of and For the Nine Months Ended September 30,				As of and For the Nine Months Ended September 30,			
	2023	2022			2023	2022		
Total properties		225		225		234		234
Number of units		24,592		24,592		25,302		25,078
Occupancy		78.1 %		73.8 %		77.7 %		73.8 %
Average monthly rate ⁽²⁾	\$	4,825	\$	4,516	\$	4,824	\$	4,487

	Nine Months Ended September 30,									
	Comparable ⁽¹⁾					Non-Comparable				
	Properties Results					Properties Results				
	Consolidated Properties Results					Consolidated Properties Results				
	2023	2022	Change	Change		2023	2022	Change	Change	
Residents fees and services	\$ 843,149	\$ 746,997	\$ 96,152	12.9 %	\$ 14,423	\$ 7,917	\$ 857,572	\$ 754,914	\$ 102,658	13.6 %
Property operating expenses	(781,713)	(739,290)	42,423	5.7 %	(15,020)	(14,767)	(796,733)	(754,057)	42,676	5.7 %
NOI	\$ 61,436	\$ 7,707	\$ 53,729	697.1 %	\$ (597)	\$ (6,850)	\$ 60,839	\$ 857	\$ 59,982	6,999.1 %

(1) Consists of senior living communities that we have owned and which have been in service, reported in the same segment and operated by the same operator continuously since January 1, 2022; excludes communities classified as held for sale, closed or out of service, if any.

(2) Average monthly rate is calculated by taking the average daily rate, which is defined as total residents fees and services divided by occupied units during the period, and multiplying it by 30 days.

Residents fees and services. Residents fees and services increased primarily due to increases in occupancy and average monthly rate at our communities and the transfer of three previously leased communities to our SHOP segment as described below, partially offset by one community that was taken out of service due to damage sustained by Hurricane Ian.

Property operating expenses. Property operating expenses increased primarily due to increases in labor costs, insurance costs, increased sales and marketing costs to improve occupancy and the transfer of three previously leased communities to our SHOP segment as described below, partially offset by one community that was taken out of service due to damage sustained by Hurricane Ian.

Net operating income. The change in NOI reflects the net changes in residents fees and services and property operating expenses described above.

Non-Segment⁽¹⁾

	Comparable Properties ⁽²⁾		All Properties	
	As of and For the Nine Months Ended September 30,		As of and For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Total properties:				
Triple net leased senior living communities	26	26	27	30
Wellness centers	10	10	10	10

	Nine Months Ended September 30,									
	Comparable ⁽²⁾				Non-Comparable					
	Properties Results				Properties Results		Consolidated Properties Results			
			\$	%					\$	%
	2023	2022	Change	Change	2023	2022	2023	2022	Change	Change
Rental income	\$ 25,753	\$ 25,919	\$ (166)	(0.6)%	\$ —	\$ 2,987	\$ 25,753	\$ 28,906	\$ (3,153)	(10.9)%
Property operating expenses	(770)	(195)	575	294.9 %	—	—	(770)	(195)	575	294.9 %
NOI	\$ 24,983	\$ 25,724	\$ (741)	(2.9)%	\$ —	\$ 2,987	\$ 24,983	\$ 28,711	\$ (3,728)	(13.0)%

(1) Non-segment operations consists of all of our other operations, including certain senior living communities and wellness centers that are leased to third party operators, which segment we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.

(2) Consists of properties that we have owned and which have been reported in the same segment and leased to the same operator continuously since January 1, 2022; excludes properties classified as held for sale, if any.

Rental income. Rental income decreased primarily due to the termination of the lease agreements for three of our senior living communities which were replaced with management agreements under our TRS structure in October 2022 and a decrease in rental income at our comparable properties. The decrease in comparable properties rental income was primarily due to cash rents received during the nine months ended September 30, 2022 from a tenant previously in default under leases for six of our wellness centers, partially offset by the net leasing activity at our wellness centers. In January 2023, we agreed to amend the lease for three of these wellness centers and repossess the remaining three wellness centers. In February 2023, we entered into a 15 year lease, which commenced in June 2023, with a private operator for one of these repossessed wellness centers. In March 2023, we entered into two separate 20 year leases, which are expected to commence in 2024, with an operator for the remaining two repossessed wellness centers.

Property operating expenses. Property operating expenses consist of real estate taxes and other expenses we paid on behalf of a tenant previously in default under leases for six of our wellness centers. Pursuant to an agreement with this tenant in January 2023, we expect to continue to incur real estate taxes and other direct costs for three of these wellness centers. We will also continue to pay real estate taxes and other direct costs for two wellness centers until the leases commence, which we expect to occur in 2024.

Net operating income. The change in NOI reflects the net changes in rental income and property operating expenses described above.

Consolidated:

Depreciation and amortization expense. Depreciation and amortization expense increased primarily due to the purchase of capital improvements at certain of our properties and our acquisition of one property since January 1, 2022. Increases in depreciation and amortization expenses were partially offset by the deconsolidation of 10 medical office and life science properties owned by an unconsolidated joint venture in which we own an equity interest and certain depreciable assets becoming fully depreciated since January 1, 2022.

General and administrative expense. General and administrative expense decreased primarily due to a decrease in our base business management fees expense as a result of lower consolidated indebtedness and lower trading prices for our common shares during the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022, partially offset by an increase in legal fees.

Acquisition and certain other transaction related costs. For the nine months ended September 30, 2023, acquisition and certain other transaction related costs primarily represent costs incurred in connection with our terminated merger with OPI. For the nine

months ended September 30, 2023 and 2022, acquisition and certain other transaction related costs also include costs related to the transition of certain senior living communities to other third party managers.

Impairment of assets. For information about our asset impairment charges, see Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Gain on sale of properties. Gain on sale of properties is the net result of our sales of certain of our properties and joint venture equity interests during the nine months ended September 30, 2023 and 2022. The gain on sale of properties during the nine months ended September 30, 2022 reflects our sale of 10 medical office and life science properties to the LSMD JV in which we retained a 20% equity interest and our sale of a 10% equity interest in the Seaport JV. For further information regarding gain on sale of properties, see Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q and Note 3 to our consolidated financial statements included in Part IV, Item 15 of our Annual Report.

Gains and losses on equity securities, net. Gains and losses on equity securities, net, represent the net realized and unrealized gains and losses to adjust our former investment in AlerisLife to its fair value. For further information regarding our former investment in AlerisLife, see Notes 5 and 10 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Interest and other income. The increase in interest and other income is primarily due to higher interest earned during the nine months ended September 30, 2023 as a result of higher interest rates compared to the nine months ended September 30, 2022. The increase in interest and other income is also due to \$1,581 of funds we received from certain programs under the CARES Act, ARPA and various state programs during the nine months ended September 30, 2023 compared to \$1,084 received during the nine months ended September 30, 2022.

Interest expense. Interest expense decreased primarily due to our redemption of \$500,000 of our 9.75% senior notes due 2025 in June 2022 and a decrease in average borrowings under our credit facility in connection with repayments aggregating \$250,000 related to amendments of our credit facility. This decrease was partially offset by an increase in interest rates under our credit facility.

Loss on modification or early extinguishment of debt. During the nine months ended September 30, 2023 and 2022, we recorded a loss on modification or early extinguishment of debt in connection with amendments to our credit agreement. During the nine months ended September 30, 2022, we also recorded a loss on early extinguishment of debt in connection with our redemption of \$500,000 of our 9.75% senior notes due 2025, partially offset by a gain on early extinguishment of debt in connection with our prepayment of a mortgage note.

Income tax expense. Income tax expense (expense) benefit is the result of operating income we earned in certain jurisdictions where we are subject to state income taxes.

Equity in net earnings (losses) of investees. Equity in net earnings (losses) of investees is the change in the fair value of our investments in our joint ventures, ventures and also represents our proportionate share of the earnings of our equity method investment in AlerisLife. For further information regarding our investment in AlerisLife, see Notes 3 and 11 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Non-GAAP Financial Measures (dollars in thousands, except per share amounts)

We present certain "non-GAAP financial measures" within the meaning of applicable rules of the Securities and Exchange Commission, or the SEC, including funds from operations, or FFO, normalized funds from operations, or Normalized FFO, and NOI for the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023. These measures do not represent cash generated by operating activities in accordance with GAAP and should not be considered alternatives to net income (loss) as indicators of our operating performance or as measures of our liquidity. These measures should be considered in conjunction with net income (loss) as presented in our condensed consolidated statements of comprehensive income (loss). We consider these non-GAAP measures to be appropriate supplemental measures of operating performance for a REIT, along with net income (loss). We believe these measures provide useful information to investors because by excluding the effects of certain historical amounts, such as depreciation and amortization, they may facilitate a comparison of our operating performance between periods and with other REITs and, in the case of NOI, reflecting only those income and expense items that are generated and incurred at the property level may help both investors and management to understand the operations of our properties.

Funds From Operations and Normalized Funds From Operations

We calculate FFO and Normalized FFO as shown below. FFO is calculated on the basis defined by the National Association of Real Estate Investment Trusts, which is net income (loss), calculated in accordance with GAAP, excluding any gain or loss on sale of properties, equity in net earnings or losses of unconsolidated joint ventures, investees, loss on impairment of real estate assets, gains or losses on equity securities, net, if any, and including adjustments to reflect our proportionate share of FFO of our former equity method investment in AlerisLife for the periods we had an equity investment in AlerisLife that we accounted for as an equity method investment and our proportionate share of FFO from our unconsolidated joint ventures, investees, plus real estate depreciation and amortization of consolidated properties, as well as certain other adjustments currently not applicable to us. In calculating Normalized FFO, we adjust for the items shown below including similar adjustments for our unconsolidated joint ventures, if any, any, and include business management incentive fees, if any, only in the fourth quarter versus the quarter when they are recognized as an expense in accordance with GAAP due to their quarterly volatility not necessarily being indicative of our core operating performance and the uncertainty as to whether any such business management incentive fees will be payable when all contingencies for determining such fees are known at the end of the calendar year. FFO and Normalized FFO are among the factors considered by our Board of Trustees when determining the amount of distributions to our shareholders. Other factors include, but are not limited to, requirements to maintain our qualification for taxation as a REIT, limitations in the agreements governing our debt, the availability to us of debt and equity capital, our expectation of our future capital requirements and operating performance, and our expected needs for and availability of cash to pay our obligations. Other Other real estate companies and REITs may calculate FFO and Normalized FFO differently than we do.

Our calculations of FFO and Normalized FFO for the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023 and reconciliations of net income (loss), the most directly comparable financial measure under GAAP reported in our condensed consolidated financial statements, to FFO and Normalized FFO appear in the following table. This table also provides a comparison of distributions to shareholders, FFO and Normalized FFO and net income (loss) per share for these periods.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net (loss) income	\$ (65,779)	\$ (81,492)	\$ (191,008)	\$ 49,548
Net loss				
Net loss				
Net loss				
Depreciation and amortization				
Depreciation and amortization				

Depreciation and amortization	Depreciation and amortization	67,236	60,407	200,430	175,927
Loss (gain) on sale of properties	Loss (gain) on sale of properties	—	5,044	(1,233)	(322,064)
Loss (gain) on sale of properties					
Loss (gain) on sale of properties					
Impairment of assets	Impairment of assets	1,156	—	18,380	—
Gains and losses on equity securities, net		—	2,674	(8,126)	21,384
Impairment of assets					
Impairment of assets					
Gains on equity securities, net					
Gains on equity securities, net					
Gains on equity securities, net					
Equity in net losses (earnings) of unconsolidated joint ventures		145	(2,127)	(2,137)	(8,685)
Equity in net (earnings) losses of investees					
Equity in net (earnings) losses of investees					
Equity in net (earnings) losses of investees					
Share of FFO from unconsolidated joint ventures					
Share of FFO from unconsolidated joint ventures					
Share of FFO from unconsolidated joint ventures	Share of FFO from unconsolidated joint ventures	1,912	2,137	5,808	9,516
Adjustments to reflect our share of FFO attributable to an equity method investment	Adjustments to reflect our share of FFO attributable to an equity method investment	—	(1,639)	(1,586)	(5,037)
Adjustments to reflect our share of FFO attributable to an equity method investment					
Adjustments to reflect our share of FFO attributable to an equity method investment					
FFO					
FFO					
FFO	FFO	4,670	(14,996)	20,528	(79,411)
Business management incentive fees ⁽¹⁾					
Business management incentive fees ⁽¹⁾					
Business management incentive fees ⁽¹⁾					
Acquisition and certain other transaction related costs					
Acquisition and certain other transaction related costs					
Acquisition and certain other transaction related costs	Acquisition and certain other transaction related costs	3,676	289	9,812	1,826
Loss on modification or early extinguishment of debt	Loss on modification or early extinguishment of debt	—	—	1,075	30,043
Loss on modification or early extinguishment of debt					

Loss on modification or early extinguishment of debt					
Adjustments to reflect our share of Normalized FFO attributable to an equity method investment					
Adjustments to reflect our share of Normalized FFO attributable to an equity method investment					
Adjustments to reflect our share of Normalized FFO attributable to an equity method investment	Adjustments to reflect our share of Normalized FFO attributable to an equity method investment	—	540	1,576	1,079
Normalized FFO	Normalized FFO	\$ 8,346	\$ (14,167)	\$ 32,991	\$ (46,463)
Normalized FFO					
Normalized FFO					
Weighted average common shares outstanding (basic and diluted)					
Weighted average common shares outstanding (basic and diluted)					
Weighted average common shares outstanding (basic and diluted)	Weighted average common shares outstanding (basic and diluted)	238,892	238,344	238,722	238,231
<u>Per common share data (basic and diluted);</u>	<u>Per common share data (basic and diluted);</u>				
Net (loss) income		\$ (0.28)	\$ (0.34)	\$ (0.80)	\$ 0.21
<u>Per common share data (basic and diluted);</u>					
<u>Per common share data (basic and diluted);</u>					
Net loss					
Net loss					
Net loss					
FFO					
FFO					
FFO	FFO	\$ 0.02	\$ (0.06)	\$ 0.09	\$ (0.33)
Normalized FFO	Normalized FFO	\$ 0.03	\$ (0.06)	\$ 0.14	\$ (0.20)
Normalized FFO					
Normalized FFO					
Distributions declared	Distributions declared	\$ 0.01	\$ 0.01	\$ 0.03	\$ 0.03
Distributions declared					
Distributions declared					

- (1) Incentive fees under our business management agreement are payable after the end of each calendar year, are calculated based on common share total return, as defined, and are included in general and administrative expense in our condensed consolidated statements of comprehensive income (loss). In calculating net income (loss) in accordance with GAAP, we recognize estimated business management incentive fee expense, if any, in the first, second and third quarters. Although we recognize this expense, if any, in the first, second and third quarters for purposes of calculating net income (loss), we do not include these amounts in the calculation of Normalized FFO until the fourth quarter, when the amount of the business management incentive fee expense for the calendar year, if any, is determined.

Property Net Operating Income (NOI)

We calculate NOI as shown below. The calculation of NOI excludes certain components of net income (loss) in order to provide results that are more closely related to our property level results of operations. We define NOI as income from our real estate less our property operating expenses. NOI excludes amortization of capitalized tenant improvement costs and leasing commissions that we record as depreciation and amortization. We use NOI to evaluate individual and company-wide property level performance. Other real estate companies and REITs may calculate NOI differently than we do.

The calculation of NOI by reportable segment is included above in this Item 2. The following table includes the reconciliation of net **income (loss) loss** to NOI for the three **and** nine months ended **September 30, 2023** **March 31, 2024** and **2022, 2023**.

		Three Months Ended March 31,		Three Months Ended March 31,		Three Months Ended March 31,	
		2024		2024		2024	
		2024		2024		2024	

Gains and losses on equity securities, net	—	2,674	(8,126)	21,384
Interest and other income				
Interest and other income				
Gains on equity securities, net				
Gains on equity securities, net				
Gains on equity securities, net				
Loss (gain) on sale of properties				
Loss (gain) on sale of properties				
Loss (gain) on sale of properties	—	5,044	(1,233)	(322,064)
Impairment of assets	1,156	—	18,380	—
Impairment of assets				
Impairment of assets				
Acquisition and certain other transaction related costs				
Acquisition and certain other transaction related costs				
Acquisition and certain other transaction related costs				
Acquisition and certain other transaction related costs	3,676	289	9,812	1,826
General and administrative	6,954	6,179	20,111	20,671
General and administrative				
General and administrative				
Depreciation and amortization				
Depreciation and amortization				
Depreciation and amortization	67,236	60,407	200,430	175,927
Total NOI	\$ 58,092	\$ 33,824	\$ 178,033	\$ 122,777
Total NOI				
Total NOI				
Office Portfolio NOI	\$ 29,274	\$ 31,075	\$ 92,211	\$ 93,209
Medical Office and Life Science Portfolio NOI				
Medical Office and Life Science Portfolio NOI				
Medical Office and Life Science Portfolio NOI				
SHOP NOI				
SHOP NOI				
SHOP NOI	20,689	(5,762)	60,839	857
Non-Segment NOI	8,129	8,511	24,983	28,711
Non-Segment NOI				
Non-Segment NOI				
Total NOI	\$ 58,092	\$ 33,824	\$ 178,033	\$ 122,777
Total NOI				
Total NOI				

LIQUIDITY AND CAPITAL RESOURCES

Our principal sources of cash to meet operating and capital expenses, pay our debt service obligations and make distributions to our shareholders are the operating cash flows we generate as rental income from our leased properties, residents fees and services revenues from our managed communities and proceeds from the disposition of certain properties. We believe that these sources of funds will be sufficient to meet our operating and capital expenses, pay our debt service obligations and make distributions to our shareholders for at least the next 12 months. Our future cash flows from operating activities will depend primarily upon:

- our ability to receive rents from our tenants;
- our ability to maintain or increase the occupancy of, and the rates at, our properties;
- our and our managers' abilities to control operating expenses and capital expenses at our properties, including increased operating expenses that we may incur in response to wage and commodity price inflation, limited labor availability and increased insurance costs; and
- our managers' abilities to maintain or increase our returns from our managed senior living communities.

The senior living industry has been adversely affected by a slow recovery from the COVID-19 pandemic, as well as economic and market conditions. These conditions, continue to have a significant negative impact on our results of operations, financial position and cash flows. Although there have been signs of recovery, while we are encouraged by positive trends, including increases in rates and increased demand when compared to the low levels during the COVID-19 pandemic, the recovery of occupancy in our SHOP segment has been slower than previously anticipated and uneven, favorable supply and demand dynamics in the senior living industry, generally, we cannot be sure when or if the senior living business that these trends will return continue to historic pre-pandemic levels. To mitigate the effects of the slow recovery coming from the COVID-19 pandemic benefit us and the increased variability any benefits we do realize may be uneven. While we continue to experience volatility in operating cash flows from labor, insurance and food costs in our SHOP communities, segment, we expect increases in these costs to moderate and we continue to work with our senior living operators to manage costs, especially labor these costs and to increase rates and occupancy. However, increased operating costs resulting from difficult labor market conditions, wage and commodity price inflation and insurance costs, among other things, continue occupancy at our communities, which we believe will enable our managers to negatively impact margins. Additionally, while generate better returns to us.

our senior living operators have increased rates, those rates are increasing gradually and are not increasing at the same pace as our costs, putting further pressure on our margins. In order to increase the probability of a recovery of our cash flows, we have continued We also continue to invest capital in our SHOP segment which has reduced in order to capitalize on these positive trends and increase the probability of higher cash flows to us.

On December 21, 2023, we completed a private offering of \$940.5 million in aggregate principal amount at maturity of senior secured notes due January 2026, with a one-year extension option. The net proceeds from the offering were approximately \$730.4 million after deducting initial purchaser discounts and estimated offering costs. We used a portion of the net proceeds to repay in full the \$450.0 million outstanding under our cash balances since the filing then secured credit facility and to redeem \$250.0 million of our Annual Report on March 1, 2023, senior notes that were scheduled to mature in May 2024. As a result of our decreased cash balances, these transactions, we have deferred, and may continue to defer, future capital expenditures to preserve liquidity, which may slow the pace of any recovery no significant debt maturities until June 2025 when \$500.0 million of our senior notes will become due, and as of March 31, 2024, we had \$207.1 million of cash flows, AS and cash equivalents. Additionally, as of September 30, 2023 March 31, 2024, our ratio of consolidated income available for debt service to debt service was below is above the 1.5x incurrence requirement under our credit agreement and our public debt covenants, and we cannot be certain how long this ratio will remain below 1.5x, senior notes, on a pro forma basis. We are unable able to refinance existing or maturing debt or and issue new debt until as long as this ratio is at or above 1.5x on a pro forma basis. As basis at the time of September 30, 2023 such refinancing or issuance.

Until its repayment in full and termination on December 21, 2023, we had \$278.1 million of cash and cash equivalents and \$700.0 million of outstanding debt due within one year from the date of issuance of the financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, including \$450.0 million in outstanding borrowings under our credit facility which matures on January 15, 2024 and \$250.0 million of senior notes that mature on May 1, 2024. Our credit facility is secured by 62 properties which had an appraised value of approximately \$1.1 billion based on appraisals completed in 2023.

Based on the challenges described above, as well as our reduced cash balances, additional capital commitments in both our Office Portfolio and SHOP segments and upcoming debt maturities, we have concluded that there is substantial doubt about our ability to continue as a going concern for at least one year from the date of issuance of the financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q. In September 2023, subsequent to the termination of our proposed merger with OPI, we engaged B. Riley as a financial advisor to help us evaluate our options to address our near term capital needs, including the upcoming debt maturities described above. Among the alternatives being considered to address our near term capital needs are raising permissible new capital, including by selling assets, as well as seeking an extension of the maturity date of our credit facility. Regarding any new capital that may be raised, we are limited in the type of financings we can pursue as we cannot currently refinance existing or maturing debt or issue new debt, as described above. We are in the pre-marketing stage of a disposition program, which currently includes 66 properties, to increase liquidity to repay maturing debt and to continue to fund capital expenditures. We are also engaging in discussions with the lenders under our \$450.0 million credit facility regarding an amendment to our credit agreement to extend the maturity date of the facility, amend certain covenants and allow us to repay maturing debt, among other things. While we believe that the new capital we expect to raise, including proceeds from our planned asset sales, and the possible extension of the maturity date of our credit facility, will alleviate the substantial doubt about our ability to continue as a going concern, we cannot provide assurance that we will raise new capital or sell assets or that any new capital raised, including proceeds from our planned asset sales, will be sufficient to repay our maturing debt or that our lenders will agree to an extension of the maturity date of our credit facility. Due to challenging capital market conditions, in particular with respect to commercial real estate, we do not believe that it is probable, as of the date of issuance of the financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, that we will raise sufficient new capital, including proceeds from our planned asset sales, to meet our upcoming contractual commitments. As of November 1, 2023, we cannot demonstrate that our management's plans to alleviate the substantial doubt about our ability to continue as a going concern will be probable in mitigating the conditions that raise the substantial doubt because our plan to raise permissible new capital, including proceeds from our planned asset sales, and to extend the maturity date of our credit facility, is subject to market conditions and lender approvals, among other things, which are beyond our control.

In March 2021, we borrowed \$800.0 million under our credit facility as a precautionary measure to increase our cash position and preserve financial flexibility in light of uncertainties related to the COVID-19 pandemic. In February 2022, we repaid \$100.0 million in outstanding borrowings under our credit facility and the facility commitments were reduced to \$700.0 million. In February 2022, we exercised our option to extend the maturity date of our credit facility by one year to January 2024, and in January 2023, pursuant to the terms of the credit agreement, we repaid \$113.6 million in outstanding borrowings under our credit facility and the facility commitments were reduced to \$586.4 million. In February 2023, pursuant to an amendment to our credit agreement, we repaid \$136.4 million in outstanding borrowings under our credit facility and the facility commitments were further reduced to \$450.0 million. We have no additional options to extend the maturity date of our credit facility and, pursuant to the February 2023 amendment to our credit agreement, the feature of our credit facility permitting us to reborrow any repaid funds was eliminated. Although we continue to take steps to enhance our ability to maintain sufficient liquidity, a protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from wage and commodity price inflation,

rising or sustained high interest rates, increased insurance costs, geopolitical risks or other economic, market or industry conditions, including the delayed recovery of the senior housing industry, downturns or recessions, may cause further increased pressure on our ability to satisfy financial and other covenants. We may fail to satisfy covenants and conditions under our credit agreement or fail to satisfy our public debt covenants. In addition, we may be unable to repay the \$450.0 million in outstanding borrowings under our credit facility if we do not succeed in realizing our plan to address the uncertainty of our ability to continue as a going concern or if that plan is not successful. If we believe we will not be able to satisfy our financial or other covenants, we expect that we would seek waivers or amendments prior to any covenant violation or seek other financing alternatives. Any such waiver or amendment may result in increased costs and interest rates, additional restrictive covenants or other lender protections imposed on us. For example, we are currently engaging in discussions with the lenders under our credit facility regarding a possible extension and amendment of that facility, as described above. As of September 30, 2023, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our credit facility and our public debt covenants as the effects of the current market conditions continued to adversely impact our operations. We are unable to refinance existing or maturing debt or issue new debt until this ratio is at or above 1.5x on a pro forma basis.

In January 2022, we entered into a joint venture with two unrelated third party institutional investors for 10 medical office and life science properties we owned for aggregate proceeds, before closing costs and other adjustments, of \$653.3 million. The equity interests that the investors acquired from us equaled 41% and 39%, respectively, of the total equity interests in the joint venture and we retained a 20% equity interest in the joint venture. Following the sale, we account for this joint venture using the equity method of accounting under the fair value option. The initial investment amounts were based upon a property valuation of approximately \$702.5 million, less approximately \$456.6 million of secured debt on the properties incurred by this joint venture.

In June 2022, we sold an additional 10% equity interest in the Seaport JV to an existing joint venture investor for aggregate proceeds, before closing costs and other adjustments, of \$108.0 million. After giving effect to this sale, we continue to own a 10% equity interest in this joint venture. Our initial investment amount was based on a property valuation of \$1.7 billion, less \$620.0 million of existing mortgage debts on the property that this joint venture assumed, fully drawn.

During the nine three months ended September 30, 2023 March 31, 2024, we sold three one property for a sales price of \$3.6 million, excluding closing costs. As of May 2, 2024, we had two properties under agreements to sell for an aggregate sales price of \$2.8 million, excluding closing costs. In October 2023, we sold three properties for an aggregate sales price of \$10.8 million, excluding closing costs. As of October 27, 2023, we had one property under an agreement to sell for a sales price of approximately \$1.8 \$10.4 million, excluding closing costs. We may not complete the sales of any or all of the properties we currently plan to sell. Also, we may sell some or all of these properties at amounts that are less than currently expected and/or less than the carrying values of such properties and we may incur losses on any such sales as a result.

The following is a summary of our sources and uses of cash flows for the periods presented, as reflected in our condensed consolidated statements of cash flows (dollars in thousands):

		Nine Months Ended September 30,		Three Months Ended March 31,	
		2023	2022	2024	2023
Cash and cash equivalents and restricted cash at beginning of period	Cash and cash equivalents and restricted cash at beginning of period	\$688,302	\$1,016,945		
Net cash provided by (used in):	Net cash provided by (used in):				
Operating activities	Operating activities	17,692	(36,948)		
Operating activities	Operating activities				
Investing activities	Investing activities	(150,846)	483,713		
Financing activities	Financing activities	(276,043)	(662,905)		
Cash and cash equivalents and restricted cash at end of period	Cash and cash equivalents and restricted cash at end of period	\$279,105	\$800,805		

Our Operating Liquidity and Resources

We generally receive minimum rents from tenants at our Office Portfolio medical office and life science properties, triple net leased senior living communities and wellness centers monthly, we receive residents fees and services revenues, net of expenses, from our managed senior living communities monthly and we receive percentage rents from

tenants at certain of our senior living communities monthly, quarterly or annually.

The change in cash provided by (used in) operating activities for the nine three months ended September 30, 2023 March 31, 2024 compared to the prior period was primarily due to increased NOI as a result of increased rates and occupancy at the senior living communities in our SHOP segment. Additionally, cash interest payments decreased in the 2023 2024 period compared to the 2022 2023 period primarily due to the repayment and termination of our former credit facility and the redemption of \$500,000 \$250.0 million of our 9.75% senior notes due 2025 that were scheduled to mature in June 2022. These increases were partially offset by an increase in costs incurred in connection with our terminated merger with OPI. May 2024.

Although we have seen signs of recovery as it relates to our SHOP segment, the recovery of our SHOP segment has been slower than previously anticipated and uneven, and we face and may continue to face issues with limited labor availability and wage inflation along with cost pressures from increased insurance premiums and commodity price inflation and possible reduced demand for senior living communities.

Our Investing Liquidity and Resources

The change in cash (used in) provided by used in investing activities for the nine three months ended September 30, 2023 March 31, 2024 compared to the prior period was primarily due to proceeds in our purchase on February 16, 2024 of approximately 34.0% of the 2022 period then outstanding AlerisLife common shares from our sale ABP Trust at the tender offer price of 10 medical office and life science properties to the LSMD JV in which we retained \$1.31 per share for a 20% equity interest and our sale total purchase price, including transaction related costs, of a 10% equity interest in the Seaport JV, \$15.5 million, partially offset by a property acquisition in the 2022 period, a decrease in real estate improvements in the 2023 2024 period compared to the 2022 period and the proceeds received from the tender of all of the 10,691,658 AlerisLife common shares we owned at a price of \$1.31 per share in the 2023 period.

The following is a summary of capital expenditures, development, redevelopment and other activities for the periods presented (dollars in thousands):

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
Office Portfolio segment capital expenditures:					
Medical Office and Life Science Portfolio capital expenditures:					
Medical Office and Life Science Portfolio capital expenditures:					
Medical Office and Life Science Portfolio capital expenditures:					
Lease related costs ⁽¹⁾					
Lease related costs ⁽¹⁾					
Lease related costs ⁽¹⁾	Lease related costs ⁽¹⁾	\$ 8,689	\$ 4,277	\$ 24,721	\$ 15,669
Building improvements ⁽²⁾	Building improvements ⁽²⁾	4,036	3,535	7,453	7,439
Recurring capital expenditures - Office Portfolio segment		12,725	7,812	32,174	23,108
Building improvements ⁽²⁾					
Building improvements ⁽²⁾					
Recurring capital expenditures - Medical Office and Life Science Portfolio					
Recurring capital expenditures - Medical Office and Life Science Portfolio					
Recurring capital expenditures - Medical Office and Life Science Portfolio					
Wellness centers lease related costs ⁽¹⁾					
Wellness centers lease related costs ⁽¹⁾					
Wellness centers lease related costs ⁽¹⁾	Wellness centers lease related costs ⁽¹⁾	3,909	—	4,793	—

SHOP segment fixed assets and capital improvements	SHOP segment fixed assets and capital improvements	25,978	24,724	68,029	70,111
SHOP segment fixed assets and capital improvements					
SHOP segment fixed assets and capital improvements					
Total recurring capital expenditures					
Total recurring capital expenditures					
Total recurring capital expenditures	Total recurring capital expenditures	\$ 42,612	\$ 32,536	\$ 104,996	\$ 93,219
Development, redevelopment and other activities					
- Office Portfolio segment ⁽³⁾		\$ 2,410	\$ 9,069	\$ 9,124	\$ 43,279
Development, redevelopment and other activities					
- Medical Office and Life Science Portfolio ⁽³⁾					
Development, redevelopment and other activities					
- Medical Office and Life Science Portfolio ⁽³⁾					
Development, redevelopment and other activities					
- Medical Office and Life Science Portfolio ⁽³⁾					
Development, redevelopment and other activities					
- SHOP segment ⁽³⁾					
Development, redevelopment and other activities					
- SHOP segment ⁽³⁾					
Development, redevelopment and other activities - SHOP segment ⁽³⁾	Development, redevelopment and other activities - SHOP segment ⁽³⁾	23,020	28,224	59,648	58,620
Total development, redevelopment and other activities	Total development, redevelopment and other activities	\$ 25,430	\$ 37,293	\$ 68,772	\$ 101,899
Total development, redevelopment and other activities					
Total development, redevelopment and other activities					

- (1) Lease related costs generally include capital expenditures to improve tenants' space or amounts paid directly to tenants to improve their space and other leasing related costs, such as brokerage commissions and tenant inducements.
- (2) Building improvements generally include capital expenditures to replace obsolete building components that extend the useful life of existing assets or other improvements to increase the marketability of the property.
- (3) Development, redevelopment and other activities generally include capital expenditures that reposition a property or result in new sources of revenue.

We generally plan to continue investing capital in our properties, including redevelopment projects, to better position these properties in their respective markets in order to increase our returns in future years. However, we have deferred, and may continue to defer, our capital expenditures to preserve liquidity.

As of **September 30, 2023** **March 31, 2024**, we had estimated unspent leasing related obligations at our triple net leased wellness centers and our medical office and life science properties of approximately **\$66.9** **\$43.2** million, of which we expect to spend approximately **\$48.4 million** **\$33.1** million during the next 12 months. We expect to fund these obligations using operating cash flows we generate as rental income from our leased properties, residents fees and services revenues from our managed communities, cash on hand, proceeds from the disposition of certain properties and **proceeds related to contributions we may make of properties we own to joint ventures, future financing activities with unencumbered properties.**

We are currently in the process of redeveloping **several certain** properties in our **Medical Office and Life Science** Portfolio and a number of our managed senior living communities, which projects are expected to be completed at various times between **2023** **2024** and 2025. We continue to assess opportunities to redevelop other properties in our **Medical Office and Life Science** Portfolio and SHOP segment. These redevelopment projects may require significant capital expenditures and time to complete, and we have deferred, and may **continue to in the future** defer, certain redevelopment projects to preserve liquidity.

Our ability to make capital investments is currently limited under our credit agreement and may become more limited as we contemplate deferring further capital investments to preserve liquidity. Additionally, due **Due** to labor availability constraints and wage and commodity price inflation, the capital investments we plan to make may be delayed or cost more than we expect. For further information regarding our dispositions, see Note **23** to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Our Financing Liquidity and Resources

The decrease change in cash used in financing activities for the nine three months ended September 30, 2023 March 31, 2024 compared to the prior period was primarily due to our redemption of \$500,000 of our 9.75% senior notes due 2025 in June 2022, partially offset by higher repayments of borrowings under our former credit facility in during the 2023 period compared to the 2022 period.

As of September 30, 2023 March 31, 2024, we had \$278.1 million \$207.1 million of cash and cash equivalents and were fully drawn under our credit facility. equivalents. We typically use cash balances, net proceeds from offerings of securities, debt issuances or dispositions of assets and cash flows from our operations to fund our operations, debt repayments, distributions, acquisitions, investments, capital expenditures and other general business purposes.

In order to fund investments Until its repayment in full and to meet cash needs that may result from timing differences between our receipt of rents and our desire or need to make distributions or pay operating or capital expenses, termination on December 21, 2023, we maintain had a credit facility. The maturity date of our \$450.0 million credit facility is January 15, 2024. that was fully drawn. At September 30, 2023 December 21, 2023, our former credit facility required interest to be paid on borrowings at the an annual rate of 8.3% 8.4%, plus a facility fee of \$0.3 million per quarter. On March 31, 2021, we borrowed \$800.0 million under our credit facility as a precautionary measure to increase our cash position and preserve financial flexibility in light of uncertainties related to the COVID-19 pandemic. In February 2022, we repaid \$100.0 million in outstanding borrowings under our credit facility and the facility commitments were reduced to \$700.0 million. Also in February 2022, we exercised our option to extend the maturity date of our credit facility by one year to January 2024, and in January 2023, pursuant to the terms of our credit agreement, we repaid \$113.6 million in outstanding borrowings under our credit facility and the facility commitments were reduced to \$586.4 million. In February 2023, pursuant to an amendment to our credit agreement, we repaid \$136.4 million in outstanding borrowings under our credit facility and the facility commitments were further reduced to \$450.0 million. We have no additional options to extend the maturity date of our credit facility. As of September 30, 2023 and October 27, 2023, we were fully drawn under our credit facility. We are currently engaging in discussions with the lenders under our credit facility regarding a possible extension and amendment of that facility, as described elsewhere in this Current Report on Form 10-Q.

In February 2022, we and our lenders amended our credit agreement. Pursuant to the amendment:

- the waiver of the fixed charge coverage ratio covenant included in our credit agreement was extended through December 31, 2022;
- the facility commitments were reduced from \$800.0 million to \$700.0 million;
- we have the ability to fund \$400.0 million of capital expenditures per year and we are restricted in our ability to acquire real property as defined in our credit agreement;
- the interest premium under our credit facility increased by 15 basis points; and
- certain financial covenants and restrictions on distributions to common shareholders, share repurchases, capital expenditures, acquiring additional properties and incurring additional indebtedness (in each case subject to various exceptions), and the minimum liquidity requirement of \$200.0 million remained in place through December 31, 2022.

In February 2023, we and our lenders further amended our credit agreement. Pursuant to the amendment:

- the waiver of the fixed charge coverage ratio covenant has been extended through the maturity date of our credit facility, or January 15, 2024;
- the minimum liquidity requirement was decreased from \$200.0 million to \$100.0 million;
- the facility commitments were reduced from \$586.4 million to \$450.0 million following our repayment of \$136.4 million in then outstanding borrowings, and as a result of the reduction in commitments, we recorded a loss on modification or early extinguishment of debt of \$1.1 million for the nine months ended September 30, 2023;
- the feature of our credit facility permitting us to reborrow any repaid funds was eliminated;
- we continue to have the ability to fund \$400.0 million of capital expenditures per year and we are restricted in our ability to acquire real property as defined in the credit agreement;

▪ SOFR was established as the replacement benchmark rate in place of LIBOR to calculate interest payable on amounts outstanding under our credit facility, and the interest premium under our credit facility was increased by 40 basis points; and

- we are required to repay outstanding amounts under our credit facility with excess cash flow, and certain financial covenants and restrictions on distributions to common shareholders, share repurchases, capital expenditures, acquiring additional properties and incurring additional indebtedness (in each case subject to various exceptions) will remain in place through the maturity date of our credit facility.

Our credit agreement requires us to maintain collateral properties with an aggregate appraised value of at least \$1.09 billion, and allows the Administrative Agent to periodically reappraise the collateral properties. On June 23, 2023, the Administrative Agent notified us that the reappraised value of the then 61 medical office and life science properties securing our credit facility since September 2021 had declined from \$1.34 billion to \$1.05 billion, below the \$1.09 billion threshold required under our credit agreement. Failure to meet the required threshold constitutes a non-monetary event of default under our credit agreement. In July 2023, we obtained a limited waiver from the Administrative Agent and requisite lenders under our credit facility, which waived the event of default and decreased the required appraised value of the collateral properties through September 30, 2023. In

September 2023, we pledged the equity interests of an additional subsidiary owning one medical office property to secure our obligations under our credit agreement and provided a first mortgage lien on such medical office property. As of September 30, 2023, we believe we were in compliance with this covenant.

Generally, when significant amounts are outstanding under our credit facility, or as the maturities of our indebtedness approach, we intend to explore, and are currently exploring, refinancing alternatives, as well as the possible extension of the applicable maturity dates. Such alternatives include selling certain properties and issuing new equity securities. In addition, we may also seek to expand our existing joint venture arrangements or to participate in additional joint ventures or other arrangements that may provide us additional sources of financing. We currently have an effective shelf registration statement that allows us to issue public securities on an expedited basis, but it does not assure that there will be buyers for such securities. Also, we are currently limited in the type of financings we can pursue as we cannot refinance existing or maturing debt or issue new debt due to our non-compliance with our debt incurrence covenants, as discussed elsewhere in this Quarterly Report on Form 10-Q.

During the nine three months ended September 30, 2023 March 31, 2024, we paid quarterly cash distributions to our shareholders totaling approximately \$7.2 million \$2.4 million using existing cash balances. On October 12, 2023 April 11, 2024, we declared a quarterly distribution payable to common shareholders of record on October 23, 2023 April 22, 2024 in the amount of \$0.01 per share, or approximately \$2.4 million. We expect to pay this distribution on or about November 16, 2023 May 16, 2024 using cash on hand. For further information regarding the distribution we paid during 2022, 2023, see Note 6 7 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

We believe we may have access to certain types of financings, including debt or equity offerings, to fund our operations and repay our debts and other obligations as they become due. Our ability to complete, and the costs associated with, future debt or equity transactions depends primarily upon credit market conditions and our then creditworthiness and our ability to be in compliance with our debt covenants as discussed below. We have no control over market conditions. Our credit and debt ratings depend upon evaluations by credit rating agencies of our business practices and plans, including our ability to maintain our earnings, to stagger our debt maturities and to balance our use of debt and equity capital so that our financial performance and leverage ratios afford us flexibility to withstand any reasonably anticipated adverse changes. Similarly, our ability to raise equity capital in the future will depend primarily upon equity capital market conditions and our ability to conduct our business to maintain and grow our operating cash flows. We intend to conduct our business activities in a manner which will afford us reasonable access to capital for investment and financing activities, but we cannot be sure that we will be able to successfully carry out that intention. A protracted negative impact on the economy or the industries in which our properties and businesses operate, wage and commodity price inflation, rising or sustained high interest rates, increased insurance costs, geopolitical risks or other economic, market or industry conditions, including the delayed recovery of the senior housing industry, economic downturns and recessions, a possible recession, may have various negative consequences including a decline in financing availability and increased costs for financing. Further, those conditions could also disrupt capital markets and limit our access to financing from public sources, particularly if the global financial markets experience significant disruptions.

In April January 2023, pursuant to the then existing credit agreement, we repaid \$113.6 million in outstanding borrowings under our former credit facility and the commitments were reduced to \$586.4 million. In February 2023, we prepaid a mortgage note secured by one and our lenders amended the credit agreement to reduce the commitments from \$586.4 million to \$450.0 million following our repayment of \$136.4 million in outstanding borrowings under our former credit facility.

In December 2023, we issued \$940.5 million in aggregate principal amount at maturity of our senior living communities with an outstanding principal balance secured notes due 2026 in a private offering, raising net proceeds of approximately \$14.6 million \$730.4 million, after deducting initial purchaser discounts and estimated offering costs. These notes are fully and unconditionally guaranteed, on a maturity date joint, several and senior secured basis, by the Collateral Guarantors, and on a joint, several and unsecured basis, by all our subsidiaries other than the Collateral Guarantors and certain excluded subsidiaries. These notes and the guarantees provided by the Collateral Guarantors are secured by a first priority lien and security interest in June 2023 each of the collateral properties and an annual 100% of the equity interests in each of the Collateral Guarantors. No cash interest will accrue on these notes prior to maturity. The accreted value of these notes will increase at a rate of 6.64% using cash 11.25% per annum compounded semiannually on hand. January 15 and July 15 of each year. We used the net proceeds from this offering to repay in full and terminate our then \$450.0 million secured credit facility and to redeem \$250.0 million of our senior notes which were scheduled to mature in May 2024.

In January 2023, 2024, Moody's Investors Service, or Moody's, downgraded upgraded our 9.75% senior notes due 2025 rating from B3 to Caa3, and our 4.375% senior notes due 2031 rating ratings from B3 Ca to Caa3 and our senior unsecured debt rating from Caa1 C to Ca. In Ca, and Moody's also assigned a Caa2 rating to our senior secured notes due 2026.

February 2023, In January 2024, Standard & Poor's Rating Services, or Standard & Poor's, downgraded upgraded our 9.75% senior notes due 2025 rating from BB- CCC+ to B, our 4.375% senior notes due 2031 rating from BB- CCC+ to B and our senior unsecured debt rating from B CCC- to CCC+. In September 2023, Moody's downgraded our 9.75% senior notes due 2025 rating from Caa3 to Ca, our 4.375% senior notes due 2031 rating from Caa3 to Ca CCC, and our senior unsecured debt rating from Ca to C. In September 2023, Standard & Poor's downgraded also assigned a B rating to our 9.75% senior secured notes due 2025 rating from B to CCC+, our 4.375% senior notes due 2031 rating from B to CCC+ and our senior unsecured debt rating from CCC+ to CCC-.

Our next significant debt maturity is our credit facility, which matures in January 2024, followed by \$250.0 million of senior unsecured notes that mature in May 2024, 2026.

For further information regarding our outstanding debt, see Note 4 5 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Debt Covenants

Our principal debt obligations at September 30, 2023 March 31, 2024 were: (1) \$450.0 million of outstanding borrowings under our credit facility; (2) \$2.4 billion \$2.1 billion outstanding principal amount of senior unsecured notes; (2) \$940.5 million outstanding principal amount of senior secured notes; and (3) \$9.5 million \$8.7 million aggregate principal amount of mortgage notes (excluding discounts, premiums discounts and net debt issuance costs) secured by one property. For further information regarding our indebtedness, see Note 4 5 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Our senior unsecured notes are governed by our senior unsecured notes indentures and their supplements. Our credit agreement and our senior unsecured notes indentures and their supplements provide for acceleration of payment of all amounts outstanding upon the occurrence and continuation of certain events of default, such as, in the case of our credit agreement, a change of control of us, as defined, which includes RMR ceasing to act as our business and property manager. Our senior unsecured notes indentures and their supplements and our credit agreement also contain covenants that restrict our ability to incur debts, including debts secured by mortgages on our properties, in excess of calculated amounts and require us to maintain various financial ratios, and our credit agreement contains covenants that restrict our ability to make distributions to our shareholders in certain circumstances. ratios. As of September 30, 2023, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our credit agreement and our public debt covenants as the effects of the slower than anticipated and uneven recovery of our SHOP business from the COVID-19 pandemic, wage and commodity price inflation, rising interest rates, increased insurance costs, geopolitical risks and other economic, market and industry conditions continued to adversely impact our operations. We are unable to refinance existing or maturing debt or issue new debt until this ratio is at or above 1.5x on a pro forma basis. As of September 30, 2023 March 31, 2024, we believe we were in compliance with all of the other covenants under our senior unsecured notes indentures and their supplements our credit agreement and our other debt obligations, subject to the waivers described above. obligations. Although we continue to take steps to enhance our ability to maintain sufficient liquidity, as noted elsewhere in this Quarterly Report on Form 10-Q, a protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from wage or commodity price inflation, rising or sustained high interest rates, geopolitical risks or other economic, market or industry conditions, including the delayed recovery of the senior housing industry, economic downturns or recessions, a possible recession, may cause increased pressure on our ability to satisfy financial and other covenants. If our operating results and financial condition are significantly negatively impacted by economic conditions or otherwise, we may fail to satisfy our debt covenants and conditions under our credit agreement or fail to satisfy our public debt covenants. In addition, we may be unable to repay the \$450.0 million in outstanding borrowings under our credit facility if we do not succeed in realizing our plan to address the uncertainty of our ability to continue as a going concern or if that plan is not successful. Further, if we believe we will not be able to satisfy our financial or other covenants, we expect that we would seek waivers or amendments prior to any covenant violation or seek other financing alternatives. Any such waiver or amendment may result in increased costs and interest rates, additional restrictive covenants or other lender protections imposed on us. For example, we are currently engaging in discussions with the lenders under our credit facility regarding a possible extension and amendment of that facility, as described above. We cannot assure that we would be able to obtain these waivers or amendments or repay the related debt facilities when due, which may result in an event of default under the agreements governing our debt or the potential acceleration of our outstanding debt. conditions.

Neither our Our senior unsecured notes indentures and their supplements nor our credit agreement, do not contain provisions for acceleration which could be triggered by our debt ratings. See "—Our Financing Liquidity and Resources" above for information regarding recent downgrades of changes to our issuer credit rating and senior unsecured debt rating. ratings.

Our senior unsecured notes indentures and their supplements contain cross default provisions to any other debts of more than \$20.0 million (\$50.0 million or more in the case of our senior unsecured notes indentures and supplements entered in

February 2016, February 2018, June 2020, February 2021 and February 2021 December 2023). Similarly, our credit agreement has cross default provisions to other indebtedness that is recourse of \$25.0 million or more and indebtedness that is non-recourse of \$75.0 million or more.

The loan agreements governing the aggregate \$620.0 million secured debt financing related to the Seaport JV contain customary covenants and provide for acceleration of payment of all amounts due thereunder upon the occurrence and continuation of certain events of default. We no longer include this \$620.0 million of secured debt financing in our condensed consolidated balance sheet following the deconsolidation of the net assets of this joint venture; however, we continue to provide certain guaranties on this debt. The debt secured by the properties included in the LSMD JV in which we own a 20% equity interest is guaranteed by this joint venture and is non-recourse to us.

Supplemental Guarantor Information

On May 28, 2020, we issued \$1.0 billion of our 9.75% senior notes due 2025. We subsequently redeemed \$500.0 million of this debt in June 2022, with \$500.0 million remaining outstanding. On February 3, 2021, we issued \$500.0 million of our 4.375% senior notes due 2031. As of September 30, 2023 March 31, 2024, all \$500.0 million of our 9.75% senior notes due 2025 and all \$500.0 million of our 4.375% senior notes due 2031 were fully and unconditionally guaranteed, on a joint, and several basis and on a senior unsecured basis, by all of our subsidiaries, except for certain excluded subsidiaries, including pledged subsidiaries under our credit agreement. subsidiaries. The notes and the related guarantees are effectively subordinated to all of our and the subsidiary guarantors' secured indebtedness, respectively, to the extent of the value of the collateral securing such secured indebtedness, and are structurally subordinated to all indebtedness and other liabilities and any preferred equity of any of our subsidiaries that do not guarantee the notes. Our remaining \$1.35 billion \$1.1 billion of senior unsecured notes do not have the benefit of any guarantees as of September 30, 2023. guarantees.

A subsidiary guarantor's guarantee of our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031, as applicable, and all other obligations of such subsidiary guarantor under the indenture governing the notes will automatically terminate and such subsidiary guarantor will automatically be released from all of its obligations under such subsidiary guarantee and the indenture under certain circumstances, including on or after the date (a) the notes have an investment grade rating from two rating agencies and one of such investment grade ratings is a mid-BBB investment grade rating and (b) no default or event of default has occurred and is continuing under the indenture. Our non-guarantor subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due on our 9.75% senior notes due 2025 or our 4.375% senior notes due 2031 or the respective guarantees, or to make any funds available therefor, whether by dividend, distribution, loan or other payments. The rights of holders of our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031, as applicable, to benefit from any of the assets of our non-guarantor subsidiaries are subject to the prior satisfaction of claims of those subsidiaries' creditors and any preferred equity holders. As a result, our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031 and the respective guarantees are structurally subordinated to all indebtedness, guarantees and other liabilities of our subsidiaries that do not guarantee our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031, including guarantees of other indebtedness of ours, payment obligations under lease agreements, trade payables and preferred equity.

The following tables present summarized financial information for guarantor entities and issuer, on a combined basis after eliminating (i) intercompany transactions and balances among the guarantor entities and (ii) equity in earnings from, and any investments in, any subsidiary that is a non-guarantor (dollars in thousands):

		September 30, 2023	December 31, 2022
	March 31, 2024		
	March 31, 2024		
	March 31, 2024		December 31, 2023
Real estate properties, net	Real estate properties, net	\$3,967,125	\$3,991,336
Other assets, net	Other assets, net	617,930	1,046,180
Total assets	Total assets	\$4,585,055	\$5,037,516
Indebtedness, net	Indebtedness, net	\$2,775,476	\$3,037,879
Indebtedness, net	Indebtedness, net		
Other liabilities	Other liabilities	227,335	249,911
Total liabilities	Total liabilities	\$3,002,811	\$3,287,790

		Nine Months Ended September 30, 2023	Three Months Ended March 31, 2024
Revenues	\$	943,002	324,711
Expenses		1,046,145	365,317
Loss from continuing operations		(225,140)	(95,658)
Net loss		(223,382)	(93,947)

Related Person Transactions

We have relationships and historical and continuing transactions with RMR, RMR Inc., AlerisLife (including Five Star) and others related to them. For further information about these and other such relationships and related person transactions, see Notes 8, 9, 10 and 10 11 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, our Annual Report, our definitive Proxy Statement for our 2023 2024 Annual Meeting of Shareholders and our other filings with the SEC. In addition, see the section captioned "Risk Factors" of our Annual Report for a description of risks that may arise as a result of these and other related person transactions and relationships. We may engage in additional transactions with related persons, including businesses to which RMR or its subsidiaries provide management services.

Critical Accounting Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect reported amounts. Actual results could differ from those estimates. Significant estimates in our condensed consolidated financial statements include purchase price allocations, useful lives of fixed assets and impairments of real estate and intangible assets.

A discussion of our critical accounting estimates is included in our Annual Report. There have been no significant changes in our critical accounting estimates since the year ended December 31, 2022 December 31, 2023.

