

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

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

For the fiscal year ended December 31 , 2023

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 of Organization)

04-3445278
(I.R.S. 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

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

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or 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 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 ☐ Accelerated filer ☒ Non-Accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

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

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

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

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

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

The aggregate market value of the voting common shares of beneficial interest, \$.01 par value, or common shares, of the registrant held by non-affiliates was approximately \$ 485.2 million based on the \$2.25 closing price per common share on The Nasdaq Stock Market LLC on June 30, 2023. For purposes of this calculation, an aggregate of 24,133,010 common shares held directly by, or by affiliates of, the trustees and the executive officers of the registrant have been included in the number of common shares held by affiliates.

Number of the registrant's common shares outstanding as of February 21, 2024: 240,418,363

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

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Items 10, 11, 12, 13 and 14 of Part III of this Annual Report on Form 10-K is incorporated by reference to our definitive Proxy Statement for the 2024 Annual Meeting of Shareholders, to be filed with the Securities and Exchange Commission within 120 days after the fiscal year ended December 31, 2023.

Warning Concerning Forward-Looking Statements

This Annual Report on Form 10-K 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 efforts to manage costs and increase occupancy at our Senior Housing Operating Portfolio, or 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; our 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:

- The impact of unfavorable market and commercial real estate industry conditions due to possible reduced demand for healthcare related space and senior living communities, high interest rates, wage and commodity price inflation, limited labor availability, increased insurance costs, supply chain disruptions, volatility in the public equity and debt markets, pandemics, geopolitical instability and tensions, 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 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 office space and residencies at senior living communities, increased operating costs and labor availability constraints,
- 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 continuing unfavorable market and commercial real estate industry conditions,
- 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,

- Our ability to effectively raise and balance our use of debt and equity capital,
- Our ability to comply with the financial covenants under our debt agreements,
- Our ability to make required payments on our 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 our manager, The RMR Group LLC, or 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 Inc., or AlerisLife, including Five Star Senior Living, or Five Star, and others affiliated with them,
- Limitations imposed by and our ability to satisfy complex rules to maintain our qualification for taxation as a real estate investment trust, or REIT, for U.S. federal income tax purposes,
- Acts of terrorism, outbreaks or continuation of pandemics 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, 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 Annual Report on Form 10-K or in our other filings with the Securities and Exchange Commission, or SEC, including under the caption “Risk Factors”, or incorporated herein or therein, identifies other important factors that could cause differences from our forward-looking statements. Our 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.

DIVERSIFIED HEALTHCARE TRUST
2023 FORM 10-K ANNUAL REPORT

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PART I

Item 1. Business.

Our Company

We are a real estate investment trust, or REIT, that was organized under Maryland law in 1998. We primarily own medical office and life science properties, senior living communities and other healthcare related properties throughout the United States. As of December 31, 2023, we owned 371 properties, including three closed senior living communities, located in 36 states and Washington, D.C. On that date, 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.

As of December 31, 2023, we owned an equity interest in each of two unconsolidated joint ventures 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 98% leased with an average (by annualized rental income) remaining lease term of 5.3 years.

Our principal executive offices are located at Two Newton Place, 255 Washington Street, Suite 300, Newton, Massachusetts 02458-1634, and our telephone number is (617) 796-8350.

Our Business Strategy

The healthcare industry remains one of the most resilient commercial real estate sectors, in part due to the scale of the U.S. healthcare market, which collectively represents approximately 17% of the U.S. gross domestic product, or GDP, according to the Centers for Medicare and Medicaid Services, or CMS. The healthcare sector's continued expansion has been driven by rising standards of care, increasing life expectancies and other demographic trends, as well as funding from both public and private sources.

We believe that the aging of the U.S. population benefits our portfolio of healthcare real estate. According to U.S. Census data, between now and 2030, more than 20% of the total U.S. population will be age 65 or older, with that demographic projected to grow thereafter by the equivalent of 10,000 people per day. We believe that this will increase demand for our senior living communities (including active adult communities) and for healthcare services and products supplied by the tenants in our medical office and life science properties. The primary market for senior living services is individuals age 80 and older. According to U.S. Census data, the age 75+ demographic is projected to be among the fastest growing age cohorts in the United States over the next 20 years, and according to CMS, the age 85+ demographic is projected to grow over 30% over the next five years. Also, as a result of medical advances, seniors are living longer, and CMS reports that healthcare spending is projected to grow at an average rate of 5.4% per year and reach \$6.8 trillion by 2030.

We believe there is a favorable mix of increased demand and limited supply for senior living communities which we expect will benefit us and our existing portfolio of senior living communities in the future. As a result of elevated financing and construction costs over recent years, inventory growth for senior living communities has reached a new low. According to The National Investment Center for Seniors Housing and Care, or NIC, annual inventory growth was 1.3% across all markets during the fourth quarter of 2023. Additionally, annual absorption was 4.1% for the fourth quarter of 2023, according to NIC. We expect improving market fundamentals and constrained supply to continue to result in increased occupancy at our senior living communities over the next 12 to 24 months.

We plan to seek to profit from this demand in the future by, over time, investing in our properties, acquiring additional properties and entering into lease and management arrangements with qualified tenants, managers and operators which enhance our cash flow and generate returns that exceed our operating and capital costs to us, including structuring leases that provide for or permit periodic rent increases.

We also seek to selectively sell properties from time to time when we determine our continued ownership or ongoing required capital expenditures will not achieve desired returns, when we believe we have maximized returns or when we believe we can successfully pursue more desirable opportunities than retaining these properties. We also may use future sales proceeds to manage our leverage, to invest in our properties and to acquire new properties that we believe will help us reduce the overall average age of our properties, increase our weighted average lease term, reduce our ongoing capital requirements and/or increase our distributions to shareholders. Additionally, we seek to selectively develop, redevelop or reposition our properties when we believe the returns will be satisfactory.

Office Portfolio

Our portfolio of medical office and life science properties, or our Office Portfolio, consists of commercial properties constructed for use or operated as medical office space for physicians and other healthcare personnel and other businesses in medical related fields, including clinics and life science or laboratory uses. Some of our office properties are occupied as administrative facilities, such as hospitals and healthcare insurance companies or similar uses. As our lease expirations approach, we will seek to renew our leases with existing tenants or to enter into new leases with new tenants, in both circumstances at rental rates equal to or higher than current rental rates for the same space. Our ability to renew leases with our existing tenants or to enter into new leases with new tenants and the rents we are able to charge will depend in large part upon market and economic conditions, which are beyond our control.

Senior Living Communities

Independent Living Communities. Independent living communities provide high levels of privacy to residents and require residents to be capable of relatively high degrees of independence. An independent living community usually bundles several services as part of a regular monthly charge. For example, an independent living community may include one or two meals per day in a central dining room, daily or weekly maid service or a social director in the base charge. Additional services are generally available from staff employees on a fee for service basis. In some of our independent living communities, separate parts of the property are dedicated to assisted living and/or nursing services. We also own an active adult community, which we have classified as an independent living community.

Assisted Living Communities. Assisted living communities typically have one bedroom or studio units which include private bathrooms and efficiency kitchens. Services bundled within one charge usually include three meals per day in a central dining room, daily housekeeping, laundry, medical reminders and 24 hour availability of assistance with the activities of daily living, such as dressing and bathing. Professional nursing and healthcare services are usually available at the property on call or at regularly scheduled times. These communities may also include Alzheimer's or memory care services. In some of our assisted living communities, separate parts of the property are dedicated to independent living and/or nursing services.

Skilled Nursing Facilities. Skilled nursing facilities, or SNFs, generally provide extensive nursing and healthcare services similar to those available in hospitals, without the high costs associated with operating rooms, emergency rooms or intensive care units. A typical purpose built SNF includes mostly rooms with one or two beds, a separate bathroom and shared dining facilities. Licensed nursing professionals staff SNFs 24 hours per day.

Wellness Centers

Wellness centers typically have exercise classes, strength and cardiovascular equipment areas, tennis and racquet sports facilities, pools, spas and children's centers. Professional sports training and therapist services are often available. Wellness centers often market themselves as clubs for which members may pay monthly fees plus additional fees for specific services.

Other Types of Real Estate

In the past, we have considered investing in real estate different from our existing property types and some properties located outside the United States. We may explore these or other alternative investments in the future.

Lease Terms

Our medical office and life science property leases primarily include both "triple net" leases, where the tenant is generally responsible for the payment of property operating expenses and capital expenditures during the lease term, and "net" and "modified gross" leases, where we are responsible for operating and maintaining the properties and we charge the tenants for some or all of the property operating expenses. A portion of our medical office and life science property leases are "full service" leases where we receive fixed rent from the tenants and do not charge the tenants for any property operating expenses. Most of our leases for senior living communities and wellness centers are "triple net" leases.

Senior Housing Operating Portfolio Management Agreements

Because we are a REIT for U.S. federal income tax purposes, we generally may not operate our senior living communities. For nearly all of our senior living communities, we use a taxable REIT subsidiary, or TRS, structure authorized by the REIT Investment Diversification and Empowerment Act. Under this structure, we lease certain of our communities to

our TRSs, and our TRSs enter into management agreements with third parties for the operation of such communities. These management agreements generally provide the managers with a management fee, which is a percentage of the gross revenues realized at the communities, plus reimbursement for the managers' direct costs and expenses related to the communities. The managers may also receive an annual incentive fee equal to a percentage of the amount by which the annual earnings before interest, taxes, depreciation and amortization, or EBITDA, of the applicable communities exceeds the target EBITDA for the applicable communities.

Our managed senior living communities are operated by third parties pursuant to management agreements. As of December 31, 2023, Five Star Senior Living, or Five Star, which is an operating division of AlerisLife Inc., or AlerisLife, managed 119 of our senior living communities. Also as of December 31, 2023, 113 of our senior living communities were managed by other third party managers. We lease nearly all of our senior living communities to our TRSs.