Impact of Government Reimbursement

For the nine three months ended September 30, 2023 March 31, 2024, substantially all of our NOI was generated from properties where a majority of the revenues are derived from our tenants' and residents' private resources, and a small amount of our NOI was generated from properties where a majority of the revenues are derived from Medicare and Medicaid payments. Nonetheless, we own, and our tenants, managers and operators operate, facilities in many states that participate in federal and state healthcare payment programs, including the federal Medicare and state Medicaid programs and other federal and state healthcare payment programs. Also, some of our medical office and life science property tenants participate in federal Medicare and state Medicaid programs and other government healthcare payment programs.

During the nine months ended September 30, 2023 and 2022, we recognized \$1.6 million and \$1.1 million, respectively, in interest and other income in our condensed consolidated statements of comprehensive income (loss) related to funds received under the CARES Act, ARPA and various state programs in which certain of our communities in our SHOP segment are located.

For more information regarding the government healthcare funding and regulation of our business, please see the section captioned "Business—Government Regulation and Reimbursement" in our Annual Report and the section captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations—Impact of Government Reimbursement" in our Annual Report.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

We are exposed to risks associated with market changes in interest rates. We manage our exposure to this market risk by monitoring available financing alternatives. Other than as described below, we do not currently foresee any significant changes in our exposure to fluctuations in interest rates or in how we manage this exposure in the near future.

We may in the future enter into hedge arrangements or derivative contracts from time to time to mitigate our exposure to changes in interest rates.

Fixed Rate Debt

At September 30, 2023, our outstanding fixed rate debt included the following (dollars in thousands):

Debt	Principal Balance ⁽¹⁾	Annual Interest Rate ⁽¹⁾	Annual Interest Expense	Maturity	Interest Payments Due
Senior unsecured notes	\$ 250,000	4.750 %	\$ 11,875	2024	Semi-Annually
Senior unsecured notes ⁽²⁾	500,000	9.750 %	48,750	2025	Semi-Annually
Senior unsecured notes	500,000	4.750 %	23,750	2028	Semi-Annually
Senior unsecured notes ⁽²⁾	500,000	4.375 %	21,875	2031	Semi-Annually
Senior unsecured notes	350,000	5.625 %	19,688	2042	Quarterly
Senior unsecured notes	250,000	6.250 %	15,625	2046	Quarterly
Mortgage note	9,504	6.444 %	612	2043	Monthly
	<u>\$ 2,359,504</u>		<u>\$ 142,175</u>		

(1) The principal balances and interest rates are the amounts stated in the applicable contracts. In accordance with GAAP, our carrying values and recorded interest expense may differ from these amounts because of market conditions at the time we assumed certain of these debts. This table does not include obligations under finance leases.

(2) As of September 30, 2023, these senior notes were fully and unconditionally guaranteed. For further information, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" in Part I, Item 2 of this Quarterly Report on Form 10-Q.

No principal repayments are due under our unsecured notes until maturity. Our mortgage notes generally require principal and interest payments through maturity pursuant There have been no material changes to amortization schedules. Because these debts require interest to be paid at a fixed rate, changes in market interest rates during the term of these debts will not affect our interest obligations. If these debts were refinanced at interest rates which are one percentage point higher or lower than shown above, our annual interest cost would increase or decrease by approximately \$23.6 million.

Changes in market interest rates also would affect the fair value of rate risks associated with our fixed rate debt obligations; increases in during the three months ended March 31, 2024. For a discussion of market interest rates decrease the fair value of rate risks associated with our fixed rate debt, while decreases see "Quantitative and Qualitative Disclosures About Market Risk" included in market interest rates increase the fair value Part II, Item 7A of our fixed rate debt. The U.S. Federal Reserve has raised interest rates multiple times since the beginning of 2022 in an effort to combat inflation and may continue to do so. 2023 Annual Report.

Our senior unsecured notes and our mortgage note contain provisions that allow us to make repayments earlier than the stated maturity date. In some cases, we are not allowed to make early repayment prior to a cutoff date and we are generally allowed to make prepayments only at a premium equal to a make whole amount, as defined, which is generally designed to preserve a stated yield to the noteholder. In the past, we have repurchased and retired some of our outstanding debt and we may do so again in the future. These prepayment rights and our ability to repurchase and retire outstanding debt may afford us opportunities to mitigate the risk of refinancing our debts at maturity at higher rates by refinancing prior to maturity.

Floating Rate Debt

At September 30, 2023 March 31, 2024, our we did not have any floating rate debt obligations consisted of \$450.0 million outstanding under our credit facility. Our credit facility matures in January 2024.

Borrowings under our credit facility are in U.S. dollars and interest is required to be paid at the rate of SOFR plus a premium as defined in our credit agreement. Accordingly, we are exposed to interest rate risk for changes in U.S. dollar based short term rates. In addition, upon any potential renewal or refinancing of our credit facility, we are vulnerable to increases in interest premiums due to market conditions or our perceived credit characteristics. Generally, a change in interest rates would not affect the value of our floating rate debt but would affect our operating results.

The following table presents the impact a one percentage point increase in interest rates would have on our annual floating rate interest expense as of September 30, 2023 (dollars in thousands except per share amounts):

	Impact of Changes in Interest Rates				
	Interest Rate	Outstanding Floating Rate Debt	Total Interest Expense Per Year	Annual Earnings	
				Per Share Impact ⁽¹⁾	
At September 30, 2023	8.33 %	\$ 450,000	\$ 37,485	\$	0.16
One percentage point increase	9.33 %	\$ 450,000	\$ 41,985	\$	0.18

(1) Based on weighted average number of shares outstanding (basic and diluted) for the nine months ended September 30, 2023.

The foregoing table shows the impact of an immediate increase in floating interest rates. If interest rates were to increase gradually over time, the impact would be spread over time. Our exposure to fluctuations in floating interest rates will increase or decrease in the future with increases or decreases in the amount of our borrowings outstanding under our credit facility or other floating rate debt obligations.

Item 4. Controls and Procedures.

As of the end of the period covered by this Quarterly Report on Form 10-Q, our management carried out an evaluation, under the supervision and with the participation of our President and Chief Executive Officer and our Chief Financial Officer and Treasurer, of the effectiveness of our disclosure controls and procedures pursuant to Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934, as amended. Based upon that evaluation, our President and Chief Executive Officer and our Chief Financial Officer and Treasurer concluded that our disclosure controls and procedures are effective.

There have been no changes in our internal control over financial reporting during the quarter ended September 30, 2023 March 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Warning Concerning Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and other securities laws that are subject to risks and uncertainties. These statements may include words such as “believe”, “expect”, “anticipate”, “intend”, “plan”, “estimate”, “will”, “may” and negatives or derivatives of these or similar expressions. These forward-looking statements include, among others, statements about: our ability to continue as a going concern; our actions to address our near term capital needs and possible financing options; our access to financing; our compliance with financial covenants; our access to permitted capital; our efforts to manage costs and increase occupancy at our SHOP communities; demand for medical office and life science leased space; our future leasing activity; market demand and supply for healthcare services for older adults and senior living communities; expected costs related to the transition of certain senior living communities; our leverage levels; leverage; the sufficiency of our liquidity; our liquidity needs and sources; our capital expenditure plans and commitments; the transition of operations at certain of our senior living communities to new managers; our acquisitions and our pending or potential property dispositions; our redevelopment, repositioning and construction activities and plans; and the amount and timing of future distributions.

Forward-looking statements reflect our current expectations, are based on judgments and assumptions, are inherently uncertain and are subject to risks, uncertainties and other factors, which could cause our actual results, performance or achievements to differ materially from expected future results, performance or achievements expressed or implied in those forward-looking statements. Some of the risks, uncertainties and other factors that may cause our actual results, performance or achievements to differ materially from those expressed or implied by forward-looking statements include, but are not limited to, the following:

- Our ability to successfully take actions to address the current substantial doubt as to our ability to continue as a going concern.
- The impact of increasing or sustained unfavorable market and commercial real estate industry conditions due to possible reduced demand for healthcare related space and senior living communities, high interest rates, limited labor availability, wage and commodity price inflation, limited labor availability, increased insurance costs, disruption and supply chain disruptions, volatility in the public equity and debt markets, conditions in the real estate industry generally pandemics, geopolitical instability and in the sectors we operate, global geopolitical hostilities and tensions, and economic downturns or a possible recession or changes in real estate utilization, among other things, on us and our managers and other operators and tenants,
- Our senior living operators' abilities to successfully and profitably operate the communities they manage for us,
- The continuing impact of changed changing market practices, including those that arose or intensified during the COVID-19 pandemic, or delayed returns to prior market practices on us and our managers and other operators and tenants, such as reduced demand for leased medical office, life science and other space of ours and residencies at senior living communities, increased operating costs and labor availability constraints,
- Our ability to comply with the financial covenants under our debt agreements,
- The financial strength of our managers and other operators and tenants,

- Whether the aging U.S. population and increasing life spans of seniors will increase the demand for senior living communities and other medical and healthcare related properties and healthcare services,
- Whether our tenants will renew or extend their leases or whether we will obtain replacement tenants on terms as favorable to us as our prior leases,
- The likelihood that our tenants and residents will pay rent or be negatively impacted by cyclical economic continuing unfavorable market and commercial real estate industry conditions,
- Our ability to pay distributions to our shareholders and to maintain or increase the amount of such distributions,
- Our ability to increase or maintain occupancy at our properties on terms desirable to us,
- Our managers' abilities to increase or maintain rates charged to residents of our senior living communities and manage operating costs for those communities,
- Our ability to increase or maintain occupancy at our properties on terms desirable to us,
- Our ability to increase rents when our leases expire or renew,
- Costs we incur and concessions we grant to lease our properties,
- Risk and uncertainties regarding the costs and timing of development, redevelopment and repositioning activities, including as a result of prolonged high inflation, cost overruns, supply chain challenges, labor shortages, construction delays or inability to obtain necessary permits or volatility in the commercial real estate markets,
- Our ability to manage our capital expenditures and other operating costs effectively and to maintain and enhance our properties and their appeal to tenants and residents,
- Costs we incur and concessions we grant to lease our properties,
- Our ability to sell properties at prices we target,
- Our ability to effectively raise and balance our use of debt and equity capital,
- Our ability to make required payments on comply with the financial covenants under our debt agreements,
- Our ability to extend the maturity date of make required payments on our credit facility, debt,
- Our ability to maintain sufficient liquidity and otherwise manage leverage,
- Our credit ratings,
- Our ability to sell properties at prices or returns we target,
- Our ability to sell additional equity interests in, or contribute additional properties to, our existing joint ventures, or enter into additional, real estate joint ventures or to attract co-venturers and benefit from our existing joint ventures or any real estate joint ventures we may enter into,
- Our ability to acquire, develop, redevelop or reposition properties that realize our targeted returns,
- Our ability to pay distributions to our shareholders and to maintain or increase the amount of such distributions,
- The ability of RMR to successfully manage us,
- Competition in the real estate industry, particularly in those markets in which our properties are located,
- Government regulations affecting Medicare and Medicaid reimbursement rates and operational requirements,
- Compliance with, and changes to, federal, state and local laws and regulations, accounting rules, tax laws and similar matters,
- Exposure to litigation and regulatory and government proceedings due to the nature of the senior living and other health and wellness related service businesses,
- Actual and potential conflicts of interest with our related parties, including our Managing Trustees, RMR, ABP Trust, AlerisLife and others affiliated with them,
- Limitations imposed by and our ability to satisfy complex rules to maintain our qualification for taxation as a REIT for U.S. federal income tax purposes,
- Acts of terrorism, outbreaks or continuation of pandemics including the COVID-19 pandemic, or other public health safety events or conditions, war or other hostilities, material or prolonged disruption to supply chains, global climate change or other manmade or natural disasters beyond our control,

- Our ability to comply with Nasdaq listing standards and maintain the listing of our common shares on Nasdaq, and
- Other matters.

These risks, uncertainties and other factors are not exhaustive and should be read in conjunction with other cautionary statements that are included in our periodic filings. The information contained elsewhere in this Quarterly Report on Form 10-Q or in our other filings with the SEC, including under the caption "Risk Factors" in this Quarterly Report on Form 10-Q and other periodic reports, or incorporated herein or therein, identifies other important factors that could cause differences from our forward-looking statements in this Quarterly Report on Form 10-Q, statements. Our other filings with the SEC are available on the SEC's website at www.sec.gov.

You should not place undue reliance upon our forward-looking statements.

Except as required by law, we do not intend to update or change any forward-looking statements as a result of new information, future events or otherwise.

Statement Concerning Limited Liability

The Amended and Restated Declaration of Trust establishing Diversified Healthcare Trust, dated September 20, 1999, as amended and supplemented, as filed with the State Department of Assessments and Taxation of Maryland, provides that no trustee, officer, shareholder, employee or agent of Diversified Healthcare Trust shall be held to any personal liability, jointly or severally, for any obligation of, or claim against, Diversified Healthcare Trust. All persons dealing with Diversified Healthcare Trust in any way shall look only to the assets of Diversified Healthcare Trust for the payment of any sum or the performance of any obligation.

PART II. Other Information

Item 1A. Risk Factors.

Our business is subject There have been no material changes to risks and uncertainties, a number of which are described under the caption "Risk Factors" risk factors from those we previously disclosed in our Annual Report. The risks described in our Annual Report and below may not be the only risks we face but are risks we believe may be material at this time. Other risks of which we are not yet aware, or that we currently believe are not material, may also materially and adversely impact our business operations or financial results. If any of the events or circumstances described in the risk factors contained in our Annual Report or included below occurs, our business, financial condition, liquidity, results of operations or ability to pay distributions to our shareholders could be adversely impacted and the value of an investment in our securities could decline. Investors and prospective investors should consider the risks described in our Annual Report and below and the information contained under the caption "Warning Concerning Forward-Looking Statements" and elsewhere in this Quarterly Report on Form 10-Q before deciding whether to invest in our securities.

Risks Relating to Going Concern

We have concluded that there is substantial doubt about our ability to continue as a going concern.

The senior living industry has been adversely affected by the slow recovery from the COVID-19 pandemic as well as current economic and market conditions. These conditions continue to have a significant negative impact on our results of operations, financial condition and cash flows. Our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our credit agreement and our public debt covenants as of September 30, 2023. We cannot be certain how long this ratio will remain below 1.5x, and we are unable to refinance existing or maturing debt or issue new debt until this ratio is at or above 1.5x on a pro forma basis. As of September 30, 2023, we had \$278.1 million of cash and cash equivalents, \$450.0 million in outstanding borrowings under our credit facility which matures on January 15, 2024 and \$250.0 million of senior notes that mature on May 1, 2024. Our credit facility is secured by 62 properties which had an appraised value of approximately \$1.1 billion based on appraisals completed in 2023.

As discussed in Note 1 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, based on these challenges and upcoming debt maturities, we have concluded that there is substantial doubt about our ability to continue as a going concern for at least one year from the date of issuance of the financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q. Our continuation as a going concern is dependent upon many factors, including our ability to meet our debt covenants and repay our debts and other obligations when due. While we believe raising permissible new capital, including proceeds from our planned asset sales, and the possible extension of our credit facility, will alleviate the substantial doubt about our ability to continue as a going concern, we cannot provide assurance that any new capital raised, including proceeds from our planned asset sales, will be available to us or sufficient to repay our upcoming maturing debt, or that our lenders will agree to an extension of the maturity date of our credit facility. We cannot be sure that we will be able to obtain any future debt financing, and any such debt financing we may obtain may not be sufficient to repay our upcoming maturing debt. If we are unable to obtain sufficient funds, we may be unable to continue as a going concern.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Issuer purchases of equity securities. The following table provides information about our purchases of our equity securities during the quarter ended September 30, 2023 March 31, 2024:

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(1) These common share withholdings and purchases were made to satisfy tax withholding and payment obligations of our officers and certain current and former officers and employees of RMR in connection with the vesting of prior awards of our common shares. We withheld and purchased these common shares at their fair market values based upon the trading prices of our common shares at the close of trading on Nasdaq on the purchase dates.

Item 5. Other Information.

On November 1, 2023, our Board of Trustees approved and adopted our Third Amended and Restated Bylaws, or our Amended Bylaws, to reduce the permitted ownership of our shares on a prospective basis, from 9.8% to 5%, in order to preserve our cumulative net operating losses.

The new Article IX of our Amended Bylaws generally provides that transfers of our shares (and certain other securities) to a person, entity or group which is then, or would become as a result, an owner of 5% or more of our outstanding shares would be void in total for transferees then already owning 5% or more of our shares and, for transferees that would otherwise become owners of 5% or more of our shares, to the extent the transfer would so result in such level of ownership by the proposed transferee. The prohibited transfer threshold was set at 5% because transfers at or above that level could result in limitations on our ability to use our net operating losses and other tax benefits to reduce our future taxable income, as provided under the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations and rulings issued thereunder. Shares relating to attempted transfers in violation of the Article IX prohibition may be subject to transfer to a charitable trust in accordance with the provisions of Article VII of our Declaration of Trust. Article VII of our Declaration of Trust also governs the treatment for our shares which are subject to other provisions of our Declaration of Trust and Amended Bylaws, including shares owned in excess of the 9.8% ownership limitation included in our Declaration of Trust and shares required to be divested due to a shareholder's failure to comply with certain regulatory matters, as further provided in our Amended Bylaws.

With respect to shareholders who held in excess of 5% of our shares outstanding prior to November 1, 2023, none of such shareholders' shares were deemed under the new limitation to be excess securities subject to automatic transfer to a charitable trust; instead such shareholders will not be permitted to acquire additional shares while owning 5% or more of our outstanding shares or thereafter to the extent any such subsequent acquisition would result in them owning 5% or more of our outstanding shares. Our Board of Trustees or an authorized committee may approve transfers otherwise prohibited by these provisions of our Amended Bylaws.

The foregoing description of our Amended Bylaws is not complete and is subject to and qualified in its entirety by reference to the Amended Bylaws, a copy of which is filed as Exhibit 3.5 to this Quarterly Report on Form 10-Q and incorporated herein by reference. In addition, a marked copy of our Amended Bylaws indicating changes made to our bylaws as they existed immediately prior to the adoption of our Amended Bylaws is filed as Exhibit 3.6 to this Quarterly Report on Form 10-Q.

Item 6. Exhibits.

Exhibit Number	Description
3.1	Composite Copy of Articles of Amendment and Restatement, dated September 20, 1999, as amended to date. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020.)
3.2	Articles Supplementary, dated May 11, 2000. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2000.)
3.3	Articles Supplementary, dated June 30, 2017. (Incorporated by reference to the Company's Current Report on Form 8-K filed on June 30, 2017.)
3.4	Articles Supplementary, dated May 19, 2020. (Incorporated by reference to the Company's Current Report on Form 8-K filed on May 20, 2020.)
3.5	Third Amended and Restated Bylaws of the Company, adopted November 1, 2023. (Filed herewith.)
3.6	Third Amended and Restated Bylaws of (Incorporated by reference to the Company, adopted November 1, 2023 (marked copy). (Filed herewith.) Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023.)
4.1	Form of Common Share Certificate. (Incorporated by reference to the Company's Current Report on Form 8-K filed on January 2, 2020.)
4.2	Indenture, dated as of December 20, 2001, between the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association, as successor trustee to State Street Bank and Trust Company). (Incorporated by reference to the Company's Registration Statement on Form S-3, File No. 333-76588.)
4.3	Supplemental Indenture No. 7, dated as of July 20, 2012, between the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 5.625% Senior Notes due 2042, including form thereof. (Incorporated by reference to the Company's Registration Statement on Form 8-A filed on July 20, 2012.)
4.4	Supplemental Indenture No. 9, dated as of April 28, 2014, between the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 4.75% Senior Notes due 2024, including form thereof. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014.)
4.5	Indenture, dated as of February 18, 2016, between the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association). (Incorporated by reference to the Company's Current Report on Form 8-K filed on February 18, 2016.)
4.6 4.5	First Supplemental Indenture, dated as of February 18, 2016, between the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 6.25% Senior Notes due 2046, including form thereof. (Incorporated by reference to the Company's Current Report on Form 8-K filed on February 18, 2016.)

4.7 4.6	Second Supplemental Indenture, dated as of February 12, 2018, between the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 4.75% Senior Notes due 2028, including form thereof. (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2017.)
4.8 4.7	Third Supplemental Indenture, dated as of June 2, 2020, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 9.750% Senior Notes due 2025, including form thereof. (Incorporated by reference to the Company's Current Report on Form 8-K filed on June 5, 2020.)
4.9 4.8	Supplemental Indenture, dated as of March 5, 2021, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 9.750% Senior Notes due 2025. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021.)
4.10 4.9	Supplemental Indenture, dated as of September 9, 2022, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 9.750% Senior Notes due 2025. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022.)
4.11 4.10	Supplemental Indenture, dated as of November 22, 2022, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 9.750% Senior Notes due 2025. (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2022.)
4.11	Supplemental Indenture, dated as of March 1, 2024, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 9.750% Senior Notes due 2025. (Filed herewith.)
4.12	Fourth Supplemental Indenture, dated as of February 8, 2021, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 4.375% Senior Notes due 2031, including form thereof. (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2020.)
4.13	Supplemental Indenture, dated as of March 5, 2021, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 4.375% Senior Notes due 2031. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021.)
4.14	Supplemental Indenture, dated as of September 9, 2022, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 4.375% Senior Notes due 2031. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022.)
4.15	Supplemental Indenture, dated as of November 22, 2022, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 4.375% Senior Notes due 2031. (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2022.)
4.16	Supplemental Indenture, dated as of March 1, 2024, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), related to 4.375% Senior Notes due 2031. (Filed herewith.)
4.17	Indenture, dated as of December 21, 2023, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank Trust Company, National Association. (Incorporated by reference to the Company's Current Report on Form 8-K filed on December 22, 2023.)
4.18	Registration Rights and Lock-Up Agreement, dated as of June 5, 2015, among the Company, ABP Trust (f/k/a Reit Management & Research Trust) and Adam D. Portnoy. (Incorporated by reference to the Company's Current Report on Form 8-K filed on June 8, 2015.)
10.1	Termination Agreement, dated as of September 1, 2023, by and between Office Properties Income Trust and the Company. (Incorporated by reference to the Company's Current Report on Form 8-K filed on September 1, 2023.)
10.2	Pledge Amendment, dated as of September 26, 2023, by the Company and certain subsidiaries of the Company party thereto. (Filed herewith.)
10.3	Release of Certain Guarantors, dated as of October 12, 2023 March 1, 2024, related to 9.750% Senior Notes due 2025, among the Company, certain subsidiaries of the Company named therein and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association). (Filed herewith.)
10.4 10.2	Release of Certain Guarantors, dated as of October 12, 2023 March 1, 2024, related to 4.375% Senior Notes due 2031, among the Company, certain subsidiaries of the Company named therein and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association). (Filed herewith.)
10.5 10.3	Form Stockholders Agreement, dated as of Share Award Agreement. (Filed herewith.)
10.6	Form of Indemnification Agreement, February 16, 2024, by and among AlerisLife Inc., the Company, DHC Holdings LLC and ABP Trust. (Filed herewith.)
22.1	List of Subsidiary Guarantors. (Filed herewith.) (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2023.)
31.1	Rule 13a-14(a) Certification. (Filed herewith.)
31.2	Rule 13a-14(a) Certification. (Filed herewith.)

32.1	Section 1350 Certification. (Furnished herewith.)
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.
101.SCH	XBRL Taxonomy Extension Schema Document. (Filed herewith.)
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document. (Filed herewith.)
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document. (Filed herewith.)
101.LAB	XBRL Taxonomy Extension Label Linkbase Document. (Filed herewith.)
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document. (Filed herewith.)
104	Cover Page Interactive Data File. (Formatted as Inline XBRL and contained in Exhibit 101.)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DIVERSIFIED HEALTHCARE TRUST

By: /s/ Jennifer F. Francis Christopher J. Bilotto
Jennifer F. Francis Christopher J. Bilotto
President and Chief Executive Officer

Dated: November 1, 2023 May 6, 2024

By: /s/ Matthew C. Brown
Matthew C. Brown
Chief Financial Officer and Treasurer
(principal financial and accounting officer)

Dated: November 1, 2023 May 6, 2024

56 40

Exhibit 3.5 4.11

SUPPLEMENTAL INDENTURE

DIVERSIFIED HEALTHCARE TRUST

THIRD AMENDED AND RESTATED BYLAWS

As of November 1, 2023

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DIVERSIFIED HEALTHCARE TRUST
THIRD AMENDED AND RESTATED BYLAWS

These THIRD AMENDED AND RESTATED BYLAWS (these "Bylaws"THIS SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*") of Diversified Healthcare Trust (the "Trust") are made, dated as of the date set forth above by the Board of Trustees of the Trust (the "Board of Trustees" or "Board," March 1, 2024, among SNH Durham LLC and SNH Maryland Heights LLC, each member thereof, a "Trustee").

ARTICLE I
OFFICES

Section 1.1 **Principal Office.** The principal office of the Trust shall be located at such place or places as the Board of Trustees may designate.

Section 1.2 **Additional Offices.** The Trust may have additional offices at such places as the Board of Trustees may from time to time determine or the business of the Trust may require.

ARTICLE II MEETINGS OF SHAREHOLDERS

Section 2.1 **Place.** All meetings of shareholders shall be held at the principal office of the Trust or at such other place as is designated by the Board of Trustees, a Managing Trustee (as defined in Section 3.2) or the president.

Section 2.2 **Annual Meeting.** An annual meeting of the shareholders for the election of Trustees and the transaction of any business within the powers of the Trust shall be held at such times as the Trustees may designate. Failure to hold an annual meeting does not invalidate the Trust's existence or affect any otherwise valid acts of the Trust.

Section 2.3 **Special Meetings.** Special meetings of shareholders may be called only by a majority of the Trustees then in office. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees for the purpose of electing Trustees.

Section 2.4 **Notice of Regular or Special Meetings.** Notice given in writing or by electronic transmission specifying the place, day and hour of any regular or special meeting, the purposes of the meeting, to the extent required by law to be provided, and all other matters required by law shall be given to each shareholder of record entitled to vote, sent to his or her address appearing on the books of the Trust or theretofore given by him or her to the Trust for the purpose of notice, by presenting it to such shareholder personally, by leaving it at the shareholder's residence or usual place of business or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given once deposited in the U.S. mail addressed to the shareholder at his or her post office address as it appears on the records of the Trust, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the shareholder by an electronic transmission to any address or number of the shareholder at which the shareholder receives electronic transmissions. It shall be the duty of the secretary to give notice of each meeting of the shareholders. The Trust may give a single notice to all shareholders who share an address, which single notice shall be effective to any shareholder at such address, unless a shareholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more shareholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this ARTICLE II or the validity of any proceedings at any such meeting.

Section 2.5 **Notice of Adjourned Meetings.** It shall not be necessary to give notice of the time and place of any adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which such adjournment is taken.

Section 2.6 **Meeting Business.** Except as otherwise expressly set forth elsewhere in these Bylaws, no business shall be transacted at an annual or special meeting of shareholders except as specifically designated in the notice or otherwise properly brought before the meeting of shareholders by or at the direction of the Board of Trustees.

Section 2.7 **Organization of Shareholder Meetings.** Every meeting of shareholders shall be conducted by an individual appointed by the Board of Trustees to be chairperson of the meeting or, in the absence of such appointment or the absence of the appointed individual, by one of the following officers present at the meeting in the following order: the chairman of the board, if there be one, a Managing Trustee (in their order of seniority), the president, the vice presidents (in their order of seniority), the secretary, or, in the absence of such officers, a chairperson chosen by the shareholders by the vote of holders of shares of beneficial interest representing a majority of the votes cast on such appointment by shareholders present in person or

represented by proxy. The secretary, an assistant secretary or a person appointed by the Trustees or, in the absence of such appointment, a person appointed by the chairperson of the meeting shall act as secretary of the meeting and record the minutes of the meeting. If the secretary presides as chairperson at a meeting of the shareholders, then the secretary shall not also act as secretary of the meeting and record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of shareholders shall be determined by the chairperson of the meeting. The chairperson of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairperson, are appropriate for the proper conduct of the meeting, including, without limitation: (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to shareholders of record of the Trust, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (c) limiting participation at the meeting on any matter to shareholders of record of the Trust entitled to vote on such matter, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (d) limiting the time allotted to questions or comments by participants; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any shareholder or other person who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairperson of the meeting; (h) concluding a meeting or recessing or adjourning the meeting to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Without limiting the generality of the powers of the chairperson of the meeting pursuant to the foregoing provisions, the chairperson may adjourn any meeting of shareholders for any reason deemed necessary by the chairperson, including, without limitation, if (i) no quorum is present for the transaction of the business, (ii) the Board of Trustees or the chairperson of the meeting determines that adjournment is necessary or appropriate to enable the shareholders to consider fully information that the Board of Trustees or the chairperson of the meeting determines has not been made sufficiently or timely available to shareholders or (iii) the Board of Trustees or the chairperson of the meeting determines that adjournment is otherwise in the best interests of the Trust. Unless otherwise determined by the chairperson of the meeting, meetings of shareholders shall not be required to be held in accordance with the general rules of parliamentary procedure or any otherwise established rules of order.

Section 2.8 **Quorum.** At any meeting of shareholders, the presence in person or by proxy of shareholders entitled to cast a majority of all the votes entitled to be cast at such meeting shall constitute a quorum; but this section shall not affect any requirement under any statute or the Declaration of Trust for the vote necessary for the adoption of any measure. If, however, such quorum shall not be present at any meeting of the shareholders, the chairperson of the meeting shall have the power to adjourn the meeting from time to

time without the Trust having to set a new record date or provide any additional notice of such meeting, subject to any obligation of the Trust to give notice pursuant to Section 2.5. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present, either in person or by proxy, at a meeting of shareholders which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal of enough votes to leave less than a quorum then being present at the meeting.

Section 2.9 Voting.

(a) Except as may be mandated by applicable law or the listing requirements of the principal exchange on which the Trust's common shares of beneficial interest are listed, and subject to the provisions of any class or series of shares of beneficial interest of the Trust hereafter authorized and then outstanding, a plurality of all the votes cast at a meeting of shareholders duly called and at which a quorum is present shall be sufficient to elect a Trustee. Each share may be voted for as many individuals as there are Trustees to be elected and for whose election the share is entitled to be voted.

(b) With regard to any other matter which may properly come before a meeting of shareholders duly called and at which a quorum is present, and except as may be mandated by applicable law, by the listing requirements of the principal exchange on which the Trust's common shares of beneficial interest are listed or by a specific provision of the Declaration of Trust, the vote required for approval shall be the affirmative vote of seventy-five percent (75%) of the votes entitled to be cast for each such matter unless such matter has been previously approved by the Board of Trustees, in which case the vote required for approval shall be a majority of the votes cast at a meeting of shareholders duly called and at which a quorum is present.

Section 2.10 Proxies. A shareholder may cast the votes entitled to be cast by him or her either in person or by proxy executed by the shareholder or by his or her duly authorized agent in any manner permitted by law. Such proxy shall be filed with such officer of the Trust or third party agent as the Board of Trustees shall have designated for such purpose for verification at or prior to such meeting. Any proxy relating to the Trust's shares of beneficial interest shall be valid until the expiration date therein or, if no expiration is so indicated, for such period as is permitted pursuant to Maryland law. At a meeting of shareholders, all questions concerning the qualification of voters, the validity of proxies, and the acceptance or rejection of votes, shall be decided by or on behalf of the chairperson of the meeting, subject to Section 2.13.

Section 2.11 Record Date. The Board of Trustees may fix the date for determination of shareholders entitled to notice of and to vote at a meeting of shareholders. If no date is fixed for the determination of the shareholders entitled to vote at any meeting of shareholders, only persons in whose names shares entitled to vote are recorded on the share records of the Trust on the later of: (i) the close of business on the day on which notice of such meeting of shareholders is first mailed by the Trust or (ii) the thirtieth (30th) day before the date of such meeting shall be entitled to vote at such meeting.

Section 2.12 Voting of Shares by Certain Holders. Shares of beneficial interest of the Trust registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner, managing member or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such shares pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or pursuant to an agreement of the partners of the partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such shares. Any trustee or other fiduciary may vote shares registered in his or her name as such fiduciary, either in person or by proxy. Notwithstanding the apparent authority created by the prior two sentences of this Section 2.12, the Board of Trustees or the chairperson of the meeting may require that such person acting for a corporation, partnership, trust or other entity provide documentary evidence of his or her authority to vote such shares and of the fact that the beneficial owner of such shares has been properly solicited and authorized such person to vote as voted, and in the absence of such satisfactory evidence, the Board of Trustees or the chairperson may determine such votes have not been validly cast.

Section 2.13 Inspectors.

(a) Before or at any meeting of shareholders, the chairperson of the meeting may appoint one or more persons as inspectors for such meeting. Such inspectors, if any, shall (i) ascertain and report the number of shares of beneficial interest represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairperson of the meeting and (iv) perform such other acts as are proper to conduct the election or voting at the meeting. In the absence of such a special appointment, the secretary may act as the inspector.

(b) Each report of an inspector shall be in writing and signed by him or her. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 2.14 Nominations and Other Proposals to be Considered at Meetings of Shareholders. Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at meetings of shareholders may be properly brought before the meeting only as set forth in this Section 2.14 or Section 2.18. Nothing in this Section 2.14 shall be deemed to affect any right of a shareholder to request inclusion of a non-binding precatory proposal in, or the right of the Trust to omit a proposal from, any proxy statement filed by the Trust with the U.S. Securities and Exchange Commission (the "SEC") pursuant to Rule 14a-8 (or any successor provision) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All judgments and determinations made by the Board of Trustees or the chairperson of the meeting, as applicable, under this Section 2.14 (including, without limitation, judgments and determinations as to the propriety of a proposed nomination or a proposal of other business for consideration by shareholders) shall be final and binding unless determined to have been made in bad faith.

Section 2.14.1 Annual Meetings of Shareholders.

(a) Any shareholder may recommend to the Nominating and Governance Committee of the Board of Trustees an individual as a nominee for election to the Board of Trustees. Such recommendation shall be made by written notice to the Chair of such committee and the secretary, which notice should contain or be accompanied by the information and documents with respect to such recommended nominee and shareholder that such shareholder believes to be relevant or helpful to the Nominating and Governance Committee's deliberations. In considering such recommendation, the Nominating and Governance Committee may request additional information concerning the recommended nominee or the shareholder(s) making the recommendation. The Nominating and Governance Committee of the Board of Trustees will consider any such recommendation in its

discretion. Any shareholder seeking to make a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders must make such nomination in accordance with Section 2.14.1(b)(ii) or Section 2.18.

(b) Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at an annual meeting of shareholders may be properly brought before the meeting (i) pursuant to the Trust's notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees or (ii) by any one or more shareholders who (A) have each continuously Owned (as defined below) shares of beneficial interest of the Trust entitled to vote in the election of Trustees or on a proposal of other business, for at least three (3) years as of the date of the giving of the notice provided for in Section 2.14.1(c), the record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting (including any adjournment or postponement thereof), with the aggregate shares Owned by such shareholder(s) as of each of such dates and during such three (3) year period representing at least one percent (1%) of the Trust's shares of beneficial interest, (B) holds, or hold, a certificate or certificates evidencing the aggregate number of shares of beneficial interest of the Trust referenced in subclause (A) of this Section 2.14.1(b)(ii) as of the time of giving the notice provided for in Section 2.14.1(c), the record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting (including any adjournment or postponement thereof), (C) is, or are, entitled to make such nomination or propose such other business and to vote at the meeting on such election or proposal of other business, (D) complies, or comply, with the notice procedures set forth in this Section 2.14 as to such nomination or proposal of other business, and (E) in connection with a nomination for election to the Board of Trustees, complies or comply, with the requirements of Rule 14a-19 promulgated under the Exchange Act. For purposes of this Section 2.14, a shareholder shall be deemed to "Own" or have "Owned" only those outstanding shares of the Trust's shares of beneficial interest to which the shareholder possesses both the full voting and investment rights pertaining to such shares and the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with the foregoing shall not include any shares (x) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar instrument or agreement entered into by such shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of beneficial interest of the Trust, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such shareholder's or its affiliates' full right to vote or direct the voting of any such shares and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such shareholder or affiliate. Without limiting the foregoing, to the extent not excluded by the immediately preceding sentence, a shareholder's "short position" as defined in Rule 14e-4 under the Exchange Act shall be deducted from the shares otherwise "Owned." A shareholder shall "Own" shares held in the name of a nominee or other intermediary so long as the shareholder retains the right to instruct how the shares are voted with respect to the election of Trustees or the proposal of other business and possesses the full economic interest in the shares. For purposes of this Section 2.14, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act. For purposes of this Section 2.14, the period of continuous Ownership of shares must be evidenced by documentation accompanying the nomination or proposal. The terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings. Whether shares are "Owned" for purposes of this Section 2.14 shall be determined by the Board of Trustees.

(c) For nominations for election to the Board of Trustees or other business to be properly brought before an annual meeting by one or more shareholders pursuant to this Section 2.14.1, such shareholder(s) shall have given timely notice thereof in writing to the secretary in accordance with this Section 2.14 and such other business shall otherwise be a proper matter for action by shareholders. To be timely, the notice of such shareholder(s) shall include all documentation and set forth all information required under this Section 2.14 and shall be delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the one-hundred twentieth (120th) day nor earlier than the one-hundred fiftieth (150th) day prior to the first (1st) anniversary of the date of the proxy statement for the preceding year's annual meeting; provided, however, that if the annual meeting is called for a date that is more than thirty (30) days earlier or later than the first (1st) anniversary of the date of the preceding year's annual meeting, notice by such shareholder(s) to be timely shall be so delivered not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day following the earlier of the day on which (i) notice of the date of the annual meeting is mailed or otherwise made available or (ii) public announcement of the date of the annual meeting is first made by the Trust. Neither the postponement or adjournment of an annual meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a notice of one or more shareholders as described above.

A notice of one or more shareholders pursuant to this Section 2.14.1(c) shall set forth:

(i) separately as to each individual whom such shareholder(s) propose to nominate for election or reelection as a Trustee (a "Proposed Nominee"), (1) the name, age, business address, residence address and educational background of such Proposed Nominee, (2) a statement of whether such Proposed Nominee is proposed for nomination as an Independent Trustee (as defined in Section 3.2) or a Managing Trustee and a description of such Proposed Nominee's qualifications to be an Independent Trustee or Managing Trustee, as the case may be, and such Proposed Nominee's qualifications to be a Trustee pursuant to the criteria set forth in Section 3.1, (3) the class, series and number of any shares of beneficial interest of the Trust that are, directly or indirectly, beneficially owned or owned of record by such Proposed Nominee, (4) a description of the material terms of each Derivative Transaction that such Proposed Nominee directly or indirectly, has an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys any voting rights directly or indirectly, to such Proposed Nominee, (y) such Derivative Transaction is required to be, or is capable of being, settled through delivery of securities of the Trust and (z) such Proposed Nominee and/or, to their knowledge, the counterparty to such Derivative Transaction has entered into other transactions that hedge or mitigate the economic effect of such Derivative Transaction, (5) a description of all direct and indirect compensation and other agreements, arrangements and understandings or any other relationships, between or among any shareholder making the nomination, or any of its respective affiliates and associates, or others acting in concert therewith, on the one hand, and such Proposed Nominee, or his or her respective affiliates and associates, on the other hand, and (6) all other information relating to such Proposed Nominee that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded;

(ii) as to any other business that such shareholder(s) propose to bring before the meeting, (1) a description of such business, (2) the reasons for proposing such business at the meeting and any material interest in such business of such shareholder(s) or any Shareholder Associated Person (as defined in Section 2.14.1(g)), including any anticipated benefit to such shareholder(s) or any Shareholder Associated Person therefrom, (3) a description of all agreements, arrangements and understandings between such shareholder(s) and Shareholder Associated Person amongst themselves or with any other person or persons (including their names) in connection with the proposal of such business by such shareholder(s) and (4) a representation that such shareholder(s) intend to appear in person or by proxy at the meeting to bring the business before the meeting;

(iii) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) the class, series and number of all shares of beneficial interest of the Trust that are owned of record by such shareholder or by such Shareholder Associated Person, if any, and (2) the class, series and number of, and the

nominee holder for, any shares of beneficial interests of the Trust that are, directly or indirectly, beneficially owned but not owned of record by such shareholder or by such Shareholder Associated Person, if any;

(iv) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) a description of all purchases and sales of securities of the Trust by such shareholder or Shareholder Associated Person during the period of continuous Ownership required by Section 2.14.1(b)(ii), including the date of the transactions, the class, series and number of securities involved in the transactions and the consideration involved, (2) a description of the material terms of each Derivative Transaction that such shareholder or Shareholder Associated Person, directly or indirectly, has, or during the period of continuous Ownership required by Section 2.14.1(b)(ii) had, an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys or conveyed any voting rights, directly or indirectly, to such shareholder or Shareholder Associated Person, (y) such Derivative Transaction is or was required to be, or is or was capable of being, settled through delivery of securities of the Trust and (z) such shareholder or Shareholder Associated Person and/or, to their knowledge, the counterparty to such Derivative Transaction has or had entered into other transactions that hedge or mitigate the economic effect of such Derivative Transaction, (3) a description of the material terms of any performance related fees (other than an asset based fee) to which such shareholder or Shareholder Associated Person is entitled based on any increase or decrease in the value of shares of beneficial interest of the Trust or instrument or arrangement of the type contemplated within the definition of Derivative Transaction, and (4) any rights to dividends or other distributions on the shares of beneficial interest of the Trust that are beneficially owned by such shareholder or Shareholder Associated Person that are separated or separable from the underlying shares of beneficial interest of the Trust;

(v) separately as to each shareholder giving the notice and any Shareholder Associated Person with a material interest described in clause (ii)(2) above, an ownership interest described in clause (iii) above or a transaction or right described in clause (iv) above, (1) the name and address of such shareholder and Shareholder Associated Person, and (2) all information relating to such shareholder and Shareholder Associated Person that would be required to be disclosed in connection with a solicitation of proxies for election of Trustees in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded;

(vi) to the extent known by the shareholder(s) giving the notice, the name and address of any other person who beneficially owns or owns of record any shares of beneficial interest of the Trust and who supports the nominee for election or reelection as a Trustee or the proposal of other business; and

(vii) in connection with a nomination for election to the Board of Trustees, all other information required by Rule 14a-19 under the Exchange Act.

(d) A notice of one or more shareholders making a nomination or proposing other business pursuant to Section 2.14.1(c) shall be accompanied by a sworn verification of each shareholder making the nomination or proposal as to such shareholder's continuous Ownership of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) throughout the period referenced in such subclause, together with (i) a copy of the share certificate(s) referenced in subclause (B) of Section 2.14.1(b)(ii) above; (ii) if any such shareholder was not a shareholder of record of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) above continuously for the three (3) year period referenced therein, reasonable evidence of such shareholder's continuous beneficial ownership of such shares during such three (3) year period, such reasonable evidence may include, but shall not be limited to, (A) a copy of a report of the shareholder on Schedule 13D or Schedule 13G under the Exchange Act filed on or prior to the beginning of the three (3) year period and all amendments thereto, (B) a copy of a statement required to be filed pursuant to Section 16 of the Exchange Act (or any successor provisions) by a person who is a Trustee or who is directly or indirectly the beneficial owner of more than ten percent (10%) of the shares of beneficial interest of the Trust filed on or prior to the beginning of the three (3) year period and all amendments thereto, or (C) written evidence that each shareholder making the nomination or proposal maintained throughout the chain of record and non-record ownership continuous Ownership of such shares (i.e. possession of full voting and investment rights pertaining to, and full economic interest in, such shares) throughout the required period, including written verification of such Ownership from each person who was the "record" holder of such shares during such period (including, if applicable, the Depository Trust Company) and each participant of the Depository Trust Company, financial institution, broker-dealer or custodian through which the shares were Owned; and (iii) with respect to nominations, (A) a completed and executed questionnaire required of the Trustees (in the form available from the secretary) of each Proposed Nominee with respect to his or her background and qualification to serve as a Trustee, the background of any other person or entity on whose behalf the nomination is being made and the information relating to such Proposed Nominee and such other person or entity that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded, and (B) a representation and agreement (in the form available from the secretary) executed by each Proposed Nominee pursuant to which such Proposed Nominee (1) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with, and does not have any commitment and has not given any assurance to, any person or entity, in each case that has not been previously disclosed to the Trust, (x) as to how he or she, if elected as a Trustee, will act or vote on any issue or question, or (y) that could limit or interfere with his or her ability to comply, if elected as a Trustee, with his or her duties to the Trust, (2) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with any person or entity, other than the Trust, with respect to any direct or indirect compensation, reimbursement or indemnification in connection with or related to his or her service as, or any action or omission in his or her capacity as, a Trustee that has not been previously disclosed to the Trust, (3) represents and agrees that if elected as a Trustee, he or she will be in compliance with and will comply with, applicable law and all applicable publicly disclosed corporate governance, conflict of interest, corporate opportunity, confidentiality and share ownership and trading policies and guidelines of the Trust and (4) consents to being named as a nominee and to serving as a Trustee if elected.

(e) Any shareholder(s) providing notice of a proposed nomination or other business to be considered at an annual meeting of shareholders shall further update and supplement such notice, (i) if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.14 is true and correct as of the record date for such annual meeting and as of a date that is ten (10) business days prior to such annual meeting, and any such update shall be delivered to the secretary at the principal executive offices of the Trust not later than the close of business on the fifth (5th) business day after the record date (in the case of an update or supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the annual meeting (in the case of an update or supplement required to be made as of ten (10) business days prior to the meeting) and (ii) in connection with a nomination for election to the Board of Trustees, to provide evidence that the shareholder(s) providing notice of a proposed nomination has solicited proxies from holders representing at least sixty-seven percent (67%) of the voting power of the shares of beneficial interest of the Trust entitled to vote in the election of trustees, and such update and supplement shall be delivered to or be mailed and received by the secretary at the principal executive offices of the Trust not later than five (5) business days after the shareholder files a definitive proxy statement in connection with such annual meeting of shareholders.

(f) A shareholder making a nomination or proposal of other business for consideration at an annual meeting may withdraw the nomination or proposal at any time before the annual meeting. After the period specified in the second sentence of Section 2.14.1(c), a shareholder nomination or proposal of other business for consideration at an annual meeting may only be amended with the permission of the Board of Trustees. Notwithstanding anything in the second sentence of Section 2.14.1(c) to the contrary, if the number of Trustees to be elected to the Board of Trustees is increased and there is no public announcement of such action at least one-hundred thirty (130) days prior to the first (1st) anniversary of the date of the proxy statement for the preceding year's annual meeting, the notice required by this Section 2.14.1 also shall be considered timely, but only with respect to nominees for any new positions created by such increase, if such notice is delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day immediately following the day on which such public announcement is first made by the Trust. If the number of the Trustees to be elected to the Board of Trustees is decreased, there shall be no change or expansion in the time period for shareholders to make a nomination from the time period specified in the second sentence of Section 2.14.1(c). Any change in time period for shareholders to make a nomination shall not change the time period to make any other proposal from the time period specified in the second sentence of Section 2.14.1(c).

(g) For purposes of this Section 2.14, (i) "Shareholder Associated Person" of any shareholder shall mean (A) any person acting in concert with, such shareholder, (B) any direct or indirect beneficial owner of shares of beneficial interest of the Trust beneficially owned or owned of record by such shareholder and (C) any person controlling, controlled by or under common control with such shareholder or a Shareholder Associated Person; and (ii) "Derivative Transaction" by a person shall mean any (A) transaction in, or arrangement, agreement or understanding with respect to, any option, warrant, convertible security, stock appreciation right or similar right with an exercise, conversion or exchange privilege, or settlement payment or mechanism related to, any security of the Trust, or similar instrument with a value derived in whole or in part from the value of a security of the Trust, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise or (B) any transaction, arrangement, agreement or understanding which included or includes an opportunity for such person, directly or indirectly, to profit or share in any profit derived from any increase or decrease in the value of any security of the Trust, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the Trust or to increase or decrease the number of securities of the Trust which such person was, is or will be entitled to vote, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise.

Section 2.14.2 Shareholder Nominations or Other Proposals Causing Covenant Breaches or Defaults. At the same time as the submission of any shareholder nomination or proposal of other business to be considered at a shareholders meeting that, if approved and implemented by the Trust, would cause the Trust or any subsidiary (as defined in Section 2.14.5(c)) of the Trust to be in breach of any covenant or otherwise cause a default (in any case, with or without notice or lapse of time) in any existing debt instrument or agreement of the Trust or any subsidiary of the Trust or other material contract or agreement of the Trust or any subsidiary of the Trust, the notice provided pursuant to Section 2.14.1(c) shall disclose: (a) whether the lender or contracting party has agreed to waive the breach of covenant or default, and, if so, shall include reasonable evidence thereof, or (b) in reasonable detail, the plan of the proponent shareholder(s) for the repayment of the indebtedness to the lender or curing the contractual breach or default and satisfying any resulting damage claim, specifically identifying the actions to be taken and the source of funds for any such repayment, and such notice shall be accompanied by a copy of any commitment letter(s) or agreement(s) for the financing of such plan.

Section 2.14.3 Shareholder Nominations or Other Proposals Requiring Governmental Action. If (a) any shareholder nomination or proposal of other business to be considered at a shareholders meeting could not be considered or, if approved, implemented by the Trust without the Trust, any subsidiary of the Trust, any proponent shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, the holder of proxies or their respective affiliates or associates filing with or otherwise notifying or obtaining the consent, approval or other action of any federal, state, municipal or other governmental or regulatory body (a "Governmental Action") or (b) any proponent shareholder's ownership of shares of beneficial interest of the Trust or any solicitation of proxies or votes or holding or exercising proxies by such shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, or their respective affiliates or associates would require Governmental Action, then, in the notice provided pursuant to Section 2.14.1(c) the proponent shareholder(s) shall disclose (x) whether such Governmental Action has been given or obtained, and, if so, such notice shall be accompanied by reasonable evidence thereof, or (y) in reasonable detail, the plan of such shareholder(s) for making or obtaining the Governmental Action.

Section 2.14.4 Special Meetings of Shareholders. As set forth in Section 2.6, only business brought before the meeting pursuant to the Trust's notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees may be considered at a special meeting of shareholders. Nominations of individuals for election to the Board of Trustees only may be made at a special meeting of shareholders at which Trustees are to be elected: (a) pursuant to the Trust's notice of meeting; (b) if the Board of Trustees has determined that Trustees shall be elected at such special meeting; or

(c) if there are no Trustees and the special meeting is called by the officers of the Trust for the election of successor Trustees; provided, however, that nominations of individuals to serve as Trustees at a special meeting called in the manner set forth in subclauses (a)-(c) above may only be made by (1) the applicable Trustees or officers of the Trust who call the special meeting of shareholders for the purpose of electing one or more Trustees or (2) any one or more shareholder(s) of the Trust who (A) satisfy the Ownership amount, holding period and certificate requirements set forth in Section 2.14.1(b)(ii), (B) have given timely notice thereof in writing to the secretary at the principal executive offices of the Trust, which notice contains or is accompanied by the information and documents required by Section 2.14.1(c) and Section 2.14.1(d), (C) satisfy the requirements of Section 2.14.2 and Section 2.14.3 and (D) further update and supplement such notice in accordance with Section 2.14; provided further, that, for purposes of this Section 2.14.4, all references in Section 2.14.1, Section 2.14.2 and Section 2.14.3 to the annual meeting and to the notice given under Section 2.14.1 shall be deemed, for purposes of this Section 2.14.4, to be references to the special meeting and the notice given under this Section 2.14.4. To be timely, a shareholder's notice under this Section 2.14.4 shall be delivered to the secretary at the principal executive offices of the Trust not earlier than the one-hundred fiftieth (150th) day prior to such special meeting and not later than 5:00 p.m. (Eastern Time) on the later of (i) the one-hundred twentieth (120th) day prior to such special meeting or (ii) the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting. Neither the postponement or adjournment of a special meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a shareholder(s)' notice as described above.

Section 2.14.5 General.

(a) If information submitted pursuant to this Section 2.14 by any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall be deemed by the Board of Trustees incomplete or inaccurate, any authorized officer or the Board of Trustees or any committee thereof may treat such information as not having been provided in accordance with this Section 2.14. Any notice submitted by a shareholder pursuant to this Section 2.14 that is deemed by the Board of Trustees inaccurate, incomplete or otherwise fails to satisfy completely any provision of this Section 2.14 shall be deemed defective and shall thereby render all proposals and nominations set forth in such notice defective. Upon written request by the secretary or the Board of Trustees or any committee thereof (which may be made from time to time), any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall provide, within three (3) business days after such request (or such other period as may be specified in such request), (i) written verification, satisfactory to the secretary or any other authorized officer or the Board of Trustees or any

committee thereof, in his, her or its discretion, to demonstrate the accuracy of any information submitted by the shareholder pursuant to this Section 2.14, (ii) written responses to information reasonably requested by the secretary, the Board of Trustees or any committee thereof and (iii) a written update, to a current date, of any information submitted by the shareholder pursuant to this Section 2.14 as of an earlier date. If a shareholder fails to provide such written verification, information or update within such period, the secretary or any other authorized officer or the Board of Trustees may treat the information which was previously provided and to which the verification, request or update relates as not having been provided in accordance with this Section 2.14. It is the responsibility of a shareholder who wishes to make a nomination or other proposal to comply with the requirements of Section 2.14; nothing in this Section 2.14.5(a) or otherwise shall create any duty of the Trust, the Board of Trustees or any committee thereof nor any officer of the Trust to inform a shareholder that the information submitted pursuant to this Section 2.14 by or on behalf of such shareholder is incomplete or inaccurate or not otherwise in accordance with this Section 2.14 nor require the Trust, the Board of Trustees, any committee of the Board of Trustees or any officer of the Trust to request clarification or updating of information provided by any shareholder, but the Board of Trustees, a committee thereof or the secretary acting on behalf of the Board of Trustees or a committee, may do so in its, his or her discretion.

(b) Only such individuals who are nominated in accordance with this Section 2.14 or Section 2.18 shall be eligible for election by shareholders as Trustees and only such business shall be conducted at a meeting of shareholders as shall have been properly brought before the meeting in accordance with this Section 2.14. The chairperson of the meeting and the Board of Trustees shall each have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 2.14 and, if any proposed nomination or other business is determined not to be in compliance with this Section 2.14 or if it is determined that the solicitation in support of the nominees other than the Trust's nominees was not conducted in compliance with Rule 14a-19 under the Exchange Act, to declare that such defective nomination or proposal be disregarded.

(c) For purposes of this Section 2.14: (i) "public announcement" shall mean disclosure in (A) a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or any other widely circulated news or wire service or (B) a document publicly filed by the Trust with the SEC; (ii) "subsidiary" shall include, with respect to a person, any corporation, partnership, joint venture or other entity of which such person (A) owns, directly or indirectly, ten percent (10%) or more of the outstanding voting securities or other interests or (B) has a person designated by such person serving on, or a right, contractual or otherwise, to designate a person, so to serve on, the board of directors (or analogous governing body); and (iii) a person shall be deemed to "beneficially own" or "have beneficially owned" any shares of beneficial interest of the Trust not owned directly by such person if that person or a group of which such person is a member would be the beneficial owner of such shares under Rule 13d-3 and Rule 13d-5 of the Exchange Act.

(d) Notwithstanding the foregoing provisions of this Section 2.14, a shareholder shall also comply with all applicable legal requirements, including, without limitation, applicable requirements of state law and the Exchange Act and the rules and regulations thereunder, with respect to the matters set forth in this Section 2.14. Nothing in this Section 2.14 shall be deemed to require that a shareholder nomination of an individual for election to the Board of Trustees or a shareholder proposal relating to other business be included in the Trust's proxy statement, except as may be required by law.

(e) The Board of Trustees may from time to time require any individual nominated to serve as a Trustee to agree in writing with regard to matters of business ethics and confidentiality while such nominee serves as a Trustee, such agreement to be on the terms and in a form determined satisfactory by the Board of Trustees, as amended and supplemented from time to time in the discretion of the Board of Trustees. The terms of any such agreement may be substantially similar to the Code of Business Conduct and Ethics of the Trust or any similar code promulgated by the Trust or may differ from or supplement such Code.

(f) Determinations required or permitted to be made under this Section 2.14 by the Board of Trustees may be delegated by the Board of Trustees to a committee of the Board of Trustees, subject to applicable law.

Section 2.15 No Shareholder Actions by Written Consent. Shareholders shall not be authorized or permitted to take any action required or permitted to be taken at a meeting of shareholders by written consent, and may take such action only at a shareholders meeting of the Trust.

Section 2.16 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the chairperson of the meeting or any shareholder shall demand that voting be by ballot.

Section 2.17 Proposals of Business Which Are Not Proper Matters For Action By Shareholders. Notwithstanding anything in these Bylaws to the contrary, subject to applicable law, any shareholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board of Trustees or would reasonably likely, if considered by the shareholders or approved or implemented by the Trust, result in an impairment of the limited liability status for the shareholders, shall be deemed not to be a matter upon which the shareholders are entitled to vote. The Board of Trustees in its discretion shall be entitled to determine whether a shareholder proposal for business is not a matter upon which the shareholders are entitled to vote pursuant to this Section 2.17, and its decision shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

Section 2.18 Proxy Access for Trustee Nominations.

(a) Whenever the Board of Trustees solicits proxies with respect to the election of Trustees at an annual meeting of shareholders, subject to the provisions of this Section 2.18, the Trust shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at the direction of the Board of Trustees (or any duly authorized committee thereof), the name, together with the Required Information (as defined below), of any person nominated for election to the Board of Trustees by an Eligible Shareholder pursuant to and in accordance with this Section 2.18 (a "Shareholder Nominee"). For purposes of this Section 2.18, the "Required Information" that the Trust will include in its proxy statement is (i) the information provided to the Secretary of the Trust concerning the Shareholder Nominee and the Eligible Shareholder that is required to be disclosed in the Trust's proxy statement pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder and (ii) if the Eligible Shareholder so elects, a Supporting Statement (as defined in Section 2.18(h)). For the avoidance of doubt, nothing in this Section 2.18 shall limit the Trust's ability to solicit against any Shareholder Nominee or include in its proxy materials the Trust's own statements or other information relating to any Eligible Shareholder or Shareholder Nominee, including any information provided to the Trust pursuant to this Section 2.18. Subject to the provisions of this Section 2.18, the name of any Shareholder Nominee included in the Trust's proxy statement for an annual meeting of shareholders shall also be set forth on the form of proxy distributed by the Trust in connection with such annual meeting.

(b) In addition to any other requirements imposed by law, the Declaration of Trust or these Bylaws, for a nomination to be made by an Eligible Shareholder pursuant to this Section 2.18, the Eligible Shareholder must have given timely written notice thereof (a "Notice of Proxy Access Nomination") in proper form to the Secretary of the Trust and must expressly request in the Notice of Proxy Access Nomination to have such nominee included in the Trust's proxy materials pursuant to this Section 2.18. To be timely, a Notice

of Proxy Access Nomination must be delivered to or be mailed and received at the principal executive offices of the Trust not less than one-hundred twenty (120) days nor more than one-hundred fifty (150) days prior to the anniversary of the date of the Trust's proxy statement for the immediately preceding annual meeting of shareholders. In no event shall the adjournment or postponement of an annual meeting, or the public disclosure of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a Notice of Proxy Access Nomination as described above.

(c) The maximum number of Shareholder Nominees nominated by all Eligible Shareholders that will be included in the Trust's proxy materials with respect to an annual meeting of shareholders (as adjusted pursuant to this Section 2.18(c), the "Permitted Number") shall not exceed the greater of (i) two (2) or (ii) twenty percent (20%) of the number of Trustees in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 2.18 (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below twenty percent (20%); provided, however, that if (x) the Trust has a classified Board of Trustees and (y) the size of the Board of Trustees is less than nine (9) Trustees, the Permitted Number is subject to reduction so that the Permitted Number for any annual meeting shall not exceed one-half of the number of Trustees to be elected at such annual meeting as noticed by the Trust rounded down to the nearest whole number but only to the extent the Permitted Number after reduction pursuant to this proviso is not less than one. In the event that one or more vacancies for any reason occurs on the Board of Trustees after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Trustees resolves to reduce the size of the Board of Trustees in connection therewith, the Permitted Number shall be calculated based on the number of Trustees in office as so reduced. In addition, the Permitted Number shall be reduced by (i) the number of individuals who will be included in the Trust's proxy materials as nominees recommended by the Board of Trustees pursuant to an agreement, arrangement or other understanding with a shareholder or group of shareholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of shares from the Trust by such shareholder or group of shareholders), (ii) the number of Trustees in office as of the Final Proxy Access Nomination Date who were included in the Trust's proxy materials as Shareholder Nominees for any of the two (2) preceding annual meetings of shareholders (including any persons counted as Shareholder Nominees pursuant to the immediately succeeding sentence) and (x) whose term of office does not expire at the annual meeting or (y) whose re-election at the upcoming annual meeting is being recommended by the Board of Trustees and (iii) the number of Trustee candidates for which the Secretary of the Trust shall receive notice (whether or not subsequently withdrawn) that a shareholder intends to nominate one or more persons for election to the Board of Trustees pursuant to Section 2.14.1 of these Bylaws, but only to the extent the Permitted Number after such reduction with respect to this clause (iii) equals or exceeds one. For purposes of determining when the Permitted Number has been reached, any individual nominated by an Eligible Shareholder for inclusion in the Trust's proxy materials pursuant to this Section 2.18 whose nomination is subsequently withdrawn or whom the Board of Trustees decides to nominate for election to the Board of Trustees shall be counted as one of the Shareholder Nominees. Any Eligible Shareholder submitting more than one Shareholder Nominee for inclusion in the Trust's proxy materials pursuant to this Section 2.18 shall rank such Shareholder Nominees based on the order in which the Eligible Shareholder desires such Shareholder Nominees to be selected for inclusion in the Trust's proxy materials in the event that the total number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.18 exceeds the Permitted Number. In the event that the number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.18 exceeds the Permitted Number, the highest ranking Shareholder Nominee who meets the requirements of this Section 2.18 from each Eligible Shareholder will be selected for inclusion in the Trust's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of beneficial interest of the Trust each Eligible Shareholder disclosed as Owned in its Notice of Proxy Access Nomination. If the Permitted Number is not reached after the highest ranking Shareholder Nominee who meets the requirements of this Section 2.18 from each Eligible Shareholder has been selected, then the next highest ranking Shareholder Nominee who meets the requirements of this Section 2.18 from each Eligible Shareholder will be selected for inclusion in the Trust's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(d) An "Eligible Shareholder" is a shareholder or group of no more than twenty (20) shareholders (counting as one shareholder, for this purpose, any two (2) or more funds that are part of the same Qualifying Fund Group (as defined below)) that (i) has Owned (as defined in Section 2.18(e)) continuously for at least three years (the "Minimum Holding Period") a number of shares of beneficial interest of the Trust that represents at least three percent (3%) of the outstanding shares of beneficial interest of the Trust as of the most recent date for which such number is given in any filing by the Trust with the SEC prior to the date the Notice of Proxy Access Nomination is received at the principal executive offices of the Trust in accordance with this Section 2.18 (the "Required Shares"), (ii) continues to Own the Required Shares through the date of the annual meeting and (iii) meets all other requirements of this Section 2.18. A "Qualifying Fund Group" means two (2) or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a "group of investment companies" as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. Whenever the Eligible Shareholder consists of a group of shareholders (including a group of funds that are part of the same Qualifying Fund Group), (i) each provision in this Section 2.18 that requires the Eligible

Shareholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each shareholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares of beneficial interest of the Trust that each member has Owned continuously throughout the Minimum Holding Period in order to meet the three percent (3%) Ownership requirement of the "Required Shares" definition) and (ii) a breach of any obligation, agreement or representation under this Section 2.18 by any member of such group shall be deemed a breach by the Eligible Shareholder. No shareholder may be a member of more than one group of shareholders constituting an Eligible Shareholder with respect to any annual meeting.

(e) For purposes of this Section 2.18, the terms "Owned," "Owning" and other variations of the word "Own" shall have the meanings assigned to such terms in Section 2.14.1(b); provided, that, for purposes of Section 2.18 only, a shareholder's Ownership of shares of beneficial interest of the Trust shall be deemed to continue during any period in which (i) the shareholder has loaned such shares, provided that the shareholder has the power to recall such loaned shares on five (5) business days' notice and includes in the Notice of Proxy Access Nomination an agreement that it (A) will promptly recall such loaned shares upon being notified that any of its Shareholder Nominees will be included in the Trust's proxy materials and (B) will continue to hold such recalled shares through the date of the annual meeting or (ii) the shareholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the shareholder. Whether outstanding shares of beneficial interest of the Trust are "Owned" for purposes of Section 2.18 shall be decided by the Board of Trustees.

(f) To be in proper written form, a Notice of Proxy Access Nomination must set forth or be accompanied by the following:

(i) a statement by the Eligible Shareholder (A) setting forth and certifying as to the number of shares of beneficial interest of the Trust it Owns and has Owned continuously throughout the Minimum Holding Period, (B) agreeing to continue to Own the Required Shares through the date of annual meeting and (C) indicating whether it intends to continue to own the Required Shares for at least one year following the annual meeting;

(ii) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Notice of Proxy Access Nomination is delivered to or mailed and received at the principal executive offices of the Trust, the Eligible Shareholder Owns, and has Owned continuously throughout the Minimum Holding Period, the

Required Shares, and the Eligible Shareholder's agreement to provide, within five (5) business days following the later of the record date for determining the shareholders entitled to receive notice of the annual meeting and the date notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Shareholder's continuous Ownership of the Required Shares through the record date;

(iii) a copy of the Schedule 14N that has been or is concurrently being filed with the SEC as required by Rule 14a-18 under the Exchange Act;

(iv) the information, representations, agreements and other documents that would be required to be set forth in or included with a notice of nomination pursuant to Section 2.14 of these Bylaws (including the written consent of each Shareholder Nominee to being named as a nominee and to serving as a Trustee if elected and the written representation and agreement of each Shareholder Nominee required by Section 2.14.1);

(v) a representation that the Eligible Shareholder (A) did not acquire, and is not holding, any securities of the Trust for the purpose or with the intent of changing or influencing control of the Trust, (B) has not nominated and will not nominate for election to the Board of Trustees at the annual meeting any person other than the Shareholder Nominee(s) it is nominating pursuant to this Section 2.18, (C) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a Trustee at the annual meeting other than its Shareholder Nominee(s) or a nominee of the Board of Trustees, (D) has not distributed and will not distribute to any shareholder of the Trust any form of proxy for the annual meeting other than the form distributed by the Trust, (E) has complied and will comply with all laws, rules and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting and (F) has provided and will provide facts, statements and other information in all communications with the Trust and its shareholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(vi) an undertaking that the Eligible Shareholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Shareholder's communications with the shareholders of the Trust or out of the information that the Eligible Shareholder provided to the Trust, (B) indemnify and hold harmless the Trust, each of its Trustees and officers, the manager of the Trust and each of the directors, officers and employees of the manager of the Trust or such manager's parent individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Trust, any of its Trustees or officers, the manager of the Trust or any of the directors, officers or employees of the manager of the Trust or such manager's parent, arising out of any nomination submitted by the Eligible Shareholder pursuant to this Section 2.18 or any solicitation or other activity in connection therewith and (C) file with the SEC any solicitation materials with the shareholders of the Trust relating to the meeting at which its Shareholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act;

(vii) in the case of a nomination by an Eligible Shareholder consisting of a group of shareholders, the designation by all group members of one member of the group that is authorized to receive communications, notices and inquiries from the Trust and to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 2.18 (including withdrawal of the nomination); and

(viii) in the case of a nomination by an Eligible Shareholder consisting of a group of shareholders in which two (2) or more funds are intended to be treated as one shareholder for purposes of qualifying as an Eligible Shareholder, documentation reasonably satisfactory to the Trust that demonstrates that the funds are part of the same Qualifying Fund Group.

(g) In addition to the information required or requested pursuant to Section 2.18(f) or any other provision of these Bylaws, (i) the Trust may require any proposed Shareholder Nominee to furnish any other information (A) that may reasonably be requested by the Trust to determine whether the Shareholder Nominee would meet the qualifications of an independent trustee under the Declaration of Trust, be independent under the rules and listing standards of any national securities exchange upon which any securities the Trust are listed or traded, be independent under any applicable rules of the SEC or any publicly disclosed standards used by the Board of Trustees in determining and disclosing the independence of Trustees (collectively, the "Independence Standards"), (B) that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such Shareholder Nominee or (C) that may reasonably be requested by the Trust to determine the eligibility of such Shareholder Nominee to be included in the Trust's proxy materials pursuant to this Section 2.18 or to serve as a Trustee, and (ii) the Trust may require the Eligible Shareholder to furnish any other information that may reasonably be requested by the Trust to verify the Eligible Shareholder's continuous Ownership of the Required Shares throughout the Minimum Holding Period and through the date of the annual meeting.

(h) For each of its Shareholder Nominees, the Eligible Shareholder may, at its option, provide to the Secretary of the Trust, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed five hundred (500) words, in support of such Shareholder Nominee's candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Shareholder (including any group of shareholders together constituting an Eligible Shareholder) in support of each of its Shareholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 2.18, the Trust may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law, rule or regulation.

(i) In the event that any information or communications provided by an Eligible Shareholder or a Shareholder Nominee to the Trust or its shareholders is not, when provided, or thereafter ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Shareholder or Shareholder Nominee, as the case may be, shall promptly notify the Secretary of the Trust of any such defect and of the information that is required to correct any such defect. Without limiting the foregoing, an Eligible Shareholder shall provide immediate notice to the Trust if the Eligible Shareholder ceases to Own any of the Required Shares prior to the date of the annual meeting. In addition, any person providing any information to the Trust pursuant to this Section 2.18 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for determining the shareholders entitled to receive notice of the annual meeting, and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Trust not later than five (5) business days following the later of the record date for determining the shareholders entitled to receive notice of the annual meeting and the date notice of the record date is first publicly disclosed. For the avoidance of doubt, no notification, update or supplement provided pursuant to this Section 2.18(i) or otherwise shall be deemed to cure any defect in any previously provided information or communications or limit the remedies available to the

Trust relating to any such defect (including the right to omit a Shareholder Nominee from its proxy materials pursuant to this Section 2.18).

(j) Notwithstanding anything to the contrary contained in this Section 2.18, the Trust shall not be required to include in its proxy materials, pursuant to this Section 2.18, any Shareholder Nominee (i) who would not be independent under any of the Independence Standards, (ii) whose election as a member of the Board of Trustees would cause the Trust to be in violation of these Bylaws, the Declaration of Trust, the rules and listing standards of any national securities exchange upon which any securities of the Trust are listed or traded, or any applicable law, rule or regulation, (iii) who is or has been, within the past three (3) years, an officer, director or trustee of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, of the Trust or its manager, (iv) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (v) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, or (vi) who shall have provided any information to the Trust or its shareholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

(k) Notwithstanding anything to the contrary set forth herein, if (i) a Shareholder Nominee and/or the applicable Eligible Shareholder breaches any of its agreements or representations or fails to comply with any of its obligations under this Section 2.18 or (ii) a Shareholder Nominee otherwise becomes ineligible for inclusion in the Trust's proxy materials pursuant to this Section 2.18, or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board of Trustees (or any duly authorized committee thereof) or the chairperson of the annual meeting, (A) the Trust may omit or, to the extent feasible, remove the information concerning such Shareholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its shareholders that such Shareholder Nominee will not be eligible for election at the annual meeting, (B) the Trust shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Shareholder or any other Eligible Shareholder and (C) the chairperson of the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Trust.

(l) Any Shareholder Nominee who is included in the Trust's proxy materials for a particular annual meeting of shareholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least twenty percent (20%) of the votes cast in favor of such Shareholder Nominee's election, will be ineligible to be a Shareholder Nominee pursuant to this Section 2.18 for the next two (2) annual meetings of shareholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any shareholder from nominating any person to the Board of Trustees pursuant to and in accordance with Section 2.14.1.

(m) Other than pursuant to Rule 14a-19 of the Exchange Act, this Section 2.18 provides the exclusive method for a shareholder to include nominees for election to the Board of Trustees in the Trust's proxy materials.

ARTICLE III TRUSTEES

Section 3.1 General Powers; Qualifications; Trustees Holding Over. The business and affairs of the Trust shall be managed under the direction of its Board of Trustees. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. To qualify for nomination or election as a Trustee, an individual, at the time of nomination and election, shall, without limitation, (a) have substantial expertise or experience relevant to the business of the Trust and its subsidiaries (as determined by the Board of Trustees), (b) not have been convicted of a felony, (c) meet the qualifications of an Independent Trustee or a Managing Trustee, as the case may be, depending upon the position for which such individual may be nominated and elected, and (d) have been nominated for election to the Board of Trustees in accordance with Section 2.14 or Section 2.18. In case of failure to elect Trustees at an annual meeting of the shareholders, the incumbent Trustees shall hold over and continue to direct the management of the business and affairs of the Trust until they may resign or until their successors are elected and qualify. The failure of shareholders to elect Trustees at an annual meeting of shareholders shall not cause vacancies on the Board of Trustees requiring the officers of the Trust to call a special meeting of shareholders to elect Trustees unless all Trustees, including holdover Trustees, are unwilling or unable to continue to serve.

Section 3.2 Independent Trustees and Managing Trustees. A majority of the Trustees holding office shall at all times be Independent Trustees; provided, however, that upon a failure to comply with this requirement as a result of the creation of a temporary vacancy which shall be filled by an Independent Trustee, whether as a result of enlargement of the Board of Trustees or the resignation, removal or death of a Trustee who is an Independent Trustee, such requirement shall not be applicable. An "Independent Trustee" is one who is not an employee of the Advisor (as defined in the Declaration of Trust),

who is not involved in the Trust's day to day activities, who meets the qualifications of an independent trustee under the Declaration of Trust and who meets the qualifications of an independent director (not including the specific independence requirements applicable only to members of the Audit Committee or Compensation Committee of the Board of Trustees) under the applicable rules of each securities exchange upon which shares of beneficial interest of the Trust are listed for trading and the SEC, as those requirements may be amended from time to time. If the number of Trustees, at any time, is set at less than five (5), at least one (1) Trustee shall be a Managing Trustee. So long as the number of Trustees shall be five (5) or greater, at least two (2) Trustees shall be Managing Trustees. "Managing Trustees" shall mean Trustees who have been employees, officers or directors of the Advisor or involved in the day to day activities of the Trust for at least one (1) year prior to their election. If at any time the Board of Trustees shall not be comprised of a majority of Independent Trustees, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have a majority of Independent Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees. If at any time the Board of Trustees shall not be comprised of a number of Managing Trustees as is required under this Section 3.2, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have the requisite number of Managing Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees.

Section 3.3 Number and Tenure. Pursuant to the Articles Supplementary accepted for record by the State Department of Assessments and Taxation (the "SDAT") as of May 11, 2000, the number of Trustees constituting the entire Board of Trustees may be increased or decreased from time to time only by a vote of the Trustees; provided however that the tenure of office of a Trustee shall not be affected by any decrease in the number of Trustees. The number of Trustees shall be five (5) until increased or decreased by the Board of Trustees.

Section 3.4 Annual and Regular Meetings. An annual meeting of the Trustees shall be held immediately after the annual meeting of shareholders, no notice other than this Bylaw being necessary. The time and place of the annual meeting of the Trustees may be changed by the Board of Trustees. The Trustees may provide, by resolution, the time and place, either within or without the State of Maryland, for the holding of regular meetings of the Trustees without other notice than such resolution. If any such regular meeting is not so provided for, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Trustees.

Section 3.5 Special Meetings. Special meetings of the Trustees may be called at any time by any Managing Trustee, the president or pursuant to the request of any two (2) Trustees then in office. The person or persons authorized to call special meetings of the Trustees may fix any place, either within or without the State of Maryland, as the place for holding any special meeting of the Trustees called by them.

Section 3.6 Notice. Notice of any special meeting shall be given by written notice delivered personally or by electronic mail, telephoned, facsimile transmitted, overnight couriered (with proof of delivery) or mailed to each Trustee at his or her business or residence address. Personally delivered, telephoned, facsimile transmitted or electronically mailed notices shall be given at least twenty-four (24) hours prior to the meeting. Notice by mail shall be deposited in the U.S. mail at least seventy-two (72) hours prior to the meeting. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail properly addressed, with postage thereon prepaid. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Trust by the Trustee. Telephone notice shall be deemed given when the Trustee is personally given such notice in a telephone call to which he is a party. Facsimile transmission notice shall be deemed given upon completion of the transmission of the message to the number given to the Trust by the Trustee and receipt of a completed answer back indicating receipt. If sent by overnight courier, such notice shall be deemed given when delivered to the courier. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Trustees need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 3.7 Quorum. A majority of the Trustees shall constitute a quorum for transaction of business at any meeting of the Trustees, provided that, if less than a majority of such Trustees are present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to the Declaration of Trust or these Bylaws, the vote of a majority of a particular group of Trustees is required for action, a quorum for that action shall also include a majority of such group. The Trustees present at a meeting of the Board of Trustees which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of such number of Trustees as would otherwise result in less than a quorum then being present at the meeting.

Section 3.8 Voting. The action of the majority of the Trustees present at a meeting at which a quorum is or was present shall be the action of the Trustees, unless the concurrence of a greater proportion is required for such action by specific provision of an applicable statute, the Declaration of Trust or these Bylaws. If enough Trustees have withdrawn from a meeting

to leave fewer than are required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of Trustees necessary to constitute a quorum at such meeting shall be the action of the Board of Trustees, unless the concurrence of a greater proportion is required for such action by applicable law, the Declaration of Trust or these Bylaws.

Section 3.9 Telephone Meetings. Trustees may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting. Such meeting shall be deemed to have been held at a place designated by the Trustees at the meeting.

Section 3.10 Action by Written Consent of Trustees. Unless specifically otherwise provided in the Declaration of Trust, any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting, if a majority of the Trustees shall individually or collectively consent in writing or by electronic transmission to such action. Such written or electronic consent or consents shall be filed with the records of the Trust and shall have the same force and effect as the affirmative vote of such Trustees at a duly held meeting of the Trustees at which a quorum was present.

Section 3.11 Waiver of Notice. The actions taken at any meeting of the Trustees, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Trustees not present waives notice, consents to the holding of such meeting or approves the minutes thereof.

Section 3.12 Vacancies. Pursuant to the Articles Supplementary accepted for record by the SDAT as of May 11, 2000, if for any reason any or all the Trustees cease to be Trustees, such event shall not terminate the Trust or affect these Bylaws or the powers of the remaining Trustees hereunder (even if fewer than three Trustees remain). Any vacancy on the Board of Trustees may be filled only by a majority of the remaining Trustees, even if the remaining Trustees do not constitute a quorum. Any Trustee elected to fill a vacancy, whether occurring due to an increase in size of the Board of Trustees or by the death, resignation or removal of any Trustee, shall hold office for the remainder of the full term of the class of Trustees in which the vacancy occurred or was created and until a successor is elected and qualifies.

Section 3.13 Compensation. The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as the Trustees may determine from time to time. Trustees may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Trustees or of any committee thereof; and for their expenses, if any, in connection with each property visit and any other service or activity performed or engaged in as Trustees. The Trustees shall be entitled to receive remuneration for services rendered to the Trust in any other capacity, and such services may include, without limitation, services as an officer of the Trust, services as an employee of the Advisor, legal, accounting or other professional services, or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee.

Section 3.14 Removal of Trustees. A Trustee may be removed by the affirmative vote either of all the remaining Trustees or if and only to the extent permitted by applicable law, at a meeting of the shareholders if a proposal for such action is properly brought before such meeting for that purpose, by the affirmative vote of the holders of not less than two-thirds (2/3) of the shares of beneficial interest of the Trust then outstanding and entitled to vote generally in the election of Trustees. For a proposal to remove one or more Trustees to be properly brought before such meeting by one or more shareholders, such shareholder(s) shall meet and comply with all requirements in these Bylaws for a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders or a proposal of other business to be properly brought by such shareholder(s) at a meeting of the shareholders as set forth in Section 2.14.1, including the timely written notice, Ownership amount, holding period, certificate, information and documentation requirements of Section 2.14.1(b), Section 2.14.1(c), Section 2.14.1(d), Section 2.14.2 and Section 2.14.3.

Section 3.15 Surety Bonds. Unless specifically required by law, no Trustee shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 3.16 Reliance. Each Trustee, officer, employee and agent of the Trust shall, in the performance of his or her duties with respect to the Trust, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Trust or by the Advisor, accountants, appraisers or other experts or consultants selected by the Board of Trustees or officers of the Trust, regardless of whether the Advisor or any such accountant, appraiser or other expert or consultant may also be a Trustee.

Section 3.17 Interested Trustee Transactions. Section 2-419 of the Maryland General Corporation Law (the "MGCL") (or any successor statute) 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.

Section 3.18 Certain Rights of Trustees, Officers, Employees and Agents. A Trustee shall have no responsibility to devote his or her full time to the affairs of the Trust. Any Trustee or officer, employee or agent of the Trust, in his or her personal capacity or in a capacity as an affiliate, employee or agent of any other person, or otherwise, may have business interests and engage in business activities similar or in addition to those of or relating to the Trust.

Section 3.19 Emergency Provisions. Notwithstanding any other provision in the Declaration of Trust or these Bylaws, this Section 3.19 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Trustees under ARTICLE III cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board of Trustees, (a) a meeting of the Board of Trustees may be called by any Managing Trustee or officer of the Trust by any means feasible under the circumstances and (b) notice of any meeting of the Board of Trustees during such an Emergency may be given less than twenty-four (24) hours prior to the meeting to as many Trustees and by such means as it may be feasible at the time, including publication, television or radio.

ARTICLE IV COMMITTEES

Section 4.1 Number, Tenure and Qualifications. The Board of Trustees shall appoint an Audit Committee, a Compensation Committee and a Nominating and Governance Committee. Each of these committees shall be composed of three or more Trustees, to serve at the pleasure of the Board of Trustees. The Board of Trustees may also appoint other committees from time to time composed of one or more members, at least one of which shall be a Trustee, to serve at the pleasure of the Board of Trustees. The Board of Trustees shall adopt a charter with respect to the Audit Committee, the Compensation Committee and the Nominating and Governance Committee, which charter shall specify the purposes, the criteria for membership and the responsibility and duties and may specify other matters with respect to each committee. The Board of Trustees may also adopt a charter with respect to other committees.

Section 4.2 Powers. The Trustees may delegate any of the powers of the Trustees to committees appointed under Section 4.1 and composed solely of Trustees, except as prohibited by law. If a charter has been adopted with respect to a committee composed solely of Trustees, the charter shall constitute a delegation by the Trustees of the powers of the Board of Trustees necessary to carry out the purposes, responsibilities and duties of a committee provided in the charter or reasonably related to those purposes, responsibilities and duties, to the extent permitted by law.

Section 4.3 Meetings. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Trustees. One-third (1/3), but not less than one, of the members of any committee shall be present in person at any meeting of a committee in order to constitute a quorum for the transaction of business at a meeting, and the act of a majority present at a meeting at the time of a vote if a quorum is then present shall be the act of a committee. The Board of Trustees or, if authorized by the Board in a committee charter or otherwise, the committee members may designate a chairman of any committee, and the chairman or, in the absence of a chairman, a majority of any committee may fix the time and place of its meetings unless the Board shall otherwise provide. In the absence or disqualification of any member of any committee, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another Trustee to act at the meeting in the place of absent or disqualified members.

Section 4.4 Telephone Meetings. Members of a committee may participate in a meeting by means of a conference telephone or similar communications equipment and participation in a meeting by these means shall constitute presence in person at the meeting.

Section 4.5 Action by Written Consent of Committees. Any action required or permitted to be taken at any meeting of a committee of the Trustees may be taken without a meeting, if a consent in writing or by electronic transmission to such action is signed by a majority of the committee and such written or electronic consent is filed with the minutes of proceedings of such committee.

Section 4.6 Vacancies. Subject to the provisions hereof, the Board of Trustees shall have the power at any time to change the membership of any committee, to fill all vacancies, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

ARTICLE V OFFICERS

Section 5.1 General Provisions. The officers of the Trust shall include a president, a secretary and a treasurer. In addition, the Board of Trustees may from time to time elect such other officers with such titles, powers and duties as set forth herein or as the Board of Trustees shall deem necessary or desirable, including a chairman of the board, a vice chairman of the board, a chief executive officer, a chief operating officer, a chief financial officer, one or more vice presidents, one or more assistant secretaries and one or more assistant treasurers. The officers of the Trust shall be elected annually by the Board of Trustees. Each officer shall hold office until his or her successor is elected and qualifies or

until his or her death, resignation or removal in the manner hereinafter provided. Any two (2) or more offices, except that of president and vice president, may be held by the same person. In their discretion, the Trustees may leave unfilled any office except that of president, treasurer and secretary. Election of an officer or agent shall not of itself create contract rights between the Trust and such officer or agent.

Section 5.2 Removal and Resignation. Any officer or agent of the Trust may be removed, with or without cause, by the Board of Trustees if in its judgment the best interests of the Trust would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Trust may resign at any time by delivering his or her resignation to the Board of Trustees, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Trust.

Section 5.3 Vacancies. A vacancy in any office may be filled by the Board of Trustees for the balance of the term.

Section 5.4 President. Except as the Board of Trustees may otherwise provide, the president shall have the duties usually vested in a president. The president shall have such other duties as may be assigned to the president by the Board of Trustees from time to time. The president may execute any deed, mortgage, bond, lease, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Trust or shall be required by law to be otherwise executed.

Section 5.5 Chief Operating Officer. If elected, except as the Board of Trustees may otherwise provide, the chief operating officer shall have the duties usually vested in a chief operating officer. The chief operating officer shall have such other duties as may be assigned to the chief operating officer by the president or the Board of Trustees from time to time.

Section 5.6 Chief Financial Officer. If elected, except as the Board of Trustees may otherwise provide, the chief financial officer shall have the duties usually vested in a chief financial officer. The chief financial officer shall have such other duties as may be assigned to the chief financial officer by the president or the Board of Trustees from time to time.

Section 5.7 Vice Presidents. In the absence or disability of the president, the vice president, if any (or if there is more than one, the vice presidents in the order designated or, in the absence of any designation, then in the order of their election), shall perform the duties and exercise the powers of the president. The vice president(s) shall have such other duties as may be assigned to such vice president by the president or the Board of Trustees from time to time. The Board of Trustees may designate one or more vice presidents as executive vice president, senior vice president or vice presidents for particular areas of responsibility.

Section 5.8 Secretary. Except as the Board of Trustees may otherwise provide, the secretary (or his or her designee) shall (a) keep the minutes of the proceedings of the shareholders, the Board of Trustees and committees of the Board of Trustees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the Trust records and of the seal of the Trust, if any; and (d) maintain a share register, showing the ownership and transfers of ownership of all shares of beneficial interest of the Trust, unless a transfer agent is employed to maintain and does maintain such a share register. The secretary shall have such other duties as may be assigned to the secretary by the president or the Board of Trustees from time to time.

Section 5.9 Treasurer. Except as the Board of Trustees may otherwise provide, the treasurer shall (a) have general charge of the financial affairs of the Trust; (b) have or oversee in accordance with Section 6.3 the custody of the funds, securities and other valuable documents of the Trust; (c) maintain or oversee the maintenance of proper financial books and records of the Trust; and (d) have the duties usually vested in a treasurer. The treasurer shall have such other duties as may be assigned to the treasurer by the president or the Board of Trustees from time to time.

Section 5.10 Assistant Secretaries and Assistant Treasurers. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the Board of Trustees from time to time.

ARTICLE VI CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 6.1 Contracts. The Board of Trustees may authorize any Trustee, officer or agent (including the Advisor or any officer of the Advisor) to execute and deliver any instrument in the name of and on behalf of the Trust and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Trust when duly authorized or ratified by action of the Board of Trustees and executed by an authorized person.

Section 6.2 Checks and Drafts. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Trust shall be signed by such officer or agent of the Trust in such manner as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

Section 6.3 Deposits. All funds of the Trust not otherwise employed shall be deposited or invested from time to time to the credit of the Trust as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

ARTICLE VII SHARES

Section 7.1 Certificates. Ownership of shares of any class of shares of beneficial interest of the Trust shall be evidenced by certificates, or at the election of a shareholder in book entry form. Unless otherwise determined by the Board of Trustees, any such certificates shall be signed by the president or a vice president and countersigned by the secretary or an assistant secretary or the treasurer or an assistant treasurer and may be sealed with the seal, if any, of the Trust. The signatures may be either manual or facsimile.

Certificates shall be consecutively numbered and if the Trust shall from time to time issue several classes of shares, each class may have its own number series. A certificate is valid and may be issued whether or not an officer who signed it is still an officer when it is issued.

Section 7.2 Transfers.

(a) Shares of beneficial interest of the Trust shall be transferable in the manner provided by applicable law, the Declaration of Trust and these Bylaws. Certificates shall be treated as negotiable and title thereto and to the shares they represent shall be transferred by delivery thereof to the same extent as those of a Maryland stock corporation.

(b) The Trust shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided in these Bylaws or by the laws of the State of Maryland.

Section 7.3 Lost Certificates. For shares evidenced by certificates, any officer designated by the Trustees may direct a new certificate to be issued in place of any certificate previously issued by the Trust alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing the issuance of a new certificate, an officer designated by the Trustees may, in such officer's discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he shall require and/or to give bond, with sufficient surety, to the Trust to indemnify it against any loss or claim which may arise as a result of the issuance of a new certificate.

Section 7.4 Closing of Transfer Books or Fixing of Record Date.

(a) The Trustees may set, in advance, a record date for the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or determining shareholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of shareholders for any other proper purpose.

(b) In lieu of fixing a record date, the Trustees may provide that the share transfer books shall be closed for a stated period but not longer than twenty (20) days. If the share transfer books are closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days before the date of such meeting.

(c) If no record date is fixed and the share transfer books are not closed for the determination of shareholders, (i) the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day on which the notice of meeting is mailed or the thirtieth (30th) day before the meeting, whichever is the closer date to the meeting; and (ii) the record date for the determination of shareholders entitled to receive payment of a dividend or an allotment of any other rights shall be the close of business on the day on which the resolution of the Trustees, declaring the dividend or allotment of rights, is adopted.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof unless the Board of Trustees shall set a new record date with respect thereto.

Section 7.5 Share Ledger. The Trust shall maintain at its principal office or at the office of its counsel, accountants or transfer agent a share ledger containing the name and address of each shareholder and the number of shares of each class of shares of beneficial interest of the Trust held by such shareholder.

Section 7.6 Fractional Shares; Issuance of Units. The Trustees may issue fractional shares or provide for the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the Declaration of Trust or these Bylaws, the Trustees may issue units consisting of different securities of the Trust. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Trust, except that the Trustees may provide that for a specified period securities of the Trust issued in such unit may be transferred on the books of the Trust only in such unit.

Section 7.7 Determination of Beneficial Ownership and Constructive Ownership. For the avoidance of doubt and pursuant to the authority granted to the Board in Section 7.2.6 of the Declaration of Trust, for purposes of ARTICLE VII of the Declaration of Trust, a Person (as defined in ARTICLE VII of the Declaration of Trust) owns directly or indirectly all Equity Shares (as defined in ARTICLE VII of the Declaration of Trust) that such Person is deemed to beneficially own pursuant to Rule 13d-3 under the Exchange Act.

ARTICLE VIII REGULATORY COMPLIANCE AND DISCLOSURE

Section 8.1 Actions Requiring Regulatory Compliance Implicating the Trust. If any shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or actions taken by the shareholder affecting the Trust, triggers the application of any requirement or regulation of any federal, state, municipal or other governmental or regulatory body on the Trust or any subsidiary (for purposes of this ARTICLE VIII, as defined in Section 2.14.5(c)) of the Trust or any of their respective businesses, assets or operations, including, without limitation, any obligations to make or obtain a Governmental Action (as defined in Section 2.14.3), such shareholder shall promptly take all actions necessary and fully cooperate with the Trust to ensure that such requirements or regulations are satisfied without restricting, imposing additional obligations on or in any way limiting the business, assets, operations or prospects of the Trust or any subsidiary of the Trust. If the shareholder fails or is otherwise unable to promptly take such actions so to cause satisfaction of such requirements or regulations, the shareholder shall promptly divest a sufficient number of shares of beneficial interest of the Trust necessary to cause the application of such requirement or regulation to not apply to the Trust or any subsidiary of the Trust. If the shareholder fails to cause such satisfaction or divest itself of such sufficient number of shares of beneficial interest of the Trust by not later than the tenth (10th) day after triggering such requirement or regulation referred to in this Section 8.1, then any shares of beneficial interest of the Trust beneficially owned by such shareholder at and in excess of the level triggering the application of such requirement or regulation shall, to the fullest extent permitted by law, be deemed to constitute shares held in violation of the ownership limitations set forth in ARTICLE VII of the Declaration of Trust and be subject to the provisions of ARTICLE VII of the Declaration of Trust and any actions triggering the application of such a requirement or regulation may be deemed by the Trust to be of no force or effect. Moreover, if the shareholder who triggers the application of any regulation or requirement fails to satisfy the requirements or regulations or to take curative actions within such ten (10) day period, the Trust may take all other actions which the Board of Trustees deems appropriate to require

compliance or to preserve the value of the Trust's assets; and the Trust may charge the offending shareholder for the Trust's costs and expenses as well as any damages which may result to the Trust.

As an example and not as a limitation, at the time these Bylaws are being amended and restated, the Trust owns healthcare facilities in various states which are subject to state regulatory and licensing requirements in each such state. Under

the licensing terms or regulatory regime of certain states with jurisdiction over the Trust, a shareholder which acquires a controlling equity position in the Trust may be required to obtain regulatory approval or consent prior to or as a result of obtaining such ownership. Accordingly, if a shareholder which acquires a controlling equity position in the Trust that would require the shareholder or the Trust to obtain the consent or approval of a state authority due to the fact that the Trust owns licensed healthcare facilities in such state, and the shareholder refuses to provide the Trust with information required to be submitted to the applicable state authority or if the state authority declines to approve the shareholder's ownership of the Trust, then, in either event, shares of the Trust owned by the shareholder necessary to reduce its ownership to an amount so that the shareholder's ownership of Trust shares would not require it to provide any such information to, or for consent to be obtained from, the state authority, may be deemed by the Board of Trustees to be shares held in violation of the ownership limitation in ARTICLE VII of the Declaration of Trust and shall be subject to the provisions of ARTICLE VII of the Declaration of Trust.

Section 8.2 Compliance With Law. Shareholders shall comply with all applicable requirements of federal and state laws, including all rules and regulations promulgated thereunder, in connection with such shareholder's ownership interest in the Trust and all other laws which apply to the Trust or any subsidiary of the Trust or their respective businesses, assets or operations and which require action or inaction on the part of the shareholder.

Section 8.3 Limitation on Voting Shares or Proxies. Without limiting the provisions of Section 8.1, if a shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or its receipt or exercise of proxies to vote shares owned by other shareholders, would not be permitted to vote such shares or proxies for such shares in excess of a certain amount pursuant to applicable law (including by way of example, applicable state insurance regulations) but the Board of Trustees determines that the excess shares or shares represented by the excess proxies are necessary to obtain a quorum, then such shareholder shall not be entitled to vote any such excess shares or proxies, and instead such excess shares or proxies may, to the fullest extent permitted by law, be voted by the Advisor (or by another person designated by the Trustees) in proportion to the total shares otherwise voted on such matter.

Section 8.4 Representations, Warranties and Covenants Made to Governmental or Regulatory Bodies. To the fullest extent permitted by law, any representation, warranty or covenant made by a shareholder with any governmental or regulatory body in connection with such shareholder's interest in the Trust or any subsidiary of the Trust shall be deemed to be simultaneously made to, for the benefit of and enforceable by, the Trust and any applicable subsidiary of the Trust.

Section 8.5 Board of Trustees' Determinations. The Board of Trustees shall be empowered to make all determinations regarding the interpretation, application, enforcement and compliance with any matters referred to or contemplated by these Bylaws.

ARTICLE IX RESTRICTIONS ON TRANSFER OF SHARES

Section 9.1 Definitions. As used in this ARTICLE IX, the following terms have the following meanings (and any references to any portions of Treasury Regulation Sections 1.382-2, 1.382-2T, 1.382-3 and 1.382-4 shall include any successor provisions):

- (a) "5-percent Shareholder" means a Person or group of Persons that is a "5-percent shareholder" of the Trust pursuant to Treasury Regulation Section 1.382-2T(g).
- (b) "5-percent Transaction" means any Transfer described in clause (a) or (b) of Section 9.2.
- (c) "Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and the rulings issued thereunder.
- (d) "Effective Date" means November 1, 2023.
- (e) "Excess Securities" has the meaning given such term in Section 9.4.
- (f) "Expiration Date" means the earlier of (i) the repeal of Section 382 of the Code or any successor statute if the Board of Trustees determines that this ARTICLE IX is no longer necessary for the preservation of Tax Benefits, (ii) the beginning of a taxable year of the Trust to which the Board of Trustees determines that no Tax Benefits may be carried forward, or (iii) such date as the Board of Trustees shall fix in accordance with Section 9.10.
- (g) "Grandfathered Owner" has the meaning given such term in Section 9.2.
- (h) "Percentage Share Ownership" means the percentage Share Ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Code as determined in accordance with the Treasury Regulation Sections 1.382-2T(g), (h), (j) and (k) and 1.382-4.
- (i) "Person" means any individual, firm, corporation, company, Delaware limited liability company, partnership, joint venture, estate, trust, or other legal entity, including a group of persons treated as an entity pursuant to Treasury Regulation Section 1.382-3(a)(1)(i), and any successor of any such individual or entity.
- (j) "Prohibited Transfer" means any Transfer or purported Transfer of Trust Securities to the extent that such Transfer is prohibited and/or void under this ARTICLE IX.
- (k) "Public Group" has the meaning set forth in Treasury Regulation Section 1.382-2T(f)(13), excluding any "direct public group" with respect to the Trust, as that term is used in Treasury Regulation Section 1.382-2T(j)(2)(ii).

(l) "Purported Transferee" has the meaning set forth in Section 9.4.

(m) "Securities" and "Security" each has the meaning set forth in Section 9.5.

(n) "Shares" means any interest that would be treated as "stock" of the Trust pursuant to Treasury Regulation Sections 1.382-2(a)(3) and 1.382-2T(f)(18).

(o) "Share Ownership" means any direct or indirect ownership of Shares, including any ownership by virtue of application of constructive ownership rules, with such direct, indirect, and constructive ownership determined under the provisions of Section 382 of the Code and the Treasury Regulations.

(p) "Tax Benefits" means the net operating loss carryforwards, capital loss carryforwards, general business credit carryforwards, alternative minimum tax credit carryforwards and foreign tax credit carryforwards, as well as any loss or deduction attributable to a "net unrealized built-in loss" of the Trust or any direct or indirect subsidiary thereof, within the meaning of Section 382 of the Code.

(q) "Transfer" means, any direct or indirect (by operation of law or otherwise) sale, transfer, assignment, conveyance, pledge, devise or other disposition or other action taken by a Person, other than the Trust, that alters the Percentage Share Ownership of any Person. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation Sections 1.382-2T(h)(4)(v) and 1.382-4). For the avoidance of doubt, a Transfer shall not include the creation or grant by the Trust of an option to purchase securities of the Trust, nor shall a Transfer include the issuance of Shares by the Trust.

(r) "Transferee" means any Person to whom Trust Securities are Transferred.

(s) "Treasury Regulations" means the regulations, including temporary regulations or any successor regulations, promulgated under the Code, as amended from time to time.

(t) "Trust Security" or "Trust Securities" means (i) common shares of beneficial interest of the Trust, (ii) preferred shares of beneficial interest of the Trust (other than preferred stock described in Section 1504(a)(4) of the Code), (iii) warrants, rights, or options (including options within the meaning of Treasury Regulation Sections 1.382-2T(h)(4)(v) and 1.382-4) to purchase Securities issued by the Trust, and (iv) any Shares not included within the preceding clauses (i) through (iii) of this definition.

Section 9.2 Transfer and Ownership Restrictions. From and after the Effective Date, any attempted Transfer of Trust Securities prior to the Expiration Date and any attempted Transfer of Trust Securities pursuant to an agreement entered into prior to the Expiration Date shall be prohibited and void ab initio to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (a) any Person or Persons would become a 5-percent Shareholder or (b) the Percentage Share Ownership of any 5-percent Shareholder would be increased. Any 5-percent Shareholder as of the Effective Date (the "Grandfathered Owner") shall not be required, solely as a result of the adoption of this ARTICLE IX and the occurrence of the Effective Date, pursuant to this ARTICLE IX, to reduce or dispose of any Trust Securities owned by such Grandfathered Owner as of the Effective Date and none of such Trust Securities owned by such Grandfathered Owner as of the Effective Date shall be deemed, solely as a result of the adoption of this ARTICLE IX and the occurrence of the Effective Date,

to be Excess Securities; provided, however, that such Grandfathered Owner may not acquire any additional Trust Securities at any time such Grandfathered Owner remains a 5-percent Shareholder and, upon such Grandfathered Owner no longer being a 5-percent Shareholder, the provisions of this ARTICLE IX shall apply in their entirety to such Grandfathered Owner.

Section 9.3 Exceptions.

(a) Notwithstanding anything to the contrary herein, Transfers to a Public Group (including a new Public Group created under Treasury Regulation Section 1.382-2T(j)(3)(i)) shall be permitted.

(b) The restrictions set forth in Section 9.2 shall not apply to an attempted Transfer that is a 5-percent Transaction if the transferor or the Transferee obtains the written approval of the Board of Trustees or a duly authorized committee thereof. The Board of Trustees may impose conditions in connection with such approval, including, without limitation, restrictions on the ability or right of any Transferee to Transfer Shares acquired through a Transfer. Approvals of the Board of Trustees hereunder may be given prospectively or retroactively.

Section 9.4 Excess Securities.

(a) No officer or agent of the Trust shall record any Prohibited Transfer in the share register for the Trust, and the purported transferee of such a Prohibited Transfer (the "Purported Transferee") shall not be recognized as a shareholder for any purpose whatsoever in respect of the Trust Securities which are the subject of the Prohibited Transfer (the "Excess Securities"). The Purported Transferee shall not be entitled with respect to such Excess Securities to any rights of shareholders, including, without limitation, the right to vote such Excess Securities or to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to constitute shares of the Trust in excess of the Aggregate Share Ownership Limit (as defined in Section 7.1 of the Declaration of Trust) and be subject to Article VII of the Declaration of Trust. Any Transfer of Excess Securities in accordance with the provisions of this ARTICLE IX shall cease to be Excess Securities upon consummation of such Transfer.

(b) The Trust may require as a condition to the registration of the Transfer of any Trust Securities in the share register of the Trust or the payment of any distribution on any Trust Securities that the proposed Transferee or payee furnish to the Trust all information reasonably requested by the Trust with respect to its direct or indirect ownership interests in such Trust Securities. The Trust may make such arrangements or issue such instructions to its officers or agents as may be determined by the Board of Trustees to be necessary or advisable to implement this ARTICLE IX, including, without limitation, authorizing its officers or agents to require, as a condition to registering any Transfer in the share register of the Trust, an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of shares and other evidence that a Transfer will not be prohibited by this ARTICLE IX.

Section 9.5 Modification of Remedies for Certain Indirect Transfers. In the event of any Transfer which does not involve a transfer of securities of the Trust within the meaning of Maryland law ("Securities," and individually, a "Security") but which would cause a 5-percent Shareholder to violate a restriction on Transfers provided for in this ARTICLE IX, a sufficient amount of Securities of such 5-percent Shareholder and/or any Person whose ownership of Securities is attributed to such 5-percent Shareholder shall be deemed to be Excess Securities and shall be treated as provided in Section 9.4, including, without limitation, being deemed to constitute shares of the Trust in excess of the Aggregate Share Ownership Limit (as defined in Section 7.1 of the Declaration of Trust) and be subject to Article VII of the Declaration of Trust. For the avoidance of doubt, no such 5-percent Shareholder shall be required, pursuant to this Section 9.5, to dispose of any interest that is not a Security. The purpose of this Section 9.5 is to extend the restrictions in Section 9.2 to situations in which there is a 5-percent Transaction without a direct Transfer of Securities, and this Section 9.5, along with the other provisions of this ARTICLE IX, shall be interpreted to produce the same results, with such differences as the context requires or as determined by the Board of Trustees, as a direct Transfer of Trust Securities.