For more information about the terms of the management agreements with Five Star and the other third party managers, see Note 6 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

Economic and Market Conditions

We are closely monitoring the impacts of the current economic and market conditions on all aspects of our business, including, but not limited to, high interest rates, prolonged high inflation, labor market challenges, supply chain disruptions, volatility in the public equity and debt markets, geopolitical risks, economic downturns or a possible recession and changes in real estate utilization. We expect continued volatility in labor, insurance and food costs in our Senior Housing Operating Portfolio, or SHOP segment.

In response to significant and prolonged increases in inflation, the U.S. Federal Reserve has raised interest rates multiple times since the beginning of 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 interest rates may remain at the current high levels or continue to increase. These inflationary pressures in the United States, as well as global geopolitical instability and tensions, have given rise to uncertainty regarding economic downturns or a possible recession and 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 amounts 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.

For further information and risks relating to these economic uncertainties, see elsewhere in this Annual Report on Form 10-K, including "Warning Concerning Forward-Looking Statements", Part I, Item 1A, "Risk Factors" and Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations".

Our Investment and Operating Policies

Our investment objectives include increasing cash flows from operations from dependable and diverse sources in order to make distributions to our shareholders. To seek to achieve these objectives, we seek to: maintain a strong capital base of shareholders' equity; invest in properties with strong market fundamentals and high credit quality tenants and managers; use leverage to fund additional investments which increase cash flow from operations because of positive spreads between our cost of investment capital and investment yields; make structured investments, including joint venture arrangements, which generate a minimum return and provide an opportunity to participate in operating growth at our properties; when market conditions permit, refinance maturing debt with new equity or debt; and pursue diversification so that our cash flow from operations comes from diverse properties and tenants.

Our Board of Trustees may change our investment and operating policies at any time without a vote of, or notice to, our shareholders.

Acquisition Policies

Our acquisition strategy is to seek to acquire additional properties primarily for income and secondarily for appreciation potential. We may purchase individual properties or multiple properties in one portfolio. In implementing this acquisition strategy, we consider a range of factors relating to each proposed acquisition, including, but not limited to:

- the use and size of the property;
- our cost of capital compared to projected returns we may realize by owning the property;
- the location of the property;
- the price at which the property may be acquired as compared to the estimated replacement cost of the property;
- the existing or proposed lease or management terms;
- the existence of alternative sources, uses or needs for our capital and our leverage;
- the availability and reputation of experienced and financially qualified tenants, managers or guarantors;
- the historical and projected cash flows from the operations of the property;
- the construction quality, physical condition and design of the property, including various environmental sustainability factors;
- the expected capital expenditures that may be needed at the property;
- the competitive market environment of the property;
- the growth, tax and regulatory environments of the market in which the property is located;
- the price segment and payment sources in which the property is operated;
- the strategic fit of the property with the rest of our portfolio; and
- the level of permitted services and regulatory history of the property and its historical tenants and managers.

An important part of our acquisition strategy is to identify and select qualified, experienced and financially stable tenants and managers.

Disposition Policies

We plan to selectively sell certain properties from time to time to manage our leverage and improve our liquidity, to fund future acquisitions and to strategically update, rebalance and reposition our investment portfolio with a goal of (1) reducing our leverage, (2) improving the asset quality of our portfolio by reducing the overall average age of our properties and increasing the weighted average term of our leases and the likelihood of retaining our tenants and (3) increasing our distributions to shareholders.

Other than as described, we generally consider ourselves to be a long term owner of properties and are more interested in the long term earnings potential of our properties and stability of our portfolio than selling properties for short term gains. However, from time to time, we may consider the sale of all or a stake in one or more of our properties or other investments. We make disposition decisions based on a number of factors, including, but not limited to, the following:

- our ability to lease or operate the affected property on terms acceptable to us or have the affected property managed with our realizing acceptable returns;
- the manager's or tenant's desire to dispose of or cease operating the affected property;
- the proposed sale price or targeted returns;
- the existence of alternative sources, uses or needs for our capital and our leverage;
- the remaining length of the lease relating to the property and its other terms;
- our evaluation of future cash flows which may be achieved from the property;

- the strategic fit of the property or investment with the rest of our portfolio;
- the age and capital required to maintain the property;
- the estimated value we may receive by selling the property;
- our intended use of the proceeds we may realize from the sale of a property;
- the expected benefits that can be achieved from contributing additional properties to our existing or any new joint ventures; and
- the tax implications to us and our shareholders.

Other Investments

We have no policies which specifically limit the percentage of our assets that may be invested in any individual property, in any one type of property, in properties leased to any one tenant or to an affiliated group of tenants or in properties operated by any one tenant or manager or by an affiliated group of tenants or managers or in securities of one or more persons.

On February 2, 2023, AlerisLife entered into an Agreement and Plan of Merger, or the ALR Merger Agreement, with certain subsidiaries of ABP Trust, pursuant to which ABP Trust acquired all of the publicly held outstanding AlerisLife common shares, at a price of \$1.31 per share, or the Tender Offer Price, by tender offer, or the AlerisLife Transaction.

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 at the time of any such purchase. On December 20, 2023, we and ABP Trust extended our right to purchase AlerisLife common shares until March 31, 2024.

On February 16, 2024, we exercised this purchase right and acquired, together with our applicable TRS, approximately 34.0% of the currently outstanding AlerisLife common shares from ABP Trust at the Tender Offer Price, for a total purchase price of \$14.9 million, and we, our applicable TRS, ABP Trust and AlerisLife entered into a stockholders agreement. Following this acquisition, ABP Trust owns the remaining approximate 66.0% of AlerisLife.

We may in the future acquire additional common shares or securities of other entities, including entities engaged in real estate activities. We may invest in the securities of other entities for the purpose of exercising control, or otherwise, make loans to other persons or entities, engage in the sale of investments, offer securities in exchange for property or repurchase or reacquire our securities.

Historically, we have primarily owned wholly owned investments in fee interests. However, circumstances may arise in which we may invest in leaseholds, joint ventures, mortgages and other real estate interests. We may invest or enter into additional real estate joint ventures if we conclude that by doing so we may benefit from the participation of joint venture partners or that our opportunity to participate in the investment is contingent on the use of a joint venture structure. As of December 31, 2023, we owned a 10% equity interest in an unconsolidated joint venture that owns a life science property located in Boston, Massachusetts, or the Seaport JV, and a 20% equity interest in an unconsolidated joint venture for 10 medical office and life science properties, or the LSMD JV. Further, we may acquire interests in joint ventures as part of an acquisition of properties or entities or we may contribute properties into our existing or new joint ventures. We also may invest in participating, convertible or other types of mortgages if we conclude that by doing so, we may benefit from the cash flow or appreciation in the value of a property which is not available for purchase.

Our Financing Policies

Although there are no limitations in our organizational documents on the amount of indebtedness we may incur, our senior notes indentures and their supplements contain covenants which, among other things, restrict our ability to incur debts and generally require us to maintain certain financial ratios.

We may seek additional capital through secured or unsecured debt financing or refinancing transactions, sales of properties or equity interests in properties, retention of cash flows in excess of distributions to shareholders, equity offerings or a combination of these methods or other transactions. We may seek to obtain lines of credit or to issue securities senior to our

common shares, including preferred shares or debt securities, some of which may be convertible into our common shares or be accompanied by warrants to purchase our common shares. We may also finance acquisitions by assuming debt, through an exchange of properties or through the issuance of equity or other securities. The proceeds from any of our financings may be used to pay distributions, to make investments in our properties, to refinance existing indebtedness or to finance acquisitions, development, redevelopment or repositionings.

For more information regarding our financing sources and activities, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Our Financing Liquidity and Resources” in Part II, Item 7 of this Annual Report on Form 10-K.

Our Board of Trustees may change our financing policies at any time without a vote of, or notice to, our shareholders.

Our Manager

The RMR Group Inc., or RMR Inc., is a holding company and substantially all of its business is conducted by its majority owned subsidiary, The RMR Group LLC, or 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., chair of the board of directors, a managing director and the president and chief executive officer of RMR Inc. and an officer and employee of RMR. Jennifer F. Francis, our other Managing Trustee and our former President and Chief Executive Officer, served as an officer of RMR until December 31, 2023 and will remain an employee of RMR until her retirement on July 1, 2024. 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 and an officer of ABP Trust. Our day to day operations are conducted by RMR. RMR originates and presents investment and divestment opportunities to our Board of Trustees and provides management and administrative services to us. RMR has a principal place of business at Two Newton Place, 255 Washington Street, Suite 300, Newton, Massachusetts, 02458-1634, and its telephone number is (617) 796-8390. RMR is an alternative asset management company that is focused on commercial real estate and related businesses. RMR or its subsidiaries also act as a manager to other publicly traded real estate companies, privately held real estate funds and real estate related operating businesses. In addition, RMR provides management services to joint ventures, including our existing joint ventures. As of February 21, 2024, the executive officers of RMR are: Adam D. Portnoy, president and chief executive officer; Christopher J. Bilotto, executive vice president; Jennifer B. Clark, executive vice president, general counsel and secretary; Matthew P. Jordan, executive vice president, chief financial officer and treasurer; and John G. Murray, executive vice president. Mr. Bilotto is also our President and Chief Executive Officer, and our Chief Financial Officer and Treasurer, Matthew C. Brown, is a senior vice president of RMR. Mr. Bilotto, Mr. Brown and other officers of RMR also serve as officers of other companies to which RMR or its subsidiaries provide management services.

Government Regulation and Reimbursement

The senior living and healthcare industries are subject to extensive, frequently changing federal, state and local laws and regulations. Although most of these laws and regulations affect the manner in which our tenants and managers operate our properties, some of them also impact us and the values of our properties. Some of the laws that impact or may impact us or our tenants or managers include: state and local licensure laws; laws protecting consumers against deceptive practices; laws relating to the operation of our properties and how our tenants and managers conduct their operations, such as health and safety, fire and privacy laws; federal and state laws affecting assisted living communities that participate in Medicaid and federal and state laws affecting SNFs, clinics and other healthcare facilities that participate in both Medicaid and Medicare that mandate allowable costs, pricing, reimbursement procedures and limitations, quality of services and care, food service and physical plants; resident rights laws (including abuse and neglect laws) and fraud laws; anti-kickback and physician referral laws; the Americans with Disabilities Act and similar state and local laws; and safety and health standards set by the federal Occupational Safety and Health Administration, or OSHA. Medicaid funding is available in some, but not all, states for assisted living services. State licensure standards for assisted living communities, SNFs, clinics and other healthcare facilities typically address facility policies, staffing, quality of services and care, resident rights, fire safety and physical plant matters, and related matters. In addition, government regulation increased and additional compliance obligations were imposed in response to the COVID-19 pandemic, some of which have since been, or are expected in the near future to be, reduced or removed as a result of the abating of the COVID-19 pandemic. We are unable to predict the future course of federal, state and local legislation or regulations. Changes in the regulatory framework could have a material adverse effect on the ability of our tenants to pay us rent, the profitability of our managed senior living communities and the values of our properties.

State and local health and social service agencies and other regulatory authorities regulate and license many senior living communities. State health authorities regulate and license clinics and other healthcare facilities. In most states in which we own properties, we and our tenants and managers are prohibited from providing certain services without first obtaining

appropriate licenses. In addition, some states require a certificate of need, or CON, before an entity may open an assisted living community or SNF or expand services at an existing facility. In addition, some states (such as California and Texas) that have eliminated CON laws have retained other means of limiting development of facilities, including moratoria, licensing laws and limitations upon participation in the state Medicaid program. Senior living communities and certain other healthcare facilities must also comply with applicable state and local building, zoning, fire and food service codes before licensing or Medicare and Medicaid certification are granted. These laws and regulatory requirements could affect our ability and that of our tenants and managers to expand into new markets or to expand communities in existing markets.

In addition, government authorities have been subjecting healthcare facilities such as those that we own to increasing numbers of inspections, surveys, investigations, audits and other potential enforcement actions. We and our tenants and managers expend considerable resources to respond to such actions. Unannounced inspections or surveys may occur annually or biannually, or even more regularly, such as following a regulatory body's receipt of a complaint about a facility. From time to time in the ordinary course of business, we and our tenants and managers receive deficiency reports from state regulatory bodies resulting from those inspections and surveys. We and our tenants and managers seek to resolve most inspection deficiencies through a plan of corrective action relating to the affected facility's operations. If we or our tenants or managers fail to comply with any applicable legal requirements, or are unable to cure deficiencies, certain sanctions may be imposed and, if imposed, may adversely affect the ability of our tenants to pay their rent to us, the profitability of our managed senior living communities and the values of our properties. In addition, government agencies typically have the authority to take or seek further action against a licensed or certified facility, including the ability to impose civil money penalties or fines; suspend, modify, or revoke a license or Medicare or Medicaid participation; suspend or deny admissions of residents; deny payments in full or in part; institute state oversight, temporary management or receivership; and impose criminal penalties. Loss, suspension or modification of a license or certification or the imposition of other sanctions or penalties could adversely affect the values of our properties, the ability of our tenants to pay their rents and the profitability of our managed senior living communities.

CMS of the U.S. Department of Health and Human Services, or HHS, has increased its oversight of state survey agencies in recent years, focusing its enforcement efforts on SNFs and chains of SNF operators with findings of substandard care or repeat and continuing deficiencies and violations. Moreover, state Attorneys General typically enforce consumer protection laws relating to senior living services, clinics and other healthcare facilities. In addition, state Medicaid fraud control agencies may investigate and prosecute assisted living communities and SNFs, clinics and other healthcare facilities under fraud and patient abuse and neglect laws.

Current state laws and regulations allow enforcement officials to make determinations as to whether the care provided by or on behalf of our tenants or by our managers at our facilities exceeds the level of care for which a particular facility is licensed, which could result in closure of the community and the immediate discharge and transfer of residents, which could adversely affect the ability of that tenant to pay rent to us, the profitability of our managed senior living communities and the values of our properties. Citations or revocation of a license could impact the ability for us or our managers to obtain new licenses or certifications or maintain or renew existing licenses and certifications which would trigger defaults under management agreements and leases with us and adversely affect our ability to operate. Furthermore, some states and the federal government allow certain citations of one facility to impact other facilities owned or operated by the same entity or a related entity, including facilities in other states. Revocation of a license or certification at one facility could therefore impact our or a tenant's or manager's ability to obtain new licenses or certifications or to maintain or renew existing licenses at other facilities, which could adversely affect the ability of that tenant to pay rent to us, the profitability of that manager, the profitability and values of our properties and trigger defaults under our tenants' leases and managers' management agreements and our or our tenants' or managers' credit arrangements, or adversely affect our or our tenants' or managers' ability to obtain financing in the future. In addition, an adverse finding by state officials could serve as the basis for lawsuits by private plaintiffs and lead to investigations under federal and state laws, which could result in civil and/or criminal penalties against the facility as well as a related entity.

For the year ended December 31, 2023, substantially all of our net operating income, or NOI, from our senior living communities 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 our senior living communities where a majority of the revenue is dependent upon Medicare and Medicaid programs. Our tenants and managers operate facilities in many states and they and we participate in federal and state healthcare payment programs, including the federal Medicare and state Medicaid benefit programs for services in SNFs and other similar facilities and state Medicaid programs for services in assisted living communities.

In addition, the Federal government took several measures to address the financial impact of the pandemic. The Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, was signed into law on March 27, 2020. The CARES Act, among other things, provided \$2.0 trillion in aid to certain individuals, businesses and state and local governments

suffering from the COVID-19 pandemic. Additionally, the American Rescue Plan Act, or ARPA, was signed into law on March 11, 2021 to provide additional economic stimulus. For a description of the governmental funding and subsequent legislation, see our Annual Report on Form 10-K for the year ended December 31, 2021.

The CARES Act created a Provider Relief Fund, which allocated financial support to providers who experienced lost revenues and increased expenses as a result of the COVID-19 pandemic. The terms and conditions of the Provider Relief Fund require that the funds are 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. In addition, Provider Relief Fund recipients are subject to other terms and conditions, including certain reporting requirements. Any funds not used in accordance with the terms and conditions must be returned to HHS. 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 recognized \$1.6 million of these funds in interest and other income in our consolidated statement of operations for which we believe we have met the required terms and conditions for the year ended December 31, 2023.

Government Payers. In light of the current and projected federal budget deficit and challenging state fiscal conditions, there have been numerous recent legislative and regulatory actions or proposed actions with respect to federal Medicare rates and state Medicaid rates and federal payments to states for Medicaid programs, each of which, or in any combination, could have a material adverse effect on the ability of our tenants to pay us rent, the profitability of our managed senior living communities and the values of our properties.

It is unclear whether any adjustments in Medicare rates will compensate for the increased costs our tenants and managers may incur for services to residents whose services are paid for by Medicare. Current and future programmatic changes to Medicaid eligibility and rates may also impact us.

Enforcement. Federal and state efforts to target false claims, fraud and abuse and violations of anti-kickback, physician referral and privacy laws by providers under Medicare, Medicaid and other public and private programs have increased in recent years, as have civil monetary penalties, treble damages, repayment requirements and criminal sanctions for noncompliance, loss of licensure, termination of government payments, exclusion from any government health care program and damage assessments. The federal False Claims Act, as amended and expanded by the Fraud Enforcement and Recovery Act of 2009 and the Patient Protection and Affordable Care Act of 2010, or the ACA, provides significant civil monetary penalties and treble damages for false claims and authorizes individuals to bring claims on behalf of the federal government for false claims and earn a percentage of the government's recovery should the government intervene. These incentives have led to a steady increase in whistleblower actions. The federal Civil Monetary Penalties Law authorizes the Secretary of HHS to impose substantial civil penalties, treble damages and program exclusions administratively for false claims or violations of the federal anti-kickback statute. In addition, the ACA increased penalties under federal sentencing guidelines between 20% and 50% for healthcare fraud offenses involving more than \$1.0 million.

Government authorities are devoting increasing attention and resources to the prevention, detection and prosecution of healthcare fraud and abuse. CMS contractors are also expanding the retroactive audits of Medicare claims submitted by SNFs and other providers and recouping alleged overpayments for services determined by auditors not to have been appropriately billed (e.g., not medically necessary or not meeting Medicare coverage criteria). State Medicaid programs and other third party payers are conducting similar medical necessity and compliance audits. The ACA facilitates the Department of Justice's, or the DOJ's, ability to investigate allegations of wrongdoing or fraud at healthcare facilities, in part because of increased cooperation and data sharing among CMS, HHS, Office of the Inspector General, or the OIG, the DOJ and the states.

In addition, the ACA requires all states to terminate the Medicaid participation of any provider that has been terminated under Medicare or any Medicaid state plan. We and our tenants and managers expend significant resources to comply with these laws and regulations.

Data Privacy and Security. Federal and state laws designed to protect the confidentiality and security of individually identifiable information apply to us, our tenants and our managers. Under the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, and the Health Information Technology for Economic and Clinical Health Act, or the HITECH Act, we, our managers and our tenants that are covered entities or business associates within the meaning of HIPAA must comply with rules adopted by HHS governing the privacy, security, use and disclosure of individually identifiable information, including financial information and protected health information, or PHI, and also with security rules for electronic PHI. There may be both civil monetary penalties and criminal sanctions for noncompliance with such federal laws. In January 2013, HHS released the HIPAA Omnibus Rule, or the Omnibus Rule, which modified various requirements, including the standard for providing breach notices, which previously required an analysis of the harm of any disclosure, to a more objective analysis relating to whether any PHI was actually acquired or viewed as a result of the breach. On December 10, 2020, HHS

issued a proposed rule that would modify certain standards, definitions and patient rights under the previously promulgated Standards for Privacy of Individually Identifiable Health Information to address barriers to coordinated care and case management. The effect of this proposed rule, if finalized, upon our operations is unknown at this time. HIPAA enforcement efforts have increased considerably over the past few years, with HHS, through its Office for Civil Rights, or OCR, entering into several multi-million dollar HIPAA settlements in prior years. OCR has also demonstrated a continuing commitment to enforce the obligation to provide individuals with timely access to their health information upon request. Finally, OCR and other regulatory bodies have become increasingly focused on cybersecurity risks, including the emerging threat of ransomware and similar cyberattacks. The increasing sophistication of cybersecurity threats presents challenges to the entire healthcare industry.