Section 9.6 Legal Proceedings; Prompt Enforcement. The Board of Trustees may authorize such additional actions, beyond those provided for or contemplated by this ARTICLE IX, to give effect to or in furtherance of the provisions of this ARTICLE IX. Nothing in this Section 9.6 shall (a) be deemed inconsistent with any Transfer of the Excess Securities provided in this ARTICLE IX being void ab initio, (b) preclude the Trust in the sole discretion of the Board of Trustees from immediately bringing legal proceedings without a prior demand, or (c) cause any failure of the Trust to act within any particular time period to constitute a waiver or loss of any right of the Trust under this ARTICLE IX.

Section 9.7 Liability. To the fullest extent permitted by law and without limiting any other remedies of the Trust and related matters provided elsewhere in these Bylaws or in the Declaration of Trust, any shareholder subject to the provisions of this ARTICLE IX who knowingly violates the provisions of this ARTICLE IX and any Persons controlling, controlled by or

under common control with such shareholder shall be jointly and severally liable to the Trust for, and shall indemnify and hold the Trust harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Trust's (or any of its subsidiaries') ability or right to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

Section 9.8 Obligation to Provide Information. As a condition to the registration of the Transfer of any Shares in the share register for the Trust, any Person who is a beneficial, legal or record holder of Shares, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Trust may request from time to time in order to determine compliance with this ARTICLE IX or the status of the Tax Benefits of the Trust (or any of its subsidiaries).

Section 9.9 Legend. Unless otherwise provided by the Board of Trustees, each certificate or account statement evidencing or representing Shares (or securities exercisable for or convertible into Shares) shall bear a legend with respect to the restrictions contained in this ARTICLE IX in such form as shall be prescribed by the Board of Trustees. Instead of the foregoing legend, the certificate or account statement may state that the Trust will furnish a full statement about certain restrictions on transferability to a shareholder on request and without charge.

Section 9.10 Authority of Board of Trustees.

(a) The Board of Trustees shall have the power to determine all matters necessary for assessing compliance with this ARTICLE IX, including, without limitation, (i) the identification of 5-percent Shareholders, (ii) whether a Transfer is a 5-percent Transaction or a Prohibited Transfer, (iii) the Percentage Share Ownership of any 5-percent Shareholder, (iv) whether an instrument constitutes a Trust Security, (v) the application of Section 9.4, including, without limitation, the application of Article VII of the Declaration of Trust to Excess Securities, and Section 9.5, and (vi) any other matters which the Board of Trustees determines to be relevant. The determination of the Board of Trustees on all of the foregoing and any related matters shall be conclusive and binding for all the purposes of this ARTICLE IX.

(b) Nothing contained in this ARTICLE IX shall limit the authority of the Board of Trustees to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Trust and its shareholders in preserving the Tax Benefits. Without limiting the generality of the foregoing, the Board of Trustees may, by adopting a written resolution, (i) accelerate or extend the Expiration Date, (ii) modify the ownership interest percentage in the Trust or the Persons or groups covered by this ARTICLE IX, (iii) modify the definitions of any terms set forth in this ARTICLE IX or (iv) modify the terms of this ARTICLE IX as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or otherwise. Shareholders may be notified of such determination through a filing with the SEC or such other method of notice as the Board of Trustees may determine. All actions, calculations, interpretations and determinations which are done or made by the Board of Trustees shall be conclusive and binding on the Trust and all other parties for all other purposes of this ARTICLE IX.

(c) The Board of Trustees may delegate all or any portion of its duties and powers under this ARTICLE IX to a committee of the Board of Trustees as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this ARTICLE IX through duly authorized officers or agents of the Trust.

Section 9.11 Transactions on a National Securities Exchange. Nothing in this ARTICLE IX shall preclude the settlement of any transaction entered into through the facilities of a national securities exchange or any automated inter-dealer quotation system. The fact that the settlement of any transaction takes place shall not negate the effect of any other provision of this ARTICLE IX and any transferor and transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this ARTICLE IX.

Section 9.12 Reliance. For purposes of determining the existence, identity and amount of any Trust Securities owned by any shareholder, the Trust is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the Exchange Act (or similar filings), as of any date, subject to its actual knowledge of the ownership of Trust Securities.

Section 9.13 Benefits of this ARTICLE IX. Nothing in this ARTICLE IX shall be construed to give to any Person, other than the Trust and the Trustee (as defined in Section 7.1 of the Declaration of Trust), any legal or equitable right, remedy or claim under this ARTICLE IX. This ARTICLE IX shall be for the sole and exclusive benefit of the Trust and the Trustee (as defined in Section 7.1 of the Declaration of Trust).

Section 9.14 **Severability.** If any provision of this ARTICLE IX or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this ARTICLE IX.

Section 9.15 **Waiver.** With regard to any power, remedy or right provided herein or otherwise available to the Trust under this ARTICLE IX, (a) no waiver will be effective unless authorized by the Board of Trustees and expressly contained in a writing signed by the Trust; and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

Section 9.16 **Conflict.** If there shall be any conflict between the provisions of this ARTICLE IX or the application thereof and the provisions of Article VII of the Declaration of Trust or the application thereof to the matters addressed in this ARTICLE IX, as contemplated by this ARTICLE IX, the provisions of this ARTICLE IX and the application thereof shall control.

ARTICLE X FISCAL YEAR

Section 10.1 **Fiscal Year.** The fiscal year of the Trust shall be the calendar year.

ARTICLE XI DIVIDENDS AND OTHER DISTRIBUTIONS

Section 11.1 **Dividends and Other Distributions.** Dividends and other distributions upon the shares of beneficial interest of the Trust may be authorized and declared by the Trustees. Dividends and other distributions may be paid in cash, property or shares of beneficial interest of the Trust.

ARTICLE XII SEAL

Section 12.1 **Seal.** The Trustees may authorize the adoption of a seal by the Trust. The Trustees may authorize one or more duplicate seals.

Section 12.2 **Affixing Seal.** Whenever the Trust is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Trust.

ARTICLE XIII WAIVER OF NOTICE

Section 13.1 **Waiver of Notice.** Whenever any notice is required to be given pursuant to the Declaration of Trust, these Bylaws or applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice or waiver by electronic transmission, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE XIV AMENDMENT OF BYLAWS

Section 14.1 **Amendment of Bylaws.** Except for any change for which these Bylaws require approval by more than a majority vote of the Trustees, these Bylaws may be amended or repealed or new or additional Bylaws may be adopted only by the vote or written consent of a majority of the Trustees as specified in Section 3.10.

ARTICLE XV MISCELLANEOUS

Section 15.1 **References to Declaration of Trust.** All references to the Declaration of Trust shall mean the declaration of trust of the Trust and shall include any amendments and supplements thereto.

Section 15.2 **Costs and Expenses.** In addition to, and as further clarification of each shareholder's obligation to indemnify and hold the Trust harmless pursuant to these Bylaws or Section 8.7 of the Declaration of Trust, to the fullest extent permitted by law, each shareholder will be liable to the Trust (and any subsidiaries or affiliates thereof) for, and indemnify and hold harmless the Trust (and any subsidiaries or affiliates thereof) from and against, all costs, expenses, penalties, fines or other amounts, including, without limitation, reasonable attorneys' and other professional fees, whether third party or internal, arising from such shareholder's breach of or failure to fully comply with any covenant, condition or provision of these Bylaws or the Declaration of Trust (including Section 2.14 of these Bylaws) or any action by or against the Trust (or any subsidiaries or affiliates thereof) in which such shareholder is not the prevailing party, and shall pay such amounts to such indemnitee on demand, together with interest on such amounts, which interest will accrue at the lesser of fifteen percent (15%) per annum and the maximum amount permitted by law, from the date such costs or the like are incurred until the receipt of payment.

Section 15.3 **Ratification.** The Board of Trustees or the shareholders may ratify and make binding on the Trust any action or inaction by the Trust or its officers to the extent that the Board of Trustees or the shareholders could have originally authorized the matter. Moreover, any action or inaction questioned in any shareholder's derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a Trustee, officer or shareholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the Board of Trustees or by the

shareholders and, if so ratified, shall have the same force and effect as if the questioned action or inaction had been originally duly authorized, and such ratification shall be binding upon the Trust and its shareholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

Section 15.4 Ambiguity. In the case of an ambiguity in the application of any provision of these Bylaws or any definition contained in these Bylaws, the Board of Trustees shall have the sole power to determine the application of such provisions with respect to any situation based on the facts known to it and such determination shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

Section 15.5 Inspection of Bylaws. The Trustees shall keep at the principal office for the transaction of business of the Trust the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the secretary, which shall be open to inspection by the shareholders at all reasonable times during office hours.

Section 15.6 Election to be Subject to Part of Title 3, Subtitle 8. Notwithstanding any other provision contained in the Declaration of Trust or these Bylaws, the Trust hereby elects to be subject to Section 3-804(b) and (c) of Title 3, Subtitle 8 of the MGCL. This Section 15.6 only may be repealed, in whole or in part, by a subsequent amendment to these Bylaws.

Section 15.7 Special Voting Provisions Relating to Control Shares. Notwithstanding any other provision contained herein or in the Declaration of Trust or these Bylaws, Title 3, Subtitle 7 of the MGCL shall not apply to any acquisition by any person of shares of beneficial interest of the Trust. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

ARTICLE XVI ARBITRATION PROCEDURES FOR DISPUTES

Section 16.1 Procedures for Arbitration of Disputes. Any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE XVI, shall mean any shareholder of record or any beneficial owner of shares of beneficial interest of the Trust, or any former shareholder of record or beneficial owner of shares of beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager (including The RMR Group LLC or its successor), agent or employee of the Trust, including any disputes, claims or controversies relating to the application or enforcement of the Declaration of Trust or these Bylaws (all of which are referred to as "Disputes") or relating in any way to such a Dispute or Disputes shall, on the demand of any party to such Dispute or Disputes, be resolved through binding and final arbitration in accordance with the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as those Rules may be modified in this ARTICLE XVI. For the avoidance of doubt,

and not as a limitation, Disputes are intended to include derivative actions against Trustees, officers or managers of the Trust and class actions by shareholders against those individuals or entities and the Trust. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party. Notwithstanding the foregoing, (a) the provisions of this ARTICLE XVI shall not apply to any request for a declaratory judgment or similar action regarding the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, but such request shall be heard and determined in the exclusive forum provided for in ARTICLE XVII; and (b) in the event a Dispute involves both a question of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws and any other matter in dispute, the arbitration of such other matter in dispute, if dependent upon a determination of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, shall be stayed until a final, non-appealable judgement regarding such meaning, interpretation or validity has been rendered by the exclusive forum provided for in ARTICLE XVII.

Section 16.2 Arbitrators. There shall be three (3) arbitrators. If there are only two (2) parties to the Dispute, each party shall select one (1) arbitrator within fifteen (15) days after receipt by respondent of a copy of the demand for arbitration. The arbitrators may be affiliated or interested persons of the parties. If there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, shall each select, by the vote of a majority of the claimants or the respondents, as the case may be, one (1) arbitrator within fifteen (15) days after receipt of the demand for arbitration. The arbitrators may be affiliated or interested persons of the claimants or the respondents, as the case may be. If either a claimant (or all claimants) or a respondent (or all respondents) fail(s) to timely select an arbitrator then the party (or parties) who has selected an arbitrator may request AAA to provide a list of three (3) proposed arbitrators in accordance with the Rules (each of whom shall be neutral, impartial and unaffiliated with any party) and the party (or parties) that failed to timely appoint an arbitrator shall have ten (10) days from the date AAA provides the list to select one (1) of the three (3) arbitrators proposed by AAA. If the party (or parties) fail(s) to select the second (2nd) arbitrator by that time, the party (or parties) who have appointed the first (1st) arbitrator shall then have ten (10) days to select one (1) of the three (3) arbitrators proposed by AAA to be the second (2nd) arbitrator; and, if he/they should fail to select the second (2nd) arbitrator by such time, AAA shall select, within fifteen (15) days thereafter, one (1) of the three (3) arbitrators it had proposed as the second (2nd) arbitrator. The two (2) arbitrators so appointed shall jointly appoint the third (3rd) and presiding arbitrator (who shall be neutral, impartial and unaffiliated with any party) within fifteen (15) days of the appointment of the second (2nd) arbitrator. If the third (3rd) arbitrator has not been appointed within the time limit specified herein, then AAA shall provide a list of proposed arbitrators in accordance with the Rules, and the arbitrator shall be appointed by AAA in accordance with a listing, striking and ranking procedure, with each party having a limited number of strikes, excluding strikes for cause.

Section 16.3 Place of Arbitration. The place of arbitration shall be Boston, Massachusetts unless otherwise agreed by the parties.

Section 16.4 Discovery. There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators. For the avoidance of doubt, it is intended that there shall be no depositions and no other discovery other than limited documentary discovery as described in the preceding sentence.

Section 16.5 Awards. In rendering an award or decision (an "Award"), the arbitrators shall be required to follow the laws of the State of Maryland. Any arbitration proceedings or Award shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. An Award shall be in writing and shall state the findings of fact and conclusions of law on which it is based. Any monetary Award shall be made and payable in U.S. dollars free of any tax, deduction or offset. Subject to Section 16.7, each party against which an Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of such Award or such other date as such Award may provide.

Section 16.6 Costs and Expenses. Except as otherwise set forth in the Declaration of Trust or these Bylaws, including Section 15.2 of these Bylaws, or as otherwise agreed by the parties thereto, each party involved in a Dispute shall bear its own costs and expenses (including attorneys' fees), and the arbitrators shall not render an Award that

would include shifting of any such costs or expenses (including attorneys' fees) or, in a derivative case or class action, award any portion of the Trust's Award to the claimant or the claimant's attorneys. Each party (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, respectively) shall bear the costs and expenses of its (or their) selected arbitrator and the parties (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand) shall equally bear the costs and expenses of the third (3rd) appointed arbitrator.

Section 16.7 **Appeals.** Any Award, including but not limited to any interim Award, may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"). An Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Award by filing a notice of appeal with any AAA office. Following the appeal process, the decision rendered by

the appeal tribunal may be entered in any court having jurisdiction thereof. For the avoidance of doubt, and despite any contrary provision of the Appellate Rules, Section 16.6 shall apply to any appeal pursuant to this Section 16.7 and the appeal tribunal shall not render an Award that would include shifting of any costs or expenses (including attorneys' fees) of any party.

Section 16.8 **Final and Binding.** Following the expiration of the time for filing the notice of appeal, or the conclusion of the appeal process set forth in Section 16.7, an Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between those parties relating to the Dispute, including any claims, counterclaims, issues or accounting presented to the arbitrators. Judgment upon an Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any Award, except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

Section 16.9 **Beneficiaries.** This ARTICLE XVI is intended to benefit and be enforceable by the shareholders, Trustees, officers, managers (including The RMR Group **SNH Granite Gate Inc.** or its successor and The RMR Group LLC or its successor), agents or employees of the Trust and the Trust and shall be binding on the shareholders and the Trust, as applicable, and be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.

ARTICLE XVII
EXCLUSIVE FORUM FOR CERTAIN DISPUTES

Section 17.1 **Exclusive Forum.** The Circuit Court for Baltimore City, Maryland shall be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Trust, (2) any action asserting a claim of breach of a fiduciary duty owed by any Trustee, officer, manager, agent or employee of the Trust to the Trust or the shareholders, (3) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust arising pursuant to Maryland law or the Declaration of Trust or these Bylaws, including any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE XVII, shall mean any shareholder of record or any beneficial owner of any class or series of shares of beneficial interest of the Trust, or any former holder of record or beneficial owner of any class or series of shares of beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager, agent or employee of the Trust, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of the Declaration of Trust or these Bylaws, including this ARTICLE XVII, or (4) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust governed by the internal affairs doctrine of the State of Maryland. Failure to enforce the foregoing provisions would cause the Trust irreparable harm and the Trust shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of beneficial interest of the Trust shall be deemed to have notice of and consented to the provisions of this ARTICLE XVII. This ARTICLE XVII shall not abrogate or supersede any other provision of these Bylaws which may require the resolution of such disputes by arbitration.

DIVERSIFIED HEALTHCARE TRUST

SECONDTHIRD AMENDED AND RESTATED BYLAWS

As of June5November 1, 2023

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DIVERSIFIED HEALTHCARE TRUST

~~SECOND~~THIRD AMENDED AND RESTATED BYLAWS

These ~~SECOND~~THIRD AMENDED AND RESTATED BYLAWS (these "Bylaws") of Diversified Healthcare Trust (the "Trust") are made as of the date set forth above by the Board of Trustees of the Trust (the "Board of Trustees" or "Board," and each member thereof, a "Trustee").

ARTICLE I

OFFICES

Section 1.1 Principal Office. The principal office of the Trust shall be located at such place or places as the Board of Trustees may designate.

Section 1.2 Additional Offices. The Trust may have additional offices at such places as the Board of Trustees may from time to time determine or the business of the Trust may require.

ARTICLE II

MEETINGS OF SHAREHOLDERS

Section 2.1 Place. All meetings of shareholders shall be held at the principal office of the Trust or at such other place as is designated by the Board of Trustees, a Managing Trustee (as defined in Section 3.2) or the president.

Section 2.2 Annual Meeting. An annual meeting of the shareholders for the election of Trustees and the transaction of any business within the powers of the Trust shall be held at such times as the Trustees may designate. Failure to hold an annual meeting does not invalidate the Trust's existence or affect any otherwise valid acts of the Trust.

Section 2.3 Special Meetings. Special meetings of shareholders may be called only by a majority of the Trustees then in office. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees for the purpose of electing Trustees.

Section 2.4 Notice of Regular or Special Meetings. Notice given in writing or by electronic transmission specifying the place, day and hour of any regular or special meeting, the purposes of the meeting, to the extent required by law to be provided, and all other matters required by law shall be given to each shareholder of record entitled to vote, sent to his or her address appearing on the books of the Trust or theretofore given by him or her to the Trust for the purpose of notice, by presenting it to such shareholder personally, by leaving it at the shareholder's residence or usual place of business or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given once deposited in the U.S. mail addressed to the shareholder at his or her post office address as it appears on the records of the Trust, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the shareholder by an electronic transmission to any address or number of the shareholder at which the shareholder receives electronic transmissions. It shall be the duty of the secretary to give notice of each meeting of the shareholders. The Trust may give a single notice to all shareholders who share an address, which single notice shall be effective to any shareholder at such address, unless a shareholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more shareholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this ARTICLE II or the validity of any proceedings at any such meeting.

Section 2.5 Notice of Adjourned Meetings. It shall not be necessary to give notice of the time and place of any adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which such adjournment is taken.

Section 2.6 Meeting Business. Except as otherwise expressly set forth elsewhere in these Bylaws, no business shall be transacted at an annual or special meeting of shareholders except as specifically designated in the notice or otherwise properly brought before the meeting of shareholders by or at the direction of the Board of Trustees.

Section 2.7 Organization of Shareholder Meetings. Every meeting of shareholders shall be conducted by an individual appointed by the Board of Trustees to be chairperson of the meeting or, in the absence of such appointment or the absence of the appointed individual, by one of the following officers present at the meeting in the following order: the chairman of the board, if there be one, a Managing Trustee (in their order of seniority), the president, the vice presidents (in their order of seniority), the secretary, or, in the absence of such officers, a chairperson chosen by the shareholders by the vote of holders of shares of beneficial interest representing a majority of the votes cast on such appointment by shareholders present in person or

represented by proxy. The secretary, an assistant secretary or a person appointed by the Trustees or, in the absence of such appointment, a person appointed by the chairperson of the meeting shall act as secretary of the meeting and record the minutes of the meeting. If the secretary presides as chairperson at a meeting of the shareholders, then the secretary shall not also act as secretary of the meeting and record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of shareholders shall be determined by the chairperson of the meeting. The chairperson of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairperson, are appropriate for the proper conduct of the meeting, including, without limitation: (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to shareholders of record of the Trust, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (c) limiting participation at the meeting on any matter to shareholders of record of the Trust entitled to vote on such matter, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (d) limiting the time allotted to questions or comments by participants; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any shareholder or other person who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairperson of the meeting; (h) concluding a meeting or recessing or adjourning the meeting to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Without limiting the generality of the powers of the chairperson of the meeting pursuant to the foregoing provisions, the chairperson may adjourn any meeting of shareholders for any reason deemed necessary by the chairperson, including, without limitation, if (i) no quorum is present for the transaction of the business, (ii) the Board of Trustees or the chairperson of the meeting determines that adjournment is necessary or appropriate to enable the shareholders to consider fully information that the Board of Trustees or the chairperson of the meeting determines has not been made sufficiently or timely available to shareholders or (iii) the Board of Trustees or the chairperson of the meeting determines that adjournment is otherwise in the best interests of the Trust. Unless otherwise determined by the chairperson of the meeting, meetings of shareholders shall not be required to be held in accordance with the general rules of parliamentary procedure or any otherwise established rules of order.

Section 2.8 Quorum. At any meeting of shareholders, the presence in person or by proxy of shareholders entitled to cast a majority of all the votes entitled to be cast at such meeting shall constitute a quorum; but this section shall not affect any requirement under any statute or the Declaration of Trust for the vote necessary for the adoption of any measure. If, however, such quorum shall not be present at any meeting of the shareholders, the chairperson of the meeting shall have the power to adjourn the meeting from time to time without the Trust having to set a new record date or provide any additional notice of such meeting, subject to any obligation of the Trust to give notice pursuant to Section 2.5. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present, either in person or by proxy, at a meeting of shareholders which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal of enough votes to leave less than a quorum then being present at the meeting.

Section 2.9 Voting.

(a) Except as may be mandated by applicable law or the listing requirements of the principal exchange on which the Trust's common shares of beneficial interest are listed, and subject to the provisions of any class or series of shares of beneficial interest of the Trust hereafter authorized and then outstanding, a plurality of all the votes cast at a

meeting of shareholders duly called and at which a quorum is present shall be sufficient to elect a Trustee. Each share may be voted for as many individuals as there are Trustees to be elected and for whose election the share is entitled to be voted.

(b) With regard to any other matter which may properly come before a meeting of shareholders duly called and at which a quorum is present, and except as may be mandated by applicable law, by the listing requirements of the principal exchange on which the Trust's common shares of beneficial interest are listed or by a specific provision of the Declaration of Trust, the vote required for approval shall be the affirmative vote of seventy-five percent (75%) of the votes entitled to be cast for each such matter unless such matter has been previously approved by the Board of Trustees, in which case the vote required for approval shall be a majority of the votes cast at a meeting of shareholders duly called and at which a quorum is present.

Section 2.10 Proxies. A shareholder may cast the votes entitled to be cast by him or her either in person or by proxy executed by the shareholder or by his or her duly authorized agent in any manner permitted by law. Such proxy shall be filed with such officer of the Trust or third party agent as the Board of Trustees shall have designated for such purpose for verification at or prior to such meeting. Any proxy relating to the Trust's shares of beneficial interest shall be valid until the expiration date therein or, if no expiration is so indicated, for such period as is permitted pursuant to Maryland law. At a meeting of shareholders, all questions concerning the qualification of voters, the validity of proxies, and the acceptance or rejection of votes, shall be decided by or on behalf of the chairperson of the meeting, subject to Section 2.13.

Section 2.11 Record Date. The Board of Trustees may fix the date for determination of shareholders entitled to notice of and to vote at a meeting of shareholders. If no date is fixed for the determination of the shareholders entitled to vote at any meeting of shareholders, only persons in whose names shares entitled to vote are recorded on the share records of the Trust on the later of: (i) the close of business on the day on which notice of such meeting of shareholders is first mailed by the Trust or (ii) the thirtieth (30th) day before the date of such meeting shall be entitled to vote at such meeting.

Section 2.12 Voting of Shares by Certain Holders. Shares of beneficial interest of the Trust registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner, managing member or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such shares pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or pursuant to an agreement of the partners of the partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such shares. Any trustee or other fiduciary may vote shares registered in his or her name as such fiduciary, either in person or by proxy. Notwithstanding the apparent authority created by the prior two sentences of this Section 2.12, the Board of Trustees or the chairperson of the meeting may require that such person acting for a corporation, partnership, trust or other entity provide documentary evidence of his or her authority to vote such shares and of the fact that the beneficial owner of such shares has been properly solicited and authorized such person to vote as voted, and in the absence of such satisfactory evidence, the Board of Trustees or the chairperson may determine such votes have not been validly cast.

Section 2.13 Inspectors.

(a) Before or at any meeting of shareholders, the chairperson of the meeting may appoint one or more persons as inspectors for such meeting. Such inspectors, if any, shall (i) ascertain and report the number of shares of beneficial interest represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairperson of the meeting and (iv) perform such other acts as are proper to conduct the election or voting at the meeting. In the absence of such a special appointment, the secretary may act as the inspector.

(b) Each report of an inspector shall be in writing and signed by him or her. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 2.14 Nominations and Other Proposals to be Considered at Meetings of Shareholders. Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at meetings of shareholders may be properly brought before the meeting only as set forth in this Section 2.14 or Section 2.18. Nothing in this Section 2.14 shall be deemed to affect any right of a shareholder to request inclusion of a non-binding precatory proposal in, or the right of the Trust to omit a proposal from, any proxy statement filed by the Trust with the U.S. Securities and Exchange Commission (the "SEC") pursuant to Rule 14a-8 (or any successor provision) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All judgments and determinations made by the Board of Trustees or the chairperson of the meeting, as applicable, under this Section 2.14 (including, without limitation, judgments and determinations as to the propriety of a proposed nomination or a proposal of other business for consideration by shareholders) shall be final and binding unless determined to have been made in bad faith.

Section 2.14.1 Annual Meetings of Shareholders.

(a) Any shareholder may recommend to the Nominating and Governance Committee of the Board of Trustees an individual as a nominee for election to the Board of Trustees. Such recommendation shall be made by written notice to the Chair of such committee and the secretary, which notice should contain or be accompanied by the information and documents with respect to such recommended nominee and shareholder that such shareholder believes to be relevant or helpful to the Nominating and Governance Committee's deliberations. In considering such recommendation, the Nominating and Governance Committee may request additional information concerning the recommended nominee or the shareholder(s) making the recommendation. The Nominating and Governance Committee of the Board of Trustees will consider any such recommendation in its discretion. Any shareholder seeking to make a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders must make such nomination in accordance with Section 2.14.1(b)(ii) or Section 2.18.

(b) Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at an annual meeting of shareholders may be properly brought before the meeting (i) pursuant to the Trust's notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees or (ii) by any one or more shareholders who (A) have each continuously Owned (as defined below) shares of beneficial interest of the Trust entitled to vote in the election of Trustees or on a proposal of other business, for at least three (3) years as of the date of the giving of the notice provided for in Section 2.14.1(c), the record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting (including any adjournment or postponement thereof), with the aggregate shares Owned by such shareholder(s) as of each of such dates and during such three (3) year period representing at least one percent (1%) of the Trust's shares of beneficial interest, (B) holds, or hold, a certificate or certificates evidencing the aggregate number of shares of beneficial interest of the Trust referenced in subclause (A) of this Section 2.14.1(b)(ii) as of the time of giving the notice provided for in Section 2.14.1(c), the record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting

(including any adjournment or postponement thereof), (C) is, or are, entitled to make such nomination or propose such other business and to vote at the meeting on such election or proposal of other business, (D) complies, or comply, with the notice procedures set forth in this Section 2.14 as to such nomination or proposal of other business, and (E) in connection with a nomination for election to the Board of Trustees, complies or comply, with the requirements of Rule 14a-19 promulgated under the Exchange Act. For purposes of this Section 2.14, a shareholder shall be deemed to "Own" or have "Owned" only those outstanding shares of the Trust's shares of beneficial interest to which the shareholder possesses both the full voting and investment rights pertaining to such shares and the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with the foregoing shall not include any shares (x) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar instrument or agreement entered into by such shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of beneficial interest of the Trust, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such shareholder's or its affiliates' full right to vote or direct the voting of any such shares and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such shareholder or affiliate. Without limiting the foregoing, to the extent not excluded by the immediately preceding sentence, a shareholder's "short position" as defined in Rule 14e-4 under the Exchange Act shall be deducted from the shares otherwise "Owned." A shareholder shall "Own" shares held in the name of a nominee or other intermediary so long as the shareholder retains the right to instruct how the shares are voted with respect to the election of Trustees or the proposal of other business and possesses the full economic interest in the shares. For purposes of this Section 2.14, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act. For purposes of this Section 2.14, the period of continuous Ownership of shares must be evidenced by documentation accompanying the nomination or proposal. The terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings. Whether shares are "Owned" for purposes of this Section 2.14 shall be determined by the Board of Trustees.

(c) For nominations for election to the Board of Trustees or other business to be properly brought before an annual meeting by one or more shareholders pursuant to this Section 2.14.1, such shareholder(s) shall have given timely notice thereof in writing to the secretary in accordance with this Section 2.14 and such other business shall otherwise be a proper matter for action by shareholders. To be timely, the notice of such shareholder(s) shall include all documentation and set forth all information required under this Section 2.14 and shall be delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the one-hundred twentieth (120th) day nor earlier than the one-hundred fiftieth (150th) day prior to the first (1st) anniversary of the date of the proxy statement for the preceding year's annual meeting; provided, however, that if the annual meeting is called for a date that is more than thirty (30) days earlier or later than the first (1st) anniversary of the date of the preceding year's annual meeting, notice by such shareholder(s) to be timely shall be so delivered not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day following the earlier of the day on which (i) notice of the date of the annual meeting is mailed or otherwise made available or (ii) public announcement of the date of the annual meeting is first made by the Trust. Neither the postponement or adjournment of an annual meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a notice of one or more shareholders as described above.

A notice of one or more shareholders pursuant to this Section 2.14.1(c) shall set forth:

(i) separately as to each individual whom such shareholder(s) propose to nominate for election or reelection as a Trustee (a "Proposed Nominee"), (1) the name, age, business address, residence address and educational background of such Proposed Nominee, (2) a statement of whether such Proposed Nominee is proposed for nomination as an Independent Trustee (as defined in Section 3.2) or a Managing Trustee and a description of such Proposed Nominee's qualifications to be an Independent Trustee or Managing Trustee, as the case may be, and such Proposed Nominee's qualifications to be a Trustee pursuant to the criteria set forth in Section 3.1, (3) the class, series and number of any shares of beneficial interest of the Trust that are, directly or indirectly, beneficially owned or owned of record by such Proposed Nominee, (4) a description of the material terms of each Derivative Transaction that such Proposed Nominee directly or indirectly, has an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys any voting rights directly or indirectly, to such Proposed Nominee, (y) such Derivative Transaction is required to be, or is capable of being, settled through delivery of securities of the Trust and (z) such Proposed Nominee and/or, to their knowledge, the counterparty to such Derivative Transaction has entered into other transactions that hedge or mitigate the economic effect of such Derivative Transaction, (5) a description of all direct and indirect compensation and other agreements, arrangements and understandings or any other relationships, between or among any shareholder making the nomination, or any of its respective affiliates and associates, or others acting in concert therewith, on the one hand, and such Proposed Nominee, or his or her respective affiliates and associates, on the other hand, and (6) all other information relating to such Proposed Nominee that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded;

(ii) as to any other business that such shareholder(s) propose to bring before the meeting, (1) a description of such business, (2) the reasons for proposing such business at the meeting and any material interest in such business of such shareholder(s) or any Shareholder Associated Person (as defined in Section 2.14.1(g)), including any anticipated benefit to such shareholder(s) or any Shareholder Associated Person therefrom, (3) a description of all agreements, arrangements and understandings between such shareholder(s) and Shareholder Associated Person amongst themselves or with any other person or persons (including their names) in connection with the proposal of such business by such shareholder(s) and (4) a representation that such shareholder(s) intend to appear in person or by proxy at the meeting to bring the business before the meeting;

(iii) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) the class, series and number of all shares of beneficial interest of the Trust that are owned of record by such shareholder or by such Shareholder Associated Person, if any, and (2) the class, series and number of, and the nominee holder for, any shares of beneficial interests of the Trust that are, directly or indirectly, beneficially owned but not owned of record by such shareholder or by such Shareholder Associated Person, if any;

(iv) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) a description of all purchases and sales of securities of the Trust by such shareholder or Shareholder Associated Person during the period of continuous Ownership required by Section 2.14.1(b)(ii), including the date of the transactions, the class, series and number of securities involved in the transactions and the consideration involved, (2) a description of the material terms of each Derivative Transaction that such shareholder or Shareholder Associated Person, directly or indirectly, has, or during the period of continuous Ownership required by Section 2.14.1(b)(ii) had, an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys or conveyed any voting rights, directly or indirectly, to such shareholder or Shareholder Associated Person, (y) such Derivative Transaction is or was required to be, or is or was capable of being, settled through delivery of securities of the Trust and (z) such shareholder or Shareholder Associated Person and/or, to their knowledge, the counterparty to such Derivative Transaction has or had entered into other

transactions that hedge or mitigate the economic effect of such Derivative Transaction, (3) a description of the material terms of any performance related fees (other than an asset based fee) to which such shareholder or Shareholder Associated Person is entitled based on any increase or decrease in the value of shares of beneficial interest of the Trust or instrument or arrangement of the type contemplated within the definition of Derivative Transaction, and (4) any rights to dividends or other distributions on the shares of beneficial interest of the Trust that are beneficially owned by such shareholder or Shareholder Associated Person that are separated or separable from the underlying shares of beneficial interest of the Trust;

(v) separately as to each shareholder giving the notice and any Shareholder Associated Person with a material interest described in clause (ii)(2) above, an ownership interest described in clause (iii) above or a transaction or right described in clause (iv) above, (1) the name and address of such shareholder and Shareholder Associated Person, and (2) all information relating to such shareholder and Shareholder Associated Person that would be required to be disclosed in connection with a solicitation of proxies for election of Trustees in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded;

(vi) to the extent known by the shareholder(s) giving the notice, the name and address of any other person who beneficially owns or owns of record any shares of beneficial interest of the Trust and who supports the nominee for election or reelection as a Trustee or the proposal of other business; and

(vii) in connection with a nomination for election to the Board of Trustees, all other information required by Rule 14a-19 under the Exchange Act.

(d) A notice of one or more shareholders making a nomination or proposing other business pursuant to Section 2.14.1(c) shall be accompanied by a sworn verification of each shareholder making the nomination or proposal as to such shareholder's continuous Ownership of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) throughout the period referenced in such subclause, together with (i) a copy of the share certificate(s) referenced in subclause (B) of Section 2.14.1(b)(ii) above; (ii) if any such shareholder was not a shareholder of record of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) above continuously for the three (3) year period referenced therein, reasonable evidence of such shareholder's continuous beneficial ownership of such shares during such three (3) year period, such reasonable evidence may include, but shall not be limited to, (A) a copy of a report of the shareholder on Schedule 13D or Schedule 13G under the Exchange Act filed on or prior to the beginning of the three (3) year period and all amendments thereto, (B) a copy of a statement required to be filed pursuant to Section 16 of the Exchange Act (or any successor provisions) by a person who is a Trustee or who is directly or indirectly the beneficial owner of more than ten percent (10%) of the shares of beneficial interest of the Trust filed on or prior to the beginning of the three (3) year period and all amendments thereto, or (C) written evidence that each shareholder making the nomination or proposal maintained throughout the chain of record and non-record ownership continuous Ownership of such shares (i.e. possession of full voting and investment rights pertaining to, and full economic interest in, such shares) throughout the required period, including written verification of such Ownership from each person who was the "record" holder of such shares during such period (including, if applicable, the Depository Trust Company) and each participant of the Depository Trust Company, financial institution, broker-dealer or custodian through which the shares were Owned; and (iii) with respect to nominations, (A) a completed and executed questionnaire required of the Trustees (in the form available from the secretary) of each Proposed Nominee with respect to his or her background and qualification to serve as a Trustee, the background of any other person or entity on whose behalf the nomination is being made and the information relating to such Proposed Nominee and such other person or entity that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded, and (B) a representation and agreement (in the form available from the secretary) executed by each Proposed Nominee pursuant to which such Proposed Nominee (1) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with, and does not have any commitment and has not given any assurance to, any person or entity, in each case that has not been previously disclosed to the Trust, (x) as to how he or she, if elected as a Trustee, will act or vote on any issue or question, or (y) that could limit or interfere with his or her ability to comply, if elected as a Trustee, with his or her duties to the Trust, (2) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with any person or entity, other than the Trust, with respect to any direct or indirect compensation, reimbursement or indemnification in connection with or related to his or her service as, or any action or omission in his or her capacity as, a Trustee that has not been previously disclosed to the Trust, (3) represents and agrees that if elected as a Trustee, he or she will be in compliance with and will comply with, applicable law and all applicable publicly disclosed corporate governance, conflict of interest, corporate opportunity, confidentiality and share ownership and trading policies and guidelines of the Trust and (4) consents to being named as a nominee and to serving as a Trustee if elected.

(e) Any shareholder(s) providing notice of a proposed nomination or other business to be considered at an annual meeting of shareholders shall further update and supplement such notice, (i) if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.14 is true and correct as of the record date for such annual meeting and as of a date that is ten (10) business days prior to such annual meeting, and any such update shall be delivered to the secretary at the principal executive offices of the Trust not later than the close of business on the fifth (5th) business day after the record date (in the case of an update or supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the annual meeting (in the case of an update or supplement required to be made as of ten (10) business days prior to the meeting) and (ii) in connection with a nomination for election to the Board of Trustees, to provide evidence that the shareholder(s) providing notice of a proposed nomination has solicited proxies from holders representing at least sixty-seven percent (67%) of the voting power of the shares of beneficial interest of the Trust entitled to vote in the election of trustees, and such update and supplement shall be delivered to or be mailed and received by the secretary at the principal executive offices of the Trust not later than five (5) business days after the shareholder files a definitive proxy statement in connection with such annual meeting of shareholders.

(f) A shareholder making a nomination or proposal of other business for consideration at an annual meeting may withdraw the nomination or proposal at any time before the annual meeting. After the period specified in the second sentence of Section 2.14.1(c), a shareholder nomination or proposal of other business for consideration at an annual meeting may only be amended with the permission of the Board of Trustees. Notwithstanding anything in the second sentence of Section 2.14.1(c) to the contrary, if the number of Trustees to be elected to the Board of Trustees is increased and there is no public announcement of such action at least one-hundred thirty (130) days prior to the first (1st) anniversary of the date of the proxy statement for the preceding year's annual meeting, the notice required by this Section 2.14.1 also shall be considered timely, but only with respect to nominees for any new positions created by such increase, if such notice is delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day immediately following the day on which such public announcement is first made by the Trust. If the number of the Trustees to be elected to the Board of Trustees is decreased, there shall be no change or expansion in the time period for shareholders to make Maryland corporation, SNH Granite Gate Tenant LLC, a nomination from the time period specified in the second sentence of Section 2.14.1(c). Any change in time period for shareholders to make a nomination shall not change the time period to make any other proposal from the time period specified in the second sentence of Section 2.14.1(c).

(g) For purposes of this Section 2.14, (i) "Shareholder Associated Person" of any shareholder shall mean (A) any person acting in concert with, such shareholder, (B) any direct or indirect beneficial owner of shares of beneficial interest of the Trust beneficially owned or owned of record by such shareholder and (C) any person controlling, controlled by or under common control with such shareholder or a Shareholder Associated Person; and (ii) "Derivative Transaction" by a person shall mean any (A) transaction in, or arrangement, agreement or understanding with respect to, any option, warrant, convertible security, stock appreciation right or similar right with an exercise, conversion or exchange privilege, or settlement payment or mechanism related to, any security of the Trust, or similar instrument with a value derived in whole or in part from the value of a security of the Trust, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise or (B) any transaction, arrangement, agreement or understanding which included or includes an opportunity for such person, directly or indirectly, to profit or share in any profit derived from any increase or decrease in the value of any security of the Trust, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the Trust or to increase or decrease the number of securities of the Trust which such person was, is or will be entitled to vote, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise.

Section 2.14.2 Shareholder Nominations or Other Proposals Causing Covenant Breaches or Defaults. At the same time as the submission of any shareholder nomination or proposal of other business to be considered at a shareholders meeting that, if approved and implemented by the Trust, would cause the Trust or any subsidiary (as defined in Section 2.14.5(c)) of the Trust to be in breach of any covenant or otherwise cause a default (in any case, with or without notice or lapse of time) in any existing debt instrument or agreement of the Trust or any subsidiary of the Trust or other material contract or agreement of the Trust or any subsidiary of the Trust, the notice provided pursuant to Section 2.14.1(c) shall disclose: (a) whether the lender or contracting party has agreed to waive the breach of covenant or default, and, if so, shall include reasonable evidence thereof, or (b) in reasonable detail, the plan of the proponent shareholder(s) for the repayment of the indebtedness to the lender or curing the contractual breach or default and satisfying any resulting damage claim, specifically identifying the actions to be taken and the source of funds for any such repayment, and such notice shall be accompanied by a copy of any commitment letter(s) or agreement(s) for the financing of such plan.

Section 2.14.3 Shareholder Nominations or Other Proposals Requiring Governmental Action. If (a) any shareholder nomination or proposal of other business to be considered at a shareholders meeting could not be considered or, if approved, implemented by the Trust without the Trust, any subsidiary of the Trust, any proponent shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, the holder of proxies or their respective affiliates or associates filing with or otherwise notifying or obtaining the consent, approval or other action of any federal, state, municipal or other governmental or regulatory body (a "Governmental Action") or (b) any proponent shareholder's ownership of shares of beneficial interest of the Trust or any solicitation of proxies or votes or holding or exercising proxies by such shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, or their respective affiliates or associates would require Governmental Action, then, in the notice provided pursuant to Section 2.14.1(c) the proponent shareholder(s) shall disclose (x) whether such Governmental Action has been given or obtained, and, if so, such notice shall be accompanied by reasonable evidence thereof, or (y) in reasonable detail, the plan of such shareholder(s) for making or obtaining the Governmental Action.

Section 2.14.4 Special Meetings of Shareholders. As set forth in Section 2.6, only business brought before the meeting pursuant to the Trust's notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees may be considered at a special meeting of shareholders. Nominations of individuals for election to the Board of Trustees only may be made at a special meeting of shareholders at which Trustees are to be elected: (a) pursuant to the Trust's notice of meeting; (b) if the Board of Trustees has determined that Trustees shall be elected at such special meeting; or

(c) if there are no Trustees and the special meeting is called by the officers of the Trust for the election of successor Trustees; provided, however, that nominations of individuals to serve as Trustees at a special meeting called in the manner set forth in subclauses (a)-(c) above may only be made by (1) the applicable Trustees or officers of the Trust who call the special meeting of shareholders for the purpose of electing one or more Trustees or (2) any one or more shareholder(s) of the Trust who (A) satisfy the Ownership amount, holding period and certificate requirements set forth in Section 2.14.1(b)(ii), (B) have given timely notice thereof in writing to the secretary at the principal executive offices of the Trust, which notice contains or is accompanied by the information and documents required by Section 2.14.1(c) and Section 2.14.1(d), (C) satisfy the requirements of Section 2.14.2 and Section 2.14.3 and (D) further update and supplement such notice in accordance with Section 2.14; provided further, that, for purposes of this Section 2.14.4, all references in Section 2.14.1, Section 2.14.2 and Section 2.14.3 to the annual meeting and to the notice given under Section 2.14.1 shall be deemed, for purposes of this Section 2.14.4, to be references to the special meeting and the notice given under this Section 2.14.4. To be timely, a shareholder's notice under this Section 2.14.4 shall be delivered to the secretary at the principal executive offices of the Trust not earlier than the one-hundred fiftieth (150th) day prior to such special meeting and not later than 5:00 p.m. (Eastern Time) on the later of (i) the one-hundred twentieth (120th) day prior to such special meeting or (ii) the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting. Neither the postponement or adjournment of a special meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a shareholder(s)' notice as described above.

Section 2.14.5 General.

(a) If information submitted pursuant to this Section 2.14 by any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall be deemed by the Board of Trustees incomplete or inaccurate, any authorized officer or the Board of Trustees or any committee thereof may treat such information as not having been provided in accordance with this Section 2.14. Any notice submitted by a shareholder pursuant to this Section 2.14 that is deemed by the Board of Trustees inaccurate, incomplete or otherwise fails to satisfy completely any provision of this Section 2.14 shall be deemed defective and shall thereby render all proposals and nominations set forth in such notice defective. Upon written request by the secretary or the Board of Trustees or any committee thereof (which may be made from time to time), any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall provide, within three (3) business days after such request (or such other period as may be specified in such request), (i) written verification, satisfactory to the secretary or any other authorized officer or the Board of Trustees or any committee thereof, in his, her or its discretion, to demonstrate the accuracy of any information submitted by the shareholder pursuant to this Section 2.14, (ii) written responses to information reasonably requested by the secretary, the Board of Trustees or any committee thereof and (iii) a written update, to a current date, of any information submitted by the shareholder pursuant to this Section 2.14 as of an earlier date. If a shareholder fails to provide such written verification, information or update within such period, the secretary or any other authorized officer or the Board of Trustees may treat the information which was previously provided and to which the verification, request or update relates as not having been provided in accordance with this Section 2.14. It is the responsibility of a shareholder who wishes to make a nomination or other proposal to comply with the requirements of Section 2.14; nothing in this Section 2.14.5(a) or otherwise shall create any duty of the Trust, the Board of Trustees or any committee thereof nor any officer of the Trust to inform a shareholder that the information submitted pursuant to this Section 2.14 by or on behalf of such shareholder is incomplete or inaccurate or not otherwise in accordance with this Section 2.14 nor require the Trust, the Board of Trustees, any committee of the Board of Trustees or any officer of the Trust to request clarification or updating of information provided by any shareholder, but the Board of Trustees, a committee thereof or the secretary acting on behalf of the Board of Trustees or a committee, may do so in its, his or her discretion.

(b) Only such individuals who are nominated in accordance with this Section 2.14 or Section 2.18 shall be eligible for election by shareholders as Trustees and only such business shall be conducted at a meeting of shareholders as shall have been properly brought before the meeting in accordance with this Section 2.14. The chairperson of the meeting and the Board of Trustees shall each have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 2.14 and, if any proposed nomination or other business is determined not to be in compliance with this Section 2.14 or if it is determined that the solicitation in support of the nominees other than the Trust's nominees was not conducted in compliance with Rule 14a-19 under the Exchange Act, to declare that such defective nomination or proposal be disregarded.

(c) For purposes of this Section 2.14: (i) "public announcement" shall mean disclosure in (A) a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or any other widely circulated news or wire service or (B) a document publicly filed by the Trust with the SEC; (ii) "subsidiary" shall include, with respect to a person, any corporation, partnership, joint venture or other entity of which such person (A) owns, directly or indirectly, ten percent (10%) or more of the outstanding voting securities or other interests or (B) has a person designated by such person serving on, or a right, contractual or otherwise, to designate a person, so to serve on, the board of directors (or analogous governing body); and (iii) a person shall be deemed to "beneficially own" or "have beneficially owned" any shares of beneficial interest of the Trust not owned directly by such person if that person or a group of which such person is a member would be the beneficial owner of such shares under Rule 13d-3 and Rule 13d-5 of the Exchange Act.

(d) Notwithstanding the foregoing provisions of this Section 2.14, a shareholder shall also comply with all applicable legal requirements, including, without limitation, applicable requirements of state law and the Exchange Act and the rules and regulations thereunder, with respect to the matters set forth in this Section 2.14. Nothing in this Section 2.14 shall be deemed to require that a shareholder nomination of an individual for election to the Board of Trustees or a shareholder proposal relating to other business be included in the Trust's proxy statement, except as may be required by law.

(e) The Board of Trustees may from time to time require any individual nominated to serve as a Trustee to agree in writing with regard to matters of business ethics and confidentiality while such nominee serves as a Trustee, such agreement to be on the terms and in a form determined satisfactory by the Board of Trustees, as amended and supplemented from time to time in the discretion of the Board of Trustees. The terms of any such agreement may be substantially similar to the Code of Business Conduct and Ethics of the Trust or any similar code promulgated by the Trust or may differ from or supplement such Code.

(f) Determinations required or permitted to be made under this Section 2.14 by the Board of Trustees may be delegated by the Board of Trustees to a committee of the Board of Trustees, subject to applicable law.

Section 2.15 No Shareholder Actions by Written Consent. Shareholders shall not be authorized or permitted to take any action required or permitted to be taken at a meeting of shareholders by written consent, and may take such action only at a shareholders meeting of the Trust.

Section 2.16 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the chairperson of the meeting or any shareholder shall demand that voting be by ballot.

Section 2.17 Proposals of Business Which Are Not Proper Matters For Action By Shareholders. Notwithstanding anything in these Bylaws to the contrary, subject to applicable law, any shareholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board of Trustees or would reasonably likely, if considered by the shareholders or approved or implemented by the Trust, result in an impairment of the limited liability status for the shareholders, shall be deemed not to be a matter upon which the shareholders are entitled to vote. The Board of Trustees in its discretion shall be entitled to determine whether a shareholder proposal for business is not a matter upon which the shareholders are entitled to vote pursuant to this Section 2.17, and its decision shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

Section 2.18 Proxy Access for Trustee Nominations.

(a) Whenever the Board of Trustees solicits proxies with respect to the election of Trustees at an annual meeting of shareholders, subject to the provisions of this Section 2.18, the Trust shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at the direction of the Board of Trustees (or any duly authorized committee thereof), the name, together with the Required Information (as defined below), of any person nominated for election to the Board of Trustees by an Eligible Shareholder pursuant to and in accordance with this Section 2.18 (a "Shareholder Nominee"). For purposes of this Section 2.18, the "Required Information" that the Trust will include in its proxy statement is (i) the information provided to the Secretary of the Trust concerning the Shareholder Nominee and the Eligible Shareholder that is required to be disclosed in the Trust's proxy statement pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder and (ii) if the Eligible Shareholder so elects, a Supporting Statement (as defined in Section 2.18(h)). For the avoidance of doubt, nothing in this Section 2.18 shall limit the Trust's ability to solicit against any Shareholder Nominee or include in its proxy materials the Trust's own statements or other information relating to any Eligible Shareholder or Shareholder Nominee, including any information provided to the Trust pursuant to this Section 2.18. Subject to the provisions of this Section 2.18, the name of any Shareholder Nominee included in the Trust's proxy statement for an annual meeting of shareholders shall also be set forth on the form of proxy distributed by the Trust in connection with such annual meeting.

(b) In addition to any other requirements imposed by law, the Declaration of Trust or these Bylaws, for a nomination to be made by an Eligible Shareholder pursuant to this Section 2.18, the Eligible Shareholder must have given timely written notice thereof (a "Notice of Proxy Access Nomination") in proper form to the Secretary of the Trust and must expressly request in the Notice of Proxy Access Nomination to have such nominee included in the Trust's proxy materials pursuant to this Section 2.18. To be timely, a Notice of Proxy Access Nomination must be delivered to or be mailed and received at the principal executive offices of the Trust not less than one-hundred twenty (120) days nor more than one-hundred fifty (150) days prior to the anniversary of the date of the Trust's proxy statement for the immediately preceding annual meeting of shareholders. In no event shall the adjournment or postponement of an annual meeting, or the public disclosure of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a Notice of Proxy Access Nomination as described above.

(c) The maximum number of Shareholder Nominees nominated by all Eligible Shareholders that will be included in the Trust's proxy materials with respect to an annual meeting of shareholders (as adjusted pursuant to this Section 2.18(c), the "Permitted Number") shall not exceed the greater of (i) two (2) or (ii) twenty percent (20%) of the number of Trustees in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 2.18 (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below twenty percent (20%); provided, however, that if (x) the Trust has a classified Board of Trustees and (y) the size of the Board of Trustees is less than nine (9) Trustees, the Permitted Number is subject to reduction so that the Permitted Number for any annual meeting shall not exceed one-half of the number of Trustees to be elected at such annual meeting as noticed by the Trust rounded down to the nearest whole number but only to the

extent the Permitted Number after reduction pursuant to this proviso is not less than one. In the event that one or more vacancies for any reason occurs on the Board of Trustees after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Trustees resolves to reduce the size of the Board of Trustees in connection therewith, the Permitted Number shall be calculated based on the number of Trustees in office as so reduced. In addition, the Permitted Number shall be reduced by (i) the number of individuals who will be included in the Trust's proxy materials as nominees recommended by the Board of Trustees pursuant to an agreement, arrangement or other understanding with a shareholder or group of shareholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of shares from the Trust by such shareholder or group of shareholders), (ii) the number of Trustees in office as of the Final Proxy Access Nomination Date who were included in the Trust's proxy materials as Shareholder Nominees for any of the two (2) preceding annual meetings of shareholders (including any persons counted as Shareholder Nominees pursuant to the immediately succeeding sentence) and (x) whose term of office does not expire at the annual meeting or (y) whose re-election at the upcoming annual meeting is being recommended by the Board of Trustees and (iii) the number of Trustee candidates for which the Secretary of the Trust shall receive notice (whether or not subsequently withdrawn) that a shareholder intends to nominate one or more persons for election to the Board of Trustees pursuant to Section 2.14.1 of these Bylaws, but only to the extent the Permitted Number after such reduction with respect to this clause (iii) equals or exceeds one. For purposes of determining when the Permitted Number has been reached, any individual nominated by an Eligible Shareholder for inclusion in the Trust's proxy materials pursuant to this Section 2.18 whose nomination is subsequently withdrawn or whom the Board of Trustees decides to nominate for election to the Board of Trustees shall be counted as one of the Shareholder Nominees. Any Eligible Shareholder submitting more than one Shareholder Nominee for inclusion in the Trust's proxy materials pursuant to this Section 2.18 shall rank such Shareholder Nominees based on the order in which the Eligible Shareholder desires such Shareholder Nominees to be selected for inclusion in the Trust's proxy materials in the event that the total number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.18 exceeds the Permitted Number. In the event that the number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.18 exceeds the Permitted Number, the highest ranking Shareholder Nominee who meets the requirements of this Section 2.18 from each Eligible Shareholder will be selected for inclusion in the Trust's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of beneficial interest of the Trust each Eligible Shareholder disclosed as Owned in its Notice of Proxy Access Nomination. If the Permitted Number is not reached after the highest ranking Shareholder Nominee who meets the requirements of this Section 2.18 from each Eligible Shareholder has been selected, then the next highest ranking Shareholder Nominee who meets the requirements of this Section 2.18 from each Eligible Shareholder will be selected for inclusion in the Trust's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(d) An "Eligible Shareholder" is a shareholder or group of no more than twenty (20) shareholders (counting as one shareholder, for this purpose, any two (2) or more funds that are part of the same Qualifying Fund Group (as defined below)) that (i) has Owned (as defined in Section 2.18(e)) continuously for at least three years (the "Minimum Holding Period") a number of shares of beneficial interest of the Trust that represents at least three percent (3%) of the outstanding shares of beneficial interest of the Trust as of the most recent date for which such number is given in any filing by the Trust with the SEC prior to the date the Notice of Proxy Access Nomination is received at the principal executive offices of the Trust in accordance with this Section 2.18 (the "Required Shares"), (ii) continues to Own the Required Shares through the date of the annual meeting and (iii) meets all other requirements of this Section 2.18. A "Qualifying Fund Group" means two (2) or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a "group of investment companies" as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. Whenever the Eligible Shareholder consists of a group of shareholders (including a group of funds that are part of the same Qualifying Fund Group), (i) each provision in this Section 2.18 that requires the Eligible

Shareholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each shareholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares of beneficial interest of the Trust that each member has Owned continuously throughout the Minimum Holding Period in order to meet the three percent (3%) Ownership requirement of the "Required Shares" definition) and (ii) a breach of any obligation, agreement or representation under this Section 2.18 by any member of such group shall be deemed a breach by the Eligible Shareholder. No shareholder may be a member of more than one group of shareholders constituting an Eligible Shareholder with respect to any annual meeting.

(e) For purposes of this Section 2.18, the terms "Owned," "Owning" and other variations of the word "Own" shall have the meanings assigned to such terms in Section 2.14.1(b); provided, that, for purposes of Section 2.18 only, a shareholder's Ownership of shares of beneficial interest of the Trust shall be deemed to continue during any period in which (i) the shareholder has loaned such shares, provided that the shareholder has the power to recall such loaned shares on five (5) business days' notice and includes in the Notice of Proxy Access Nomination an agreement that it (A) will promptly recall such loaned shares upon being notified that any of its Shareholder Nominees will be included in the Trust's proxy materials and (B) will continue to hold such recalled shares through the date of the annual meeting or (ii) the shareholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the shareholder. Whether outstanding shares of beneficial interest of the Trust are "Owned" for purposes of Section 2.18 shall be decided by the Board of Trustees.

(f) To be in proper written form, a Notice of Proxy Access Nomination must set forth or be accompanied by the following:

(i) a statement by the Eligible Shareholder (A) setting forth and certifying as to the number of shares of beneficial interest of the Trust it Owns and has Owned continuously throughout the Minimum Holding Period, (B) agreeing to continue to Own the Required Shares through the date of annual meeting and (C) indicating whether it intends to continue to own the Required Shares for at least one year following the annual meeting;

(ii) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Notice of Proxy Access Nomination is delivered to or mailed and received at the principal executive offices of the Trust, the Eligible Shareholder Owns, and has Owned continuously throughout the Minimum Holding Period, the Required Shares, and the Eligible Shareholder's agreement to provide, within five (5) business days following the later of the record date for determining the shareholders entitled to receive notice of the annual meeting and the date notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Shareholder's continuous Ownership of the Required Shares through the record date;

(iii) a copy of the Schedule 14N that has been or is concurrently being filed with the SEC as required by Rule 14a-18 under the Exchange Act;

(iv) the information, representations, agreements and other documents that would be required to be set forth in or included with a notice of nomination pursuant to Section 2.14 of these Bylaws (including the written consent of each Shareholder Nominee to being named as a nominee and to serving as a Trustee if elected and the written representation and agreement of each Shareholder Nominee required by Section 2.14.1);

(v) a representation that the Eligible Shareholder (A) did not acquire, and is not holding, any securities of the Trust for the purpose or with the intent of changing or influencing control of the Trust, (B) has not nominated and will not nominate for election to the Board of Trustees at the annual meeting any person other than the Shareholder Nominee(s) it is nominating pursuant to this Section 2.18, (C) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a Trustee at the annual meeting other than its Shareholder Nominee(s) or a nominee of the Board of Trustees, (D) has not distributed and will not distribute to any shareholder of the Trust any form of proxy for the annual meeting other than the form distributed by the Trust, (E) has complied and will comply with all laws, rules and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting and (F) has provided and will provide facts, statements and other information in all communications with the Trust and its shareholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(vi) an undertaking that the Eligible Shareholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Shareholder's communications with the shareholders of the Trust or out of the information that the Eligible Shareholder provided to the Trust, (B) indemnify and hold harmless the Trust, each of its Trustees and officers, the manager of the Trust and each of the directors, officers and employees of the manager of the Trust or such manager's parent individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Trust, any of its Trustees or officers, the manager of the Trust or any of the directors, officers or employees of the manager of the Trust or such manager's parent, arising out of any nomination submitted by the Eligible Shareholder pursuant to this Section 2.18 or any solicitation or other activity in connection therewith and (C) file with the SEC any solicitation materials with the shareholders of the Trust relating to the meeting at which its Shareholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act;

(vii) in the case of a nomination by an Eligible Shareholder consisting of a group of shareholders, the designation by all group members of one member of the group that is authorized to receive communications, notices and inquiries from the Trust and to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 2.18 (including withdrawal of the nomination); and

(viii) in the case of a nomination by an Eligible Shareholder consisting of a group of shareholders in which two (2) or more funds are intended to be treated as one shareholder for purposes of qualifying as an Eligible Shareholder, documentation reasonably satisfactory to the Trust that demonstrates that the funds are part of the same Qualifying Fund Group.

(g) In addition to the information required or requested pursuant to Section 2.18(f) or any other provision of these Bylaws, (i) the Trust may require any proposed Shareholder Nominee to furnish any other information (A) that may reasonably be requested by the Trust to determine whether the Shareholder Nominee would meet the qualifications of an independent trustee under the Declaration of Trust, be independent under the rules and listing standards of any national securities exchange upon which any securities the Trust are listed or traded, be independent under any applicable rules of the SEC or any publicly disclosed standards used by the Board of Trustees in determining and disclosing the independence of Trustees (collectively, the "Independence Standards"), (B) that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such Shareholder Nominee or (C) that may reasonably be requested by the Trust to determine the eligibility of such Shareholder Nominee to be included in the Trust's proxy materials pursuant to this Section 2.18 or to serve as a Trustee, and (ii) the Trust may require the Eligible Shareholder to furnish any other information that may reasonably be requested by the Trust to verify the Eligible Shareholder's continuous Ownership of the Required Shares throughout the Minimum Holding Period and through the date of the annual meeting.

(h) For each of its Shareholder Nominees, the Eligible Shareholder may, at its option, provide to the Secretary of the Trust, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed five hundred (500) words, in support of such Shareholder Nominee's candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Shareholder (including any group of shareholders together constituting an Eligible Shareholder) in support of each of its Shareholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 2.18, the Trust may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law, rule or regulation.

(i) In the event that any information or communications provided by an Eligible Shareholder or a Shareholder Nominee to the Trust or its shareholders is not, when provided, or thereafter ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Shareholder or Shareholder Nominee, as the case may be, shall promptly notify the Secretary of the Trust of any such defect and of the information that is required to correct any such defect. Without limiting the foregoing, an Eligible Shareholder shall provide immediate notice to the Trust if the Eligible Shareholder ceases to Own any of the Required Shares prior to the date of the annual meeting. In addition, any person providing any information to the Trust pursuant to this Section 2.18 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for determining the shareholders entitled to receive notice of the annual meeting, and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Trust not later than five (5) business days following the later of the record date for determining the shareholders entitled to receive notice of the annual meeting and the date notice of the record date is first publicly disclosed. For the avoidance of doubt, no notification, update or supplement provided pursuant to this Section 2.18(i) or otherwise shall be deemed to cure any defect in any previously provided information or communications or limit the remedies available to the

Trust relating to any such defect (including the right to omit a Shareholder Nominee from its proxy materials pursuant to this Section 2.18).

(j) Notwithstanding anything to the contrary contained in this Section 2.18, the Trust shall not be required to include in its proxy materials, pursuant to this Section 2.18, any Shareholder Nominee (i) who would not be independent under any of the Independence Standards, (ii) whose election as a member of the Board of Trustees would cause the Trust to be in violation of these Bylaws, the Declaration of Trust, the rules and listing standards of any national securities exchange upon which any securities of the Trust are listed or traded, or any applicable law, rule or regulation, (iii) who is or has been, within the past three (3) years, an officer, director or trustee of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, of the Trust or its manager, (iv) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (v) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, or (vi) who shall have provided any information to the Trust or its shareholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

(k) Notwithstanding anything to the contrary set forth herein, if (i) a Shareholder Nominee and/or the applicable Eligible Shareholder breaches any of its agreements or representations or fails to comply with any of its obligations under this Section 2.18 or (ii) a Shareholder Nominee otherwise becomes ineligible for inclusion in the Trust's proxy

materials pursuant to this Section 2.18, or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board of Trustees (or any duly authorized committee thereof) or the chairperson of the annual meeting, (A) the Trust may omit or, to the extent feasible, remove the information concerning such Shareholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its shareholders that such Shareholder Nominee will not be eligible for election at the annual meeting, (B) the Trust shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Shareholder or any other Eligible Shareholder and (C) the chairperson of the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Trust.

(l) Any Shareholder Nominee who is included in the Trust's proxy materials for a particular annual meeting of shareholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least twenty percent (20%) of the votes cast in favor of such Shareholder Nominee's election, will be ineligible to be a Shareholder Nominee pursuant to this Section 2.18 for the next two (2) annual meetings of shareholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any shareholder from nominating any person to the Board of Trustees pursuant to and in accordance with Section 2.14.1.

(m) Other than pursuant to Rule 14a-19 of the Exchange Act, this Section 2.18 provides the exclusive method for a shareholder to include nominees for election to the Board of Trustees in the Trust's proxy materials.

ARTICLE III TRUSTEES

Section 3.1 General Powers; Qualifications; Trustees Holding Over. The business and affairs of the Trust shall be managed under the direction of its Board of Trustees. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. To qualify for nomination or election as a Trustee, an individual, at the time of nomination and election, shall, without limitation, (a) have substantial expertise or experience relevant to the business of the Trust and its subsidiaries (as determined by the Board of Trustees), (b) not have been convicted of a felony, (c) meet the qualifications of an Independent Trustee or a Managing Trustee, as the case may be, depending upon the position for which such individual may be nominated and elected, and (d) have been nominated for election to the Board of Trustees in accordance with Section 2.14 or Section 2.18. In case of failure to elect Trustees at an annual meeting of the shareholders, the incumbent Trustees shall hold over and continue to direct the management of the business and affairs of the Trust until they may resign or until their successors are elected and qualify. The failure of shareholders to elect Trustees at an annual meeting of shareholders shall not cause vacancies on the Board of Trustees requiring the officers of the Trust to call a special meeting of shareholders to elect Trustees unless all Trustees, including holdover Trustees, are unwilling or unable to continue to serve.

Section 3.2 Independent Trustees and Managing Trustees. A majority of the Trustees holding office shall at all times be Independent Trustees; provided, however, that upon a failure to comply with this requirement as a result of the creation of a temporary vacancy which shall be filled by an Independent Trustee, whether as a result of enlargement of the Board of Trustees or the resignation, removal or death of a Trustee who is an Independent Trustee, such requirement shall not be applicable. An "Independent Trustee" is one who is not an employee of the Advisor (as defined in the Declaration of Trust),

who is not involved in the Trust's day to day activities, who meets the qualifications of an independent trustee under the Declaration of Trust and who meets the qualifications of an independent director (not including the specific independence requirements applicable only to members of the Audit Committee or Compensation Committee of the Board of Trustees) under the applicable rules of each securities exchange upon which shares of beneficial interest of the Trust are listed for trading and the SEC, as those requirements may be amended from time to time. If the number of Trustees, at any time, is set at less than five (5), at least one (1) Trustee shall be a Managing Trustee. So long as the number of Trustees shall be five (5) or greater, at least two (2) Trustees shall be Managing Trustees. "Managing Trustees" shall mean Trustees who have been employees, officers or directors of the Advisor or involved in the day to day activities of the Trust for at least one (1) year prior to their election. If at any time the Board of Trustees shall not be comprised of a majority of Independent Trustees, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have a majority of Independent Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees. If at any time the Board of Trustees shall not be comprised of a number of Managing Trustees as is required under this Section 3.2, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have the requisite number of Managing Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees.

Section 3.3 Number and Tenure. Pursuant to the Articles Supplementary accepted for record by the State Department of Assessments and Taxation (the "SDAT") as of May 11, 2000, the number of Trustees constituting the entire Board of Trustees may be increased or decreased from time to time only by a vote of the Trustees; provided however that the tenure of office of a Trustee shall not be affected by any decrease in the number of Trustees. The number of Trustees shall be five (5) until increased or decreased by the Board of Trustees.

Section 3.4 Annual and Regular Meetings. An annual meeting of the Trustees shall be held immediately after the annual meeting of shareholders, no notice other than this Bylaw being necessary. The time and place of the annual meeting of the Trustees may be changed by the Board of Trustees. The Trustees may provide, by resolution, the time and place, either within or without the State of Maryland for the holding of regular meetings of the Trustees without other notice than such resolution. If any such regular meeting is not so provided for, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Trustees.

Section 3.5 Special Meetings. Special meetings of the Trustees may be called at any time by any Managing Trustee, the president or pursuant to the request of any two (2) Trustees then in office. The person or persons authorized to call special meetings of the Trustees may fix any place, either within or without the State of Maryland, as the place for holding any special meeting of the Trustees called by them.

Section 3.6 Notice. Notice of any special meeting shall be given by written notice delivered personally or by electronic mail, telephoned, facsimile transmitted, overnight couriered (with proof of delivery) or mailed to each Trustee at his or her business or residence address. Personally delivered, telephoned, facsimile transmitted or electronically mailed notices shall be given at least twenty-four (24) hours prior to the meeting. Notice by mail shall be deposited in the U.S. mail at least seventy-two (72) hours prior to the meeting. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail properly addressed, with postage thereon prepaid. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Trust by the Trustee. Telephone notice shall be deemed given when the Trustee is personally given such notice in a telephone call to which he is a party. Facsimile transmission notice shall be deemed given upon completion of the transmission of the message to

the number given to the Trust by the Trustee and receipt of a completed answer back indicating receipt. If sent by overnight courier, such notice shall be deemed given when delivered to the courier. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Trustees need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 3.7 Quorum. A majority of the Trustees shall constitute a quorum for transaction of business at any meeting of the Trustees, provided that, if less than a majority of such Trustees are present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to the Declaration of Trust or these Bylaws, the vote of a majority of a particular group of Trustees is required for action, a quorum for that action shall also include a majority of such group. The Trustees present at a meeting of the Board of Trustees which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of such number of Trustees as would otherwise result in less than a quorum then being present at the meeting.

Section 3.8 Voting. The action of the majority of the Trustees present at a meeting at which a quorum is or was present shall be the action of the Trustees, unless the concurrence of a greater proportion is required for such action by specific provision of an applicable statute, the Declaration of Trust or these Bylaws. If enough Trustees have withdrawn from a meeting

to leave fewer than are required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of Trustees necessary to constitute a quorum at such meeting shall be the action of the Board of Trustees, unless the concurrence of a greater proportion is required for such action by applicable law, the Declaration of Trust or these Bylaws.

Section 3.9 Telephone Meetings. Trustees may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting. Such meeting shall be deemed to have been held at a place designated by the Trustees at the meeting.

Section 3.10 Action by Written Consent of Trustees. Unless specifically otherwise provided in the Declaration of Trust, any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting, if a majority of the Trustees shall individually or collectively consent in writing or by electronic transmission to such action. Such written or electronic consent or consents shall be filed with the records of the Trust and shall have the same force and effect as the affirmative vote of such Trustees at a duly held meeting of the Trustees at which a quorum was present.

Section 3.11 Waiver of Notice. The actions taken at any meeting of the Trustees, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Trustees not present waives notice, consents to the holding of such meeting or approves the minutes thereof.

Section 3.12 Vacancies. Pursuant to the Articles Supplementary accepted for record by the SDAT as of May 11, 2000, if for any reason any or all the Trustees cease to be Trustees, such event shall not terminate the Trust or affect these Bylaws or the powers of the remaining Trustees hereunder (even if fewer than three Trustees remain). Any vacancy on the Board of Trustees may be filled only by a majority of the remaining Trustees, even if the remaining Trustees do not constitute a quorum. Any Trustee elected to fill a vacancy, whether occurring due to an increase in size of the Board of Trustees or by the death, resignation or removal of any Trustee, shall hold office for the remainder of the full term of the class of Trustees in which the vacancy occurred or was created and until a successor is elected and qualifies.

Section 3.13 Compensation. The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as the Trustees may determine from time to time. Trustees may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Trustees or of any committee thereof; and for their expenses, if any, in connection with each property visit and any other service or activity performed or engaged in as Trustees. The Trustees shall be entitled to receive remuneration for services rendered to the Trust in any other capacity, and such services may include, without limitation, services as an officer of the Trust, services as an employee of the Advisor, legal, accounting or other professional services, or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee.

Section 3.14 Removal of Trustees. A Trustee may be removed by the affirmative vote either of all the remaining Trustees or if and only to the extent permitted by applicable law, at a meeting of the shareholders if a proposal for such action is properly brought before such meeting for that purpose, by the affirmative vote of the holders of not less than two-thirds (2/3) of the shares of beneficial interest of the Trust then outstanding and entitled to vote generally in the election of Trustees. For a proposal to remove one or more Trustees to be properly brought before such meeting by one or more shareholders, such shareholder(s) shall meet and comply with all requirements in these Bylaws for a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders or a proposal of other business to be properly brought by such shareholder(s) at a meeting of the shareholders as set forth in Section 2.14.1, including the timely written notice, Ownership amount, holding period, certificate, information and documentation requirements of Section 2.14.1(b), Section 2.14.1(c), Section 2.14.1(d), Section 2.14.2 and Section 2.14.3.

Section 3.15 Surety Bonds. Unless specifically required by law, no Trustee shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 3.16 Reliance. Each Trustee, officer, employee and agent of the Trust shall, in the performance of his or her duties with respect to the Trust, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Trust or by the Advisor, accountants, appraisers or other experts or consultants selected by the Board of Trustees or officers of the Trust, regardless of whether the Advisor or any such accountant, appraiser or other expert or consultant may also be a Trustee.

Section 3.17 Interested Trustee Transactions. Section 2-419 of the Maryland General Corporation Law (the "MGCL") (or any successor statute) 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.

Section 3.18 Certain Rights of Trustees, Officers, Employees and Agents. A Trustee shall have no responsibility to devote his or her full time to the affairs of the Trust. Any Trustee or officer, employee or agent of the Trust, in his or her personal capacity or in a capacity as an affiliate, employee or agent of any other person, or otherwise, may have business interests and engage in business activities similar or in addition to those of or relating to the Trust.

Section 3.19 Emergency Provisions. Notwithstanding any other provision in the Declaration of Trust or these Bylaws, this Section 3.19 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Trustees under ARTICLE III cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board of Trustees, (a) a meeting of the Board of Trustees may be called by any Managing Trustee or officer of the Trust by any means feasible under the circumstances and (b) notice of any meeting of the Board of Trustees during such an Emergency may be given less than twenty-four (24) hours prior to the meeting to as many Trustees and by such means as it may be feasible at the time, including publication, television or radio.

ARTICLE IV COMMITTEES

Section 4.1 Number, Tenure and Qualifications. The Board of Trustees shall appoint an Audit Committee, a Compensation Committee and a Nominating and Governance Committee. Each of these committees shall be composed of three or more Trustees, to serve at the pleasure of the Board of Trustees. The Board of Trustees may also appoint other committees from time to time composed of one or more members, at least one of which shall be a Trustee, to serve at the pleasure of the Board of Trustees. The Board of Trustees shall adopt a charter with respect to the Audit Committee, the Compensation Committee and the Nominating and Governance Committee, which charter shall specify the purposes, the criteria for membership and the responsibility and duties and may specify other matters with respect to each committee. The Board of Trustees may also adopt a charter with respect to other committees.

Section 4.2 Powers. The Trustees may delegate any of the powers of the Trustees to committees appointed under Section 4.1 and composed solely of Trustees, except as prohibited by law. If a charter has been adopted with respect to a committee composed solely of Trustees, the charter shall constitute a delegation by the Trustees of the powers of the Board of Trustees necessary to carry out the purposes, responsibilities and duties of a committee provided in the charter or reasonably related to those purposes, responsibilities and duties, to the extent permitted by law.

Section 4.3 Meetings. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Trustees. One-third (1/3), but not less than one, of the members of any committee shall be present in person at any meeting of a committee in order to constitute a quorum for the transaction of business at a meeting, and the act of a majority present at a meeting at the time of a vote if a quorum is then present shall be the act of a committee. The Board of Trustees or, if authorized by the Board in a committee charter or otherwise, the committee members may designate a chairman of any committee, and the chairman or, in the absence of a chairman, a majority of any committee may fix the time and place of its meetings unless the Board shall otherwise provide. In the absence or disqualification of any member of any committee, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another Trustee to act at the meeting in the place of absent or disqualified members.

Section 4.4 Telephone Meetings. Members of a committee may participate in a meeting by means of a conference telephone or similar communications equipment and participation in a meeting by these means shall constitute presence in person at the meeting.

Section 4.5 Action by Written Consent of Committees. Any action required or permitted to be taken at any meeting of a committee of the Trustees may be taken without a meeting, if a consent in writing or by electronic transmission to such action is signed by a majority of the committee and such written or electronic consent is filed with the minutes of proceedings of such committee.

Section 4.6 Vacancies. Subject to the provisions hereof, the Board of Trustees shall have the power at any time to change the membership of any committee, to fill all vacancies, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

ARTICLE V OFFICERS

Section 5.1 General Provisions. The officers of the Trust shall include a president, a secretary and a treasurer. In addition, the Board of Trustees may from time to time elect such other officers with such titles, powers and duties as set forth herein or as the Board of Trustees shall deem necessary or desirable, including a chairman of the board, a vice chairman of the board, a chief executive officer, a chief operating officer, a chief financial officer, one or more vice presidents, one or more assistant secretaries and one or more assistant treasurers. The officers of the Trust shall be elected annually by the Board of Trustees. Each officer shall hold office until his or her successor is elected and qualifies or until his or her death, resignation or removal in the manner hereinafter provided. Any two (2) or more offices, except that of president and vice president, may be held by the same person. In their discretion, the Trustees may leave unfilled any office except that of president, treasurer and secretary. Election of an officer or agent shall not of itself create contract rights between the Trust and such officer or agent.

Section 5.2 Removal and Resignation. Any officer or agent of the Trust may be removed, with or without cause, by the Board of Trustees if in its judgment the best interests of the Trust would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Trust may resign at any time by delivering his or her resignation to the Board of Trustees, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Trust.

Section 5.3 Vacancies. A vacancy in any office may be filled by the Board of Trustees for the balance of the term.

Section 5.4 **President.** Except as the Board of Trustees may otherwise provide, the president shall have the duties usually vested in a president. The president shall have such other duties as may be assigned to the president by the Board of Trustees from time to time. The president may execute any deed, mortgage, bond, lease, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Trust or shall be required by law to be otherwise executed.

Section 5.5 **Chief Operating Officer.** If elected, except as the Board of Trustees may otherwise provide, the chief operating officer shall have the duties usually vested in a chief operating officer. The chief operating officer shall have such other duties as may be assigned to the chief operating officer by the president or the Board of Trustees from time to time.

Section 5.6 **Chief Financial Officer.** If elected, except as the Board of Trustees may otherwise provide, the chief financial officer shall have the duties usually vested in a chief financial officer. The chief financial officer shall have such other duties as may be assigned to the chief financial officer by the president or the Board of Trustees from time to time.

Section 5.7 **Vice Presidents.** In the absence or disability of the president, the vice president, if any (or if there is more than one, the vice presidents in the order designated or, in the absence of any designation, then in the order of their election), shall perform the duties and exercise the powers of the president. The vice president(s) shall have such other duties as may be assigned to such vice president by the president or the Board of Trustees from time to time. The Board of Trustees may designate one or more vice presidents as executive vice president, senior vice president or vice presidents for particular areas of responsibility.

Section 5.8 **Secretary.** Except as the Board of Trustees may otherwise provide, the secretary (or his or her designee) shall (a) keep the minutes of the proceedings of the shareholders, the Board of Trustees and committees of the Board of Trustees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the Trust records and of the seal of the Trust, if any; and (d) maintain a share register, showing the ownership and transfers of ownership of all shares of beneficial interest of the Trust, unless a transfer agent is employed to maintain and does maintain such a share register. The secretary shall have such other duties as may be assigned to the secretary by the president or the Board of Trustees from time to time.

Section 5.9 **Treasurer.** Except as the Board of Trustees may otherwise provide, the treasurer shall (a) have general charge of the financial affairs of the Trust; (b) have or oversee in accordance with Section 6.3 the custody of the funds, securities and other valuable documents of the Trust; (c) maintain or oversee the maintenance of proper financial books and records of the Trust; and (d) have the duties usually vested in a treasurer. The treasurer shall have such other duties as may be assigned to the treasurer by the president or the Board of Trustees from time to time.

Section 5.10 **Assistant Secretaries and Assistant Treasurers.** The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the Board of Trustees from time to time.

ARTICLE VI CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 6.1 **Contracts.** The Board of Trustees may authorize any Trustee, officer or agent (including the Advisor or any officer of the Advisor) to execute and deliver any instrument in the name of and on behalf of the Trust and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Trust when duly authorized or ratified by action of the Board of Trustees and executed by an authorized person.

Section 6.2 **Checks and Drafts.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Trust shall be signed by such officer or agent of the Trust in such manner as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

Section 6.3 **Deposits.** All funds of the Trust not otherwise employed shall be deposited or invested from time to time to the credit of the Trust as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

ARTICLE VII SHARES

Section 7.1 **Certificates.** Ownership of shares of any class of shares of beneficial interest of the Trust shall be evidenced by certificates, or at the election of a shareholder in book entry form. Unless otherwise determined by the Board of Trustees, any such certificates shall be signed by the president or a vice president and countersigned by the secretary or an assistant secretary or the treasurer or an assistant treasurer and may be sealed with the seal, if any, of the Trust. The signatures may be either manual or facsimile. Certificates shall be consecutively numbered and if the Trust shall from time to time issue several classes of shares, each class may have its own number series. A certificate is valid and may be issued whether or not an officer who signed it is still an officer when it is issued.

Section 7.2 **Transfers.**

(a) Shares of beneficial interest of the Trust shall be transferable in the manner provided by applicable law, the Declaration of Trust and these Bylaws. Certificates shall be treated as negotiable and title thereto and to the shares they represent shall be transferred by delivery thereof to the same extent as those of a Maryland stock corporation.

(b) The Trust shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided in these Bylaws or by the laws of the State of Maryland.

Section 7.3 Lost Certificates. For shares evidenced by certificates, any officer designated by the Trustees may direct a new certificate to be issued in place of any certificate previously issued by the Trust alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing the issuance of a new certificate, an officer designated by the Trustees may, in such officer's discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he shall require and/or to give bond, with sufficient surety, to the Trust to indemnify it against any loss or claim which may arise as a result of the issuance of a new certificate.

Section 7.4 Closing of Transfer Books or Fixing of Record Date.

(a) The Trustees may set, in advance, a record date for the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or determining shareholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of shareholders for any other proper purpose.

(b) In lieu of fixing a record date, the Trustees may provide that the share transfer books shall be closed for a stated period but not longer than twenty (20) days. If the share transfer books are closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days before the date of such meeting.

(c) If no record date is fixed and the share transfer books are not closed for the determination of shareholders, (i) the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day on which the notice of meeting is mailed or the thirtieth (30th) day before the meeting, whichever is the closer date to the meeting; and (ii) the record date for the determination of shareholders entitled to receive payment of a dividend or an allotment of any other rights shall be the close of business on the day on which the resolution of the Trustees, declaring the dividend or allotment of rights, is adopted.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof unless the Board of Trustees shall set a new record date with respect thereto.

Section 7.5 Share Ledger. The Trust shall maintain at its principal office or at the office of its counsel, accountants or transfer agent a share ledger containing the name and address of each shareholder and the number of shares of each class of shares of beneficial interest of the Trust held by such shareholder.

Section 7.6 Fractional Shares; Issuance of Units. The Trustees may issue fractional shares or provide for the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the Declaration of Trust or these Bylaws, the Trustees may issue units consisting of different securities of the Trust. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Trust, except that the Trustees may provide that for a specified period securities of the Trust issued in such unit may be transferred on the books of the Trust only in such unit.

Section 7.7 Determination of Beneficial Ownership and Constructive Ownership. For the avoidance of doubt and pursuant to the authority granted to the Board in Section 7.2.6 of the Declaration of Trust, for purposes of ARTICLE VII of the Declaration of Trust, a Person (as defined in ARTICLE VII of the Declaration of Trust) owns directly or indirectly all Equity Shares (as defined in ARTICLE VII of the Declaration of Trust) that such Person is deemed to beneficially own pursuant to Rule 13d-3 under the Exchange Act.

ARTICLE VIII
REGULATORY COMPLIANCE AND DISCLOSURE

Section 8.1 Actions Requiring Regulatory Compliance Implicating the Trust. If any shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or actions taken by the shareholder affecting the Trust, triggers the application of any requirement or regulation of any federal, state, municipal or other governmental or regulatory body on the Trust or any subsidiary (for purposes of this ARTICLE VIII, as defined in Section 2.14.5(c)) of the Trust or any of their respective businesses, assets or operations, including, without limitation, any obligations to make or obtain a Governmental Action (as defined in Section 2.14.3), such shareholder shall promptly take all actions necessary and fully cooperate with the Trust to ensure that such requirements or regulations are satisfied without restricting, imposing additional obligations on or in any way limiting the business, assets, operations or prospects of the Trust or any subsidiary of the Trust. If the shareholder fails or is otherwise unable to promptly take such actions so to cause satisfaction of such requirements or regulations, the shareholder shall promptly divest a sufficient number of shares of beneficial interest of the Trust necessary to cause the application of such requirement or regulation to not apply to the Trust or any subsidiary of the Trust. If the shareholder fails to cause such satisfaction or divest itself of such sufficient number of shares of beneficial interest of the Trust by not later than the tenth (10th) day after triggering such requirement or regulation referred to in this Section 8.1, then any shares of beneficial interest of the Trust beneficially owned by such shareholder at and in excess of the level triggering the application of such requirement or regulation shall, to the fullest extent permitted by law, be deemed to constitute shares held in violation of the ownership limitations set forth in ARTICLE VII of the Declaration of Trust and be subject to the provisions of ARTICLE VII of the Declaration of Trust and any actions triggering the application of such a requirement or regulation may be deemed by the Trust to be of no force or effect. Moreover, if the shareholder who triggers the application of any regulation or requirement fails to satisfy the requirements or regulations or to take curative actions within such ten (10) day period, the Trust may take all other actions which the Board of Trustees deems appropriate to require compliance or to preserve the value of the Trust's assets; and the Trust may charge the offending shareholder for the Trust's costs and expenses as well as any damages which may result to the Trust.

As an example and not as a limitation, at the time these Bylaws are being amended and restated, the Trust owns healthcare facilities in various states which are subject to state regulatory and licensing requirements in each such state. Under

the licensing terms or regulatory regime of certain states with jurisdiction over the Trust, a shareholder which acquires a controlling equity position in the Trust may be required to obtain regulatory approval or consent prior to or as a result of obtaining such ownership. Accordingly, if a shareholder which acquires a controlling equity position in the Trust that would require the shareholder or the Trust to obtain the consent or approval of a state authority due to the fact that the Trust owns licensed healthcare facilities in such state, and the shareholder refuses to provide the Trust with information required to be submitted to the applicable state authority or if the state authority declines to approve the shareholder's ownership of the Trust, then, in either event, shares of the Trust owned by the shareholder necessary to reduce its ownership to an amount so that the shareholder's ownership of

Trust shares would not require it to provide any such information to, or for consent to be obtained from, the state authority, may be deemed by the Board of Trustees to be shares held in violation of the ownership limitation in ARTICLE VII of the Declaration of Trust and shall be subject to the provisions of ARTICLE VII of the Declaration of Trust.

Section 8.2 **Compliance With Law.** Shareholders shall comply with all applicable requirements of federal and state laws, including all rules and regulations promulgated thereunder, in connection with such shareholder's ownership interest in the Trust and all other laws which apply to the Trust or any subsidiary of the Trust or their respective businesses, assets or operations and which require action or inaction on the part of the shareholder.

Section 8.3 **Limitation on Voting Shares or Proxies.** Without limiting the provisions of Section 8.1, if a shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or its receipt or exercise of proxies to vote shares owned by other shareholders, would not be permitted to vote such shares or proxies for such shares in excess of a certain amount pursuant to applicable law (including by way of example, applicable state insurance regulations) but the Board of Trustees determines that the excess shares or shares represented by the excess proxies are necessary to obtain a quorum, then such shareholder shall not be entitled to vote any such excess shares or proxies, and instead such excess shares or proxies may, to the fullest extent permitted by law, be voted by the Advisor (or by another person designated by the Trustees) in proportion to the total shares otherwise voted on such matter.

Section 8.4 **Representations, Warranties and Covenants Made to Governmental or Regulatory Bodies.** To the fullest extent permitted by law, any representation, warranty or covenant made by a shareholder with any governmental or regulatory body in connection with such shareholder's interest in the Trust or any subsidiary of the Trust shall be deemed to be simultaneously made to, for the benefit of and enforceable by, the Trust and any applicable subsidiary of the Trust.

Section 8.5 **Board of Trustees' Determinations.** The Board of Trustees shall be empowered to make all determinations regarding the interpretation, application, enforcement and compliance with any matters referred to or contemplated by these Bylaws.

ARTICLE IX RESTRICTIONS ON TRANSFER OF SHARES

Section 9.1 **Definitions.** As used in this ARTICLE IX, the following terms have the following meanings (and any references to any portions of Treasury Regulation Sections 1.382-2, 1.382-2T, 1.382-3 and 1.382-4 shall include any successor provisions):

- (a) "5-percent Shareholder" means a Person or group of Persons that is a "5-percent shareholder" of the Trust pursuant to Treasury Regulation Section 1.382-2T(g).
- (b) "5-percent Transaction" means any Transfer described in clause (a) or (b) of Section 9.2.
- (c) "Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and the rulings issued thereunder.
- (d) "Effective Date" means November 1, 2023.
- (e) "Excess Securities" has the meaning given such term in Section 9.4.
- (f) "Expiration Date" means the earlier of (i) the repeal of Section 382 of the Code or any successor statute if the Board of Trustees determines that this ARTICLE IX is no longer necessary for the preservation of Tax Benefits, (ii) the beginning of a taxable year of the Trust to which the Board of Trustees determines that no Tax Benefits may be carried forward, or (iii) such date as the Board of Trustees shall fix in accordance with Section 9.10.
- (g) "Grandfathered Owner" has the meaning given such term in Section 9.2.
- (h) "Percentage Share Ownership" means the percentage Share Ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Code as determined in accordance with the Treasury Regulation Sections 1.382-2T(g), (h), (j) and (k) and 1.382-4.
- (i) "Person" means any individual, firm, corporation, company, limited liability company, partnership, joint venture, and SNH Medical Office Properties Trust, a Maryland real estate investment trust or other legal entity, including a group of persons treated as an entity pursuant to Treasury Regulation Section 1.382-3(a)(1)(i), and any successor of any such individual or entity.
- (j) "Prohibited Transfer" means any Transfer or purported Transfer of Trust Securities to the extent that such Transfer is prohibited and/or void under this ARTICLE IX.
- (k) "Public Group" has the meaning set forth in Treasury Regulation Section 1.382-2T(f)(13), excluding any "direct public group" with respect to the Trust, as that term is used in Treasury Regulation Section 1.382-2T(j)(2)(ii).
- (l) "Purported Transferee" has the meaning set forth in Section 9.4.
- (m) "Securities" and "Security" each has the meaning set forth in Section 9.5.
- (n) "Shares" means any interest that would be treated as "stock" of the Trust pursuant to Treasury Regulation Sections 1.382-2(a)(3) and 1.382-2T(f)(18).
- (o) "Share Ownership" means any direct or indirect ownership of Shares, including any ownership by virtue of application of constructive ownership rules, with such direct, indirect, and constructive ownership determined under the provisions of Section 382 of the Code and the Treasury Regulations.
- (p) "Tax Benefits" means the net operating loss carryforwards, capital loss carryforwards, general business credit carryforwards, alternative minimum tax credit carryforwards and foreign tax credit carryforwards, as well as any loss or deduction attributable to a "net unrealized built-in loss" of the Trust or any direct or indirect subsidiary

thereof, within the meaning of Section 382 of the Code.

(q) "Transfer" means, any direct or indirect (by operation of law or otherwise) sale, transfer, assignment, conveyance, pledge, devise or other disposition or other action taken by a Person, other than the Trust, that alters the Percentage Share Ownership of any Person. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation Sections 1.382-2T(h)(4)(v) and 1.382-4). For the avoidance of doubt, a Transfer shall not include the creation or grant by the Trust of an option to purchase securities of the Trust, nor shall a Transfer include the issuance of Shares by the Trust.

(r) "Transferee" means any Person to whom Trust Securities are Transferred.

(s) "Treasury Regulations" means the regulations, including temporary regulations or any successor regulations, promulgated under the Code, as amended from time to time.

(t) "Trust Security" or "Trust Securities" means (i) common shares of beneficial interest of the Trust, (ii) preferred shares of beneficial interest of the Trust (other than preferred stock described in Section 1504(a)(4) of the Code), (iii) warrants, rights, or options (including options within the meaning of Treasury Regulation Sections 1.382-2T(h)(4)(v) and 1.382-4) to purchase Securities issued by the Trust, and (iv) any Shares not included within the preceding clauses (i) through (iii) of this definition.

Section 9.2 Transfer and Ownership Restrictions. From and after the Effective Date, any attempted Transfer of Trust Securities prior to the Expiration Date and any attempted Transfer of Trust Securities pursuant to an agreement entered into prior to the Expiration Date shall be prohibited and void ab initio to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (a) any Person or Persons would become a 5-percent Shareholder or (b) the Percentage Share Ownership of any 5-percent Shareholder would be increased. Any 5-percent Shareholder as of the Effective Date (the "Grandfathered Owner") shall not be required, solely as a result of the adoption of this ARTICLE IX and the occurrence of the Effective Date, pursuant to this ARTICLE IX, to reduce or dispose of any Trust Securities owned by such Grandfathered Owner as of the Effective Date and none of such Trust Securities owned by such Grandfathered Owner as of the Effective Date shall be deemed, solely as a result of the adoption of this ARTICLE IX and the occurrence of the Effective Date,

to be Excess Securities; provided, however, that such Grandfathered Owner may not acquire any additional Trust Securities at any time such Grandfathered Owner remains a 5-percent Shareholder and, upon such Grandfathered Owner no longer being a 5-percent Shareholder, the provisions of this ARTICLE IX shall apply in their entirety to such Grandfathered Owner.

Section 9.3 Exceptions.

(a) Notwithstanding anything to the contrary herein, Transfers to a Public Group (including a new Public Group created under Treasury Regulation Section 1.382-2T(j)(3)(i)) shall be permitted.

(b) The restrictions set forth in Section 9.2 shall not apply to an attempted Transfer that is a 5-percent Transaction if the transferor or the Transferee obtains the written approval of the Board of Trustees or a duly authorized committee thereof. The Board of Trustees may impose conditions in connection with such approval, including, without limitation, restrictions on the ability or right of any Transferee to Transfer Shares acquired through a Transfer. Approvals of the Board of Trustees hereunder may be given prospectively or retroactively.

Section 9.4 Excess Securities.

(a) No officer or agent of the Trust shall record any Prohibited Transfer in the share register for the Trust, and the purported transferee of such a Prohibited Transfer (the "Purported Transferee") shall not be recognized as a shareholder for any purpose whatsoever in respect of the Trust Securities which are the subject of the Prohibited Transfer (the "Excess Securities"). The Purported Transferee shall not be entitled with respect to such Excess Securities to any rights of shareholders, including, without limitation, the right to vote such Excess Securities or to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to constitute shares of the Trust in excess of the Aggregate Share Ownership Limit (as defined in Section 7.1 of the Declaration of Trust) and be subject to Article VII of the Declaration of Trust. Any Transfer of Excess Securities in accordance with the provisions of this ARTICLE IX shall cease to be Excess Securities upon consummation of such Transfer.

(b) The Trust may require as a condition to the registration of the Transfer of any Trust Securities in the share register of the Trust or the payment of any distribution on any Trust Securities that the proposed Transferee or payee furnish to the Trust all information reasonably requested by the Trust with respect to its direct or indirect ownership interests in such Trust Securities. The Trust may make such arrangements or issue such instructions to its officers or agents as may be determined by the Board of Trustees to be necessary or advisable to implement this ARTICLE IX, including, without limitation, authorizing its officers or agents to require, as a condition to registering any Transfer in the share register of the Trust, an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of shares and other evidence that a Transfer will not be prohibited by this ARTICLE IX.

Section 9.5 Modification of Remedies for Certain Indirect Transfers. In the event of any Transfer which does not involve a transfer of securities of the Trust within the meaning of Maryland law ("Securities," and individually, a "Security") but which would cause a 5-percent Shareholder to violate a restriction on Transfers provided for in this ARTICLE IX, a sufficient amount of Securities of such 5-percent Shareholder and/or any Person whose ownership of Securities is attributed to such 5-percent Shareholder shall be deemed to be Excess Securities and shall be treated as provided in Section 9.4, including, without limitation, being deemed to constitute shares of the Trust in excess of the Aggregate Share Ownership Limit (as defined in Section 7.1 of the Declaration of Trust) and be subject to Article VII of the Declaration of Trust. For the avoidance of doubt, no such 5-percent Shareholder shall be required, pursuant to this Section 9.5, to dispose of any interest that is not a Security. The purpose of this Section 9.5 is to extend the restrictions in Section 9.2 to situations in which there is a 5-percent Transaction without a direct Transfer of Securities, and this Section 9.5, along with the other provisions of this ARTICLE IX, shall be interpreted to produce the same results, with such differences as the context requires or as determined by the Board of Trustees, as a direct Transfer of Trust Securities.

Section 9.6 Legal Proceedings; Prompt Enforcement. The Board of Trustees may authorize such additional actions, beyond those provided for or contemplated by this ARTICLE IX, to give effect to or in furtherance of the provisions of this ARTICLE IX. Nothing in this Section 9.6 shall (a) be deemed inconsistent with any Transfer of the Excess

Securities provided in this ARTICLE IX being void ab initio, (b) preclude the Trust in the sole discretion of the Board of Trustees from immediately bringing legal proceedings without a prior demand, or (c) cause any failure of the Trust to act within any particular time period to constitute a waiver or loss of any right of the Trust under this ARTICLE IX.

Section 9.7 Liability. To the fullest extent permitted by law and without limiting any other remedies of the Trust and related matters provided elsewhere in these Bylaws or in the Declaration of Trust, any shareholder subject to the provisions of this ARTICLE IX who knowingly violates the provisions of this ARTICLE IX and any Persons controlling, controlled by or

under common control with such shareholder shall be jointly and severally liable to the Trust for, and shall indemnify and hold the Trust harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Trust's (or any of its subsidiaries') ability or right to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

Section 9.8 Obligation to Provide Information. As a condition to the registration of the Transfer of any Shares in the share register for the Trust, any Person who is a beneficial, legal or record holder of Shares, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Trust may request from time to time in order to determine compliance with this ARTICLE IX or the status of the Tax Benefits of the Trust (or any of its subsidiaries).

Section 9.9 Legend. Unless otherwise provided by the Board of Trustees, each certificate or account statement evidencing or representing Shares (or securities exercisable for or convertible into Shares) shall bear a legend with respect to the restrictions contained in this ARTICLE IX in such form as shall be prescribed by the Board of Trustees. Instead of the foregoing legend, the certificate or account statement may state that the Trust will furnish a full statement about certain restrictions on transferability to a shareholder on request and without charge.

Section 9.10 Authority of Board of Trustees.

(a) The Board of Trustees shall have the power to determine all matters necessary for assessing compliance with this ARTICLE IX, including, without limitation, (i) the identification of 5-percent Shareholders, (ii) whether a Transfer is a 5-percent Transaction or a Prohibited Transfer, (iii) the Percentage Share Ownership of any 5-percent Shareholder, (iv) whether an instrument constitutes a Trust Security, (v) the application of Section 9.4, including, without limitation, the application of Article VII of the Declaration of Trust to Excess Securities, and Section 9.5, and (vi) any other matters which the Board of Trustees determines to be relevant. The determination of the Board of Trustees on all of the foregoing and any related matters shall be conclusive and binding for all the purposes of this ARTICLE IX.

(b) Nothing contained in this ARTICLE IX shall limit the authority of the Board of Trustees to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Trust and its shareholders in preserving the Tax Benefits. Without limiting the generality of the foregoing, the Board of Trustees may, by adopting a written resolution, (i) accelerate or extend the Expiration Date, (ii) modify the ownership interest percentage in the Trust or the Persons or groups covered by this ARTICLE IX, (iii) modify the definitions of any terms set forth in this ARTICLE IX or (iv) modify the terms of this ARTICLE IX as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or otherwise. Shareholders may be notified of such determination through a filing with the SEC or such other method of notice as the Board of Trustees may determine. All actions, calculations, interpretations and determinations which are done or made by the Board of Trustees shall be conclusive and binding on the Trust and all other parties for all other purposes of this ARTICLE IX.

(c) The Board of Trustees may delegate all or any portion of its duties and powers under this ARTICLE IX to a committee of the Board of Trustees as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this ARTICLE IX through duly authorized officers or agents of the Trust.

Section 9.11 Transactions on a National Securities Exchange. Nothing in this ARTICLE IX shall preclude the settlement of any transaction entered into through the facilities of a national securities exchange or any automated inter-dealer quotation system. The fact that the settlement of any transaction takes place shall not negate the effect of any other provision of this ARTICLE IX and any transferor and transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this ARTICLE IX.

Section 9.12 Reliance. For purposes of determining the existence, identity and amount of any Trust Securities owned by any shareholder, the Trust is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the Exchange Act (or similar filings), as of any date, subject to its actual knowledge of the ownership of Trust Securities.

Section 9.13 Benefits of this ARTICLE IX. Nothing in this ARTICLE IX shall be construed to give to any Person, other than the Trust and the Trustee (as defined in Section 7.1 of the Declaration of Trust), any legal or equitable right, remedy or claim under this ARTICLE IX. This ARTICLE IX shall be for the sole and exclusive benefit of the Trust and the Trustee (as defined in Section 7.1 of the Declaration of Trust).

Section 9.14 Severability. If any provision of this ARTICLE IX or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this ARTICLE IX.

Section 9.15 Waiver. With regard to any power, remedy or right provided herein or otherwise available to the Trust under this ARTICLE IX, (a) no waiver will be effective unless authorized by the Board of Trustees and expressly contained in a writing signed by the Trust; and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

Section 9.16 Conflict. If there shall be any conflict between the provisions of this ARTICLE IX or the application thereof and the provisions of Article VII of the Declaration of Trust or the application thereof to the matters addressed in this ARTICLE IX, as contemplated by this ARTICLE IX, the provisions of this ARTICLE IX and the application thereof shall control.

ARTICLE X~~ARTICLE IX~~

FISCAL YEAR

~~Section 10.1~~~~Section 9.1~~ **Fiscal Year.** The fiscal year of the Trust shall be the calendar year.

~~ARTICLE XI~~~~ARTICLE X~~

DIVIDENDS AND OTHER DISTRIBUTIONS

~~Section 11.1~~~~Section 10.1~~ **Dividends and Other Distributions.** Dividends and other distributions upon the shares of beneficial interest of the Trust may be authorized and declared by the Trustees. Dividends and other distributions may be paid in cash, property or shares of beneficial interest of the Trust.

~~ARTICLE XII~~~~ARTICLE XI~~

SEAL

~~Section 12.1~~~~Section 11.1~~ **Seal.** The Trustees may authorize the adoption of a seal by the Trust. The Trustees may authorize one or more duplicate seals.

~~Section 12.2~~~~Section 11.2~~ **Affixing Seal.** Whenever the Trust is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Trust.

~~ARTICLE XIII~~~~ARTICLE XII~~

WAIVER OF NOTICE

~~Section 13.1~~~~Section 12.1~~ **Waiver of Notice.** Whenever any notice is required to be given pursuant to the Declaration of Trust, these Bylaws or applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice or waiver by electronic transmission, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

~~ARTICLE XIV~~~~ARTICLE XIII~~

AMENDMENT OF BYLAWS

~~Section 14.1~~~~Section 13.1~~ **Amendment of Bylaws.** Except for any change for which these Bylaws require approval by more than a majority vote of the Trustees, these Bylaws may be amended or repealed or new or additional Bylaws may be adopted only by the vote or written consent of a majority of the Trustees as specified in Section 3.10.

~~ARTICLE XV~~~~ARTICLE XIV~~

MISCELLANEOUS

~~Section 15.1~~~~Section 14.1~~ **References to Declaration of Trust.** All references to the Declaration of Trust shall mean the declaration of trust of the Trust and shall include any amendments and supplements thereto.

~~Section 15.2~~~~Section 14.2~~ **Costs and Expenses.** In addition to, and as further clarification of each shareholder's obligation to indemnify and hold the Trust harmless pursuant to these Bylaws or Section 8.7 of the Declaration of Trust, to the fullest extent permitted by law, each shareholder will be liable to the Trust (and any subsidiaries or affiliates thereof) for, and indemnify and hold harmless the Trust (and any subsidiaries or affiliates thereof) from and against, all costs, expenses, penalties, fines or other amounts, including, without limitation, reasonable attorneys' and other professional fees, whether third party or internal, arising from such shareholder's breach of or failure to fully comply with any covenant, condition or provision of these Bylaws or the Declaration of Trust (including Section 2.14 of these Bylaws) or any action by or against the Trust (or any subsidiaries or affiliates thereof) in which such shareholder is not the prevailing party, and shall pay such amounts to such indemnitee on demand, together with interest on such amounts, which interest will accrue at the lesser of fifteen percent (15%) per annum and the maximum amount permitted by law, from the date such costs or the like are incurred until the receipt of payment.