In addition, many states have enacted their own security and privacy laws relating to individually identifiable information. For example, the California Consumer Privacy Act, or the CCPA, became effective in 2020, and was further modified by the California Privacy Rights Act, or the CPRA. The majority of CPRA provisions went into effect on January 1, 2023, with some requirements applying to data collected beginning on January 1, 2022. The CPRA significantly expanded the CCPA's data protection obligations. Failure to comply with the CCPA or CPRA could result in penalties for noncompliance of up to \$7,500 per violation. We expect additional federal and state legislative and regulatory efforts to regulate consumer privacy in the future. In some states, these laws are more stringent than HIPAA, and we, our tenants and our managers must comply with both the applicable federal and state standards.

Other Matters. We require our tenants and managers to comply with all laws that regulate the operation of our senior living communities. The costs to comply with these laws may adversely affect the profitability of our managed senior living communities and the ability of our tenants to pay their rent to us. If we, our managers, or any of our tenants were subject to an action alleging violations of such laws or to any adverse determination concerning any of our or our tenants' or managers' licenses or eligibility for Medicare or Medicaid reimbursement or any substantial penalties, repayments or sanctions, these actions could materially and adversely affect the ability of our tenants to pay rent to us, the profitability of our managed senior living communities and the values of our properties. If our managers or any of our tenants becomes unable to operate our properties, or if any of our tenants becomes unable to pay its rent because it has violated government regulations or payment laws, we may experience difficulty in finding a substitute tenant or manager or selling the affected property at a price that provides us with a desirable return, and the value of the affected property may decline materially.

Federal, state and local agencies regulate our medical office and life science property tenants that provide healthcare services. Many states require medical clinics, ambulatory surgery centers, clinical laboratories and other outpatient healthcare facilities to be licensed and inspected for compliance with licensure regulations concerning professional staffing, services, patient rights and physical plant requirements, among other matters. Our tenants must comply with the Americans with Disabilities Act, or ADA, and similar state and local laws to the extent that such facilities are "public accommodations" as defined in those statutes. The obligation to comply with the ADA and similar laws is an ongoing obligation, and our tenants expend significant resources to comply with such laws.

Healthcare providers and suppliers, including physicians and other licensed medical practitioners, that receive federal or state reimbursement under Medicare, Medicaid or other federal or state programs must comply with the requirements for their participation in those programs. Our tenants that are healthcare providers or suppliers are subject to reimbursement rates that are increasingly subject to cost control pressures and may be reduced or may not be increased sufficiently to cover their increasing costs, including our rents. Further, healthcare providers are experiencing heightened scrutiny under antitrust laws in the United States as integration and consolidation of health care delivery increase and affect competition. In addition, there has been a movement toward increased scrutiny of private equity and REIT interest in the healthcare industry, including the long-term care sector. For example, on November 15, 2023, CMS issued a final rule, effective January 16, 2024, that requires SNFs and Medicaid-participating nursing facilities to disclose certain additional data on their owners, operators and management in an effort to increase transparency of nursing facility ownership and to promote competition among nursing facilities by allowing patients to choose facilities based on publicly available data of their owners and operators.

The United States Food and Drug Administration, or FDA, and other federal, state and local authorities extensively regulate our biotechnology laboratory tenants that develop, manufacture, market or distribute new drugs, biologicals or medical devices for human use. The FDA and such other authorities regulate the clinical development, testing, manufacture, quality control, safety, effectiveness, labeling, storage, record keeping, advertising and promotion of those products. Before a new pharmaceutical product or medical device may be marketed and distributed in the United States, the FDA must approve it as safe and effective for human use. Preclinical and clinical studies and documentation in connection with FDA approval of new pharmaceuticals or medical devices involve significant time, expense and risks of failure. Once a product is approved, the FDA maintains oversight of the product and its developer and can withdraw its approval, recall products or suspend their production, impose or seek to impose civil or criminal penalties on the developer or take other actions for the developer's failure to comply

with regulatory requirements, including anti-fraud, false claims, anti-kickback or physician referral laws. Other concerns affecting our biotechnology laboratory tenants include the potential for subsequent discovery of safety concerns and related litigation, ensuring that the product qualifies for reimbursement under Medicare, Medicaid or other federal or state programs, cost control initiatives of payment programs, the potential for litigation over the validity or infringement of intellectual property rights related to the product, the eventual expiration of relevant patents and the need to raise additional capital. The cost of compliance with these regulations and the risks described in this paragraph, among others, could adversely affect the ability of our biotechnology laboratory tenants to pay rent to us. In addition, if these laws and regulations are altered, additional regulatory risks may arise. Depending upon what aspects of the laws and regulations are altered, the ability of our biotechnology laboratory tenants to pay rent to us could be adversely and materially affected.

Competition

Owning and operating medical office and life science properties, senior living communities and other healthcare related properties is a highly competitive business. We compete against other REITs, numerous financial institutions, individuals and other public and private companies that are actively engaged in this business. Also, we compete for tenants and residents and for investments based on a number of factors including location, rents, rates, financings offered, underwriting criteria and reputation. Our ability to successfully compete is also impacted by current economic and industry conditions, demographic trends, availability of attractive investment opportunities, our ability to negotiate beneficial investment terms, the availability and cost of capital and new and existing laws and regulations. Some of our competitors are dominant in selected geographic or property markets, including in markets we operate. Some of our competitors may have greater financial and other resources than we have. We believe the quality and diversity of our investments, the financial strength of many of our tenants and the experience and capabilities of our managers may afford us some competitive advantages and allow us to operate our business successfully despite the competitive nature of our business.

Our tenants and managers compete on a local and regional basis with operators of facilities that provide comparable services. Operators compete for residents and patients based on quality of care, reputation, physical appearance of properties, services offered, family preferences, physicians, staff, price and location. We and our tenants and managers also face competition from other healthcare facilities for qualified personnel, such as physicians and other healthcare providers that provide comparable facilities and services.

For additional information on competition and the risks associated with our business, see "Risk Factors" in Part I, Item 1A of this Annual Report on Form 10-K.

Corporate Sustainability

Our manager, RMR, periodically publishes its Sustainability Report, which summarizes the environmental, social and governance, or ESG, initiatives employed by RMR and its client companies, including us. RMR's Sustainability Report may be accessed on the RMR Inc. website at www.rmrgroup.com/corporate-sustainability/default.aspx. The information on or accessible through RMR Inc.'s website is not incorporated by reference into this Annual Report on Form 10-K.

We believe corporate sustainability is a strategic part of our focus on operational practices, enhancing our competitive position, development and redevelopment efforts and economic performance. Our sustainability practices which align with those of our manager, RMR — minimizing our impact on the environment, embracing the communities where we operate and attracting top professionals — are critical elements supporting our long-term success.

We recognize our responsibility to minimize the impact of our business on the environment and seek to preserve natural resources and maximize efficiencies in order to reduce the impact our properties have on the planet. Our environmental sustainability strategies and best practices help to mitigate our properties' environmental footprint, optimize operational efficiency and enhance our competitiveness in the marketplace. Our sustainability and community engagement strategies focus on a complementary set of objectives, including the following:

- **Responsible Investment.** We seek to invest capital in our properties that both improves environmental performance and enhances asset value. During the property acquisition due diligence and annual budgeting processes, RMR assesses, among other things, environmental sustainability opportunities and physical and policy driven climate related risks.
- **Environmental Stewardship.** We seek to improve the environmental footprint of our properties, including by reducing carbon emissions, energy consumption and water usage, especially when doing so may reduce operating

costs and exposure to policies that call for a carbon tax or other emissions-based penalties and enhance the properties' competitive position. Our existing business practices are intended to align with the Task Force on Climate Related Financial Disclosures framework across both the physical and transition risks and opportunities. With respect to our development and redevelopment activities, RMR considers how to best incorporate sustainability goals as part of the overall goal of any development or redevelopment project at our properties. In 2022, RMR announced its commitment to a goal of net zero emissions by 2050 with a 50% reduction commitment by 2030 from a 2019 baseline as it relates to Scope 1 and 2 emissions for all properties for which it directly manages energy.

We and our manager, RMR, drive value, manage risk and benchmark the performance of our properties by effectively capturing and managing data through real-time energy monitoring, or RTM. RTM facilitates advanced data analytics and access to detect faults and inefficiencies in equipment operations faster while enhancing building system control in a cost-effective and scalable way. RMR's RTM program captures 22 of our properties and generated \$3.9 million in cumulative savings to date, of which \$0.9 million was generated in 2023.

Furthermore, properties that reach specified levels of sustainability and energy efficiency may receive potential environmental designations and certifications, such as Leadership in Energy and Environmental Design, or LEED®, designations and/or "ENERGY STAR" certifications. LEED designations are administered by the U.S. Green Building Council. The ENERGY STAR program is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy which is focused on promoting energy efficient products and properties. The U.S. Government's "green lease" policies permit government tenants to require LEED® designation in selecting new premises or renewing leases at existing premises and the General Services Administration gives preference to properties for lease that have received an ENERGY STAR certification. Our property manager, RMR, is a member of the ENERGY STAR program. Certain properties are not eligible for ENERGY STAR certification. For example, lab uses, medical office properties and properties less than 50% occupied cannot be ENERGY STAR certified. As of December 31, 2023, our LEED designations and ENERGY STAR certifications were as follows:

- **LEED:** 23 of our Office Portfolio properties containing 2.2 million rentable square feet (22.5% and 25.6% of our Office Portfolio properties and rentable square feet, respectively).
- **ENERGY STAR:** 25 of our properties containing 3.1 million square feet (11.2% and 15.1% of our eligible properties and rentable square feet, respectively).

In April 2021, we were selected by the U.S. Department of Energy's Better Buildings Alliance and Institute for Market Transformation as a Gold Level Green Lease Leader.