~~Section 15.3~~~~Section 14.3~~ **Ratification.** The Board of Trustees or the shareholders may ratify and make binding on the Trust any action or inaction by the Trust or its officers to the extent that the Board of Trustees or the shareholders could have originally authorized the matter. Moreover, any action or inaction questioned in any shareholder's derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a Trustee, officer or shareholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the Board of Trustees or by the shareholders and, if so ratified, shall have the same force and effect as if the questioned action or inaction had been originally duly authorized, and such ratification shall be binding upon the Trust and its shareholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

~~Section 15.4~~~~Section 14.4~~ **Ambiguity.** In the case of an ambiguity in the application of any provision of these Bylaws or any definition contained in these Bylaws, the Board of Trustees shall have the sole power to determine the application of such provisions with respect to any situation based on the facts known to it and such determination shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

~~Section 15.5~~~~Section 14.5~~ **Inspection of Bylaws.** The Trustees shall keep at the principal office for the transaction of business of the Trust the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the secretary, which shall be open to inspection by the shareholders at all reasonable times during office hours.

~~Section 15.6~~~~Section 14.6~~ **Election to be Subject to Part of Title 3, Subtitle 8.** Notwithstanding any other provision contained in the Declaration of Trust or these Bylaws, the Trust hereby elects to be subject to Section 3-804(b) and (c) of Title 3, Subtitle 8 of the MGCL. This Section ~~14-615.6~~ only may be repealed, in whole or in part, by a subsequent amendment to these Bylaws.

Section 15.7~~Section 14.7~~ **Special Voting Provisions Relating to Control Shares.** Notwithstanding any other provision contained herein or in the Declaration of Trust or these Bylaws, Title 3, Subtitle 7 of the MGCL shall not apply to any acquisition by any person of shares of beneficial interest of the Trust. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

ARTICLE XVI~~ARTICLE XV~~ ARBITRATION PROCEDURES FOR DISPUTES

Section 16.1~~Section 15.1~~ **Procedures for Arbitration of Disputes.** Any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE ~~XV~~**XVI**, shall mean any shareholder of record or any beneficial owner of shares of beneficial interest of the Trust, or any former shareholder of record or beneficial owner of shares of beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager (including The RMR Group LLC or its successor), agent or employee of the Trust, including any disputes, claims or controversies relating to the application or enforcement of the Declaration of Trust or these Bylaws (all of which are referred to as "Disputes") or relating in any way to such a Dispute or Disputes shall, on the demand of any party to such Dispute or Disputes, be resolved

through binding and final arbitration in accordance with the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as those Rules may be modified in this ARTICLE ~~XV~~**XVI**. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against Trustees, officers or managers of the Trust and class actions by shareholders against those individuals or entities and the Trust. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party. Notwithstanding the foregoing, (a) the provisions of this ARTICLE ~~XV~~**XVI** shall not apply to any request for a declaratory judgment or similar action regarding the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, but such request shall be heard and determined in the exclusive forum provided for in ARTICLE ~~XV~~**XVII**; and (b) in the event a Dispute involves both a question of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws and any other matter in dispute, the arbitration of such other matter in dispute, if dependent upon a determination of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, shall be stayed until a final, non-appealable judgement regarding such meaning, interpretation or validity has been rendered by the exclusive forum provided for in ARTICLE ~~XV~~**XVII**.

Section 16.2~~Section 15.2~~ **Arbitrators.** There shall be three (3) arbitrators. If there are only two (2) parties to the Dispute, each party shall select one (1) arbitrator within fifteen (15) days after receipt by respondent of a copy of the demand for arbitration. The arbitrators may be affiliated or interested persons of the parties. If there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, shall each select, by the vote of a majority of the claimants or the respondents, as the case may be, one (1) arbitrator within fifteen (15) days after receipt of the demand for arbitration. The arbitrators may be affiliated or interested persons of the claimants or the respondents, as the case may be. If either a claimant (or all claimants) or a respondent (or all respondents) fail(s) to timely select an arbitrator then the party (or parties) who has selected an arbitrator may request AAA to provide a list of three (3) proposed arbitrators in accordance with the Rules (each of whom shall be neutral, impartial and unaffiliated with any party) and the party (or parties) that failed to timely appoint an arbitrator shall have ten (10) days from the date AAA provides the list to select one (1) of the three (3) arbitrators proposed by AAA. If the party (or parties) fail(s) to select the second (2nd) arbitrator by that time, the party (or parties) who have appointed the first (1st) arbitrator shall then have ten (10) days to select one (1) of the three (3) arbitrators proposed by AAA to be the second (2nd) arbitrator; and, if he/they should fail to select the second (2nd) arbitrator by such time, AAA shall select, within fifteen (15) days thereafter, one (1) of the three (3) arbitrators it had proposed as the second (2nd) arbitrator. The two (2) arbitrators so appointed shall jointly appoint the third (3rd) and presiding arbitrator (who shall be neutral, impartial and unaffiliated with any party) within fifteen (15) days of the appointment of the second (2nd) arbitrator. If the third (3rd) arbitrator has not been appointed within the time limit specified herein, then AAA shall provide a list of proposed arbitrators in accordance with the Rules, and the arbitrator shall be appointed by AAA in accordance with a listing, striking and ranking procedure, with each party having a limited number of strikes, excluding strikes for cause.

Section 16.3~~Section 15.3~~ **Place of Arbitration.** The place of arbitration shall be Boston, Massachusetts unless otherwise agreed by the parties.

Section 16.4~~Section 15.4~~ **Discovery.** There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators. For the avoidance of doubt, it is intended that there shall be no depositions and no other discovery other than limited documentary discovery as described in the preceding sentence.

Section 16.5~~Section 15.5~~ **Awards.** In rendering an award or decision (an "Award"), the arbitrators shall be required to follow the laws of the State of Maryland. Any arbitration proceedings or Award shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. An Award shall be in writing and shall state the findings of fact and conclusions of law on which it is based. Any monetary Award shall be made and payable in U.S. dollars free of any tax, deduction or offset. Subject to Section ~~15.7~~**16.7**, each party against which an Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of such Award or such other date as such Award may provide.

Section 16.6~~Section 15.6~~ **Costs and Expenses.** Except as otherwise set forth in the Declaration of Trust or these Bylaws, including Section ~~14.2~~**15.2** of these Bylaws, or as otherwise agreed by the parties thereto, each party involved in a Dispute shall bear its own costs and expenses (including attorneys' fees), and the arbitrators shall not render an Award that would include shifting of any such costs or expenses (including attorneys' fees) or, in a derivative case or class action, award any portion of the Trust's Award to the claimant or the claimant's attorneys. Each party (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, respectively) shall bear the costs and expenses of its (or their) selected arbitrator and the parties (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand) shall equally bear the costs and expenses of the third (3rd) appointed arbitrator.

Section 16.7~~Section 15.7~~ **Appeals.** Any Award, including but not limited to any interim Award, may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"). An Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Award by filing a notice of appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be

entered in any court having jurisdiction thereof. For the avoidance of doubt, and despite any contrary provision of the Appellate Rules, Section 16.6 shall apply to any appeal pursuant to this Section ~~15.7~~16.7 and the appeal tribunal shall not render an Award that would include shifting of any costs or expenses (including attorneys' fees) of any party.

~~Section 16.8~~~~Section 15.8~~ Final and Binding. Following the expiration of the time for filing the notice of appeal, or the conclusion of the appeal process set forth in Section ~~15.7~~16.7, an Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between those parties relating to the Dispute, including any claims, counterclaims, issues or accounting presented to the arbitrators. Judgment upon an Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any Award, except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

~~Section 16.9~~~~Section 15.9~~ Beneficiaries. This ARTICLE ~~XV~~XVI is intended to benefit and be enforceable by the shareholders, Trustees, officers, managers (including The RMR Group Inc. or its successor and The RMR Group LLC or its successor), agents or employees of the Trust and the Trust and shall be binding on the shareholders and the Trust, as applicable, and be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.

ARTICLE XVII~~ARTICLE XVI~~

EXCLUSIVE FORUM FOR CERTAIN DISPUTES

~~Section 17.1~~~~Section 16.1~~ Exclusive Forum. The Circuit Court for Baltimore City, Maryland shall be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Trust, (2) any action asserting a claim of breach of a fiduciary duty owed by any Trustee, officer, manager, agent or employee of the Trust to the Trust or the shareholders, (3) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust arising pursuant to Maryland law or the Declaration of Trust or these Bylaws, including any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE ~~XVI~~XVII, shall mean any shareholder of record or any beneficial owner of any class or series of shares of beneficial interest of the Trust, or any former holder of record or beneficial owner of any class or series of shares of beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager, agent or employee of the Trust, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of the Declaration of Trust or these Bylaws, including this ARTICLE ~~XVI~~XVII, or (4) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust governed by the internal affairs doctrine of the State of Maryland. Failure to enforce the foregoing provisions would cause the Trust irreparable harm and the Trust shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of beneficial interest of the Trust shall be deemed to have notice of and consented to the provisions of this ARTICLE ~~XVI~~XVII. This ARTICLE ~~XVI~~XVII shall not abrogate or supersede any other provision of these Bylaws which may require the resolution of such disputes by arbitration.

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Exhibit 10.2

PLEDGE AMENDMENT

September 26, 2023

Reference is hereby made to the Pledge Agreement (as the same may be amended, restated, supplemented or otherwise modified from time to time, (together, the "Pledge Agreement Additional Subsidiary Guarantors") dated as, each a subsidiary of January 29, 2021, by and among Diversified Healthcare Trust, a real estate investment trust formed organized and existing under the laws of the State of Maryland (the "Borrower Company"), the undersigned Pledgor Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), a national banking organization organized and existing under the laws of the United States (the "Trustee").

WITNESSETH

WHEREAS, the Company (then known as Senior Housing Properties Trust) and the other Subsidiaries Trustee are parties to an Indenture (the "Base Indenture"), dated as of February 18, 2016 (as supplemented by that certain Third Supplemental Indenture (the "Third Supplemental Indenture"), dated as of June 2, 2020, among the Company, the Initial Subsidiary Guarantors party thereto and the Trustee, providing for the issuance of the Borrower Company's 9.750% Senior Notes due 2025 (the "Notes"), as supplemented by that certain Supplemental Indenture, dated as of March 5, 2021, among the Company, the Subsidiary Guarantors party thereto and the Trustee that certain Supplemental Indenture, dated as of September 9, 2022, among the Company, the Subsidiary Guarantors party thereto and the Trustee and that certain Supplemental Indenture, dated as of November 22, 2022, among the Company, the Subsidiary Guarantors party thereto and the Trustee, and as from time to time party thereto hereafter further amended, supplemented or otherwise modified so far as Pledgors, and Wells Fargo Bank, National Association, as Collateral Agent for it applies to the Secured Parties (in such capacity, Notes, the "Collateral Agent Indenture"), whereby;

WHEREAS, the undersigned has pledged Indenture provides that under certain capital stock, membership interests, beneficial interests circumstances the Additional Subsidiary Guarantors shall execute and partnership interests, as applicable, of certain of its Subsidiaries as collateral deliver to the Collateral Agent, for Trustee a supplemental indenture pursuant to which the ratable benefit Additional Subsidiary Guarantors will fully and unconditionally guarantee the Notes, jointly and severally with all of the Secured Parties, as more fully described in the Pledge Agreement. This Amendment is a "Pledge Amendment" as defined in the Pledge Agreement and is, together with the acknowledgments, certificates, and Transfer Powers delivered herewith, subject in all respects to other Subsidiary Guarantors, on the terms and provisions conditions set forth herein;

WHEREAS, all acts and requirements necessary to make this Supplemental Indenture the legal, valid and binding obligation of the Pledge Agreement, Company, each Additional Subsidiary Guarantor and the Trustee have been done; and

WHEREAS, pursuant to Section 901 of the Base Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, the Additional Subsidiary Guarantors and the Trustee mutually covenant and agree as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein and not defined herein without definition shall have the meanings given assigned to them in the Pledge Agreement. Indenture.

By its execution below, the undersigned 2. AGREEMENT TO GUARANTEE. Each Additional Subsidiary Guarantor hereby agrees that (i) this Amendment may be attached its obligations to the Pledge Agreement Holders and that the Pledged Collateral listed on Schedule I hereto Trustee pursuant to the Subsidiary Guarantee shall be part of the Pledged Collateral referred to as expressly set forth in the Pledge Agreement and shall secure all Obligations in accordance with the terms of the Pledge Agreement and (ii) each corporation, limited liability company, trust and partnership listed on Schedule I hereto shall continue to be a Pledged Subsidiary for all purposes of the Pledge Agreement.

By its execution below, the undersigned represents and warrants that it has full power and authority to execute this Pledge Amendment and that the representations and warranties contained in Section Article 6 of the Pledge Agreement are true Third Supplemental Indenture and correct in all respects as such other provisions of the date hereof and after taking into account Indenture as are applicable to the pledge Subsidiary Guarantors (including, without limitation, Article 3 of the additional Pledged Collateral relating hereto. The Pledge Agreement, as amended Third Supplemental Indenture), and modified hereby, remains in full force and effect and reference is hereby ratified and confirmed.

[The remainder made to the Indenture for the precise terms of this Supplemental Indenture. The terms of Article 6 of the Third Supplemental Indenture and such other provisions of the Indenture (including, without limitation, Article 3 of the Third Supplemental Indenture) as are applicable to the Subsidiary Guarantors are incorporated herein by reference.

3. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

4. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

5. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

6. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Additional Subsidiary Guarantors and the Company.

[Remainder of page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned Pledgor has parties hereto have caused this Supplemental Indenture to be duly executed, and delivered this Pledge Amendment to the Pledge Agreement all as of the date first set forth above, above written.

COMPANY:

SNH MEDICAL OFFICE PROPERTIES DIVERSIFIED HEALTHCARE TRUST, as Pledgor

By: /s/ Jennifer F. Francis Matthew C. Brown

Name: Jennifer F. Francis Matthew C. Brown

Title: President Chief Financial Officer and Treasurer

ADDITIONAL SUBSIDIARY GUARANTORS:

SNH DURHAM LLC

SNH GRANITE GATE INC.
SNH GRANITE GATE TENANT LLC
SNH MARYLAND HEIGHTS LLC
SNH MEDICAL OFFICE PROPERTIES TRUST

By: /s/ Matthew C. Brown
Name: Matthew C. Brown
Title: Chief Executive Financial Officer and Treasurer

[Signature Page to Pledge Amendment] Supplemental Indenture for 9.750% Senior Notes due 2025 (March 2024)]

Schedule I

to
Pledge Amendment TRUSTEE:

PLEDGED SUBSIDIARIES

<u>Pledgor</u>	<u>Pledged Subsidiary</u>	<u>Certificate No.</u>	<u>No. of Shares / Units Owned</u>	<u>Percentage of Ownership</u>
SNH Medical Office Properties Trust	SNH Ward Ave. Properties I Inc.	1	1,000	100%

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ David W. Doucette
Name: David W. Doucette
Title: Vice President

[Signature Page to Supplemental Indenture for 9.750% Senior Notes due 2025 (March 2024)]

Exhibit 4.16

SUPPLEMENTAL INDENTURE

THIS SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of March 1, 2024, among SNH Durham LLC and SNH Maryland Heights LLC, each a Delaware limited liability company, SNH Granite Gate Inc., a Maryland corporation, SNH Granite Gate Tenant LLC, a Maryland limited liability company, and SNH Medical Office Properties Trust, a Maryland real estate investment trust (together, the "*Additional Subsidiary Guarantors*"), each a subsidiary of Diversified Healthcare Trust, a real estate investment trust organized and existing under the laws of the State of Maryland (the "*Company*"), the Company and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), a national banking organization organized and existing under the laws of the United States (the "*Trustee*").

WITNESSETH

WHEREAS, the Company (then known as Senior Housing Properties Trust) and the Trustee are parties to an Indenture (the "*Base Indenture*"), dated as of February 18, 2016 (as supplemented by that certain Fourth Supplemental Indenture (the "*Fourth Supplemental Indenture*"), dated as of February 8, 2021, among the Company, the Initial Subsidiary Guarantors party thereto and the Trustee, providing for the issuance of the Company's 4.375% Senior Notes due 2031 (the "*Notes*"), as supplemented by that certain Supplemental Indenture, dated as of March 5, 2021, among the Company, the Subsidiary Guarantors party thereto and the Trustee that certain Supplemental Indenture, dated as of September 9, 2022, among the Company, the Subsidiary Guarantors party thereto and the Trustee and that certain Supplemental Indenture, dated as of November 22, 2022, among the Company, the Subsidiary Guarantors party thereto and the Trustee, and as from time to time hereafter further amended, supplemented or otherwise modified so far as it applies to the Notes, the "*Indenture*");

WHEREAS, the Indenture provides that under certain circumstances the Additional Subsidiary Guarantors shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Additional Subsidiary Guarantors will fully and unconditionally guarantee the Notes, jointly and severally with all of the other Subsidiary Guarantors, on the terms and conditions set forth herein;

WHEREAS, all acts and requirements necessary to make this Supplemental Indenture the legal, valid and binding obligation of the Company, each Additional Subsidiary Guarantor and the Trustee have been done; and

WHEREAS, pursuant to Section 901 of the Base Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, the Additional Subsidiary Guarantors and the Trustee mutually covenant and agree as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. AGREEMENT TO GUARANTEE. Each Additional Subsidiary Guarantor hereby agrees that its obligations to the Holders and the Trustee pursuant to the Subsidiary Guarantee shall be as expressly set forth in Article 6 of the Fourth Supplemental Indenture and in such other provisions of the Indenture as are applicable to the Subsidiary Guarantors (including, without limitation, Article 3 of the Fourth Supplemental Indenture), and reference is made to the Indenture for the precise terms of this Supplemental Indenture. The terms of Article 6 of the Fourth Supplemental Indenture and such other provisions of the Indenture (including, without limitation, Article 3 of the Fourth Supplemental Indenture) as are applicable to the Subsidiary Guarantors are incorporated herein by reference.
3. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.
4. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.
5. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

6. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Additional Subsidiary Guarantors and the Company.

[Remainder of page intentionally left blank.]

ACKNOWLEDGMENT

TO

PLEDGE AMENDMENT IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

The undersigned hereby acknowledges receipt of a copy of the foregoing Pledge Amendment together with a copy of the Pledge Agreement, agrees promptly to note on its books the security interests granted under such Pledge Agreement, agrees that after the occurrence and during the continuance of an Event of Default it will comply with instructions originated by the Collateral Agent without further consent by the applicable Pledgor and waives any rights or requirement at any time hereafter to receive a copy of such Pledge Agreement in connection with the registration of any Pledged Collateral in the name of the Collateral Agent or its nominee or the exercise of voting rights by the Collateral Agent or its nominee, COMPANY.

[Signature Pages Follow]

SNH WARD AVE. PROPERTIES I INC. DIVERSIFIED HEALTHCARE TRUST

By: /s/ Jennifer F. Francis /s/ Matthew C. Brown
Name: Jennifer F. Francis Matthew C. Brown
Title: President Chief Financial Officer and Treasurer

ADDITIONAL SUBSIDIARY GUARANTORS:

SNH DURHAM LLC
SNH GRANITE GATE INC.

SNH GRANITE GATE TENANT LLC
SNH MARYLAND HEIGHTS LLC
SNH MEDICAL OFFICE PROPERTIES TRUST

By: /s/ Matthew C. Brown
Name: Matthew C. Brown
Title: Chief Executive Financial Officer and Treasurer

[Signature Page to Acknowledgment Supplemental Indenture for 4.375% Senior Notes due 2031 (March 2024)]

TRUSTEE:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ David W. Doucette
Name: David W. Doucette
Title: Vice President

[Signature Page to Pledge Amendment Supplemental Indenture for 4.375% Senior Notes due 2031 (March 2024)]

Exhibit **10.3 10.1**

RELEASE OF CERTAIN GUARANTORS

Reference is made to that certain Third Supplemental Indenture, dated as of June 2, 2020, as supplemented by that certain Supplemental Indenture, dated as of March 5, 2021, that certain Supplemental Indenture, dated as of September 9, 2022, and that certain Supplemental Indenture, dated as of November 22, 2022 (the "Third Supplemental Indenture"), among Diversified Healthcare Trust (formerly known as Senior Housing Properties Trust), a Maryland real estate investment trust, U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as Trustee (the "Trustee"), SNH **Ward Ave. Properties I Inc., GP Valencia LLC**, a **Maryland corporation Delaware limited liability company** (the "Released Guarantor") and certain other Subsidiaries of the Company, as Guarantors, to the Indenture, dated as of February 18, 2016 (the "Indenture"), between the Company and the Trustee, relating to the Company's 9.750% Senior Notes due 2025 (the "Notes"). The terms defined in the Third Supplemental Indenture are used herein as therein defined, unless otherwise defined herein.

Pursuant to Section 6 of the Third Supplemental Indenture, the undersigned, as Trustee, hereby confirms the release and discharge of the Released Guarantor from any and all obligations and liabilities under the Subsidiary Guarantee, and further hereby confirms the termination and release of the Released Guarantor of all other obligations under the Third Supplemental Indenture, the Indenture or the Notes, each as of **September 26, 2023 December 21, 2023**.

Dated as of **October 12, 2023 March 1, 2024**.

U.S. Bank Trust Company, National Association, as Trustee

By: /s/ David W. Doucette
Name: David W. Doucette
Title: Vice President

Exhibit **10.4 10.2**

RELEASE OF CERTAIN GUARANTORS

Reference is made to that certain Fourth Supplemental Indenture, dated as of February 8, 2021, as supplemented by that certain Supplemental Indenture, dated as of March 5, 2021, that certain Supplemental Indenture, dated as of September 9, 2022, and that certain Supplemental Indenture, dated as of November 22, 2022 (the "Fourth Supplemental Indenture"), among Diversified Healthcare Trust (formerly known as Senior Housing Properties Trust), a Maryland real estate investment trust, U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as Trustee (the "Trustee"), SNH **Ward Ave. Properties I Inc., GP Valencia LLC**, a **Maryland corporation Delaware limited liability company** (the "Released Guarantor") and certain other Subsidiaries of the Company, as Guarantors, to the Indenture, dated as of February 18,

2016 (the "Indenture"), between the Company and the Trustee, relating to the Company's 4.375% Senior Notes due 2031 (the "Notes"). The terms defined in the Fourth Supplemental Indenture are used herein as therein defined, unless otherwise defined herein.

Pursuant to Section 6 of the Fourth Supplemental Indenture, the undersigned, as Trustee, hereby confirms the release and discharge of the Released Guarantor from any and all obligations and liabilities under the Subsidiary Guarantee, and further hereby confirms the termination and release of the Released Guarantor of all other obligations under the Fourth Supplemental Indenture, the Indenture or the Notes, each as of September 26, 2023 December 21, 2023.

Dated as of October 12, 2023 March 1, 2024.

U.S. Bank Trust Company, National Association, as Trustee

By: /s/ David W. Doucette
Name: David W. Doucette
Title: Vice President

Exhibit 10.5 10.3

FORM OF

STOCKHOLDERS AGREEMENT

by and among

ALERISLIFE INC.

a Maryland corporation,

DIVERSIFIED HEALTHCARE TRUST

a Maryland real estate investment trust,

Share AwardDHC HOLDINGS LLC

a Maryland limited liability company,

and

ABP TRUST

a Maryland statutory trust

dated as of

February 16, 2024

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EXHIBITS

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STOCKHOLDERS AGREEMENT

This Share Award Stockholders Agreement (this "Agreement" "Agreement") is made, dated as of «DATE» February 16, 2024, 2023, between «NAME» is entered into by and among AlerisLife Inc., a Maryland corporation (the "Recipient" "Company") and, Diversified Healthcare Trust, (the "Company" a Maryland real estate investment trust ("DHC"), DHC Holdings LLC, a Maryland limited liability company and a subsidiary of DHC ("DHC TRS"), ABP Trust, a Maryland statutory trust ("ABP" or the "Initial Stockholder") and the Permitted Transferees of the Initial Stockholder, DHC and DHC TRS who after the date hereof acquire Company Shares (such Persons, collectively with the Initial Stockholder, DHC and DHC TRS, the "Stockholders").

In RECITALS

WHEREAS, pursuant to that certain Stock Purchase Agreement by and among the Initial Stockholder, DHC and DHC TRS, dated as of February 16, 2024, DHC and DHC TRS acquired 2,674,484 and 8,691,790 shares of common stock, par value \$0.01 per share, of the Company ("Company Common Stock"), respectively, from ABP;

WHEREAS, prior to DHC's and DHC TRS's acquisition of Company Common Stock, all of the outstanding shares of the Company Common Stock were owned by the Initial Stockholder; and

WHEREAS, the Stockholders and the Company deem it in their best interests to set forth in this Agreement their respective rights and obligations in connection with certain matters related to the ownership, governance and operation of the Company;

NOW, THEREFORE, in consideration of the mutual promises covenants and covenants contained in this Agreement, agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1.

Award of Shares ARTICLE I DEFINITIONS

. Subject to Capitalized terms used in this Agreement and not otherwise defined shall have the terms and conditions hereinafter meanings set forth and the terms and conditions of the Diversified Healthcare Trust Amended and Restated 2012 Equity Compensation Plan, as it may be amended from time to time (the "Plan"), the Company hereby awards to the Recipient, effective as of the date of in this Agreement, «NUMBER» of its common shares of beneficial interest, par value \$.01 per share (the "Common Shares") Article I. The shares so awarded are hereinafter referred to as the "Shares,

"AAA" which term shall also include any shares of the Company issued to the Recipient by virtue of his or her ownership of the Shares, by share dividend, share split or combination, recapitalization or otherwise. Capitalized terms that are used but not defined herein shall have has the meaning set forth in the Plan.

2. Vesting; Forfeiture of Shares Section 8.13(a).

(a) Subject "ABP Put Valuation Firm" has the meaning set forth in Section 3.07(d)(i).

"Additional Company Shares" has the meaning set forth in Section 4.03(a).

"Adverse Regulatory Event" has the meeting set forth in Section 4.04(a).

"Affiliate" means with respect to Sections 2(b) and 2(c) hereof, the Shares shall vest one-fifth of the total number of Shares as of the date hereof and as to a further one-fifth of such total number of Shares on each anniversary of the date hereof for the next four calendar years. Any Shares not vested as of any date are herein referred to as "Unvested Shares."

(b) Subject to Section 2(c) hereof, at the option of the Company, in the event the Recipient ceases to render significant services, whether as an employee Person, any other Person who, directly or otherwise, to (i) the Company, (ii) the entity which indirectly (including through one or more intermediaries), controls, is the manager or shared services provider to the Company or an entity controlled by, or is under common control with, or controlling such entity (collectively, the "Manager"), or (iii) an affiliate Person. For purposes of the Company (which shall be deemed for such purpose to include any other entity to which the Manager is the manager or shared services provider), all or any portion of the Unvested Shares shall be forfeited by the Recipient on or after the date the Recipient ceases to render all such services, as determined by the Company. The Company may exercise such option by delivering or mailing to the Recipient (or his or her estate), at any time after the Recipient has ceased to render such services, a written notice of exercise of such option. Such notice shall specify the number of Unvested Shares to be forfeited.

(c) Notwithstanding anything in this Agreement to the contrary, immediately upon the occurrence of a Change in Control, Termination Event or the death of a Recipient, all of the Unvested Shares shall vest and any forfeiture or other rights of the Company described in Section 2(b) shall lapse in their entirety. By executing this Agreement, the Recipient hereby agrees and acknowledges that the provisions of the Plan related to the occurrence of a Change in Control shall apply to each award of Common Shares of the Company previously awarded to the Recipient which remains subject to comparable vesting restrictions ("Prior Awards") and shall supersede the corresponding provisions of such Prior Awards.

3. **Legends.** Vested and Unvested Shares awarded under this Agreement may bear or contain, as applicable, such legends and notations as may be required by the Plan or the Company's declaration of trust, any applicable supplement thereto or bylaws, each as in effect from time to time, or as the Company may otherwise determine appropriate.

Promptly following the request of the Recipient definition, "control," when used with respect to any Shares (or any other Common Shares previously awarded to the Recipient), the Company shall take, at its sole cost and expense, all such actions as may be required to permit the Recipient to sell such shares including, as applicable and without limitation, providing to the Company's transfer agent certificates of officers of the Company, and opinions of counsel and/or filing an appropriate registration statement, and taking all such other actions as may be required to remove the legends set forth above with respect to transfer and vesting restrictions from the certificates evidencing such shares and, if applicable, from the share books and records of the Company. The Company shall reimburse the Recipient, promptly upon the receipt of a request for payment, for all expenses (including

legal expenses) reasonably incurred by the Recipient in connection with the enforcement of the Recipient's rights under this paragraph.

4. **Tax Withholding.** To the extent required by law, the Company or the Manager shall withhold or cause to be withheld income and other taxes incurred by the Recipient by reason of an award of Common Shares, and the Recipient agrees that he or she shall, upon the request of the Company or the Manager, pay to the Company or to the Manager an amount sufficient to satisfy his or her tax withholding obligations from time to time (including as Shares become vested).

5. **Miscellaneous.**

(a) **Amendments.** Neither this Agreement nor any provision hereof may be changed or modified except by an agreement in writing executed by the Recipient and the Company; provided, however, that any change or modification that does not adversely affect the rights hereunder of the Recipient, as they may exist immediately prior to the effective date of such change or modification, may be adopted by the Company without an agreement in writing executed by the Recipient, and the Company shall give the Recipient written notice of such change or modification reasonably promptly following the adoption of such change or modification.

(b) **Binding Effect of the Agreement.** This Agreement shall inure to the benefit of, and be binding upon, the Company, the Recipient and their respective estates, heirs, executors, transferees, successors, assigns and legal representatives.

(c) **Provisions Separable.** In the event that any of the terms of this Agreement shall be or become or is declared to be illegal or unenforceable by any court or other authority of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, and all the remaining terms of this Agreement shall remain in full force and effect.

(d) **Notices.** Any notice in connection with this Agreement shall be deemed to have been properly delivered if it is in writing and is delivered by hand or by facsimile or sent by registered certified mail, postage prepaid, to the party addressed as follows, unless another address has been substituted by notice so given:

To the Recipient: To the Recipient's address as set forth on the signature page hereof.

To the Company: Diversified Healthcare Trust
Two Newton Place
255 Washington Street, Suite 300
Newton, MA 02458
Attn: Secretary

(e) **Construction.** The headings and subheadings of this Agreement have been inserted for convenience only, and shall not affect the construction of the provisions hereof. All references to sections of this Agreement shall be deemed to refer as well to all subsections which form a part of such section.

(f) **Employment Agreement.** This Agreement shall not be construed as an agreement by the Company, the Manager or any affiliate of the Company or the Manager to employ the Recipient, nor is the Company, the Manager or any affiliate of the Company or the Manager obligated to continue employing the Recipient by reason of this Agreement or the award of the Shares to the Recipient hereunder.

(g) **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without giving effect to the principles of conflicts of law of such state.

(h) **Binding Arbitration.** Any disputes regarding this Agreement, any award or vesting of Common Shares and/or any related matters shall be settled by binding arbitration in accordance with any Mutual Agreement to Resolve Disputes and Arbitrate Claims between the Recipient and the Manager. In the absence of such an agreement, any such claims or disputes shall be resolved through binding arbitration before one arbitrator conducted under the rules of JAMS in Boston, Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or caused this Agreement to be executed under seal, as of the date first above written.

DIVERSIFIED HEALTHCARE TRUST

By: _____
Name:
Title:

RECIPIENT:

«NAME»
«ADDRESS»
«CITY», «ST» «ZIP»

3

Exhibit 10.6

DIVERSIFIED HEALTHCARE TRUST

FORM OF [AMENDED AND RESTATED] INDEMNIFICATION AGREEMENT

THIS [AMENDED AND RESTATED] INDEMNIFICATION AGREEMENT (this "**Agreement**"), effective as of [DATE] (the "**Effective Date**"), by and between Diversified Healthcare Trust, a Maryland real estate investment trust (the "**Company**"), and [TRUSTEE/OFFICER] ("**Indemnitee**").

WHEREAS, Indemnitee has agreed to serve as a trustee and/or officer of the Company and may, in connection therewith, be subjected to claims, suits or proceedings arising from such service; and

WHEREAS, as an inducement to Indemnitee to continue to serve as such, the Company has agreed to indemnify and to advance expenses and costs incurred by Indemnitee in connection with any such claims, suits or proceedings, to the maximum extent permitted by law as hereinafter provided; and

WHEREAS, the parties [are currently parties to an Indemnification Agreement dated as of [DATE] (the "**Prior Indemnification Agreement**") and] desire to [amend and restate the Prior Indemnification Agreement and] set forth their agreement regarding indemnification and advancement of expenses [as reflected herein];

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. For purposes of this Agreement:

(a) "**Board**" means the board of trustees of the Company.

(b) "**Bylaws**" means the bylaws of the Company, as they may be amended from time to time.

(c) "**Change in Control**" means a change in control of the Company occurring after the Effective Date of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended (the "**Act**"), whether or not the Company is then subject to such reporting requirement; *provided, however*, that, without limitation, such a Change in Control shall be deemed to have occurred if after the Effective Date:

(i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Act) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 10% or more of the combined voting power of all the Company's then outstanding securities entitled to vote generally in the election of trustees without the prior approval of at least two-thirds of the members of the Board in office immediately prior to such person attaining such percentage interest;

(ii) there occurs a proxy contest, or the Company is a party to a merger, consolidation, sale of assets, plan of liquidation or other reorganization not approved by at least two-thirds of the members of the Board then in office, as a consequence of which members of the Board in office immediately prior to such transaction or event constitute less than a majority of the Board thereafter; or

(iii) during any period of two consecutive years, other than as a result of an event described in clause (a)(ii) of this Section 1, individuals who at the beginning of such period constituted the Board (including for this purpose any new trustee whose election or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds of the trustees then still in office who were trustees at the beginning of such period) cease for any reason to constitute at least a majority of the Board.

¹ Bracketed text to be included for trustees and officers with existing agreements. Bracketed text would not be included for persons who are first elected as a trustee or appointed as an officer after this form is adopted.

(d) "**Company Status**" means the status of a specified Person, who is or was a trustee, director, manager, officer, partner, employee, agent or fiduciary of the Company or any predecessor of the Company or any of their majority owned subsidiaries and the status of a Person who, while a trustee, director, manager, officer, partner, employee, agent or fiduciary of the Company or any predecessor of the Company or any of their majority owned subsidiaries, is or was serving at the request of the Company or any predecessor of the Company or any of their majority owned subsidiaries as a trustee, director, manager, officer, partner, employee, agent or fiduciary of another real estate investment trust, corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or any other Enterprise.

(e) "**control**" of an entity, shall mean the possession, power, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity, Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise, otherwise; and the terms "controlling" and "controlled" shall have correlative meanings.

(f) "**Declaration Agreement**" has the meaning set forth in the preamble.

"**Appellate Rules**" has the meaning set forth in Section 8.13(g).

"**Applicable Law**" means all applicable provisions of Trust (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental

Authority, (b) any consents or approvals of any Governmental Authority and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

"**Award**" has the meaning set forth in Section 8.13(e).

"**Base Price**" means \$1.31 per Company Share; provided that such amount shall be proportionately adjusted as a result of any reclassification, stock split (including reverse stock split), stock dividend or stock distribution, recapitalization, merger, combination, exchange of shares, subdivision or other similar transaction in the Company Shares.

"**Business Day**" means any day other than Saturday, Sunday, or any other day on which banking institutions in The Commonwealth of Massachusetts are authorized by Applicable Law or executive action to close.

"**Bylaws**" means the declaration of trust (as defined in the Maryland REIT Law) bylaws of the Company as it may amended, modified, supplemented or restated from time to time in accordance with Applicable Law or the Charter.

"**Charter**" means the articles of incorporation of the Company as amended, modified, supplemented or restated from time to time in accordance with Applicable Law.

"**Chosen Courts**" has the meaning set forth in Section 8.12.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"**Company**" has the meaning set forth in the preamble.

"Company Change of Control" means any transaction or series of related transactions (as a result of a tender offer, merger, consolidation or otherwise) that results in, or that is in connection with, (a) any Third Party Purchaser or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) of Third Party Purchasers acquiring beneficial ownership, directly or indirectly, of a majority of the then issued and outstanding voting Company Shares or (b) the sale, lease, exchange, conveyance, transfer or other disposition (for cash, equity, securities or other consideration) of all or substantially all of the property and assets of the Company and its Subsidiaries (if any) on a consolidated basis (including any liquidation, dissolution or winding up of the affairs of the Company, or any other distribution made in connection therewith), to any Third Party Purchaser or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) of Third Party Purchasers.

"Company Common Stock" has the meaning set forth in the recitals.

"Company Shares" means the Company Common Stock, preferred stock and all other capital stock of the Company, whether voting or nonvoting, and any securities issued in respect thereof, or in substitution therefor, in connection with any stock split, dividend or combination, or any reclassification, recapitalization, merger, consolidation, exchange or similar reorganization.

"Determined Repurchase Price" has the meaning set forth in [Section 3.06\(d\)\(iii\)](#).

"Determined Put Price" has the meaning set forth in [Section 3.07\(d\)\(iii\)](#).

"Determined ROFO Price" has the meaning set forth in [Section 3.02\(f\)\(iii\)](#).

"DHC" has the meaning set forth in the preamble.

"DHC Change of Control" means any transaction or series of related transactions (as a result of a tender offer, merger, consolidation or otherwise) that results in, or that is in connection with, (a) any Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) of Persons acquiring beneficial ownership, directly or indirectly, of a majority of the then issued and outstanding voting shares of beneficial interest of DHC, (b) the sale, lease, exchange,

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conveyance, transfer or other disposition (for cash, equity, securities or other consideration) of all or substantially all of the property and assets of DHC and its Subsidiaries (if any) on a consolidated basis (including any liquidation, dissolution or winding up of the affairs of DHC, or any other distribution made in connection therewith), to any Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) of Persons or (c) the following individuals cease for any reason to constitute a majority of the number of DHC trustees then serving on the DHC board of trustees: individuals who, on the date of this Agreement, constitute all of the members of the DHC board of trustees and any new DHC trustee (other than a DHC trustee whose initial election or appointment to office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation, relating to the election of DHC trustees) whose appointment or election by the DHC board of trustees or nomination for election by DHC's shareholders was approved or recommended by a vote of at least two-thirds (2/3) of the DHC trustees then in office who either were DHC trustees on the date of this Agreement or whose appointment, election or nomination for election was previously so approved or recommended.

"DHC Offer Notice" has the meaning set forth in [Section 3.02\(b\)](#).

"DHC Parties" means DHC, DHC TRS and their Permitted Transferees who acquire Company Shares.

"DHC ROFO Price" has the meaning set forth in [Section 3.02\(c\)](#).

"DHC Valuation Firm" has the meaning set forth in [Section 3.06\(d\)\(i\)](#).

"Director" means each director of the Company.

"Disputes" has the meaning set forth in [Section 8.13\(a\)](#).

"Drag-along Notice" has the meaning set forth in [Section 3.03\(b\)](#).

"Drag-along Participating Stockholders" has the meaning set forth in [Section 3.03\(a\)](#).

"Drag-along Sale" has the meaning set forth in [Section 3.03\(a\)](#).

"Drag-along Stockholder" has the meaning set forth in [Section 3.03\(a\)](#).

"Dragging Stockholders" has the meaning set forth in [Section 3.03\(a\)](#).

"Electing Put Party" has the meaning set forth in [Section 3.07\(a\)](#).

"Electing DHC Parties" has the meaning set forth in [Section 3.02\(a\)](#).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

"Excluded Shares" means any: (a) Company Shares issued or sold in connection with (i) a grant to any existing or prospective consultants, employees, officers or Directors pursuant to any stock option, employee stock purchase or similar equity-based plans or other compensation agreement maintained by the Company and approved by the Directors or (ii) the exercise or conversion of options to purchase Company Shares, or Company Shares issued to any existing or prospective consultants, employees, officers or Directors pursuant to any stock option, employee stock purchase or similar equity-based plans or any other compensation agreement; provided, however, that after giving effect to any grant pursuant to this clause (a), the aggregate amount of Company Shares issued, on a fully diluted basis, pursuant to this clause (a) shall not be more than fifteen percent (15%) of the outstanding Company Shares (by vote or value) on a fully diluted basis at the time of the issuance of such Company Shares; and (b) Company Shares or any equity of a Subsidiary of the Company issued or sold in connection with (i) any bona fide acquisition from a Third Party Purchaser on arms' length terms of such Third Party Purchaser's stock, assets, properties or business (whether by merger, acquisition of equity securities, acquisition of assets or otherwise) approved by the Directors; (ii) a Public Offering; (iii) a bona fide leasing or debt financing arrangements with a

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Third Party Purchaser; or (iv) a bona fide strategic alliance or transaction with any Third Party Purchaser on arms' length terms at the time the Company Shares were issued or the right or option to acquire such Company Shares were granted.

"Exercising Pre-emptive Stockholder" has the meaning set forth in [Section 4.03\(d\)](#).

"Final Price" has the meaning set forth in [Section 3.07\(e\)](#).

"Fiscal Year" means for financial accounting purposes, the fiscal year employed from time to time by the Company.

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

(g) "Disinterested Trustee Governmental Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Applicable Law), or any arbitrator, court or tribunal of competent jurisdiction.

"Immediate Family Member" means Adam Portnoy, Diane Portnoy or any lineal descendant of Adam Portnoy or Diane Portnoy (including descendants by adoption), the spouse of any lineal descendant of Adam Portnoy or Diane Portnoy, the estate of any such Person, or a trust for the principal benefit of one or more such Persons (including a trust the principal beneficiary of which is another trust for the principal benefit of one or more such Persons).

"Information" has the meaning set forth in [Section 4.02\(a\)](#).

"Initial ROFO Exercise Period" has the meaning set forth in [Section 3.02\(d\)](#).

"Initial Stockholder" has the meaning set forth in the preamble.

"Initial Stockholder Parties" means the Initial Stockholder and its Permitted Transferees who acquire Company Shares.

"Issuance Notice" has the meaning set forth in [Section 4.03\(b\)](#).

"Joinder Agreement" means the joinder agreement in the form and substance of [Exhibit B](#) attached hereto.

"Joint Valuation Firm" means a trustee of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advance of Expenses is sought by Indemnitee; mutually acceptable Third Party Valuation Firm.

(h) "Enterprise Management Agreement" shall mean means that certain Amended and Restated Master Management Agreement, dated as of June 9, 2021, among the Company and any other real estate investment trust, corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request certain of the Company its subsidiaries, and DHC and certain of its subsidiaries, as a trustee, director, manager, officer, partner, employee, agent or fiduciary, amended from time to time.

(i) "Expenses Non-Exercising Pre-emptive Stockholder" means all expenses, including, but not limited to, all attorneys' fees and costs, retainers, court or arbitration costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of has the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or

being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond or other appeal bond or its equivalent.

(j) **"Independent Counsel"** means a law firm, or a member of a law firm, selected by the Company and acceptable to Indemnitee, that is experienced in matters of business law. If, within twenty (20) days after submission by Indemnitee of a written demand for indemnification pursuant to Section 7(a) hereof, no Independent Counsel shall have been selected and agreed to by Indemnitee, either the Company or Indemnitee may petition a Chosen Court (as defined meaning set forth in Section 18 4.03(d)) for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person so appointed shall act as Independent Counsel hereunder.

(k) **"MGCL Offered Shares"** has the meaning set forth in Section 3.02(c).

"Organizational Documents" means the Maryland General Corporation Law, Charter, Bylaws and any written agreement between or among any Stockholders.

(l) **"Maryland REIT Law Over-allotment Exercise Period"** has the meaning set forth in Section 4.03(d).

"Over-allotment Notice" has the meaning set forth in Section 4.03(d).

"Permitted Transfer" means Title 8 any of the Corporations and Associations Article following:

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(a) the Transfer of any Company Shares by a Stockholder to one or more of its Permitted Transferees; or

(b) a pledge of any Company Shares by any DHC Party that creates a security interest in the pledged Company Shares pursuant to a bona fide loan or indebtedness transaction, in each case, with a third party lender that makes the loan in the ordinary course of its business, so long as a DHC Party continues to exercise exclusive voting control over the pledged Company Shares; provided, however, that a foreclosure on the pledged Company Shares or other action that would result in a Transfer of the Annotated Code pledged Company Shares to the pledgee shall not be a "Permitted Transfer" within the meaning of Maryland, this paragraph (b) of this definition unless the pledgee is a Permitted Transferee.

"Permitted Transferee" means any of the following:

(m) (a) with respect to the DHC Parties:

(i) any Affiliate of DHC, which is controlled, directly or indirectly, by DHC; provided, however, that such Affiliate shall only remain a Permitted Transferee for as long as such entity is controlled, directly or indirectly, by DHC;

(ii) any other Stockholder; or

(iii) any entity to which The RMR Group LLC or its Subsidiaries provide management services at the time of the Permitted Transfer; and

(b) with respect to the Initial Stockholder, any Immediate Family Member.

"Person" means an individual, a corporation, a general or limited partnership, an association, a joint venture, limited liability company, a governmental entity, a Governmental Authority, unincorporated organization, trust, a joint venture, a joint stock company association or another entity or organization, other entity.

"Pre-emptive Acceptance Notice" has the meaning set forth in Section 4.03(c).

(n) **"Pre-emptive Exercise Period"** has the meaning set forth in Section 4.03(c).

"Pre-emptive Purchaser" has the meaning set forth in Section 4.03(b).

"Pre-emptive Stockholder" has the meaning set forth in Section 4.03(a).

"Proceeding" means any threatened, pending suit, action, proceeding, arbitration, mediation, audit, hearing, inquiry or, completed claim, demand, action, suit, arbitration, alternate dispute resolution mechanism, to the knowledge of the Person in question, investigation inquiry, administrative hearing or any other proceeding, (in each case, whether civil, criminal, administrative, investigative, formal or investigative (including on appeal), whether informal) commenced, brought, conducted or not heard by or before, or otherwise involving, any Governmental Authority.

"Proposed Transferee" has the meaning set forth in Section 3.04(a).

"Public Offering" means the **right** sale of Company Common Stock by the Company to the public pursuant to a registration statement (other than a pursuant to a registration statement on Form S-4 or Form S-8 or any successor form) declared effective under the Securities Act.

"Put Alternative Value" has the meaning set forth in [Section 3.07\(c\)](#).

"Put Alternative Value Notice" has the meaning set forth in [Section 3.07\(c\)](#).

"Put Event" means a breach by the Company or any Initial Stockholder Party of [Section 4.04\(b\)](#) has occurred.

"Put Exercise Period" has the meaning set forth in [Section 3.07\(c\)](#).

"Put Notice" has the meaning set forth in [Section 3.07\(a\)](#).

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"Put Price" has the meaning set forth in [Section 3.07\(a\)](#).

"Put Right" has the meaning set forth in [Section 3.07\(a\)](#).

"Put Shares" has the meaning set forth in [Section 3.07\(a\)](#).

"REIT" means a Person that is an entity intending in good faith to qualify as a real estate investment trust under the Code.

"REIT Party" means each of (i) DHC together with its Subsidiaries and (ii) any Permitted Transferee of a DHC Party that is, or is a Subsidiary of, a REIT, together with all Subsidiaries of the applicable REIT.

"Related Party Agreement" means any agreement, arrangement or understanding between the Company and its Subsidiaries, on the one hand, and any Stockholder or any Affiliate of a Stockholder (other than DHC or its Subsidiaries) or any Director, officer or employee of the Company, **except one initiated** on the other hand, as such agreement may be amended, modified, supplemented or restated in accordance with the terms of this Agreement.

"Related Party Transaction" means any transaction between the Company and any Stockholder or any Affiliate of a Stockholder (other than DHC or its Subsidiaries) or any Director, officer or employee of the Company.

"Repurchase Acceptance Notice" has the meaning set forth in [Section 3.06\(b\)](#).

"Repurchase Alternative Value" has the meaning set forth in [Section 3.06\(b\)](#).

"Repurchase Alternative Value Notice" has the meaning set forth in [Section 3.06\(b\)](#).

"Repurchase Exercise Period" has the meaning set forth in [Section 3.06\(b\)](#).

"Repurchase Notice" has the meaning set forth in [Section 3.06\(a\)](#).

"Repurchase Shares" has the meaning set forth in [Section 3.06\(a\)](#).

"Repurchase Price" has the meaning set forth in [Section 3.06\(a\)](#).

"Repurchase Right" has the meaning set forth in [Section 3.06\(a\)](#).

"Repurchase Withdrawal Period" has the meaning set forth in [Section 3.06\(d\)\(iv\)](#).

"ROFO Acceptance Notice" has the meaning set forth in [Section 3.02\(d\)](#).

"ROFO Alternative Value" has the meaning set forth in [Section 3.02\(d\)](#).

"ROFO Alternative Value Notice" has the meaning set forth in [Section 3.02\(d\)](#).

"ROFO Process" has the meaning set forth in [Section 3.06\(g\)](#).

"Rules" has the meaning set forth in [Section 8.13\(a\)](#).

"Sale Notice" has the meaning set forth in [Section 3.04\(b\)](#).

"Second ROFO Exercise Period" has the meaning set forth in [Section 3.02\(f\)\(iv\)](#).

"Securities Act" means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

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"Selling Stockholder" has the meaning set forth in [Section 3.04\(a\)](#).

"Subsidiary" means with respect to any Person, any other Person of which a majority of the outstanding equity interests having the power to vote for directors or managers, or comparable Persons charged with governance authority, are owned, directly or indirectly, by **an Indemnitee** the first Person.

"Stockholders" has the meaning set forth in the preamble.

"Tag-along Notice" has the meaning set forth in [Section 3.04\(c\)](#).

"Tag-along Participating Stockholders" has the meaning set forth in [Section 3.04\(a\)](#).

"Tag-along Period" has the meaning set forth in [Section 3.04\(c\)](#).

"Tag-along Sale" has the meaning set forth in [Section 3.04\(a\)](#).

"Tag-along Stockholder" has the meaning set forth in [Section 3.04\(a\)](#).

"Termination Event" means either of the following:

(a) the termination by DHC, at once, or from time to time, of the Management Agreement with respect to Communities (as defined in the Management Agreement) representing, in the aggregate, sixty percent (60%) or more of the Portfolio Gross Revenues (as defined in the Management Agreement) for the last full calendar year preceding DHC's first exercise of any termination rights under the Management Agreement; or

(b) the occurrence of a DHC Change of Control.

"Third Party Purchaser" means any Person who, immediately prior to the contemplated transaction with respect to the Company, (a) does not directly or indirectly own or have the right to acquire any outstanding Company Shares or (b) is not a Person who is or would qualify as a Permitted Transferee of any Person who directly or indirectly owns or has the right to acquire any Company Shares.

"Third Party Valuation Firm" means any independent investment bank or valuation firm with a national, established reputation for the valuation of securities.

"Transfer" means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Company Shares owned by a Person or any interest (including a beneficial interest) in any Company Shares owned by a Person; provided, however, that a transfer that occurs by operation of law pursuant to a merger, acquisition, consolidation or other business combination transaction that results in a DHC Change of Control shall not be deemed to be a Transfer for purposes of [Section 3.02](#) or [Section 3.04](#).

"Waived ROFO Transfer Period" has the meaning set forth in [Section 3.02\(h\)](#).

"Waived Repurchase Transfer Period" has the meaning set forth in [Section 3.06\(f\)](#).

"Withdrawal Period" has the meaning set forth in [Section 3.02\(f\)\(iv\)](#).

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ARTICLE II
MANAGEMENT AND OPERATION OF THE COMPANY

Section 2.01 Voting Arrangements. In addition to any vote or consent of the Directors or Stockholders required by Applicable Law, without the approval of DHC, the Company shall not, and shall not enter into any commitment to, and shall not permit any of its Subsidiaries to, or enter into any commitment to:

(a) amend, modify or waive any provision of the Charter or Bylaws or the governing documents of such Subsidiary or enter into, amend, modify or waive any provision of any written agreement among the Company and any of its stockholders or such Subsidiary and any of its equityholders (other than this Agreement which can only be amended pursuant to [Section 9.10](#)), in each case, in a manner (i) disproportionately adverse to the DHC Parties as compared to all other stockholders of the Company holding the same class of Company Shares as the DHC Parties or (ii) materially adverse to the DHC Parties (it being understood the amendment, modification, or waiver of any provision of the Charter or Bylaws or any such governing documents or the entering into, or amendment, modification or waiver of any provision of, any such agreements to permit the authorization and effect the issuance of Company Shares with preferences or priorities over the Company Common Stock shall not be deemed adverse to the DHC Parties in their capacity as holders of Company Common Stock; *provided*, that any amendment, modification, or waiver of any provision of the Charter or Bylaws or the governing documents of a Subsidiary or the entering into, or amendment, modification or waiver of any provision of, any agreements among the Company and any of its stockholders or a Subsidiary and any of its equityholders that would cause the Company to be in breach of, or be otherwise unable to comply with its obligations under, this Agreement shall be deemed materially adverse to the DHC Parties); or

(b) subject to [Section 2.02](#), enter into, amend in any material respect, waive or terminate any Related Party Agreement or Related Party Transaction other than on terms that are on an arm's length basis and no less favorable to the Company or the relevant Subsidiary than could be obtained from an unaffiliated third party.