For more information, see "Risk Factors—Risks Related to Our Business—Ownership of real estate is subject to environmental risks and liabilities" and "Risk Factors—Risks Related to Our Business—We are subject to risks from adverse weather, natural disasters and adverse impact from global climate change, and we incur significant costs and invest significant amounts with respect to these matters" in Part I, Item 1A of this Annual Report on Form 10-K and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Impact of Climate Change" in Part II, Item 7 of this Annual Report on Form 10-K.

Environmental Matters

Ownership of real estate is subject to risks associated with environmental hazards. Under various laws, owners as well as tenants and operators of real estate may be required to investigate and clean up or remove hazardous substances present at or migrating from properties they own, lease or operate and may be held liable for property damage or personal injuries that result from hazardous substances. These laws also expose us to the possibility that we may become liable to government agencies or third parties for costs and damages they incur in connection with hazardous substances. In addition, these laws also impose various requirements regarding the operation and maintenance of properties and recordkeeping and reporting requirements relating to environmental matters that require us or the tenants or managers of our properties to incur costs to comply with.

We reviewed environmental surveys of the properties we own prior to their purchase. Based upon those surveys, other studies we may have since reviewed and our understanding of the operations of these properties by our tenants and managers, we do not believe that there are environmental conditions at any of our properties that have had or will have a material adverse effect on us. However, we cannot be sure that conditions are not present at our properties or that costs we may be required to incur in the future to remediate contamination will not have a material adverse effect on our business or financial condition or results of operations.

When adverse weather, natural disasters and adverse impact from global climate change, such as hurricanes, floods or wildfires, occur near our properties, we, our tenants or our managers may relocate the residents at our senior living properties to alternative locations for their safety and we, our tenants or our managers may close or limit the operations of the impacted senior living community or office property until the event has ended and the property is then ready for operation. We or the tenants or managers of our properties may incur significant costs and losses as a result of these activities, both in terms of operating, preparing and repairing our properties in anticipation of, during and after adverse weather, natural disasters and adverse impact from global climate change and in terms of potential lost business due to the interruption in operating our properties. Our insurance and our tenants' and managers' insurance may not adequately compensate us or them for these costs and losses.

Concerns about climate change have resulted in various treaties, laws and regulations that are intended to limit carbon emissions and address other environmental concerns. These and other laws may cause energy or other costs at our properties to increase. We do not expect the direct impact of these increases to be material to our results of operations, because the increased costs either would be the responsibility of our tenants directly or in the longer term, passed through and paid by tenants of our leased properties and residents at our managed senior living communities. Although we do not believe it is likely in the foreseeable future, laws enacted to mitigate climate change may make some of our buildings obsolete or cause us to make material investments in our properties, which could materially and adversely affect our financial condition or the financial condition of our tenants or managers and their ability to pay rent or returns to us. For more information regarding climate change and other environmental matters and their possible adverse impact on us, see "Risk Factors—Risks Related to Our Business—Ownership of real estate is subject to environmental risks" and "Risk Factors—Risks Related to Our Business—We are subject to risks from adverse weather, natural disasters and adverse impact from global climate change, and we incur significant costs and invest significant amounts with respect to these matters" in Part I, Item 1A of this Annual Report on Form 10-K and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Impact of Climate Change" in Part II, Item 7 of this Annual Report on Form 10-K.

Investments in Human Capital

We have no employees. We rely on our manager, RMR, to hire, train, and develop a workforce that meets the needs of our business, contributes positively to our society and helps reduce our impact on the natural environment.

Corporate Citizenship

We seek to be a responsible corporate citizen and to strengthen the communities in which we own properties. Our manager, RMR, regularly encourages its employees to engage in a variety of charitable and community programs, including participation in a company-wide service day and a charitable giving matching program.

Diversity and Inclusion

As of December 31, 2023, our Board of Trustees was comprised of six Trustees, of which four were independent trustees. Our Board of Trustees is comprised of 50% women and approximately 33% members of underrepresented minorities.

Insurance

We or our tenants are generally responsible for the costs of insurance coverage for our properties and the operations conducted on them, including for casualty, liability, fire, extended coverage and rental or business interruption losses. Either we purchase the insurance ourselves and, except in the case of our managed senior living communities, our tenants are required to reimburse us, or the tenants buy the insurance directly and are required to list us as an insured party.

Internet Website

Our internet website address is www.dhcreit.com. Copies of our governance guidelines, our code of business conduct and ethics, or our Code of Conduct, and the charters of our audit, compensation and nominating and governance committees are posted on our website and also may be obtained free of charge by writing to our Secretary, Diversified Healthcare Trust, Two Newton Place, 255 Washington Street, Suite 300, Newton, Massachusetts 02458-1634. We also have a policy outlining procedures for handling concerns or complaints about accounting, internal accounting controls or auditing matters and a governance hotline accessible on our website that shareholders can use to report concerns or complaints about accounting, internal accounting controls or auditing matters or violations or possible violations of our Code of Conduct. We make available, free of charge, through the "Investors" section of our website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to these reports filed or furnished pursuant to Section 13(a) or 15(d)

of the Securities Exchange Act of 1934, as amended, or the Exchange Act, as soon as reasonably practicable after these forms are filed with, or furnished to, the Securities and Exchange Commission, or SEC. Any material we file with or furnish to the SEC is also maintained on the SEC website, www.sec.gov. Security holders may send communications to our Board of Trustees or individual Trustees by writing to the party for whom the communication is intended at c/o Secretary, Diversified Healthcare Trust, Two Newton Place, 255 Washington Street, Suite 300, Newton, Massachusetts 02458-1634 or by email at secretary@dhcreit.com. Our website address is included several times in this Annual Report on Form 10-K as a textual reference only. The information on or accessible through our website is not incorporated by reference into this Annual Report on Form 10-K or other documents we file with, or furnish to, the SEC. We intend to use our website as a means of disclosing material non-public information and for complying with our disclosure obligations under Regulation FD. Those disclosures will be included on our website in the "Investors" section. Accordingly, investors should monitor our website, in addition to following our press releases, SEC filings and public conference calls and webcasts.

Segment Information

As of December 31, 2023, we had two reporting segments: Office Portfolio and SHOP. Non-aggregated assets are classified as "non-segment" and include corporate assets and liabilities, certain triple net leased senior living communities and wellness centers. For further information, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of this Annual Report on Form 10-K and our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following summary of material United States federal income tax considerations is based on existing law and is limited to investors who own our shares as investment assets rather than as inventory or as property used in a trade or business. The summary does not discuss all of the particular tax considerations that might be relevant to you if you are subject to special rules under federal income tax law, for example if you are:

- a bank, insurance company or other financial institution;
- a regulated investment company or REIT;
- a subchapter S corporation;
- a broker, dealer or trader in securities or foreign currencies;
- a person who marks-to-market our shares for U.S. federal income tax purposes;
- a U.S. shareholder (as defined below) that has a functional currency other than the U.S. dollar;
- a person who acquires or owns our shares in connection with employment or other performance of services;
- a person subject to alternative minimum tax;
- a person who acquires or owns our shares as part of a straddle, hedging transaction, constructive sale transaction, constructive ownership transaction or conversion transaction, or as part of a "synthetic security" or other integrated financial transaction;
- a person who owns 10% or more (by vote or value, directly or constructively under the United States Internal Revenue Code of 1986, as amended, or the IRC) of any class of our shares;
- a U.S. expatriate;
- a non-U.S. shareholder (as defined below) whose investment in our shares is effectively connected with the conduct of a trade or business in the United States;
- a nonresident alien individual present in the United States for 183 days or more during an applicable taxable year;
- a "qualified shareholder" (as defined in Section 897(k)(3)(A) of the IRC);

- a “qualified foreign pension fund” (as defined in Section 897(l)(2) of the IRC) or any entity wholly owned by one or more qualified foreign pension funds;
- a non-U.S. shareholder that is a passive foreign investment company or controlled foreign corporation;
- a person subject to special tax accounting rules as a result of their use of applicable financial statements (within the meaning of Section 451(b)(3) of the IRC); or
- except as specifically described in the following summary, a trust, estate, tax-exempt entity or foreign person.

The sections of the IRC that govern the federal income tax qualification and treatment of a REIT and its shareholders are complex. This presentation is a summary of applicable IRC provisions, related rules and regulations, and administrative and judicial interpretations, all of which are subject to change, possibly with retroactive effect. Future legislative, judicial or administrative actions or decisions could also affect the accuracy of statements made in this summary. We have not received a ruling from the U.S. Internal Revenue Service, or the IRS, with respect to any matter described in this summary, and we cannot be sure that the IRS or a court will agree with all of the statements made in this summary. The IRS could, for example, take a different position from that described in this summary with respect to our acquisitions, operations, valuations, restructurings or other matters, which, if a court agreed, could result in significant tax liabilities for applicable parties. In addition, this summary is not exhaustive of all possible tax considerations and does not discuss any estate, gift, state, local or foreign tax considerations. For all these reasons, we urge you and any holder of or prospective acquiror of our shares to consult with a tax advisor about the federal income tax and other tax consequences of the acquisition, ownership and disposition of our shares. Our intentions and beliefs described in this summary are based upon our understanding of applicable laws and regulations that are in effect as of February 26, 2024. If new laws or regulations are enacted which impact us directly or indirectly, we may change our intentions or beliefs.

Your federal income tax consequences generally will differ depending on whether or not you are a “U.S. shareholder.” For purposes of this summary, a “U.S. shareholder” is a beneficial owner of our shares that is:

- an individual who is a citizen or resident of the United States, including an alien individual who is a lawful permanent resident of the United States or meets the substantial presence residency test under the federal income tax laws;
- an entity treated as a corporation for federal income tax purposes that is created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to federal income taxation regardless of its source; or
- a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or, to the extent provided in Treasury regulations, a trust in existence on August 20, 1996 that has elected to be treated as a domestic trust;

whose status as a U.S. shareholder is not overridden by an applicable tax treaty. Conversely, a “non-U.S. shareholder” is a beneficial owner of our shares that is not an entity (or other arrangement) treated as a partnership for federal income tax purposes and is not a U.S. shareholder.

If any entity (or other arrangement) treated as a partnership for federal income tax purposes holds our shares, the tax treatment of a partner in the partnership generally will depend upon the tax status of the partner and the activities of the partnership. Any entity (or other arrangement) treated as a partnership for federal income tax purposes that is a holder of our shares and the partners in such a partnership (as determined for federal income tax purposes) are urged to consult their own tax advisors about the federal income tax consequences and other tax consequences of the acquisition, ownership and disposition of our shares.

Taxation as a REIT

We have elected to be taxed as a REIT under Sections 856 through 860 of the IRC, commencing with our 1999 taxable year. Our REIT election, assuming continuing compliance with the then applicable qualification tests, has continued and will continue in effect for subsequent taxable years. Although we cannot be sure, we believe that from and after our 1999 taxable year we have been organized and have operated, and will continue to be organized and to operate, in a manner that qualified us and will continue to qualify us to be taxed as a REIT under the IRC.

As a REIT, we generally are not subject to federal income tax on our net income distributed as dividends to our shareholders. Distributions to our shareholders generally are included in our shareholders' income as dividends to the extent of our available current or accumulated earnings and profits. Our dividends are not generally entitled to the preferential tax rates on qualified dividend income, but a portion of our dividends may be treated as capital gain dividends or as qualified dividend income, all as explained below. In addition, for taxable years beginning before 2026 and pursuant to the deduction-without-outlay mechanism of Section 199A of the IRC, our noncorporate U.S. shareholders that meet specified holding period requirements are generally eligible for lower effective tax rates on our dividends that are not treated as capital gain dividends or as qualified dividend income. No portion of any of our dividends is eligible for the dividends received deduction for corporate shareholders. Distributions in excess of our current or accumulated earnings and profits generally are treated for federal income tax purposes as returns of capital to the extent of a recipient shareholder's basis in our shares, and will reduce this basis. Our current or accumulated earnings and profits are generally allocated first to distributions made on our preferred shares, of which there are none outstanding at this time, and thereafter to distributions made on our common shares. For all these purposes, our distributions include cash distributions, any in kind distributions of property that we might make, and deemed or constructive distributions resulting from capital market activities (such as some redemptions), as described below.

Our counsel, Sullivan & Worcester LLP, is of the opinion that we have been organized and have qualified for taxation as a REIT under the IRC for our 1999 through 2023 taxable years, and that our current and anticipated investments and plan of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the IRC. Our counsel's opinions are conditioned upon the assumption that our leases, our declaration of trust, and all other legal documents to which we have been or are a party have been and will be complied with by all parties to those documents, upon the accuracy and completeness of the factual matters described in this Annual Report on Form 10-K and upon representations made by us to our counsel as to certain factual matters relating to our organization and operations and our expected manner of operation. If this assumption or a description or representation is inaccurate or incomplete, our counsel's opinions may be adversely affected and may not be relied upon. The opinions of our counsel are based upon the law as it exists today, but the law may change in the future, possibly with retroactive effect. Given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, neither Sullivan & Worcester LLP nor we can be sure that we will qualify as or be taxed as a REIT for any particular year. Any opinion of Sullivan & Worcester LLP as to our qualification or taxation as a REIT will be expressed as of the date issued. Our counsel will have no obligation to advise us or our shareholders of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. Also, the opinions of our counsel are not binding on either the IRS or a court, and either could take a position different from that expressed by our counsel.

Our continued qualification and taxation as a REIT will depend upon our compliance with various qualification tests imposed under the IRC and summarized below. While we believe that we have satisfied and will satisfy these tests, our counsel does not review compliance with these tests on a continuing basis. If we fail to qualify for taxation as a REIT in any year, then we will be subject to federal income taxation as if we were a corporation taxed under subchapter C of the IRC, or a C corporation, and our shareholders will be taxed like shareholders of a regular C corporation, meaning that federal income tax generally will be applied at both the corporate and shareholder levels. In this event, we could be subject to significant tax liabilities, and the amount of cash available for distribution to our shareholders could be reduced or eliminated.

If we continue to qualify for taxation as a REIT and meet the tests described below, then we generally will not pay federal income tax on amounts that we distribute to our shareholders. However, even if we continue to qualify for taxation as a REIT, we may still be subject to federal tax in the following circumstances, as described below:

- We will be taxed at regular corporate income tax rates on any undistributed "real estate investment trust taxable income," determined by including our undistributed ordinary income and net capital gains, if any. We may elect to retain and pay income tax on our net capital gain. In addition, if we so elect by making a timely designation to our shareholders, a shareholder would be taxed on its proportionate share of our undistributed capital gain and would generally be expected to receive a credit or refund for its proportionate share of the tax we paid.
- If we have net income from the disposition of "foreclosure property," as described in Section 856(e) of the IRC, that is held primarily for sale to customers in the ordinary course of a trade or business or other nonqualifying income from foreclosure property, we will be subject to tax on this income at the highest regular corporate income tax rate.
- If we have net income from "prohibited transactions"—that is, dispositions at a gain of inventory or property held primarily for sale to customers in the ordinary course of a trade or business other than dispositions of foreclosure property and other than dispositions excepted by statutory safe harbors—we will be subject to tax on this income at a 100% rate.

- If we fail to satisfy the 75% gross income test or the 95% gross income test discussed below, due to reasonable cause and not due to willful neglect, but nonetheless maintain our qualification for taxation as a REIT because of specified cure provisions, we will be subject to tax at a 100% rate on the greater of the amount by which we fail the 75% gross income test or the 95% gross income test, with adjustments, multiplied by a fraction intended to reflect our profitability for the taxable year.
- If we fail to satisfy any of the REIT asset tests described below (other than a de minimis failure of the 5% or 10% asset tests) due to reasonable cause and not due to willful neglect, but nonetheless maintain our qualification for taxation as a REIT because of specified cure provisions, we will be subject to a tax equal to the greater of \$50,000 or the highest regular corporate income tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail the test.
- If we fail to satisfy any provision of the IRC that would result in our failure to qualify for taxation as a REIT (other than violations of the REIT gross income tests or violations of the REIT asset tests described below) due to reasonable cause and not due to willful neglect, we may retain our qualification for taxation as a REIT but will be subject to a penalty of \$50,000 for each failure.
- If we fail to distribute for any calendar year at least the sum of 85% of our REIT ordinary income for that year, 95% of our REIT capital gain net income for that year and any undistributed taxable income from prior periods, we will be subject to a 4% nondeductible excise tax on the excess of the required distribution over the amounts actually distributed.
- If we acquire a REIT asset where our adjusted tax basis in the asset is determined by reference to the adjusted tax basis of the asset in the hands of a C corporation, under specified circumstances we may be subject to federal income taxation on all or part of the built-in gain (calculated as of the date the property ceased being owned by the C corporation) on such asset. We generally do not expect to sell assets if doing so would result in the imposition of a material built-in gains tax liability; but if and when we do sell assets that may have associated built-in gains tax exposure, then we expect to make appropriate provision for the associated tax liabilities on our financial statements.
- If we acquire a corporation in a transaction where we succeed to its tax attributes, to preserve our qualification for taxation as a REIT we must generally distribute all of the C corporation earnings and profits inherited in that acquisition, if any, no later than the end of our taxable year in which the acquisition occurs. However, if we fail to do so, relief provisions would allow us to maintain our qualification for taxation as a REIT provided we distribute any subsequently discovered C corporation earnings and profits and pay an interest charge in respect of the period of delayed distribution.
- Our subsidiaries that are C corporations, including our “taxable REIT subsidiaries”, as defined in Section 856(l) of the IRC, or TRSs, generally will be required to pay federal corporate income tax on their earnings, and a 100% tax may be imposed on any transaction between us and one of our TRSs that does not reflect arm’s length terms.
- As discussed below, we are invested in real estate through subsidiaries that we believe qualify for taxation as REITs. If it is determined that one of these entities failed to qualify for taxation as a REIT, we may fail one or more of the REIT asset tests. In such case, we expect that we would be able to avail ourselves of the relief provisions described below, but would be subject to a tax equal to the greater of \$50,000 or the highest regular corporate income tax rate multiplied by the net income we earned from this subsidiary.

If we fail to qualify for taxation as a REIT in any year, then we will be subject to federal income tax in the same manner as a regular C corporation. Further, as a regular C corporation, distributions to our shareholders will not be deductible by us, nor will distributions be required under the IRC. Also, to the extent of our current and accumulated earnings and profits, all distributions to our shareholders will generally be taxable as ordinary dividends potentially eligible for the preferential tax rates discussed below under the heading “—Taxation of Taxable U.S. Shareholders” and, subject to limitations in the IRC, will be potentially eligible for the dividends received deduction for corporate shareholders. Finally, we will generally be disqualified from taxation as a REIT for the four taxable years following the taxable year in which the termination of our REIT status is effective. Our failure to qualify for taxation as a REIT for even one year could result in us reducing or eliminating distributions to our shareholders, or in us incurring substantial indebtedness or liquidating substantial investments in order to pay the resulting corporate-level income taxes. Relief provisions under the IRC may allow us to continue to qualify for taxation as a REIT even if we fail to comply with various REIT requirements, all as discussed in more detail below. However, it is impossible to state whether in any particular circumstance we would be entitled to the benefit of these relief provisions.

REIT Qualification Requirements

General Requirements. Section 856(a) of the IRC defines a REIT as a corporation, trust or association:

- (1) that is managed by one or more trustees or directors;
- (2) the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest;
- (3) that would be taxable, but for Sections 856 through 859 of the IRC, as a domestic C corporation;
- (4) that is not a financial institution or an insurance company subject to special provisions of the IRC;
- (5) the beneficial ownership of which is held by 100 or more persons;
- (6) that is not "closely held," meaning that during the last half of each taxable year, not more than 50% in value of the outstanding shares are owned, directly or indirectly, by five or fewer "individuals" (as defined in the IRC to include specified tax-exempt entities); and
- (7) that meets other tests regarding the nature of its income and assets and the amount of its distributions, all as described below.