Section 2.02 Indemnification – General Related Party Redemptions. The Company shall *indemnify*, give DHC prior notice of any redemption of any Company Shares or any equity interests of any Subsidiary from the Initial Stockholder or any Immediate Family Member, which notice shall specify the proposed redemption price and *advance Expenses* any other material terms related to *Indemnitee (a)* such proposed redemption, as *provided* well as evidence reasonably satisfactory to DHC of the current valuation of the Company Shares or equity interests proposed to be redeemed.

ARTICLE III
TRANSFER OF INTERESTS

Section 3.01 General Restrictions on Transfer.

(a) Except for Permitted Transfers or in this Agreement and (b) otherwise to accordance with the maximum extent permitted by Maryland law procedures described in effect on the Effective Date and as amended from time to time; *provided, however* [Section 3.02](#), that no change in Maryland law shall have the effect of reducing the benefits available to Indemnitee hereunder based on Maryland law as in effect on the Effective Date. The rights of Indemnitee provided in this [Section 2.03](#), [Section 3.04](#), [Section 3.06](#) or [Section 3.07](#), each Stockholder agrees that it will not, directly or indirectly, voluntarily or involuntarily Transfer any of its Company Shares. Any Company Shares transferred to a Third Party Purchaser pursuant to [Section 3.02](#), [Section 3.03](#), [Section 3.04](#), [Section 3.06](#) or [Section 3.07](#) shall *include, without limitation, the rights* cease to be subject to this Agreement.

(b) In addition to any legends required by Applicable Law and any legends set forth in the Organizational Documents, any certificate representing the Company Shares held by a Stockholder shall bear a legend substantially in the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A STOCKHOLDERS AGREEMENT (A COPY OF WHICH IS ON FILE WITH THE COMPANY). NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH AGREEMENT AND (A) PURSUANT TO A REGISTRATION STATEMENT EFFECTIVE UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER. THE HOLDER OF THIS CERTIFICATE,

BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE PROVISIONS OF SUCH STOCKHOLDERS AGREEMENT."

(c) Each Stockholder shall give notice to the Company and the other sections Stockholders prior to any proposed Transfer (whether or not a Permitted Transfer) of any of its Company Shares. In connection with the consummation of any Transfer by a Stockholder of any of its Company Shares (including by operation of law) to a Permitted Transferee, such Permitted Transferee shall be required to execute and deliver to the Company and each other Stockholder, a Joinder Agreement; it being understood that such Permitted Transferee shall automatically be deemed to be a party to, and shall be bound by, all of the terms and conditions of this Agreement, including whether or not such Permitted Transferee has executed and delivered a Joinder Agreement.

(d) Notwithstanding any additional indemnification permitted by other provision of this Agreement, but subject to Section 2-418(g) 4.04(b), each Stockholder agrees that it will not, directly or indirectly, Transfer any of its Company Shares (i) if it would cause a violation of the MGCL, as Securities Act or other applicable to a Maryland real estate investment trust federal or state securities laws (it being understood that, upon request by virtue of Section 8-301(15) of the Maryland REIT Law, the Declaration of Trust or the Bylaws.

Section 3. Proceedings Other Than Derivative Proceedings by or in the Right of the Company. Indemnatee shall there must be entitled delivered to the rights Company an opinion of indemnification provided counsel in this Section 3 if, by reason of Indemnatee's Company Status, Indemnatee is, or is threatened form and substance satisfactory to be, made a party to any Proceeding, other than a derivative Proceeding by or in the right of the Company (or, to the effect that such Transfer may be effected without registration under the Securities Act), (ii) if applicable, such other Enterprise at which Indemnatee is or was serving at the request of it would cause the Company or a predecessor any of its Subsidiaries to be required to register as an investment company under the Investment Company Act of 1940, as amended or (iii) if it would cause the assets of the Company or any of its Subsidiaries to be deemed plan assets as defined under the Employee Retirement Income Security Act of 1974 or its accompanying regulations or result in any "prohibited transaction" thereunder involving the Company.

(e) Any Transfer or attempted Transfer of any Company Shares in violation of this Agreement shall be null and void, no such Transfer shall be recorded on the Company's books and the purported transferee in any such Transfer shall not be treated (and the purported transferor shall continue be treated) as the owner of the Company Shares for all purposes of this Agreement.

Section 3.02 Right of First Offer.

(a) Subject to Section 3.06(g), one or more DHC Parties (the "Electing DHC Parties") may Transfer all or any portion of their majority owned subsidiaries). Pursuant Company Shares to a Third Party Purchaser; provided, however, that any such Transfer must be in compliance with this Section 3.02; and, provided further, that the DHC Parties may only initiate a Transfer pursuant to this Section 3.02 once in any calendar year.

(b) Prior to Transferring any Company Shares to any Third Party Purchaser, the Electing DHC Parties shall provide ABP with notice (a "DHC Offer Notice") of their desire to Transfer some or all of their Company Shares to a Third Party.

(c) The DHC Offer Notice shall specify the number of Company Shares that the Electing DHC Parties desire to Transfer (such Company Shares, the "Offered Shares") and shall include a valuation (without any reduction for minority interests) of the Offered Shares from a Third Party Valuation Firm (the "DHC ROFO Price"), together with reasonable supporting information. Upon request of the Electing DHC Parties, the Company and ABP shall provide the Third Party Valuation Firm appointed by the Electing DHC Parties to determine the DHC ROFO Price with such information related to the Offered Shares, the Company and ABP as such Third Party Valuation Firm may reasonably request in connection with its determination. Except as provided in Section 3.06(g), Indemnatee the Electing DHC Parties shall bear the costs of such Third Party Valuation Firm.

(d) Upon receipt of the DHC Offer Notice, ABP shall have ten (10) Business Days (the "Initial ROFO Exercise Period") to elect, by delivering notice to the Electing DHC Parties, that ABP will (i) purchase all, but not less than all, of the Offered Shares at the DHC ROFO Price (a "ROFO Acceptance Notice") or (ii) provide the Electing DHC Parties with a valuation of the Offered Shares (without any reduction for minority interests) from an alternative Third Party Valuation Firm (a "ROFO Alternative Value"), together with reasonable supporting information, within forty-five (45) days after the end of the Initial ROFO Exercise Period (such notice, a "ROFO Alternative Value Notice"). Any ROFO Acceptance Notice shall be indemnified against binding upon delivery and irrevocable by ABP.

(e) If ABP delivers a ROFO Acceptance Notice during the Initial ROFO Exercise Period, the Electing DHC Parties shall sell, and ABP shall purchase, all, judgments, penalties, fines but not less than all, of the Offered Shares at the DHC ROFO Price. If ABP does not deliver a ROFO Acceptance Notice or a ROFO Alternative Value Notice during the Initial ROFO Exercise Period, or if it delivers a ROFO Alternative Value Notice but does not thereafter provide the ROFO Alternative Value when and amounts paid as required by Section 3.02(f)(i), then ABP shall be deemed to have waived its rights to purchase the Offered Shares under this Section 3.02 with respect to such DHC Offer Notice.

(f) If ABP provides a ROFO Alternative Value Notice during the Initial ROFO Exercise Period, the following provisions shall apply:

(i) the ROFO Alternative Value Notice shall specify the Third Party Valuation Firm selected by ABP to provide the ROFO Alternative Value, which Third Party Valuation Firm shall be required to deliver to the Electing DHC Parties and ABP within forty-five (45) days after the end of the Initial ROFO Exercise Period its determination of the ROFO Alternative Value, together with reasonable supporting information. ABP shall bear the costs of the Third Party Valuation Firm appointed by it.

(ii) If the ROFO Alternative Value is at least ninety percent (90%) and not more than one hundred and ten percent (110%) of the DHC ROFO Price, then ABP shall have the right, to be exercised within three (3) Business Days of the date of the delivery of the ROFO Alternative Value, to again send a ROFO Acceptance Notice and if ABP sends a ROFO Acceptance Notice, ABP shall purchase, and the Electing DHC Parties shall sell, all, but not less than all, of the Offered Shares to ABP at the average of the DHC ROFO Price and the ROFO Alternative Value.

(iii) If the ROFO Alternative Value is greater than one hundred and ten percent (110%) of the DHC ROFO Price or less than ninety percent (90%) of the DHC ROFO Price, then ABP and the Electing DHC Parties shall jointly appoint a Joint Valuation Firm to determine the value of the Offered Shares, which shall be instructed to provide the Electing DHC Parties and ABP with its determination of the value of the Offered Shares (without any reduction for minority interests) (the "**Determined ROFO Price**"), together with reasonable supporting information, within thirty (30) days of its appointment. The Joint Valuation Firm shall be provided with the prior valuations of the Offered Shares obtained by the Electing DHC Parties and ABP, but shall not be obligated to base its determination on such valuations. ABP shall also provide the Joint Valuation Firm such additional information related to the Offered Shares and ABP as the Joint Valuation Firm may reasonably request in **Settlement** connection with its determination. Except as provided in **Section 3.06(g)**, the cost of the Joint Valuation Firm will be borne fifty percent (50%) by the Electing DHC Parties and fifty percent (50%) by ABP or as they may otherwise agree. The Joint Valuation Firm shall act as an expert and not an arbitrator and the decision of the Joint Valuation Firm as to the Determined ROFO Price, absent manifest error, shall be final and non-appealable.

(iv) If the Determined ROFO Price is greater than one hundred and ten percent (110%) of the DHC ROFO Price or less than ninety percent (90%) of the DHC ROFO Price, the Electing DHC Parties shall have ten (10) days following delivery of the Determined ROFO Price (the "**Withdrawal Period**") to provide ABP with notice of their withdrawal of the DHC Offer Notice, in which event, the Electing DHC Parties shall not be permitted to sell the Offered Shares to a Third Party Purchaser without sending a new DHC Offer Notice in accordance with, and otherwise complying with, this **Section 3.02**. If the DHC Parties do not send notice of their withdrawal of the DHC Offer Notice during the Withdrawal Period, then ABP shall have ten (10) days following the end of the Withdrawal Period (the "**Second ROFO Exercise Period**") to again deliver a ROFO Acceptance Notice to the Electing DHC Parties and in such event the Electing DHC Parties shall sell, and ABP shall purchase all, but not less than all, of the Offered Shares at the Determined ROFO Price. If ABP does not deliver a ROFO Acceptance Notice during the Second ROFO Exercise Period, it shall be deemed to have waived its rights to purchase the Offered Shares under this **Section 3.02** with respect to such DHC Offer Notice.

(g) The closing of the purchase and sale of the Offered Shares to ABP pursuant to this **Section 3.02** shall occur on a date that is not later than seventy-five (75) days after the date on which ABP delivers a ROFO Acceptance Notice pursuant to this **Section 3.02**, or as otherwise agreed in writing by the Electing DHC Parties and ABP. At the closing of the purchase and sale of the Offered Shares to ABP pursuant to this **Section 3.02**, ABP shall deliver to the Electing DHC Parties the purchase price for the Offered Shares as determined pursuant to this **Section 3.02** by wire transfer of immediately available funds and the Electing DHC Parties shall deliver to ABP the certificate(s) representing the Offered Shares, if any,

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(or an affidavit of loss with respect to such certificate(s)) accompanied by stock powers and all **Expenses incurred** necessary stock transfer taxes paid and stamps affixed, if necessary.

(h) If ABP does not deliver a ROFO Acceptance Notice or a ROFO Alternative Value Notice during the Initial ROFO Exercise Period or a ROFO Acceptance Notice during the Second ROFO Exercise Period, or has otherwise waived or been deemed to have waived its rights to purchase the Offered Shares, the Electing DHC Parties may, during the one hundred and twenty (120) day period immediately following the later of the expiration of the Initial ROFO Exercise Period or the Second ROFO Exercise Period, as applicable (the "**Waived ROFO Transfer Period**"), Transfer all of the Offered Shares to a Third Party Purchaser at a price not less than ninety-eight percent (98%) of the lesser of the DHC ROFO Price, the average of the DHC ROFO Price and the ROFO Alternative Value or the Determined ROFO Price. If the Electing DHC Parties do not Transfer the Offered Shares within the Waived ROFO Transfer Period, the Electing DHC Parties may not Transfer the Offered Shares unless the Electing DHC Parties send a new DHC Offer Notice in accordance with, and otherwise comply with, this **Section 3.02**.

(i) Each Stockholder shall take all actions as may be reasonably necessary to consummate the Transfer contemplated by **Indemnitee** this **Section 3.02**, including entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate.

(j) During the Waived ROFO Transfer Period, neither the Company nor any Initial Stockholder Party shall engage in any marketing for sale or sale of the Company or any of its Subsidiaries (whether by merger, consolidation or sale of all or substantially all of the assets of the Company or its Subsidiaries) or any Company Shares (including by way of issuance of Company Shares, but other than the Offered Shares on **Indemnitee's** behalf of the Electing DHC Parties) and the Company and ABP shall provide the Electing DHC Parties with reasonable assistance and cooperation at the Electing DHC Parties' expense in connection with their marketing and sale of their Offered Shares.

(k) ABP's rights under this **Section 3.02** to acquire the Offered Shares may be assigned in whole or in part to the Company or any other Stockholder.

Section 3.03 Drag-along Rights.

(a) **Drag-along Rights.** For so long as the Initial Stockholder Parties own, or hold voting control over, in aggregate at least a majority of the issued and outstanding Company Shares on a fully diluted basis, if such Stockholders (the "**Dragging Stockholders**") receive a bona fide offer from a Third Party Purchaser to consummate, in one transaction or a series of related transactions, a Company Change of Control (a "**Drag-along Sale**"), and if the Dragging Stockholders have delivered a copy of such bona fide offer from such Third Party Purchaser to the Company and each DHC Party and each other Stockholder, then the Dragging Stockholders shall have the right to require that each DHC Party and other Stockholder (each, a "**Drag-along Stockholder**" and the Drag-along Stockholders, the Dragging Stockholders, and any other stockholders of the Company participating in the Drag-along Sale, the "**Drag-along Participating Stockholders**") participate in such Transfer in the manner set forth in this [Section 3.03](#). Notwithstanding anything to the contrary in this Agreement, but subject to [Section 4.04\(b\)](#), each Dragging Stockholder and each Drag-along Stockholder shall vote in favor of the Transfer and take all actions to approve such transaction and to waive any dissenters, appraisal or other similar rights.

(b) **Exercise.** The Dragging Stockholders shall exercise their rights pursuant to this [Section 3.03](#) by delivering a notice (the "**Drag-along Notice**") to each Drag-along Stockholder no later than thirty (30) days prior to the closing date of such Drag-along Sale. The Drag-along Notice shall set forth:

(i) the total number of Company Shares to be sold in the Drag-along Sale to the Third Party Purchaser if the Drag-along Sale is structured as a Transfer of Company Shares and the percentage of the outstanding Company Shares represented by such Company Shares;

(ii) the identity of the Third Party Purchaser;

(iii) the proposed date and time of the closing, if known, of the Drag-along Sale;

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(iv) the per Company Share purchase price and the other material terms and conditions of the Transfer, including a description of any non-cash consideration in sufficient detail to permit the valuation thereof; and

(v) a copy of any form of agreement proposed to be executed in connection therewith.

(c) **Amount of Company Shares Transferred.** If the Drag-along Sale is structured as a Transfer of Company Shares, then, subject to [Section 3.03\(d\)](#) and [Section 3.05](#), each Drag-along Participating Stockholder shall Transfer the amount of Company Shares equal to the product of (i) the total amount of Company Shares to be sold to the Third Party Purchaser as stated in the Drag-along Notice, and (ii) a fraction (1) the numerator of which is equal to the amount of Company Shares then held by such Drag-along Participating Stockholder, and (2) the denominator of which is equal to the amount of Company Shares then held in aggregate by the Drag-along Participating Stockholders.

(d) **Consideration; Representations.** Subject to the provisions of this [Section 3.03\(d\)](#) and [Section 3.05](#), the consideration to be received by each Drag-along Participating Stockholder in the Drag-along Sale shall be the same form and amount of consideration per Company Share (or, if Third Party Purchaser gives any Drag-along Participating Stockholder an option as to the form and amount of consideration to be received, the same option shall be given to each Drag-along Participating Stockholder) and the terms and conditions of such Transfer shall be the same for all Drag-along Participating Stockholders; provided, however, and notwithstanding anything in this Agreement to the contrary, in no event shall any DHC Party be required to accept any consideration having a minimum value less than the Base Price. Additionally, and notwithstanding anything in this Agreement to the contrary, in no event shall any Drag-along Stockholder be required to: (i) accept any consideration in a Drag-along Sale other than cash or freely marketable publicly traded securities; (ii) enter into any non-compete, non-solicitation or similar agreements in connection with such Drag-along Sale; or (iii) make any representations, warranties or indemnities other than with respect to such Drag-along Stockholder's ownership of its Company Shares and its power and right to enter into and consummate such Drag-along Sale; provided, however, that each Drag-along Stockholder may be required to participate in any indemnities with respect to representations related to the Company made to the Third Party Purchaser on a pro rata basis with the other Drag-along Participating Stockholders based on the aggregate consideration received by such Drag-along Participating Stockholder (except with respect to representations and warranties or covenants or indemnities as to any specific Drag-along Participating Stockholder for which only such Drag-along Participating Stockholder shall be responsible), so long as the aggregate indemnification obligations and liability for fraud or intentional misrepresentation on the part of the Company of any Drag-along Stockholder in connection with such Drag-along Sale do not exceed the actual amount of proceeds received by such Drag-along Stockholder in such Drag-along Sale and in no event shall any Drag-along Participating Stockholder be liable to a Third Party Purchaser for any fraud or intentional misrepresentation on the part of any other Drag-along Participating Stockholder.

(e) **Expenses.** The fees and expenses of each Dragging Stockholder incurred in connection with a [Proceeding by reason](#) Drag-along Sale and for the benefit of [Indemnitee's Company Status unless it is finally determined all Drag-along Participating Stockholders \(it being understood that such indemnification is not permitted by the MGCL, the Declaration of Trust or the Bylaws.](#)

[Section 4. Derivative Proceedings by or in the Right of the Company.](#) Indemnitee shall be entitled to the rights of indemnification provided in this [Section 4](#) if, by reason of [Indemnitee's Company Status](#), Indemnitee is, or is threatened to be, made a party to any derivative Proceeding brought by or in the right of the Company (or, if applicable, such other Enterprise at which Indemnitee is or was serving at the request of the Company or a predecessor of the Company or any of their majority owned subsidiaries). Pursuant to this [Section 4](#), Indemnitee shall be indemnified against all judgments, penalties, fines and amounts paid in settlement and all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding unless it is finally determined that such indemnification is not permitted by the MGCL, the Declaration of Trust or the Bylaws.

Section 5. Indemnification for Expenses of a Party Who is Partly Successful. Without limitation on **Section 3** or **Section 4**, if Indemnatee is not wholly successful in any Proceeding covered by this Agreement, but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnatee under this **Section 5** for all Expenses incurred by Indemnatee or on Indemnatee's behalf in connection with each successfully resolved claim, issue or matter, allocated on a reasonable and proportionate basis. For purposes of this **Section 5** and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Advancement of Expenses. The Company, without requiring a preliminary determination of Indemnatee's ultimate entitlement to indemnification hereunder, shall advance all Expenses costs incurred by or on behalf of Indemnatee a Dragging Stockholder for its sole benefit will not be considered to be for the benefit of all Drag-along Participating Stockholders), to the extent not paid or reimbursed by the Company or the Third Party Purchaser, shall be shared on a pro rata basis by each Drag-along Participating Stockholder based on the aggregate consideration received by such Drag-along Participating Stockholder in the Drag-along Sale; **provided**, that no Drag-along Stockholder shall be obligated to make or reimburse any out-of-pocket expenditure prior to the consummation of the Drag-along Sale.

(f) **Cooperation.** Each Stockholder shall take all actions as may be reasonably necessary to consummate the Drag-along Sale, including entering into agreements and delivering certificates, assignments and instruments, in each case, consistent with the agreements being entered into and the certificates, as applicable, being delivered by each Dragging Stockholder and the terms of this **Section 3.03**.

(g) **Timing of Closing.** The Dragging Stockholders shall have one hundred and eighty (180) days following the date of the Drag-along Notice in which to consummate the Drag-along Sale, on the terms set forth in the Drag-along Notice and the terms of this **Section 3.03** (which one hundred and eighty (180) day period may be extended for a reasonable time not to exceed an additional ninety (90) days to the extent reasonably necessary to obtain any required approvals or consents). If at the end of such period the Dragging Stockholders have not completed the Drag-along Sale, then the Dragging Stockholders may not thereafter effect a Transfer of Company Shares pursuant to this **Section 3.03** without again sending a new Drag-along Notice and complying with the provisions of this **Section 3.03**.

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Section 3.04 Tag-along Rights.

(a) **Tag-along Rights.** If at any time one or more Initial Stockholder Parties (the "**Selling Stockholders**") propose to Transfer any of their Company Shares to a Third Party Purchaser (the "**Proposed Transferee**"), and if such Selling Stockholders cannot or have not elected to exercise the rights of Dragging Stockholders set forth in **Section 3.03** in connection with such Transfer (a "**Tag-along Sale**"), then each DHC Party and each other Stockholder (each, a "**Tag-along Stockholder**" and the Selling Stockholders, the Tag-along Stockholders and any **Proceeding** other stockholders of the Company participating in **which Indemnatee may** such Tag-along Sale, collectively, the "**Tag-along Participating Stockholders**") shall be **involved, or is threatened** permitted to participate in such Tag-along Sale with respect to the Company Shares owned by such Tag-along Stockholder on the terms and conditions set forth in this **Section 3.04**.

(b) **Notice.** The Selling Stockholders shall deliver to the Company and each Tag-along Stockholder a notice (a "**Sale Notice**") of the proposed Tag-along Sale no later than twenty (20) Business Days prior to the closing date of such Tag-along Sale. The Sale Notice shall set forth:

(i) the total number of Company Shares the Proposed Transferee has offered to acquire and the percentage of the outstanding Company Shares represented by such Company Shares;

(ii) the number of Company Shares that the Selling Stockholders propose to Transfer in the Tag-along Sale and the percentage of the outstanding Company Shares owned by the Selling Stockholders represented by such Company Shares;

(iii) the identity of the Proposed Transferee;

(iv) the proposed date and time of the closing, if known, of the Tag-along Sale;

(v) the per Company Share purchase price and the other material terms and conditions of the Transfer, including a description of any non-cash consideration in sufficient detail to permit the valuation thereof; and

(vi) a copy of any form of agreement proposed to be **involved, including** executed in connection therewith.

(c) **Exercise.** Each Tag-along Stockholder shall exercise its right to participate in a Tag-along Sale by delivering to the Selling Stockholders a notice (a "**Tag-along Notice**") stating its election to do so and specifying the number of its Company Shares it desires to Transfer in such Tag-along Sale (up to the maximum number it is permitted to Transfer pursuant to this **Section 3.04**) no later than twenty (20) days after receipt of the Sale Notice (the "**Tag-along Period**"). The election by a Tag-along Stockholder set forth in its Tag-along Notice shall be irrevocable except as provided in this **Section 3.04(c)**, and such Tag-along Stockholder shall be bound and obligated, and entitled, to Transfer such Company Shares in the proposed Tag-along Sale on and subject to the terms and conditions set forth in this **Section 3.04**. Each Tag-along Stockholder shall have the right to Transfer in a **party**, Tag-along Sale up to the same percentage of its Company Shares as the percentage of the Company Shares held by the Selling Stockholders being Transferred in such Tag-along Sale. For the avoidance of doubt, if the aggregate number of Company Shares that the Tag-along Participating Stockholders have elected to Transfer in the Tag-

along Sale exceeds the number of Company Shares that the Proposed Transferee is willing to acquire, then the number of Company Shares that each Tag-along Participating Stockholder will Transfer in the Tag-along Sale shall be proportionately reduced until the aggregate number of Company Shares that the Tag-along Participating Stockholders will Transfer in such Tag-along Sale equals the number of Company Shares that the Proposed Transferee is willing to acquire; **provided**, that in no event will the number of Company Shares that the Tag-along Stockholder is permitted to sell in the Tag-along Sale be reduced to less than the same percentage of such Tag-along Stockholder's Company Shares as the percentage of the Company Shares held by the Selling Stockholders being Transferred in such Tag-along Sale. Notwithstanding the foregoing, if the terms of, or agreements for, a **witness** Tag-along Sale materially change from those provided in the Sale Notice or **otherwise**, if the percentage of the Company Shares owned by **reason of Indemnitee's Company Status**, the Selling Stockholders to be Transferred in the Tag-along Sale shall change from the percentage set forth in the Sale Notice, the Selling Stockholders shall deliver to each Tag-along Stockholder (whether or not such Tag-along Stockholder has previously sent a timely Tag-along Notice) an updated Sale Notice reflecting such changes and each Tag-along Stockholder shall have the right, exercisable within ten (10) **days after** Business Days, to elect to participate in, change its participation in or withdraw its participation in such Tag-along Sale.

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(d) **Transfer.** A Tag-along Stockholder who does not deliver a timely Tag-along Notice in compliance with **Section 3.04(c)** shall be deemed to have waived its rights to participate in such Transfer and the **receipt** Selling Stockholders shall (subject to the rights of any other Tag-along Stockholders who have provided a timely Tag-along Notice) thereafter be free to Transfer to the Proposed Transferee its Company Shares at a per Company Share price that is not greater than one hundred and two percent (102%) of the per Company Share price set forth in the Sale Notice and on other terms and conditions which are not materially more favorable in the aggregate to the Selling Stockholders than those set forth in the Sale Notice without any further obligation to the non-accepting Tag-along Stockholders.

(e) **Consideration; Representations.** Subject to the provisions of this **Section 3.04(e)** and **Section 3.05**, the consideration to be received by a Tag-along Stockholder in the Tag-along Sale shall be the same form and amount of consideration per Company Share to be received by the Selling Stockholders (or, if the Selling Stockholders are given an option as to the form and amount of consideration to be received, the same option shall be given to each Tag-along Stockholder) and the terms and conditions of such Transfer shall be the same as those upon which each Selling Stockholder Transfers its Company Shares. Each Tag-along Stockholder shall make or provide the same representations, warranties, covenants, indemnities and agreements as each Selling Stockholder makes or provides in connection with the Tag-along Sale (except that in the case of representations, warranties, covenants, indemnities and agreements pertaining specifically to the Selling Stockholders or any other Tag-along Participating Stockholder, a Tag-along Stockholder shall only make the comparable representations, warranties, covenants, indemnities and agreements pertaining specifically to itself); **provided**, that (i) the Selling Stockholders shall use commercially reasonable efforts to cause all representations, warranties, covenants and indemnities to be made by each Tag-along Participating Stockholder to be several and not joint obligations of the Tag-along Participating Stockholders and (ii) unless otherwise agreed by each Tag-along Stockholder, any indemnification obligation in respect of breaches of representations, warranties and covenants (other than those that pertain to an individual Tag-along Participating Stockholder, which shall be the sole obligation of such Tag-along Participating Stockholder) shall be borne on a pro rata basis by each Tag-along Participating Stockholder based on the aggregate consideration received by such Tag-along Participating Stockholder in such Tag-along Sale; **provided**, that in no event shall (x) the amount of the indemnification obligation and liability for fraud or intentional misrepresentation on the part of the Company of a **statement** Tag-along Stockholder exceed the aggregate proceeds received by such Tag-along Stockholder in such Tag-along Sale; (y) any Tag-along Stockholder be required to enter into any non-compete, non-solicitation or **statements from Indemnitee requesting** similar agreements in connection with such **advance** Tag-along Sale and (z) in no event shall any Tag-along Stockholder be liable for any fraud or **advances from time to time, whether prior to or after final disposition** intentional misrepresentation by any other stockholder of such Proceeding. Such statement or statements shall reasonably evidence the **Expenses Company**.

(f) **Expenses.** The fees and expenses of the Selling Stockholders incurred by **Indemnitee** in connection with a Tag-along Sale and shall be preceded or accompanied by a written affirmation by **Indemnitee** for the benefit of **Indemnitee's good faith belief** all Tag-along Participating Stockholders (it being understood that the standard of conduct necessary for indemnification by the Company as authorized by the MGCL, the Declaration of Trust and the Bylaws has been met and a written undertaking costs incurred by or on behalf of **Indemnitee**, in substantially the form Selling Stockholders for their sole benefit will not be considered to be for the benefit of all Tag-along Participating Stockholders), to the extent not paid or reimbursed by the Company or the Proposed Transferee, shall be shared by each Tag-along Participating Stockholder on a **Exhibit A pro rata** hereto basis, based on the aggregate consideration received by such Tag-along Participating Stockholder; **provided**, that no Tag-along Stockholder shall be obligated to make or in such other form reimburse any out-of-pocket expenditure prior to the consummation of the Tag-along Sale.

(g) **Cooperation.** Each Tag-along Stockholder shall take all actions as may be reasonably necessary to consummate the Tag-along Sale, including entering into agreements and delivering certificates, assignments, and instruments, in each case consistent with the agreements being entered into and the certificates, as applicable, being delivered by the Selling Stockholders and the terms of this **Section 3.04**.

(h) **Timing of Closing.** The Selling Stockholders shall have ninety (90) days following the expiration of the Tag-along Period in which to consummate such Tag-along Sale to the Proposed Transferee, on and subject to the terms and conditions set forth in the Sale Notice and this **Section 3.04** (which ninety (90) day period may be extended for a reasonable time not to exceed an additional ninety (90) days to the extent reasonably necessary to obtain any required **under applicable law as in effect** approvals and consents). If at the end of such period the Selling Stockholders have not completed such Transfer, then the Selling Stockholders may not thereafter effect a Transfer of Company Shares subject to this **Section 3.04** without again fully complying with the provisions of this **Section 3.04**.

Section 3.05 Multiple Classes of Shares. If at any time the Company has more than one class of Company Shares which may impact the application of the execution thereof, provisions of Section 3.03 or Section 3.04 in connection with a Drag-along

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Sale or a Tag-along Sale, respectively, including in connection with the consideration to be paid by the Third Party Purchaser for any class of Company Shares, the Directors and the Drag-along Participating Stockholders and Tag-along Participating Stockholders shall use reasonable best efforts to cooperate to apply Section 3.03 or Section 3.04, as applicable, in good faith in a reasonable and equitable manner in consideration of the capital structure of the Company, in order to carry out the intent of such provisions; provided, that there shall be no minority or other similar discount for less than a controlling interest or for nonvoting Company Shares, and no premium for voting Company Shares or a controlling interest, in the Company.

Section 3.06 Repurchase Rights.

(a) Subject to Section 3.06(g), following a Termination Event, ABP shall have the right (a **"Repurchase Right"**), exercised by notice (the **"Repurchase Notice"**) given to the DHC Parties any time prior to the one year anniversary of such Termination Event, to purchase all, but not less than all, of the Company Shares then owned by the DHC Parties (the **"Repurchase Shares"**). The Repurchase Notice shall include a valuation (without any reduction for minority interests) of the Repurchase Shares as of the date of the Termination Event from a Third Party Valuation Firm (the **"Repurchase Price"**), together with reasonable supporting information.

(b) Upon receipt of the Repurchase Notice, the DHC Parties shall have ten (10) Business Days (the **"Repurchase Exercise Period"**), to elect, by delivering notice to ABP, that the DHC Parties will (i) sell the Repurchase Shares at the Repurchase Price (the **"Repurchase Acceptance Notice"**) or (ii) provide ABP with a valuation of the Repurchase Shares (without any reduction for minority interests) as of the date of the Termination Event from an alternate Third Party Valuation Firm (a **"Repurchase Alternative Value Notice"**), together with reasonable supporting information, within thirty (30) days after the end of the Repurchase Exercise Period (such notice, a **"Repurchase Alternative Value Notice"**).

(c) If the DHC Parties provide a Repurchase Acceptance Notice during the Repurchase Exercise Period, the DHC Parties shall sell, and ABP shall purchase, all, but not less than all, of the Repurchase Shares at the Repurchase Price. If the DHC Parties fail to provide a Repurchase Acceptance Notice or a Repurchase Alternative Value Notice during the Repurchase Exercise Period, or if they deliver a Repurchase Alternative Value Notice but do not thereafter provide the Repurchase Alternative Value when and as required by Section 3.06(d)(i), then they will be deemed to have delivered a Repurchase Acceptance Notice.

(d) If the DHC Parties provide a Repurchase Alternative Value Notice during the Repurchase Exercise Period, the following provisions will apply:

(i) The Repurchase Alternative Value Notice shall specify the Third Party Valuation Firm (the **"DHC Valuation Firm"**) selected by the DHC Parties to provide the Repurchase Alternative Value, which Third Party Valuation Firm shall be required to deliver to the DHC Parties and ABP within thirty (30) days after the end of the Repurchase Exercise Period its determination of the Repurchase Alternative Value, together with reasonable supporting information. ABP shall provide the DHC Valuation Firm such additional information related to the Repurchase Shares and ABP as the DHC Valuation Firm may reasonably request in connection with its determination. The DHC Parties shall bear the costs of the DHC Valuation Firm.

(ii) If the Repurchase Alternative Value is at least ninety percent (90%) and not more than one hundred and ten percent (110%) of the Repurchase Price, then, subject to Section 3.06(a), the DHC Parties shall be deemed to have delivered a Repurchase Acceptance Notice and the DHC Parties shall sell, and ABP shall purchase, all, but not less than all, of the Repurchase Shares at the average of the Repurchase Price and the Repurchase Alternative Value.

(iii) If the Repurchase Alternative Value is less than ninety percent (90%) or greater than one hundred and ten percent (110%) of the Repurchase Price, then ABP and the DHC Parties shall jointly appoint a Joint Valuation Firm to determine the value of the Repurchase Shares, which shall be instructed to provide the DHC Parties and ABP with its determination of the value of the Repurchase Shares (without any reduction for minority interests) as of the date of the Termination Event (the **"Determined Repurchase Price"**), together with reasonable supporting information, within thirty (30) days of its appointment. The Joint Valuation Firm shall be provided with the prior valuations of the Repurchase Shares obtained by the DHC Parties and ABP, but shall not be obligated to base its determination on such valuations. ABP shall also provide the Joint Valuation Firm such additional information related to the Repurchase Shares and ABP as the Joint

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Valuation Firm may reasonably request in connection with its determination. The cost of the Joint Valuation Firm will be borne fifty percent (50%) by the DHC Parties and fifty percent (50%) by ABP or as they may otherwise agree. The Joint Valuation Firm shall act as an expert and not an arbitrator and the decision of the Joint Valuation Firm as to the Determined Repurchase Price, absent manifest error, shall be final and non-appealable. Upon delivery of the Determined Repurchase Price, ABP shall purchase, and the DHC Parties shall sell, all, but not less than all, of the Repurchase Shares at the Determined Repurchase Price, subject to [Section 3.06\(d\)\(iv\)](#).

(iv) If the Determined Repurchase Price is more than one hundred and ten percent (110%) of the Repurchase Price, ABP shall have ten (10) days following delivery of the Determined Repurchase Price (the "**Repurchase Withdrawal Period**") to withdraw the Repurchase Notice by notice given to the DHC Parties; provided, that ABP shall reimburse the portion Electing DHC Parties for the costs of the DHC Valuation Firm and Joint Valuation Firm incurred by them in connection with any Expenses advanced to Indemnitee relating to any claims, issues or matters in the Proceeding ROFO Process that was terminated as to which it shall be finally determined that the standard of conduct has not been met and which have not been successfully resolved as described provided in [Section 5 3.06\(g\)\(iii\)](#). If ABP does not withdraw the Repurchase Notice in such ten (10) day period, then ABP shall purchase, and the DHC Parties shall sell, all, but not less than all, of the Repurchase Shares at the Determined Repurchase Price.

(v) Notwithstanding the foregoing, in no event shall any DHC Party be required to accept a Repurchase Price having a minimum value less than the Base Price.

(e) The closing of the purchase and sale of the Repurchase Shares pursuant to this [Section 3.06](#) shall occur on a date that is not later than ninety (90) days after the purchase price for the Repurchase Shares has been finally determined pursuant to this [Section 3.06](#) or as otherwise agreed in writing by the DHC Parties and ABP. At the closing of the purchase and sale of the Repurchase Shares to ABP pursuant to this [Section 3.06](#), ABP shall deliver to the DHC Parties the purchase price for the Repurchase Shares as determined pursuant to this [Section 3.06](#) by wire transfer of immediately available funds and the DHC Parties shall deliver to ABP the certificate(s) representing the Repurchase Shares, if any, (or an affidavit of loss with respect to such certificates) accompanied by stock powers and all necessary stock transfer taxes paid and stamps affixed, if necessary.

(f) If ABP withdraws the Repurchase Notice in accordance with [Section 3.06\(d\)\(iv\)](#), the DHC Parties may during the one hundred and twenty (120) day period immediately following the date that they receive the notice from ABP that it is withdrawing the Repurchase Notice (the "**Waived Repurchase Transfer Period**"), Transfer all of the Repurchase Shares to any Third Party Purchaser at a price not less than ninety eight percent (98%) of the lesser of the Repurchase Price, the average of the Repurchase Price and the Repurchase Alternative Value or the Determined Repurchase Price and the provisions of [Section 3.02\(i\)](#) and [Section 3.02\(j\)](#) shall apply *mutatis mutandis* during the Waived Repurchase Transfer Period.

(g) Notwithstanding anything in this Agreement to the contrary, but subject to [Section 4.04\(b\)](#), (i) ABP may not exercise the Repurchase Right at any time during the pendency of a Drag-along Sale, a Tag-along Sale or a transaction which is reasonably likely to result in a Company Change of Control; (ii) if a Termination Event has occurred, the DHC Parties may not thereafter send an DHC Offer Notice until a date that is not less than ninety (90) days following the date of the Termination Event or after such ninety (90) day period if ABP has then delivered a Repurchase Notice pursuant to this [Section 3.06](#) unless and until such Repurchase Notice is withdrawn pursuant to [Section 3.06\(d\)\(iv\)](#); (iii) if as of the date a Termination Event occurs, the process with respect to an outstanding DHC Offer Notice is then pending pursuant to [Section 3.02](#) (a "**ROFO Process**"), then (A) the ROFO Process shall be suspended for ninety (90) days following the Termination Event, and terminated if ABP sends a Repurchase Notice within such ninety (90) day period; (B) if ABP fails to send a Repurchase Notice in such ninety (90) day period, then as of the ninety-first (91st) day following the Termination Event, at the Electing DHC Parties' option, the ROFO Process shall resume with any applicable time periods extended to reflect such suspension; and (C) if ABP sends a Repurchase Notice within such ninety (90) period following the Termination Event and thereafter withdraws the Repurchase Notice in accordance with [Section 3.06\(d\)\(iv\)](#), the DHC Parties shall have the right following such withdrawal to send another DHC Offer Notice to ABP even if the DHC Parties have previously sent an DHC Offer Notice in that calendar year; and (iv) if a ROFO Process is reinstated pursuant to [clause \(iii\)](#) of this [Section 3.06\(g\)](#) or the DHC Parties send an DHC Offer Notice permitted by [clause \(ii\)](#) of this [Section 3.06\(g\)](#), ABP shall not thereafter have the right to send a Repurchase Notice unless and until the applicable ROFO Process has been completed in accordance with [Section 3.02](#) and the Repurchase Right will only be exercisable with respect to the remaining Company Shares owned by the DHC Parties after the ROFO Process has been completed. For the avoidance of doubt, nothing in this [Section 3.06](#) limits the

right of the DHC Parties to Transfer any or all of their Repurchase Shares at any time pursuant to [Section 3.03](#) or [Section 3.04](#) or otherwise in compliance with this Agreement.

(h) ABP may assign the Repurchase Right in whole or in part to the Company or any other Stockholder.

Section 3.07 Put Rights

(a) At any time that a Put Event then exists, each REIT Party shall have the right (a "**Put Right**") exercised by notice to ABP (the "**Put Notice**") to require ABP to purchase from such REIT Party (the "**Electing Put Party**"), such number of the Company Shares owned by such REIT Party as is necessary to cause the Company Shares owned by such REIT Party to not exceed the Company Shares that such REIT Party may own pursuant to the limit in [Section 4.04\(b\)](#) (such number of Company Shares to be purchased, the "**Put Shares**"). The purchase price per Put Share shall initially be the Base Price (the "**Put Price**").

(b) Upon receipt of the Put Notice, ABP shall within three (3) Business Days purchase all of the Put Shares at the Put Price, subject to the remaining provisions of this Section 3.07.

(c) Without limiting the obligation of ABP to purchase the Put Shares pursuant to Section 3.07(b), the Electing Put Party shall have ten (10) Business Days following the delivery of the Put Notice (the "**Put Exercise Period**"), to elect, by delivering notice to ABP, that ABP provide the Electing Put Party with a valuation of the Put Shares (without any reduction for minority interests) as of the date of the Put Notice from a Third Party Valuation Firm (a "**Put Alternative Value**"), together with reasonable supporting information, within thirty (30) days after the end of the Put Exercise Period (such notice, a "**Put Alternative Value Notice**").

(d) If ABP provides a Put Alternative Value Notice during the Put Exercise Period, the following provisions will apply:

(i) The Put Alternative Value Notice shall specify the Third Party Valuation Firm (the "**Alternative Put Valuation Firm**") selected by ABP to provide the Put Alternative Value, which Alternative Put Valuation Firm shall be required to deliver to the Electing Put Party and ABP within thirty (30) days after the end of the Put Exercise Period its determination of the Put Alternative Value, together with reasonable supporting information. The Company and ABP shall provide the Alternative ABP Valuation Firm such additional information related to the Put Shares, the Company and ABP as the Alternative Put Valuation Firm may reasonably request in connection with its determination. ABP shall bear the costs of the Alternative Put Valuation Firm.

(ii) If the Put Alternative Value is less than the Base Price or not more than one hundred and ten percent (110%) of the Put Price, then the purchase price for the Put Shares shall be the Put Price.

(iii) If the Put Alternative Value is greater than one hundred and ten percent (110%) of the Put Price, then ABP and the Electing Put Party shall jointly appoint a Joint Valuation Firm to determine the value of the Put Shares, which shall be instructed to provide the Electing Put Party and ABP with its determination of the value of the Put Shares (without any reduction for minority interests) as of the date of the Put Notice (the "**Determined Put Price**"), together with reasonable supporting information, within thirty (30) days of its appointment. The Joint Valuation Firm shall be provided with the prior valuation of the Put Shares obtained by ABP, but shall not be obligated to base its determination on such valuation. The Company and ABP shall also provide the Joint Valuation Firm such additional information related to the Put Shares, the Company and ABP as the Joint Valuation Firm may reasonably request in connection with its determination. The cost of the Joint Valuation Firm will be borne fifty percent (50%) by the Electing Put Party and fifty percent (50%) by ABP or as they may otherwise agree. The Joint Valuation Firm shall act as an expert and not an arbitrator and the decision of the Joint Valuation Firm as to the Determined Put Price, absent manifest error, shall be final and non-appealable. Upon delivery of the Determined Put Price, the purchase price for the Put Shares shall be adjusted to the Determined Put Price, but shall in no event be lower than the Put Price.

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(e) If the final purchase price determined for the Put Shares pursuant to this Section 3.07 (the "**Final Price**") is greater than the Put Price, ABP shall promptly, and in any event within ten (10) Business Days, pay to the Electing Put Party the difference between the Put Price and the Final Price by wire transfer of immediately available funds.

(f) At the closing of the purchase and sale of the Put Shares pursuant to this Section 3.07, ABP shall deliver to the Electing Put Party the purchase price for the Put Shares as determined pursuant to this Section 3.07 by wire transfer of immediately available funds and the Electing Put Party shall deliver to ABP the certificate(s) representing the Put Shares, if any, (or an affidavit of loss with respect to such certificates) accompanied by stock powers and all necessary stock transfer taxes paid and stamps affixed, if necessary.

(g) For the avoidance of doubt, the rights of the REIT Parties under this Section 3.07 are in addition to any other rights or remedies of the REIT Parties at equity or under Applicable Law as a result of the occurrence of a Put Event.

(h) ABP may assign its right (but not its obligation) to purchase the Put Shares, in whole or in part, to the Company or any other Stockholder.

ARTICLE IV

OTHER ACTIVITIES; RELATED PARTY TRANSACTIONS; CONFIDENTIALITY; PRE-EMPTIVE RIGHTS; REIT COMPLIANCE

Section 4.01 Other Business Activities. Each Stockholder may engage independently or with others in other business ventures of every nature and description including the ownership, operation, management, syndication and development of a business which is competitive with the Company or any of its Subsidiaries or their respective businesses, and neither the Stockholders nor the Company or its Subsidiaries shall **advance Expenses incurred** have any rights in and to such independent ventures or the income or profits derived therefrom.

Section 4.02 Confidentiality.

(a) **Confidentiality.** Each DHC Party shall use commercially reasonable efforts to keep confidential any information (including any budgets, business plans and analyses) concerning the Company or its Subsidiaries, including their assets, business, operations, financial condition or prospects ("**Information**") received by **Indemnitee** it solely in its capacity as a Stockholder; provided, that nothing herein shall prevent such DHC Party from disclosing such Information: (i) upon the order of any court or **on Indemnitee's behalf** administrative agency or the request or demand of any regulatory agency or authority having jurisdiction over such Stockholder; (ii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iii) as may be appropriate or required under Applicable Law, including the rules and regulations of the U.S. Securities and Exchange Commission, The Nasdaq Stock Market LLC or the Financial Industry Regulatory Authority Inc.; (iv) subject to the provisions of this **Section 4.02**, to those Persons who have a need to know such Information in connection with the conduct of such DHC Party's business, including its officers, trustees, directors, attorneys, accountants, and other representatives and agents; (v) in connection with any Proceeding based upon or in connection with the subject matter of this Agreement or the transactions contemplated hereby; (vi) to any other Stockholder; or (vii) to any potential Third Party Purchaser in connection with a **Proceeding** proposed Transfer of Company Shares by such DHC Party as long as such Third Party Purchaser agrees to be bound by the provisions of this **Section 4.02** as if an DHC Party; provided, that in the case of clauses (i) or (ii) of this **Section 4.02** such DHC Party provides prior notice to the Company of the proposed disclosure as far in advance of such disclosure as practicable and uses reasonable efforts to insure that any Information so disclosed is accorded confidential treatment to the extent requested by the Company at the Company's expense.

(b) **Exceptions.** The restrictions of **Section 4.02(a)** shall not apply to Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by an DHC Party in violation of this Agreement; (ii) is or becomes available to an DHC Party on a nonconfidential basis prior to its disclosure to the receiving Person; (iii) is or has been independently developed or conceived by an DHC Party without use of any Information; or (iv) becomes available to the receiving Person on a nonconfidential basis from a source other than an DHC Party; provided, that such source is not known by the receiving Person to be bound by a confidentiality agreement with the Company or such Subsidiary.

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Section 4.03 Certain Pre-emptive Rights for Additional Equity.

(a) **Issuance of Additional Company Shares.** The Company hereby grants to each Stockholder (each, a "**Pre-emptive Stockholder**") the right to purchase a pro rata portion of any Company Shares (other than Excluded Shares) proposed to be issued or sold after the date hereof by the Company to any Person ("**Additional Company Shares**"). The Company shall not permit any Subsidiary to not be a wholly-owned Subsidiary of the Company, except as a result of the issuance or sale by such Subsidiary of Excluded Shares.

(b) **Additional Issuance Notices.** If the Company desires to issue Additional Company Shares, the Company shall give notice (an "**Issuance Notice**") of the proposed issuance or sale to each Pre-emptive Stockholder within seven (7) days following any meeting of the Directors at which any such issuance or sale is approved. The Issuance Notice shall be accompanied by a written offer to purchase such Additional Company Shares from each prospective purchaser of such Additional Company Shares (each, a "**Pre-emptive Purchaser**") and shall set forth the material terms and conditions of the proposed issuance or sale, including:

- (i) The identity of each Pre-emptive Purchaser, if known, and the aggregate amount and a description of the Additional Company Shares proposed to be issued and the percentage of the Company Shares that such issuance would represent;
- (ii) the proposed issuance date, which subject to **Section 4.03(g)**, shall be at least thirty (30) days from the date of the Issuance Notice;
- (iii) the proposed purchase price per Company Share of the Additional Company Shares and the form of such purchase price if other than cash; and
- (iv) if the consideration to be paid by any Pre-emptive Purchaser includes non-cash consideration, the Directors' good faith determination of the fair market value thereof.

The Issuance Notice shall also be accompanied by a statement of the Company Shares ownership of each stockholder of the Company and a calculation in reasonable detail as to each Pre-emptive Stockholder's pro rata share of the Additional Company Shares.

(c) **Exercise of Pre-emptive Rights.** Each Pre-emptive Stockholder shall for a period of twenty (20) days following the receipt of an Issuance Notice (the "**Pre-emptive Exercise Period**") have the right to elect irrevocably to purchase all or any portion of its pro rata share of the Additional Company Shares, at the purchase price set forth in the Issuance Notice, by delivering notice to the Company (a "**Pre-emptive Acceptance Notice**") specifying the number of Additional Company Shares it desires to purchase. The delivery of a Pre-emptive Acceptance Notice by a Pre-emptive Stockholder shall be a binding and irrevocable subscription by such Pre-emptive Stockholder for the number of Additional Company Shares described in its Pre-emptive Acceptance Notice in accordance with the terms of this **Section 4.03**. The failure of a Pre-emptive Stockholder to deliver an Acceptance Notice by the end of the Pre-emptive Exercise Period shall constitute a waiver of its rights under this **Section 4.03** with respect to the purchase of such Additional Company Shares, but shall not affect its rights with respect to any future issuances or sales of Additional Company Shares.

(d) **Over-allotment.** No later than seven (7) days following the expiration of the Pre-emptive Exercise Period, the Company shall notify each Pre-emptive Stockholder in writing of the number of Additional Company Shares that each Pre-emptive Stockholder has agreed to purchase (including, for the avoidance of doubt, where such number is

zero) (the "Over-allotment Notice"). Each Pre-emptive Stockholder exercising its rights to purchase its pro rata share of the Additional Company Shares in full (an "Exercising Pre-emptive Stockholder") shall have a right of over-allotment such that if any other Pre-emptive Stockholder has failed to exercise its right under this Section 4.03, or any other stockholder of the Company having pre-emptive rights to purchase Company Shares in such transaction has failed, to purchase its pro rata share of the Additional Company Shares in full (each, a "Non-Exercising Pre-emptive Stockholder"), such Exercising Pre-emptive Stockholder may purchase its pro rata share (computed on the basis of the Exercising Pre-emptive Stockholders and other stockholders of the Company who choose to purchase in the over-allotment in proportion to their pro rata share of the Additional Company Shares, and otherwise so that one hundred percent (100%) of the over-allotment may be subscribed for

and purchased by the Exercising Pre-emptive Stockholders and such other stockholders) of such Non-Exercising Pre-emptive Stockholders' unsubscribed for allotment, by giving notice to the Company within ten (10) Business Days of receipt of the Over-allotment Notice (the "Over-allotment Exercise Period").

(e) **Sale of Additional Shares.** Any Additional Company Shares not subscribed for by a Pre-emptive Stockholder pursuant to Section 4.03(c) and Section 4.03(d) may be sold by the Company following the expiration of the Pre-emptive Exercise Period and, if applicable, the Over-allotment Exercise Period, to the Pre-emptive Purchasers on terms no less favorable to the Company than those set forth in the Issuance Notice and, for the avoidance of doubt, at a price at least equal to or higher than the purchase price described in the Issuance Notice; provided, such sale is completed no later than sixty (60) days following the expiration of the Pre-emptive Exercise Period and, if applicable, the Over-allotment Exercise Period (subject to the extension of such sixty (60) day period for a reasonable time not to exceed an additional sixty (60) days to the extent reasonably necessary to obtain any third party approvals). If the Company has not sold all of the remaining Additional Company Shares to the Pre-emptive Purchasers by such date, the Company shall not thereafter issue or sell any such Additional Company Shares without first again offering such Additional Company Shares to the Pre-emptive Stockholders in accordance with the procedures set forth in this Section 4.03 and no Pre-emptive Stockholder shall be obligated to complete the purchase of the Additional Company Shares that it subscribed for pursuant to Section 4.03(c) and Section 4.03(d).