Section 856(b) of the IRC provides that conditions (1) through (4) must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Although we cannot be sure, we believe that we have met conditions (1) through (7) during each of the requisite periods ending on or before the close of our most recently completed taxable year, and that we will continue to meet these conditions in our current and future taxable years. To help comply with condition (6), our declaration of trust and bylaws restrict transfers of our shares that would otherwise result in concentrated ownership positions. These restrictions, however, do not ensure that we have previously satisfied, and may not ensure that we will in all cases be able to continue to satisfy, the share ownership requirements described in condition (6). If we comply with applicable Treasury regulations to ascertain the ownership of our outstanding shares and do not know, or by exercising reasonable diligence would not have known, that we failed condition (6), then we will be treated as having met condition (6). Accordingly, we have complied and will continue to comply with these regulations, including by requesting annually from holders of significant percentages of our shares information regarding the ownership of our shares. Under our declaration of trust, our shareholders are required to respond to these requests for information. A shareholder that fails or refuses to comply with the request is required by Treasury regulations to submit a statement with its federal income tax return disclosing its actual ownership of our shares and other information.

For purposes of condition (6), an "individual" generally includes a natural person, a supplemental unemployment compensation benefit plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes, but does not include a qualified pension plan or profit-sharing trust. As a result, REIT shares owned by an entity that is not an "individual" are considered to be owned by the direct and indirect owners of the entity that are individuals (as so defined), rather than to be owned by the entity itself. Similarly, REIT shares held by a qualified pension plan or profit-sharing trust are treated as held directly by the individual beneficiaries in proportion to their actuarial interests in such plan or trust. Consequently, five or fewer such trusts could own more than 50% of the interests in an entity without jeopardizing that entity's qualification for taxation as a REIT.

The IRC provides that we will not automatically fail to qualify for taxation as a REIT if we do not meet conditions (1) through (6), provided we can establish that such failure was due to reasonable cause and not due to willful neglect. Each such excused failure will result in the imposition of a \$50,000 penalty instead of REIT disqualification. This relief provision may apply to a failure of the applicable conditions even if the failure first occurred in a year prior to the taxable year in which the failure was discovered.

Our Wholly Owned Subsidiaries and Our Investments Through Partnerships. Except in respect of a TRS as discussed below, Section 856(i) of the IRC provides that any corporation, 100% of whose stock is held by a REIT and its disregarded subsidiaries, is a qualified REIT subsidiary and shall not be treated as a separate corporation for U.S. federal income tax purposes. The assets, liabilities and items of income, deduction and credit of a qualified REIT subsidiary are treated as the REIT's. We believe that each of our direct and indirect wholly owned subsidiaries, other than the TRSs discussed below (and entities whose equity is owned in whole or in part by such TRSs), will be either a qualified REIT subsidiary within the meaning

of Section 856(i)(2) of the IRC or a noncorporate entity that for federal income tax purposes is not treated as separate from its owner under Treasury regulations issued under Section 7701 of the IRC, each such entity referred to as a QRS. Thus, in applying all of the REIT qualification requirements described in this summary, all assets, liabilities and items of income, deduction and credit of our QRSs are treated as ours, and our investment in the stock and other securities of such QRSs will be disregarded.

We have invested and may in the future invest in real estate through one or more entities that are treated as partnerships for federal income tax purposes. In the case of a REIT that is a partner in a partnership, Treasury regulations under the IRC provide that, for purposes of the REIT qualification requirements regarding income and assets described below, the REIT is generally deemed to own its proportionate share, based on respective capital interests, of the income and assets of the partnership (except that for purposes of the 10% value test, described below, the REIT's proportionate share of the partnership's assets is based on its proportionate interest in the equity and specified debt securities issued by the partnership). In addition, for these purposes, the character of the assets and items of gross income of the partnership generally remains the same in the hands of the REIT. In contrast, for purposes of the distribution requirements discussed below, we must take into account as a partner our share of the partnership's income as determined under the general federal income tax rules governing partners and partnerships under Subchapter K of the IRC.

Subsidiary REITs. We indirectly own real estate through subsidiaries that we believe have qualified and will remain qualified for taxation as REITs under the IRC, and we may in the future invest in real estate through one or more other subsidiary entities that are intended to qualify for taxation as REITs. When a subsidiary qualifies for taxation as a REIT separate and apart from its REIT parent, the subsidiary's shares are qualifying real estate assets for purposes of the REIT parent's 75% asset test described below. However, failure of the subsidiary to separately satisfy the various REIT qualification requirements described in this summary or that are otherwise applicable (and failure to qualify for the applicable relief provisions) would generally result in (a) the subsidiary being subject to regular U.S. corporate income tax, as described above, and (b) the REIT parent's ownership in the subsidiary (i) ceasing to be qualifying real estate assets for purposes of the 75% asset test and (ii) becoming subject to the 5% asset test, the 10% vote test and the 10% value test, each as described below, generally applicable to a REIT's ownership in corporations other than REITs and TRSs. In such a situation, the REIT parent's own qualification and taxation as a REIT could be jeopardized on account of the subsidiary's failure cascading up to the REIT parent, all as described below under the heading "—Asset Tests".

We have joined with our subsidiary REITs in filing protective TRS elections, and we may continue to annually make such elections unless and until our ownership of these subsidiaries falls below 10%. Pursuant to these protective TRS elections, we believe that if one of these subsidiaries is not a REIT for some reason, then that subsidiary would instead be considered one of our TRSs, and as such its value would fit within our REIT gross asset tests described below. We expect to make similar protective TRS elections with respect to any other subsidiary REIT that we form or acquire and may implement other protective arrangements intended to avoid a cascading REIT failure if any of our intended subsidiary REITs were not to qualify for taxation as a REIT, but we cannot be sure that such protective elections or other arrangements will be effective to avoid or mitigate the resulting adverse consequences to us. We do not expect protective TRS elections to impact our compliance with the 75% and 95% gross income tests described below, because we do not expect our gains and dividends from a subsidiary REIT's shares to jeopardize compliance with these tests even if for some reason the subsidiary is not a REIT.

Taxable REIT Subsidiaries. As a REIT, we are permitted to own any or all of the securities of a TRS, provided that no more than 20% of the total value of our assets, at the close of each quarter, is comprised of our investments in the stock or other securities of our TRSs. Very generally, a TRS is a subsidiary corporation other than a REIT in which a REIT directly or indirectly holds stock and that has made a joint election with such REIT to be treated as a TRS. A TRS is taxed as a regular C corporation, separate and apart from any affiliated REIT. Our ownership of stock and other securities in our TRSs is exempt from the 5% asset test, the 10% vote test and the 10% value test discussed below. Among other requirements, a TRS of ours must:

- (1) not directly or indirectly operate or manage a lodging facility or a health care facility; and
- (2) not directly or indirectly provide to any person, under a franchise, license or otherwise, rights to any brand name under which any lodging facility or health care facility is operated, except that in limited circumstances a subfranchise, sublicense or similar right can be granted to an independent contractor to operate or manage a lodging facility or a health care facility.

In addition, any corporation (other than a REIT and other than a QRS) in which a TRS directly or indirectly owns more than 35% of the voting power or value of the outstanding securities is automatically a TRS (excluding, for this purpose, certain "straight debt" securities). Subject to the discussion below, we believe that we and each of our TRSs have complied

with, and will continue to comply with, the requirements for TRS status at all times during which the subsidiary's TRS election is intended to be in effect, and we believe that the same will be true for any TRS that we later form or acquire.

As discussed below, TRSs can perform services for our tenants without disqualifying the rents we receive from those tenants under the 75% gross income test or the 95% gross income test discussed below. Moreover, because our TRSs are taxed as C corporations that are separate from us, their assets, liabilities and items of income, deduction and credit generally are not imputed to us for purposes of the REIT qualification requirements described in this summary. Therefore, our TRSs may generally conduct activities that would be treated as prohibited transactions or would give rise to nonqualified income if conducted by us directly. Additionally, while a REIT is generally limited in its ability to earn qualifying rental income from a TRS, a REIT can earn qualifying rental income from the lease of a qualified health care property to a TRS if an eligible independent contractor operates the facility, as discussed more fully below.

Restrictions and sanctions are imposed on TRSs and their affiliated REITs to ensure that the TRSs will be subject to an appropriate level of federal income taxation. For example, if a TRS pays interest, rent or other amounts to its affiliated REIT in an amount that exceeds what an unrelated third party would have paid in an arm's length transaction, then the REIT generally will be subject to an excise tax equal to 100% of the excessive portion of the payment. Further, if in comparison to an arm's length transaction, a third-party tenant has overpaid rent to the REIT in exchange for underpaying the TRS for services rendered, and if the REIT has not adequately compensated the TRS for services provided to or on behalf of the third-party tenant, then the REIT may be subject to an excise tax equal to 100% of the undercompensation to the TRS. A safe harbor exception to this excise tax applies if the TRS has been compensated at a rate at least equal to 150% of its direct cost in furnishing or rendering the service. Finally, the 100% excise tax also applies to the underpricing of services provided by a TRS to its affiliated REIT in contexts where the services are unrelated to services for REIT tenants. We cannot be sure that arrangements involving our TRSs will not result in the imposition of one or more of these restrictions or sanctions, but we do not believe that we or our TRSs are or will be subject to these impositions.

Income Tests. We must satisfy two gross income tests annually to maintain our qualification for taxation as a REIT. First, at least 75% of our gross income for each taxable year must be derived from investments relating to real property, including "rents from real property" within the meaning of Section 856(d) of the IRC, interest and gain from mortgages on real property or on interests in real property, income and gain from foreclosure property, gain from the sale or other disposition of real property (including specified ancillary personal property treated as real property under the IRC), or dividends on and gain from the sale or disposition of shares in other REITs (but excluding in all cases any gains subject to the 100% tax on prohibited transactions). When we receive new capital in exchange for our shares or in a public offering of our five-year or longer debt instruments, income attributable to the temporary investment of this new capital in stock or a debt instrument, if received or accrued within one year of our receipt of the new capital, is generally also qualifying income under the 75% gross income test. Second, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, gain from the sale or disposition of stock or securities, or any combination of these. Gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business, income and gain from specified "hedging transactions" that are clearly and timely identified as such, and income from the repurchase or discharge of indebtedness is excluded from both the numerator and the denominator in both gross income tests. In addition, specified foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests.