(f) **Additional Company Shares Sale Closing.** Except as provided in Section 4.03(g), the closing of any purchase by any Pre-emptive Stockholder shall be consummated substantially contemporaneously with the consummation of the sale to the Pre-emptive Purchasers. The Company shall deliver the Additional Company Shares to be purchased by a Pre-emptive Stockholder in accordance with this Section 4.03 free and clear of any liens (other than those arising hereunder and those attributable to the actions of the purchasers thereof), and the Company shall represent and warrant to such Pre-emptive Stockholder that such Additional Company Shares shall be, upon issuance thereof to such Pre-emptive Stockholder and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. The Company, in the discretion of its Directors, may deliver to each purchasing Pre-emptive Stockholder certificates evidencing the Additional Company Shares. Each purchasing Pre-emptive Stockholder shall deliver to the Company the purchase price for the Additional Company Shares purchased by it by wire transfer of immediately available funds. Each party to the purchase and sale of Additional Company Shares pursuant to this Section 4.03 until it is finally determined that Indemnitee is not entitled shall take all such other actions as may be reasonably necessary to indemnification under consummate the MGCL, purchase and sale including, without limitation, entering into such additional agreements as may be necessary or appropriate. Notwithstanding anything to the Declaration contrary contained in this Agreement, the Directors in their discretion may at any time prior to the closing of Trust or the Bylaws in respect issuance and sale of any Additional Company Shares, upon five (5) Business Days' notice to the Pre-emptive Stockholders, cancel the issuance and sale of such Proceeding. To Additional Company Shares in their entirety, in which event the extent that Expenses advanced Company shall not thereafter issue any Additional Company Shares without first again offering such Additional Company Shares to Indemnitee do not relate the Pre-emptive Stockholders in accordance with the procedures set forth in this Section 4.03.

(g) **Delay.** Notwithstanding anything to a specific claim, the contrary set forth in this Section 4.03, if approved by the Directors, the Company may, in lieu of concurrently offering any Additional Company Shares to all Stockholders, initially offer, sell and issue or matter Additional Company Shares to only certain Stockholders so long as promptly, but in any event, within five (5) Business Days thereafter, the Proceeding, Company provides an Issue Notice (which Issue Notice shall include the material details of the prior issuance of Additional Company Shares pursuant to this Section 4.03) to each Pre-emptive Stockholder and complies with the provisions of this Section 4.03(g) with respect to all Pre-emptive Stockholders by offering to such Expenses shall be allocated on a reasonable Pre-emptive Stockholders their share of such Additional Company Shares (as otherwise determined pursuant to Section 4.03(a) prior to any sales and proportionate basis. The undertaking required issuances permitted by this Section 4.03(g)); provided, that (i) prior to the Company complying with the provisions of this Section 4.03(g), no Additional Company Shares issued pursuant to this Section 4.03(g) shall be entitled to vote on any matter presented to the stockholders of the Company and the Company shall not declare or pay any dividends or other distributions with respect to the Additional Company Shares issued to the Stockholders pursuant to this Section 4.03(g) and (ii) in no event shall any Pre-emptive Stockholder be required to acquire any Additional Company Shares from any other Stockholder in connection with its exercise of its rights under this Section 4.03.

Section 4.04 REIT Compliance.

- (a) **Adverse Regulatory Event.** In the event of an unlimited general obligation Adverse Regulatory Event arising from or in connection with this Agreement or a REIT Party's ownership of Company Shares, the Company and the Stockholders shall work together in good faith to eliminate the impact of such Adverse Regulatory Event, including entering into such amendments to this Agreement as may be necessary or appropriate or to permit such REIT Party to effect the Transfer of its Company Shares. For purposes of this Agreement, the term "Adverse Regulatory Event" means any time that an Applicable Law imposes upon a REIT Party (or could impose upon a REIT Party in its reasonable opinion) any material threat to such REIT Party's or any of its Affiliates' status as a "real estate investment trust" under the Code.
- (b) **Ownership of Company Shares.** Notwithstanding anything in this Agreement to the contrary, neither the Company nor any Stockholder shall have any authority to take, and none shall take, any action which shall cause any REIT Party to own (directly, indirectly, or constructively) at any time more than thirty-four percent (34%) in aggregate of the vote or value of the then outstanding Company Shares (as determined under each of Sections 856(d)(3) (inclusive of Section 856(d)(5)), 856(d)(9)(F), and 856(l)(2) of the Code).

ARTICLE V

FINANCIAL INFORMATION; ACCESS RIGHTS

Section 5.01 Financial Information. In addition to, and without limiting any rights that the DHC Parties may have with respect to the inspection of the books and records of the Company under Applicable Law, the Company shall furnish to each DHC Party, the following information:

- (a) as soon as available, and in any event within forty-five (45) days following the end of each Fiscal Year, the audited consolidated balance sheet of the Company and its Subsidiaries as at the end of each such Fiscal Year and the audited consolidated statements of income, cash flows and changes in stockholders' equity of the Company and its Subsidiaries for such Fiscal Year, accompanied by the certification of independent certified public accountants of recognized national standing selected by the Directors, to the effect that, except as set forth therein, such financial statements have been prepared in accordance with GAAP, applied on a basis consistent with prior years and fairly present in all material respects the consolidated financial condition of the Company and its Subsidiaries as of the dates thereof and the results of its operations and changes in its cash flows and stockholders' equity for the periods covered thereby;
- (b) as soon as available, and in any event within thirty (30) days following the end of each fiscal quarter, the unaudited consolidated balance sheet of the Company and its Subsidiaries at the end of such quarter and the unaudited consolidated statements of income, cash flows and changes in stockholders' equity of the Company and its Subsidiaries for such quarter, all in reasonable detail and all prepared in accordance with GAAP, consistently applied and certified by the Company's Chief Financial Officer;
- (c) draft financial statements related to the Fiscal Year and each fiscal quarter shall be provided within thirty (30) days and twenty (20) days, respectively, following the end of the period in question; and
- (d) to the extent the Company or any of its Subsidiaries is required by Applicable Law or pursuant to the terms of any outstanding indebtedness of the Company to prepare such reports, any annual reports, quarterly reports and other periodic reports actually prepared by the Company or Subsidiary promptly following filing or submission thereof.

Section 5.02 Access Rights.

- (a) The Company shall: (i) afford to the DHC Parties and their officers, trustees, directors, employees, attorneys, accountants and other representatives and agents, during normal business hours and upon reasonable notice, reasonable access to its officers, employees, auditors, and books and records; and (ii) afford such DHC Parties and other Persons the opportunity to consult with its officers and senior management from time to time regarding the Company's affairs, finances and accounts as the DHC Parties, or such other Persons on behalf of Indemnitee the DHC Parties, may reasonably

request upon reasonable notice, including presenting to such DHC Parties and such other Persons customary management presentations regarding the Company's affairs, finances, accounts and related matters at the request of DHC.

- (b) The rights set forth in Section 5.02(a), above shall not and are not intended to limit any rights which the DHC Parties may have to inspect or audit the books and records of the Company, or to inspect its properties or discuss its affairs, finances and accounts, under Applicable Law or any other agreement to which DHC or any of its Affiliates on the one hand, and the Company or any of its Affiliates on the other hand, are a party.

(c) Notwithstanding anything to the contrary herein, the information and access rights provided to the DHC Parties shall be expressly subject to the confidentiality and use restrictions set forth in [Section 4.02](#).

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Stockholder and the Company, severally and not jointly, represent and warrant to each other party that:

- (a) It has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other agreements and documents contemplated hereby, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action of such Stockholder or the Company, as applicable. It has duly executed and delivered this Agreement.
- (b) This Agreement constitutes the legal, valid and binding obligation of such party enforceable against such party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law). The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, require no action by or in respect of, or filing with, any Governmental Authority.
- (c) The Company and the Initial Stockholder represent and warrant that the execution, delivery and performance by each of them of this Agreement and the consummation of the transactions contemplated hereby do not (i) conflict with or result in any violation or breach of any provision of the Organizational Documents or the governing documents of any of the Company's Subsidiaries or of the Initial Stockholder, (ii) conflict with or result in any violation or breach of any provision of any Applicable Law applicable to them, or (iii) require any consent or other action by any Person under any provision of any material agreement or other instrument to which any of them is a party or is otherwise bound other than those which have been obtained, except, with respect to the foregoing clauses (ii) and (iii), where such conflict, violation, default or failure to obtain consent would not reasonably be expected to have a material adverse effect on the Company or its Subsidiaries, taken as a whole.
- (d) DHC, on behalf of itself and DHC TRS, represents and warrants that the execution, delivery and performance by it and DHC TRS of this Agreement and the consummation of the transactions contemplated hereby do not (i) conflict with or result in any violation or breach of any provision of their governing documents, (ii) conflict with or result in any violation or breach of any provision of any Applicable Law applicable to them, or (iii) require any consent or other action by any Person under any provision of any material agreement or other instrument to which such party is a party or is otherwise bound other than those which have been obtained, except, with respect to the foregoing clauses (ii) and (iii), where such conflict, violation, default or failure to obtain consent would not reasonably be expected to have a material adverse effect on DHC or its Subsidiaries, taken as a whole.
- (e) Except for this Agreement and the Organizational Documents, such party has not entered into or agreed to be bound by any other agreements or arrangements of any kind with any party with respect to the Company Shares, including agreements or arrangements with respect to the acquisition or disposition of the Company Shares or any interest therein or the

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voting of the Company Shares (whether or not such agreements and arrangements are with the Company or any other stockholder of the Company).

ARTICLE VII

TERM AND TERMINATION

Section 7.01 Termination. This Agreement shall terminate upon the earliest of:

- (a) the consummation of a Public Offering resulting in a market value of the Company Common Stock held by public stockholders who are otherwise Third Party Purchasers of at least twenty million (\$20,000,000) dollars;
- (b) the consummation of a Company Change of Control;
- (c) the date on which the DHC Parties no longer hold any Company Shares;
- (d) the dissolution, liquidation, or winding up of the Company; or
- (e) upon the unanimous written consent of all DHC Parties and the Company.

Section 7.02 Effect of Termination.

(a) The termination of this Agreement shall terminate all further rights and obligations of the Stockholders under this Agreement, except that such termination shall not affect:

- (i) the existence of the Company;
- (ii) the obligation of any party to pay any amounts arising on or prior to the date of termination, or as a result of or in connection with such termination;
- (iii) the rights which any Stockholder may have by operation of Applicable Law as a stockholder of the Company; or
- (iv) provisions of this Agreement which by their terms are intended or are stated to survive termination of this Agreement.

(b) The following provisions shall survive the termination of this Agreement:

(i) Section 4.02, Section 7.02 and Article VIII; and

(ii) Section 3.07 and Section 4.04, but only so long as a REIT Party owns Company Shares; provided, that the obligations of an Initial Stockholder Party under such Sections shall terminate at such time as such Initial Stockholder Party neither owns or controls any Company Shares.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement or the transactions and matters contemplated by this Agreement shall be paid by the party incurring such costs and expenses.

Section 8.02 Release of Liability; Waiver of Fiduciary Duties. Subject to Section 7.02, if any Stockholder shall Transfer all of the Company Shares held by such Stockholder in compliance with the provisions of this Agreement without retaining any interest therein, then such Stockholder shall cease to be a party to this Agreement in its capacity as a Stockholder and shall be accepted relieved and have no further liability arising hereunder in its capacity as a Stockholder for events

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occurring from and after the date of such Transfer. To the maximum extent permitted by Applicable Law, each Stockholder and its successors and assigns and, as applicable, its shareholders, stockholders, beneficial interest owners, members, partners, trustees, directors, officers, employees and agents, waives any and all fiduciary duties any Stockholder may now or in the future have to any other Stockholder, in each case in its capacity as a stockholder of the Company, in connection with this Agreement or the transactions and matters contemplated by this Agreement.

Section 8.03 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) when received if mailed by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on Exhibit A hereto (or at such other address in the United States for a party as shall be specified in a notice given in accordance with this Section 8.03).

Section 8.04 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of, and the Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 8.05 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.06 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any

term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to **Indemnitee's financial ability** modify this Agreement so as to **repay** effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.07 Entire Agreement. This Agreement and the Organizational Documents constitute the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such **advanced Expenses** subject matter. In the event of any inconsistency or conflict between this Agreement and the Organizational Documents, the Stockholders and the Company shall, to the extent permitted by Applicable Law, amend, consent to or waive provisions of each such Organizational Document to comply with the terms of this Agreement.

Section 8.08 Assignment; Successors. Except as expressly set forth in this Agreement, this Agreement and the rights, interests and obligations of the parties hereunder may not be assigned, transferred or delegated. This Agreement and the rights, interests and obligations of a party hereunder may be assigned, transferred or delegated by a party to a Person who succeeds to all or substantially all the assets of such party, which successor or Person agrees in a writing delivered to the other parties hereto to be subject to and bound by all interests and obligations set forth in this Agreement. This Agreement shall bind and inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns, including Permitted Transferees who acquire Company Shares in accordance with the terms of this Agreement.

Section 8.09 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and, except as expressly set forth in this Agreement, nothing herein is

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intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.11 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Maryland without giving effect to any **requirement** choice or conflict of law provision or rule (whether of the State of Maryland or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Maryland.

Section 8.12 Venue. Each party hereto agrees that it shall bring any Proceeding in respect of any claim arising out of or related to **post security therefor. At Indemnitee's request, advancement** this Agreement or the transactions contemplated hereby exclusively in the courts of the State of Maryland and the Federal courts of the United States, in each case, located in the City of Baltimore (the "**Chosen Courts**"). Solely in connection with claims arising under this Agreement or the transactions contemplated hereby, each party hereto irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the Chosen Courts, (ii) agrees not to commence any such Proceeding except in such courts, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such **Expense Proceeding** in the Chosen Courts, (iv) waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such Proceeding and (v) agrees that service of process upon such party in any such Proceeding shall be **made by the Company's direct payment of such Expense instead of reimbursement of Indemnitee's payment of such Expense.** effective if notice is given in accordance with

Section 7.8.03 Procedure. Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Applicable Law. A final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. Notwithstanding anything herein to the contrary, if a demand for **Determination** arbitration of **Entitlement** a Dispute is made pursuant to **Indemnification** **Section 8.13**, this **Section 8.12** shall not pre-empt resolution of the Dispute pursuant to **Section 8.13**.

Section 8.13 Dispute Resolution.

(a) **To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written demand therefor. The Secretary of the Company shall, promptly upon receipt of such a demand for indemnification, provide copies of the demand to the Board.**

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of **Disputes**, **Section 7(a)**, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall promptly be made in the specific case: (i) if a Change in Control shall have occurred, by Independent Counsel in a written

opinion to the Board, a copy of which shall be delivered to Indemnitee; **Any disputes, claims** or (ii) if a Change in Control shall not have occurred or if, after a Change in Control, Indemnitee shall so request, (A) by the Board (or a duly authorized committee thereof) by a majority vote of a quorum consisting of Disinterested Trustees, or (B) if a quorum of the Board consisting of Disinterested Trustees is not obtainable or, even if obtainable, such quorum of Disinterested Trustees so directs, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (C) if so directed by a majority of the members of the Board, by the shareholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Any Independent Counsel, member of the Board or shareholder of the Company shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement.

(c) The Company shall pay the fees and expenses of Independent Counsel, if one is appointed, and shall agree to fully indemnify such Independent Counsel against any and all expenses, claims, liabilities and damages **controversies** arising out of or relating to this Agreement, **the Organizational Documents** or the Independent Counsel's engagement as such pursuant hereto.

Section 8. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the Person or Persons making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(b) It shall be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Without limitation of the foregoing, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge or actions, or failure to act, of any trustee, director, manager, officer, partner, employee, agent or fiduciary of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

(c) Neither the failure to make a determination pursuant to **Section 7(b)** as to whether indemnification is proper in the circumstances because Indemnitee has met any particular standard of conduct, nor an actual determination by the Company (including by the Board or Independent Counsel) pursuant to **Section 7(b)** that Indemnitee has not met such standard of conduct, shall be a defense to Indemnitee's claim that indemnification is proper in the circumstances or create a presumption that Indemnitee has not met any particular standard of conduct.

(d) The termination of any Proceeding by judgment, order, settlement, conviction, a plea of *nolo contendere* or its equivalent, or an entry of an order of probation prior to judgment, shall not in and of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not meet the standard of conduct required for indemnification. The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration), it shall be presumed that Indemnitee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

Section 9. Remedies of Indemnitee.

(a) If (i) a determination is made pursuant to **Section 7(b)** that Indemnitee is not entitled to indemnification under this Agreement, (ii) advance of Expenses is not timely made pursuant to **Section 6**, (iii) no determination of entitlement to indemnification shall have been made pursuant to **Section 7(b)** within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to **Section 5** within ten (10) days after receipt by the Company of a written request therefor, or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall (A) unless the Company demands arbitration as provided by **Section 17**, be entitled to an adjudication in a Chosen Court or (B) be entitled to seek an award in arbitration as provided by **Section 17**, in each case of Indemnitee's entitlement to such indemnification or advance of Expenses.

(b) In any judicial proceeding or arbitration commenced pursuant to this **Section 9**, the Company shall have the burden of proving that Indemnitee is not entitled to indemnification or advance of Expenses, as the case may be. In the event that a determination shall have been made pursuant to **Section 7(b)** that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this **Section 9** shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under **Section 7(b)**.

(c) If a determination shall have been made pursuant to **Section 7(b)** that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this **Section 9**, absent a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the demand for indemnification.

(d) In the event that Indemnitee, pursuant to this **Section 9**, seeks a judicial adjudication of or an award in arbitration as provided by **Section 17** to enforce Indemnitee's rights under, or to recover damages for breach of, this Agreement by the Company, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall indemnify Indemnitee against any and all Expenses incurred by Indemnitee in such judicial adjudication or arbitration and, if requested by Indemnitee, the Company shall (within ten (10) days after receipt by the Company of a written demand therefor) advance, to the extent not prohibited by law, the Declaration of Trust or the Bylaws, any and all such Expenses.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this **Section 9** that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such judicial proceeding or arbitration that the Company is bound by all the provisions of this Agreement.

(f) To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

(g) Interest shall be paid by the Company to Indemnitee at the maximum rate allowed to be charged for judgments under the Courts and Judicial Proceedings Article of the Annotated Code of Maryland for amounts which the Company pays or is obligated to pay for the period (i) commencing with either the tenth (10th) day after the date on which the Company was requested to advance Expenses in accordance with **Section 6** of this Agreement or the thirtieth (30th) day after the date on which the

Company was requested to make the determination of entitlement to indemnification under Section 7(b) of this Agreement, as applicable, and (ii) ending on the date such payment is made to Indemnitee by the Company.

Section 10. Defense of the Underlying Proceeding.

(a) Indemnitee shall notify the Company promptly upon being served with or receiving any summons, citation, subpoena, complaint, indictment, information, notice, request or other document relating to any Proceeding which may result in the right to indemnification or the advance of Expenses hereunder; *provided, however*, that the failure to give any such notice shall not disqualify Indemnitee from the right, or otherwise affect in any manner any right of Indemnitee, to indemnification or the advance of Expenses under this Agreement unless the Company's ability to defend in such Proceeding or to obtain proceeds under any insurance policy is materially and adversely prejudiced thereby, and then only to the extent the Company is thereby actually so prejudiced.

(b) Subject to the provisions of the last sentence of this Section 10(b), and of Section 10(c) below, the Company shall have the right to defend Indemnitee in any Proceeding which may give rise to indemnification hereunder; *provided, however*, that the Company shall notify Indemnitee of any such decision to defend within fifteen (15) days following receipt of notice of any such Proceeding under Section 10(a) above, and the counsel selected by the Company shall be reasonably satisfactory to Indemnitee. The Company shall not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (i) includes an admission of fault of Indemnitee, (ii) does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Proceeding, which release shall be in form and substance reasonably satisfactory to Indemnitee or (iii) has the actual or purported effect of extinguishing, limiting or impairing Indemnitee's rights hereunder. This Section 10(b) shall not apply to a Proceeding brought by Indemnitee under Section 9 above or Section 15.

(c) Notwithstanding the provisions of Section 10(b), if in a Proceeding to which Indemnitee is a party by reason of Indemnitee's Company Status, (i) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that Indemnitee may have separate defenses or counterclaims to assert with respect to any issue which may not be consistent with other defendants in such Proceeding, (ii) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that an actual or apparent conflict of interest or potential conflict of interest exists between Indemnitee and the Company, or (iii) the Company fails to assume the defense of such Proceeding in a timely manner, Indemnitee shall be entitled to be represented by separate legal counsel of Indemnitee's choice, subject to the prior approval of the Company, which shall not be unreasonably withheld, at the expense of the Company. In addition, if the Company fails to comply with any of its obligations under this Agreement or in the event that the Company or any other Person takes any action to declare this Agreement void or unenforceable, or institutes any Proceeding to deny or to recover from Indemnitee the benefits intended to be provided to Indemnitee hereunder, Indemnitee shall have the right to retain counsel of Indemnitee's choice, at the expense of the Company (subject to Section 9(d)), to represent Indemnitee in connection with any such matter.

Section 11. Liability Insurance.

(a) To the extent the Company maintains an insurance policy or policies providing liability insurance for any of its trustees or officers, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Company trustee or officer during Indemnitee's tenure as a trustee or officer and, following a termination of Indemnitee's service in connection with a Change in Control, for a period of six (6) years thereafter.

(b) If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) In the event of any payment by the Company under this Agreement the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee with respect to any insurance policy. Indemnitee shall take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights in accordance with the terms of such insurance policy. The Company shall pay or reimburse all expenses actually and reasonably incurred by Indemnitee in connection with such subrogation.

Section 12. Non-Exclusivity; Survival of Rights.

(a) The rights of indemnification and advance of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Declaration of Trust or the Bylaws, any agreement or a resolution of the shareholders entitled to vote generally in the election of trustees or of the Board, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by Indemnitee in Indemnitee's Company Status prior to such amendment, alteration or repeal. To the extent that a change in the Maryland REIT Law or the MGCL permits greater indemnification to Indemnitee than would be afforded currently under the Maryland REIT Law or the MGCL, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change if permitted by the Maryland REIT Law or the MGCL. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable or payable or reimbursable as Expenses hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

Section 13. Binding Effect.

(a) The indemnification and advance of Expenses provided by, or granted pursuant to, this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a trustee, director, manager, officer, partner, employee, agent or fiduciary of the Company or a trustee, director, manager, officer, partner, employee, agent or fiduciary of another Enterprise which such Person is or was serving at the request of the Company or a predecessor of the Company or any of their majority owned subsidiaries, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(b) Any successor of the Company (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part of, the business or assets of the Company shall be automatically deemed to have assumed and agreed to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place, provided that no such assumption shall relieve the Company of its obligations hereunder. To the

extent required by applicable law to give effect to the foregoing sentence and to the extent requested by Indemnitee, the Company shall require and cause any such successor to expressly assume and agree to perform this Agreement by written agreement in form and substance satisfactory to Indemnitee.

Section 14. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 15. Limitation and Exception to Right of Indemnification or Advance of Expenses. Notwithstanding any other provision of this Agreement, (a) any indemnification or advance of Expenses to which Indemnitee is otherwise entitled under the terms of this Agreement shall be made only to the extent such indemnification or advance of Expenses does not conflict with applicable Maryland law and (b) Indemnitee shall not be entitled to indemnification or advance of Expenses under this Agreement with respect to any Proceeding brought by Indemnitee, unless (i) the Proceeding is brought to enforce rights under this Agreement, the Declaration of Trust, the Bylaws, liability insurance policy or policies, if any, or otherwise or (ii) the Declaration of Trust, the Bylaws, a resolution of the shareholders entitled to vote generally in the election of trustees or of the Board or an agreement approved by the Board to which the Company is a party expressly provides otherwise. Notwithstanding any other provision of this Agreement, a court of appropriate jurisdiction, upon application of Indemnitee and such notice as the court shall require, may order indemnification of Indemnitee by the Company in the following circumstances: (a) if such court determines that Indemnitee is entitled to reimbursement under Section 2-418(d)(1) of the MGCL, the court shall order indemnification, in which case Indemnitee shall be entitled to recover the Expenses of securing such reimbursement; or (b) if such court determines that Indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not Indemnitee (i) has met the standard of conduct set forth in Section 2-418(b) of the MGCL or (ii) has been adjudged liable for receipt of an improper personal benefit under Section

2-418(c) of the MGCL, the court may order such indemnification as the court shall deem proper without regard to any limitation on such court-ordered indemnification transactions contemplated by Section 2-418(d)(2)(ii) of the MGCL.

Section 16. Specific Performance, Etc. The parties hereto recognize that if any provision of this Agreement is violated by the Company, Indemnitee may be without an adequate remedy at law. Accordingly, in the event of any such violation, Indemnitee shall be entitled, if Indemnitee so elects, to institute proceedings, either in law or at equity, to obtain damages, to enforce specific performance, to enjoin such violation, or to obtain any relief or any combination of the foregoing as Indemnitee may elect to pursue.

Section 17. Arbitration.

(a) Any disputes, claims or controversies regarding Indemnitee's entitlement to indemnification or advancement of Expenses hereunder or otherwise arising out of or relating to this Agreement, hereby, including any disputes, claims or controversies brought by or on behalf of a party hereto, a direct or indirect parent of a party, or any holder of equity interests (which, for purposes of this Section 17.8.13, shall mean any holder of record or any beneficial owner of equity interests, or any former holder of record or beneficial owner of equity interests) of a party, either on his, her or its own behalf, on behalf of a party or on behalf of any series or class of equity interests of a party or holders of any equity interests of a party against a party or any of their respective trustees, directors, members, officers, managers (including The RMR Group LLC or its parent and their respective successor), agents or employees, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance, application or enforcement of this Agreement, including the agreements set forth in this Section 17.8.13, or the governing documents of a party (all of which are referred to as "Disputes"), or relating in any way to such a Dispute or Disputes shall, on the demand of any party to such Dispute or Disputes, be resolved through binding and final arbitration in accordance with the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("the "AAA") then in effect, except as those Rules may be modified in this Section 17.8.13. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against the trustees, directors, officers or managers of a party and class actions by a holder of equity interests against those individuals or entities Persons and a party. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party. For purposes of this Section 17, the term "equity interest" shall mean (i) in respect of the Company, shares of beneficial interest of the Company, (ii) shares of "membership interests" in an entity that is a limited liability company, (iii) general partnership interests in an entity that is a partnership, (iv) shares of capital stock of an entity that is a corporation and (v) similar equity ownership interests in other entities.

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(b) **Selection of Arbitrators.** There shall be three (3) arbitrators. If there are only two (2) parties to the Dispute, each party shall select one (1) arbitrator within fifteen (15) days after receipt by respondent of a copy of the a demand for arbitration. The Such arbitrators may be affiliated or interested persons of the such parties. If there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, shall each select, by the vote of a majority of the claimants or the respondents, as the case may be, one (1) arbitrator within fifteen (15) days after receipt of the a demand for arbitration. The Such arbitrators may be affiliated or interested persons of the claimants or the respondents, as the case may be. If either a claimant (or all claimants) or a respondent (or all respondents) fail(s) to timely select an arbitrator, then the party (or parties) who has selected an arbitrator may request the AAA to provide a list of three (3) proposed arbitrators in accordance with the Rules (each of whom shall be neutral, impartial and unaffiliated with any party) and the party (or parties) that failed to timely appoint an arbitrator shall have ten (10) days from the date the AAA provides the such list to select one (1) of the three (3) arbitrators proposed by the AAA. If the party (or parties) fail(s) to select the second (2nd) arbitrator by that time, the party (or parties) who have appointed the first (1st) arbitrator shall then have ten (10) days to select one (1) of the three (3) arbitrators proposed by the AAA to be the second (2nd) arbitrator; and, if he/they should fail to select the second (2nd) arbitrator by such time, the AAA shall select, within fifteen (15) days thereafter, one (1) of the three (3) arbitrators it had proposed as the second (2nd) arbitrator. The two (2) arbitrators so appointed shall jointly appoint the third (3rd) and presiding arbitrator (who shall be neutral, impartial and unaffiliated with any party) within fifteen (15) days of the appointment of the second (2nd) arbitrator. If the third (3rd) arbitrator has not been appointed within the time limit specified herein, then the AAA shall provide a list of proposed

arbitrators in accordance with the Rules, and the arbitrator shall be appointed by the AAA in accordance with a listing, striking and ranking procedure, with each party having a limited number of strikes, excluding strikes for cause.

(c) **The place Location of Arbitration.** Any arbitration hearings shall be held in Boston, Massachusetts, unless otherwise agreed by the parties, but the seat of arbitration shall be Maryland.

(d) **Scope of Discovery.** There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators. For the avoidance of doubt, it is intended that there shall be no depositions and no other discovery other than limited documentary discovery as described in the preceding sentence.

(e) **Arbitration Award.** In rendering an award or decision (an "Award"), the arbitrators shall be required to follow the laws of the State of Maryland, without regard to principles of conflicts of law. Any arbitration proceedings or award rendered hereunder, and the validity, effect and interpretation of the agreements set forth in this arbitration agreement Section 8.13 shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. An Award shall be in writing and may, but shall not be required to, briefly state the findings of fact and conclusions of law on which it is based. Any monetary Award shall be made and payable in U.S. dollars free of any tax, deduction or offset. Subject to Section 17(g), 8.13(f), each party against which an Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of such Award or such other date as the such Award may provide.

(f) **Costs.** Except to the extent expressly provided by this Agreement or as otherwise agreed by the parties hereto, thereto, to the maximum extent permitted by Applicable Law of the State of Maryland, each party and each Person acting or seeking to act in a representative capacity (such Person, a "Named Representative") involved in a Dispute shall bear its own costs and expenses (including attorneys' fees), and the arbitrators shall not render an Award that would include shifting of any such costs or expenses (including attorneys' fees) or, in a derivative case or class action, award any portion of a party's award Award to its attorneys, a Named Representative the claimant or any attorney of a Named Representative, the claimant's attorneys. Each party (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, respectively) shall bear the costs and expenses of its (or their) selected arbitrator and the parties (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand) shall equally bear the costs and expenses of the third (3rd) appointed arbitrator.

(g) **Appeals.** Notwithstanding any language to the contrary in this Agreement, an any Award, including, but not limited to, any interim Award, may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules (the "Appellate Rules"). An Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Award by filing a notice of appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof. For the avoidance of doubt, and despite any contrary provision of the Appellate Rules, Section 17(f)

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8.13(g) shall apply to any appeal pursuant to this Section 17 8.13 and the appeal tribunal shall not render an Award that would include shifting of any costs or expenses (including attorneys' fees) of any party or Named Representative or the payment of such costs and expenses, and all costs and expenses of a party or Named Representative shall be its sole responsibility, party.

(h) **Final Judgment.** Following the expiration of the time for filing the notice of appeal, or the conclusion of the appeal process set forth in Section 17(g) 8.13(g), an Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between those parties relating to the Dispute, including any claims, counterclaims, issues or accounting presented to the arbitrators. Judgment upon an Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any award Award made, except for actions relating to enforcement of the agreements set forth in this agreement to arbitrate Section 8.13 or any arbitral award issued hereunder and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

(i) **Intended Beneficiaries.** This Section 17 8.13 is intended to benefit and be enforceable by the parties hereto and their respective holders of equity interests, shareholders, stockholders, members, beneficial interest owners, direct and indirect parents, trustees, directors, officers, managers (including The RMR Group LLC or its parent and their respective successor), members, agents or employees and their respective successors and assigns and shall be binding upon all such on the parties, and their respective holders of equity interests, such Persons and be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities Persons may have by contract or otherwise.

Section 18, 8.14 Venue Further Assurances. Each party hereto agrees that it shall bring any Proceeding in respect of any claim arising out of or related to in connection with this Agreement exclusively in the courts of the State of Maryland and the Federal courts of the United States, in each case, located in the City of Baltimore (the "Chosen Courts"). Solely in connection with claims arising under this Agreement, each party irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the Chosen Courts, (ii) agrees not to commence any such Proceeding except in such courts, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such Proceeding in the Chosen Courts, (iv) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such Proceeding, (v) agrees that service of process upon such party in any such Proceeding shall be effective if notice is given in accordance with Section 24 and

(vi) agrees to request and/or consent to the assignment of any dispute arising out of this Agreement or the transactions contemplated by this Agreement to hereby, each Stockholder, the Chosen Courts' Business Company and Technology Case Management Program, or similar program. Nothing in this Agreement will affect each transferee of Company Shares agrees, at the right of any party hereto to serve process in any other manner permitted by law. A

final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS. Notwithstanding anything herein to the contrary, if a demand for arbitration of a Dispute is made pursuant to Section 17, this Section 18 shall not preempt resolution of the Dispute pursuant to Section 17.

Section 19. Adverse Settlement. The Company shall not seek, nor shall it agree to or support, or agree not to contest any settlement or other resolution of any matter that has the actual or purported effect of extinguishing, limiting or impairing Indemnitee's rights hereunder, including without limitation the entry of any bar order or other order, decree or stipulation, pursuant to 15 U.S.C. § 78u-4 (the Private Securities Litigation Reform Act), or any similar foreign, federal or state statute, regulation, rule or law.

Section 20. Period of Limitations. To the fullest extent permitted by law, no legal action shall be brought, and no cause of action shall be asserted, by or on behalf request of the Company or any controlled affiliate of Stockholder, to execute and deliver such additional documents, instruments, conveyances and assurances and to take such further actions as may be required to carry out the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after provisions hereof and give effect to the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company or its controlled affiliate shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; transactions contemplated hereby, provided, however, if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

Section 21. 8.15 Counterparts. This Agreement may be executed in any number of counterparts, all each of which shall be considered deemed an original, but all of which together shall be deemed to be one and the same agreement and shall become effective when counterparts have been agreement. A signed copy of this Agreement delivered by each of the parties hereto and delivered to the other party (including via facsimile, email or other electronic transmission), it being understood that each party hereto need not sign the same counterpart.

Section 22. Delivery by Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic transmission including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered deemed to have the same binding legal effect as if it were the delivery of an original signed version thereof delivered in person. At the request copy of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to the other parties. No party hereto or to any such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense, this Agreement.

Section 23. 8.16 Modification and Waiver No Liability. No supplement, modification or amendment of NO TRUSTEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, EMPLOYEE OR AGENT OF ANY PARTY SHALL BE HELD TO ANY PERSONAL LIABILITY, JOINTLY OR SEVERALLY, FOR ANY OBLIGATION OF, OR CLAIM AGAINST, SUCH PARTY. ALL PERSONS DEALING WITH SUCH PARTY IN ANY WAY, SHALL LOOK ONLY TO THE ASSETS OF SUCH PARTY FOR THE PAYMENT OF ANY SUM OR THE PERFORMANCE OF ANY OBLIGATION.

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement shall to be binding unless executed in writing by both as of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to, or shall, constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver. date first written above by, as applicable, their respective officers thereunto duly authorized.

THE COMPANY:

AlerisLife Inc.

Section 24. Notices

By: . Any notice, report or other communication required or permitted to be given hereunder shall be in writing unless some other method of giving such notice, report or other communication is accepted by the party to whom it is given. /s/ Jeffrey C. Leer

Jeffrey C. Leer

President and shall be given by being delivered at the following addresses to the parties hereto: Chief Executive Officer

(a) **DHC** If to Indemnitee, to: The address set forth on the signature page hereto. :

(b) If to the Company to:

Diversified Healthcare Trust

By: /s/ Matthew C. Brown
Matthew C. Brown
Chief Financial Officer and Treasurer

DHC TRS:

DHC Holdings LLC

By: /s/ Matthew C. Brown
Matthew C. Brown
Chief Financial Officer and Treasurer

THE INITIAL STOCKHOLDER:

ABP Trust

By: /s/ Matthew P. Jordan
Matthew P. Jordan
Treasurer

[Signature Page to AlerisLife Inc. Stockholders Agreement]

Exhibit A

NOTICE ADDRESSES

If to the Company:

Two Newton Place
255 Washington Street, Suite 230
Newton, Massachusetts 02458
Attention: President and Chief Executive Officer and
Secretary
Email: jleer@5ssl.com jclark@rmrgroup.com

If to any DHC Party:

Two Newton Place
255 Washington Street, Suite 300
Newton, Massachusetts 02458-1634 02458-1632
Attn: Chief Financial Officer and Treasurer and Secretary
Email: mbrown@rmrgroup.com or jclark@rmrgroup.com

If to any ABP Party:

Two Newton Place

255 Washington Street, Suite 300
Newton, Massachusetts 02458-1632
Attention: Treasurer and Secretary
Email: mjordan@rmrgroup.com jclark@rmrgroup.com

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Exhibit B

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT (the "**Joinder Agreement**"), dated as of _____, is entered into by _____, [a _____ organized under the laws of _____] / [an individual residing at _____] (the "**New Stockholder**"). All capitalized terms not defined in this Joinder Agreement shall have the meaning ascribed to such terms in that certain Stockholders Agreement dated as of February 16, 2024 by and among the individuals and entities named and listed therein as "**Stockholders**" and AlerisLife Inc., a Maryland corporation (the "**Company**"), as it may be amended from time to time (the "**Stockholders Agreement**").

WHEREAS, the New Stockholder desires to acquire Company Shares [in a Transfer from _____] and in connection therewith become a party to the Stockholders Agreement; and

WHEREAS, the New Stockholder shall become a party to the Stockholders Agreement, and in furtherance of the foregoing, the New Stockholder shall execute and deliver this Joinder Agreement to the Company and each Stockholder.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other address good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the New Stockholder hereby agrees as may follows:

1. **Agreement to be Bound.** The New Stockholder hereby agrees that, upon execution of this Joinder Agreement, the New Stockholder shall become a party to the Stockholders Agreement as [an DHC Party / Initial Stockholder Party], and shall be fully bound by, subject to, and have been furnished all of the benefits and burdens of all of the covenants, terms and conditions of the Stockholders Agreement as [an DHC Party / Initial Stockholder Party] thereunder.
2. **Successors and Assigns.** This Joinder Agreement shall bind and inure to Indemnitee the benefit of and be enforceable by the Company and each Stockholder, and their respective permitted successors, heirs and assigns.
3. **Counterparts.** This Joinder Agreement may be executed in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.
4. **Notices.** All notices, demands or other communications to the Company by Indemnitee, as New Stockholder shall be directed to the case may be.

respective United States address set forth next to the New Stockholder's name on the signature page hereto.

Section 25.5. Governing Law. The provisions of this This Joinder Agreement and any Dispute, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws law (other than the law governing conflict of law questions) of the State of Maryland without regard to its conflicts of laws rules. Maryland.

Section 26. Interpretation 6.

(a) **Generally.** Unless the context otherwise requires, as used in this Agreement: (a) words defined in the singular have the parallel meaning in the plural and vice versa; (b) "Articles," "Sections," and "Exhibits" refer to Articles, Sections and Exhibits of this Agreement unless otherwise specified; and (c) "hereto" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) **Additional Interpretive Provisions Descriptive Headings.** The descriptive headings in of this Joinder Agreement are for convenience of reference purposes only and shall do not in any way affect the meaning or interpretation constitute a part of this Joinder Agreement. Any capitalized term used in any Exhibit to this Agreement, but not otherwise defined therein, shall have the meaning as defined in this Agreement. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder and any successor statute or statutory provision. References to any agreement are to that agreement as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. Reference to any agreement, document or instrument means the agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof.

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(c) **[Expansion of Indemnification.** This amendment and restatement of the Prior Indemnification Agreement is intended to expand, and not to limit, the scope of indemnification provided to Indemnitee under the Prior Indemnification Agreement, and this Agreement shall be interpreted consistent with such intent.]

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have New Stockholder has executed or caused to be executed on their behalf this Joinder Agreement as of the date first written above.

DIVERSIFIED HEALTHCARE TRUST

By: _____

Name: _____

Title: _____

[INDEMNITEE]

Indemnatee's Address: _____

[]

above written.

[Signature Page to [Amended and Restated] Indemnification Agreement] _____

[By: _____]

[Name]

[Title]

Address:

EXHIBIT A _____

FORM OF AFFIRMATION AND

UNDERTAKING TO REPAY EXPENSES ADVANCED

To the Board of Trustees of Diversified Healthcare Trust:

This affirmation and undertaking is being provided pursuant to that certain [Amended and Restated] Indemnification Agreement dated _____, 20____ (the "**Indemnification Agreement**"), by and between Diversified Healthcare Trust, a Maryland real estate investment trust (the "**Company**"), and the undersigned Indemnatee, pursuant to which Indemnatee is entitled to advancement of expenses in connection with **[Description of Claims/Proceeding]** (together, the "**Claims**"). Terms used, and not otherwise defined, herein shall have the meanings specified in the Indemnification Agreement.

Indemnatee is subject to the Claims by reason of Indemnatee's Company Status or by reason of alleged actions or omissions by Indemnatee in such capacity. Indemnatee hereby affirms Indemnatee's good faith belief that the standard of conduct necessary for Indemnatee's indemnification has been met.

In consideration of the advancement of Expenses by the Company for attorneys' fees and related expenses incurred by Indemnatee in connection with the Claims (the "**Advanced Expenses**"), Indemnatee hereby agrees that if, in connection with a proceeding regarding the Claim, it is ultimately determined that Indemnatee is not entitled to indemnification under law, the Declaration of Trust, the Bylaws or the Indemnification Agreement with respect to an act or omission by Indemnatee, then Indemnatee shall promptly reimburse the portion of the Advanced Expenses relating to the Claim(s) as to which the foregoing findings have been established and which have not been successfully resolved as described in **Section 5** of the Indemnification Agreement. To the extent that Advanced Expenses do not relate to specific Claims, Indemnatee agrees that such Advanced Expenses may be allocated on a reasonable and proportionate basis.

IN WITNESS WHEREOF, the undersigned Indemnatee has executed this Affirmation and Undertaking to Repay Expenses Advanced on _____, ____.

WITNESS:

Print name of witness

Print name of Indemnatee

Accepted and agreed to:

THE COMPANY:

AlerisLife Inc.

By:

Name:

Title:

Schedule to Exhibit 10.6

The following trustees and executive officers of Diversified Healthcare Trust, or DHC, are parties to Indemnification Agreements with DHC which are substantially identical in all material respects to the representative Indemnification Agreement filed herewith and are dated as of the respective dates listed below. The other Indemnification Agreements are omitted pursuant to Instruction 2 to Item 601 of Regulation S-K.

Name of Signatory	Date
Matthew C. Brown	October 1, 2023
Phyllis M. Hollis	September 26, 2023
Jennifer F. Francis	May 22, 2018
John L. Harrington	May 22, 2018
Lisa Harris Jones	May 22, 2018
Adam D. Portnoy	May 22, 2018
Jeffrey P. Somers	May 22, 2018

Exhibit 22.1

List of Guarantor Subsidiaries

The following subsidiaries of Diversified Healthcare Trust, a Maryland real estate investment trust (the "Trust"), jointly and severally and fully and unconditionally, guaranteed the Trust's 9.75% Senior Notes due 2025 and the Trust's 4.375% Senior Notes due 2031:

Exact Name of Guarantor Subsidiary	Jurisdiction
CCC Alpha Investments Trust	Maryland
CCC Delaware Trust	Maryland
CCC Financing I Trust	Maryland
CCC Financing Limited, L.P.	Delaware
CCC Investments I, L.L.C.	Delaware
CCC Leisure Park Corporation	Delaware
CCC Pueblo Norte Trust	Maryland
CCC Retirement Communities II, L.P.	Delaware
CCC Retirement Partners Trust	Maryland
CCC Retirement Trust	Maryland
CCDE Senior Living LLC	Delaware
CCOP Senior Living LLC	Delaware
Crestline Ventures LLC	Delaware
CSL Group, Inc.	Indiana
DHC Fremont LLC	Maryland
DHC Holdings LLC	Maryland
Ellicott City Land I, LLC	Delaware
HRES1 Properties Trust	Maryland
HRES2 Properties Trust	Maryland
Leisure Park Venture Limited Partnership	Delaware
Lexington Office Realty Trust	Massachusetts
MSD Pool 1 LLC	Maryland
MSD Pool 2 LLC	Maryland
O.F.C. Corporation	Indiana
SNH AL AIMO II, Inc.	Maryland
SNH AL AIMO Tenant II, Inc.	Maryland
SNH AL AIMO Tenant, Inc.	Maryland
SNH AL AIMO, Inc.	Maryland
SNH AL Crimson Tenant Inc.	Maryland
SNH AL Cumming LLC	Maryland
SNH AL Cumming Tenant LLC	Maryland
SNH AL Georgia Holdings LLC	Maryland
SNH AL Georgia LLC	Maryland
SNH AL Georgia Tenant LLC	Maryland
SNH AL Properties LLC	Maryland
SNH AL Properties Trust	Maryland
SNH AL TRS, Inc.	Maryland

SNH AL Wilmington Tenant Inc.	Maryland
SNH Alpharetta LLC	Delaware
SNH ALT Leased Properties Trust	Maryland
SNH AZ Tenant LLC	Maryland
SNH Bakersfield LLC	Maryland
SNH BAMA Tenant LLC	Maryland
SNH Baton Rouge (North) LLC	Delaware
SNH Baton Rouge (Realtors) LLC	Delaware
SNH BRFL Properties LLC	Delaware
SNH BRFL Tenant LLC	Delaware
SNH Bridgewater LLC	Delaware
SNH CAL Tenant LLC	Maryland
SNH CALI Tenant LLC	Delaware
SNH Carlsbad LP	Delaware
SNH CCMD Properties Borrower LLC	Delaware
SNH CCMD Properties LLC	Delaware
SNH CCMD Tenant LLC	Delaware
SNH CHS Properties Trust	Maryland
SNH CO Tenant LLC	Maryland
SNH DEL Tenant LLC	Maryland
SNH Denham Springs LLC	Delaware
SNH Derby Tenant LLC	Maryland
SNH FLA Tenant LLC	Maryland
SNH FM Financing LLC	Delaware
SNH FM Financing Trust	Maryland
SNH Georgia Tenant LLC	Maryland
SNH GP Carlsbad LLC	Delaware
SNH GP Valencia LLC	Delaware
SNH Granite Gate Lands Tenant LLC	Maryland
SNH Granite Gate Lands Trust	Maryland
SNH Grove Park Tenant LLC	Maryland
SNH Grove Park Trust	Maryland
SNH IL Joplin Inc.	Maryland
SNH IL Properties Trust	Maryland
SNH Independence Park LLC	Delaware
SNH INDY Tenant LLC	Maryland
SNH Jackson LLC	Delaware
SNH Kent Properties LLC	Maryland
SNH Lincoln Tenant LLC	Maryland
SNH Longhorn Tenant LLC	Maryland
SNH LTF Properties LLC	Maryland
SNH MASS Tenant LLC	Maryland
SNH MD Tenant LLC	Maryland
SNH Medical Office Realty Trust	Massachusetts
SNH MezzCo San Antonio LLC	Delaware

SNH MO Tenant LLC	Maryland
SNH Modesto LLC	Maryland
SNH NC Tenant LLC	Maryland
SNH Neb Tenant LLC	Maryland
SNH NJ Tenant GP LLC	Maryland
SNH NJ Tenant LLC	Maryland
SNH NJ Tenant LP	Delaware
SNH NM Tenant LLC	Maryland
SNH Northwoods LLC	Maryland
SNH Northwoods Tenant LLC	Maryland
SNH NS Mtg Properties 2 Trust	Maryland
SNH NS Properties Trust	Maryland
SNH Ohio Tenant LLC	Maryland
SNH OMISS Tenant LLC	Maryland
SNH Park Place I Inc.	Maryland
SNH Park Place II Inc.	Maryland
SNH Park Place Tenant I LLC	Maryland
SNH Park Place Tenant II LLC	Maryland
SNH Parkview Properties Trust	Maryland
SNH PENN Tenant LLC	Maryland
SNH Plaquemine LLC	Delaware
SNH PLFL Properties LLC	Delaware
SNH PLFL Tenant LLC	Delaware
SNH Prairieville LLC	Delaware
SNH Proj Lincoln TRS LLC	Maryland
SNH Redmond Properties LLC	Maryland
SNH REIT Irving LLC	Delaware
SNH REIT San Antonio LLC	Delaware
SNH REIT Victoria LLC	Delaware
SNH RMI Fox Ridge Manor Properties LLC	Maryland
SNH RMI Jefferson Manor Properties LLC	Maryland
SNH RMI McKay Manor Properties LLC	Maryland
SNH RMI Northwood Manor Properties LLC	Maryland
SNH RMI Oak Woods Manor Properties LLC	Maryland
SNH RMI Park Square Manor Properties LLC	Maryland
SNH RMI Properties Holding Company LLC	Maryland
SNH RMI Smith Farms Manor Properties LLC	Maryland
SNH RMI Sycamore Manor Properties LLC	Maryland
SNH SC Tenant LLC	Maryland
SNH SE Ashley River LLC	Delaware
SNH SE Ashley River Tenant LLC	Delaware
SNH SE Barrington Boynton LLC	Delaware
SNH SE Barrington Boynton Tenant LLC	Delaware
SNH SE Burlington LLC	Delaware
SNH SE Burlington Tenant LLC	Delaware

SNH SE Daniel Island LLC	Delaware
SNH SE Daniel Island Tenant LLC	Delaware
SNH SE Habersham Savannah LLC	Delaware
SNH SE Habersham Savannah Tenant LLC	Delaware
SNH SE Holly Hill LLC	Delaware
SNH SE Holly Hill Tenant LLC	Delaware
SNH SE Kings Mtn LLC	Delaware
SNH SE Kings Mtn Tenant LLC	Delaware
SNH SE Mooresville LLC	Delaware
SNH SE Mooresville Tenant LLC	Delaware
SNH SE N. Myrtle Beach LLC	Delaware
SNH SE N. Myrtle Beach Tenant LLC	Delaware
SNH SE Properties LLC	Delaware
SNH SE Properties Trust	Maryland
SNH SE SG LLC	Delaware
SNH SE SG Tenant LLC	Delaware
SNH SE Tenant 2 TRS, Inc.	Maryland
SNH SE Tenant TRS, Inc.	Maryland
SNH Somerford Properties Trust	Maryland
SNH St. Louis LLC	Delaware
SNH Teaneck Properties LLC	Delaware
SNH Teaneck Tenant LLC	Delaware
SNH Tellico Tenant LLC	Maryland
SNH Tellico Trust	Maryland
SNH Tempe LLC	Delaware
SNH TENN Tenant LLC	Maryland
SNH Toto Tenant LLC	Maryland
SNH TRS Inc.	Maryland
SNH TRS Licensee Holdco LLC	Maryland
SNH VA Tenant LLC	Maryland
SNH Viking Tenant LLC	Maryland
SNH Well Properties GA-MD LLC	Delaware
SNH Well Properties Trust	Maryland
SNH Wilmington LLC	Maryland
SNH WIS Tenant LLC	Maryland
SNH WY Tenant LLC	Maryland
SNH Yonkers Properties Trust	Maryland
SNH Yonkers Tenant Inc.	Maryland
SNH/CSL Properties Trust	Maryland
SNH/LTA Properties GA LLC	Maryland
SNH/LTA Properties Trust	Maryland
SNH/LTA SE Home Place New Bern LLC	Delaware
SNH/LTA SE McCarthy New Bern LLC	Delaware
SNH/LTA SE Wilson LLC	Delaware
SPTGEN Properties Trust	Maryland

SPTIHS Properties Trust
SPTMISC Properties Trust
SPTMNR Properties Trust
SPTMRT Properties Trust
SPTSUN II Properties Trust

Maryland
Maryland
Maryland
Maryland
Maryland

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Exhibit 31.1

CERTIFICATION PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)

I, Jennifer F. Francis, Christopher J. Bilotto, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Diversified Healthcare Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2023 May 6, 2024

/s/ Jennifer F. Francis Christopher J. Bilotto

Jennifer F. Francis Christopher J. Bilotto

President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)

I, Matthew C. Brown, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Diversified Healthcare Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2023 May 6, 2024

/s/ Matthew C. Brown

Matthew C. Brown

Chief Financial Officer and Treasurer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SEC. 1350

In connection with the filing by Diversified Healthcare Trust (the "Company") of the Quarterly Report on Form 10-Q for the period ended September 30, 2023 March 31, 2024 (the "Report"), each of the undersigned hereby certifies, to the best of his or her knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Jennifer F. Francis Christopher J. Bilotto

Jennifer F. Francis Christopher J. Bilotto

President and Chief Executive Officer

/s/ Matthew C. Brown

Matthew C. Brown

Chief Financial Officer and Treasurer

Date: November 1, 2023 May 6, 2024

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