In order to qualify as "rents from real property" within the meaning of Section 856(d) of the IRC, several requirements must be met:

- The amount of rent received generally must not be based on the income or profits of any person, but may be based on a fixed percentage or percentages of receipts or sales.
- Rents generally do not qualify if the REIT owns 10% or more by vote or value of stock of the tenant (or 10% or more of the interests in the assets or net profits of the tenant, if the tenant is not a corporation), whether directly or after application of attribution rules. We generally do not intend to lease property to any party if rents from that property would not qualify as "rents from real property," but application of the 10% ownership rule is dependent upon complex attribution rules and circumstances that may be beyond our control. Our declaration of trust and bylaws generally disallow transfers or purported acquisitions, directly or by attribution, of our shares to the extent necessary to maintain our qualification for taxation as a REIT under the IRC. Nevertheless, we cannot be sure that these restrictions will be effective to prevent our qualification for taxation as a REIT from being jeopardized under the 10% affiliated tenant rule. Furthermore, we cannot be sure that we will be able to monitor and enforce these restrictions, nor will our shareholders necessarily be aware of ownership of our shares attributed to them under the IRC's attribution rules.

- There is a limited exception to the above prohibition on earning “rents from real property” from a 10% affiliated tenant where the tenant is a TRS. If at least 90% of the leased space of a property is leased to tenants other than TRSs and 10% affiliated tenants, and if the TRS’s rent to the REIT for space at that property is substantially comparable to the rents paid by nonaffiliated tenants for comparable space at the property, then otherwise qualifying rents paid by the TRS to the REIT will not be disqualified on account of the rule prohibiting 10% affiliated tenants.
- There is an additional exception to the above prohibition on earning “rents from real property” from a 10% affiliated tenant. For this additional exception to apply, a real property interest in a “qualified health care property” must be leased by the REIT to its TRS, and the facility must be operated on behalf of the TRS by a person who is an “eligible independent contractor,” all as described in Sections 856(d)(8)-(9) and 856(e)(6)(D) of the IRC. As described below, we believe our leases with our TRSs have satisfied and will continue to satisfy these requirements.
- In order for rents to qualify, a REIT generally must not manage the property or furnish or render services to the tenants of the property, except through an independent contractor from whom it derives no income or through one of its TRSs. There is an exception to this rule permitting a REIT to perform customary management and tenant services of the sort that a tax-exempt organization could perform without being considered in receipt of “unrelated business taxable income” as defined in Section 512(b)(3) of the IRC, or UBTI. In addition, a *de minimis* amount of noncustomary services provided to tenants will not disqualify income as “rents from real property” as long as the value of the impermissible tenant services does not exceed 1% of the gross income from the property.
- If rent attributable to personal property leased in connection with a lease of real property is 15% or less of the total rent received under the lease, then the rent attributable to personal property will qualify as “rents from real property;” if this 15% threshold is exceeded, then the rent attributable to personal property will not so qualify. The portion of rental income treated as attributable to personal property is determined according to the ratio of the fair market value of the personal property to the total fair market value of the real and personal property that is rented.
- In addition, “rents from real property” includes both charges we receive for services customarily rendered in connection with the rental of comparable real property in the same geographic area, even if the charges are separately stated, as well as charges we receive for services provided by our TRSs when the charges are not separately stated. Whether separately stated charges received by a REIT for services that are not geographically customary and provided by a TRS are included in “rents from real property” has not been addressed clearly by the IRS in published authorities; however, our counsel, Sullivan & Worcester LLP, is of the opinion that, although the matter is not free from doubt, “rents from real property” also includes charges we receive for services provided by our TRSs when the charges are separately stated, even if the services are not geographically customary. Accordingly, we believe that our revenues from TRS-provided services, whether the charges are separately stated or not, qualify as “rents from real property” because the services satisfy the geographically customary standard, because the services have been provided by a TRS, or for both reasons.

We believe that all or substantially all of our rents and related service charges have qualified and will continue to qualify as “rents from real property” for purposes of Section 856 of the IRC.

Absent the “foreclosure property” rules of Section 856(e) of the IRC, a REIT’s receipt of active, nonrental gross income from a property would not qualify under the 75% and 95% gross income tests. But as foreclosure property, the active, nonrental gross income from the property would so qualify. Foreclosure property is generally any real property, including interests in real property, and any personal property incident to such real property:

- that is acquired by a REIT as a result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default or when default was imminent on a lease of such property or on indebtedness that such property secured;
- for which any related loan acquired by the REIT was acquired at a time when the default was not imminent or anticipated; and
- for which the REIT makes a proper election to treat the property as foreclosure property.

Any gain that a REIT recognizes on the sale of foreclosure property held as inventory or primarily for sale to customers, plus any income it receives from foreclosure property that would not otherwise qualify under the 75% gross income test in the absence of foreclosure property treatment, reduced by expenses directly connected with the production of those items of income, would be subject to federal income tax at the highest regular corporate income tax rate under the foreclosure

property income tax rules of Section 857(b)(4) of the IRC. Thus, if a REIT should lease foreclosure property in exchange for rent that qualifies as "rents from real property" as described above, then that rental income is not subject to the foreclosure property income tax.

Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property, or longer if an extension is obtained from the IRS. However, this grace period terminates and foreclosure property ceases to be foreclosure property on the first day:

- on which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for purposes of the 75% gross income test (disregarding income from foreclosure property), or any nonqualified income under the 75% gross income test is received or accrued by the REIT, directly or indirectly, pursuant to a lease entered into on or after such day;
- on which any construction takes place on the property, other than completion of a building or any other improvement where more than 10% of the construction was completed before default became imminent and other than specifically exempted forms of maintenance or deferred maintenance; or
- which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business which is conducted by the REIT, other than through an independent contractor from whom the REIT itself does not derive or receive any income or a TRS.

Other than sales of foreclosure property, any gain that we realize on the sale of property held as inventory or other property held primarily for sale to customers in the ordinary course of a trade or business, together known as dealer gains, may be treated as income from a prohibited transaction that is subject to a penalty tax at a 100% rate. The 100% tax does not apply to gains from the sale of property that is held through a TRS, although such income will be subject to tax in the hands of the TRS at regular corporate income tax rates; we may therefore utilize our TRSs in transactions in which we might otherwise recognize dealer gains. Whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding each particular transaction. Sections 857(b)(6)(C) and (E) of the IRC provide safe harbors pursuant to which limited sales of real property held for at least two years and meeting specified additional requirements will not be treated as prohibited transactions. However, compliance with the safe harbors is not always achievable in practice. We attempt to structure our activities to avoid transactions that are prohibited transactions, or otherwise conduct such activities through TRSs; but, we cannot be sure whether or not the IRS might successfully assert that we are subject to the 100% penalty tax with respect to any particular transaction. Gains subject to the 100% penalty tax are excluded from the 75% and 95% gross income tests, whereas real property gains that are not dealer gains or that are exempted from the 100% penalty tax on account of the safe harbors are considered qualifying gross income for purposes of the 75% and 95% gross income tests.

We believe that any gain that we have recognized, or will recognize, in connection with our disposition of assets and other transactions, including through any partnerships, will generally qualify as income that satisfies the 75% and 95% gross income tests, and will not be dealer gains or subject to the 100% penalty tax. This is because our general intent has been and is to: (a) own our assets for investment (including through joint ventures) with a view to long-term income production and capital appreciation; (b) engage in the business of developing, owning, leasing and managing our existing properties and acquiring, developing, owning, leasing and managing new properties; and (c) make occasional dispositions of our assets consistent with our long-term investment objectives.

If we fail to satisfy one or both of the 75% gross income test or the 95% gross income test in any taxable year, we may nevertheless qualify for taxation as a REIT for that year if we satisfy the following requirements: (a) our failure to meet the test is due to reasonable cause and not due to willful neglect; and (b) after we identify the failure, we file a schedule describing each item of our gross income included in the 75% gross income test or the 95% gross income test for that taxable year. Even if this relief provision does apply, a 100% tax is imposed upon the greater of the amount by which we failed the 75% gross income test or the amount by which we failed the 95% gross income test, with adjustments, multiplied by a fraction intended to reflect our profitability for the taxable year. This relief provision may apply to a failure of the applicable income tests even if the failure first occurred in a year prior to the taxable year in which the failure was discovered.

Based on the discussion above, we believe that we have satisfied, and will continue to satisfy, the 75% and 95% gross income tests outlined above on a continuing basis beginning with our first taxable year as a REIT.

Asset Tests. At the close of each calendar quarter of each taxable year, we must also satisfy the following asset percentage tests in order to qualify for taxation as a REIT for federal income tax purposes:

- At least 75% of the value of our total assets must consist of “real estate assets,” defined as real property (including interests in real property and interests in mortgages on real property or on interests in real property), ancillary personal property to the extent that rents attributable to such personal property are treated as rents from real property in accordance with the rules described above, cash and cash items, shares in other REITs, debt instruments issued by “publicly offered REITs” as defined in Section 562(c)(2) of the IRC, government securities and temporary investments of new capital (that is, any stock or debt instrument that we hold that is attributable to any amount received by us (a) in exchange for our shares or (b) in a public offering of our five-year or longer debt instruments, but in each case only for the one-year period commencing with our receipt of the new capital).
- Not more than 25% of the value of our total assets may be represented by securities other than those securities that count favorably toward the preceding 75% asset test.
- Of the investments included in the preceding 25% asset class, the value of any one non-REIT issuer's securities that we own may not exceed 5% of the value of our total assets. In addition, we may not own more than 10% of the vote or value of any one non-REIT issuer's outstanding securities, unless the securities are “straight debt” securities or otherwise excepted as discussed below. Our stock and other securities in a TRS are exempted from these 5% and 10% asset tests.
- Not more than 20% of the value of our total assets may be represented by stock or other securities of our TRSs.
- Not more than 25% of the value of our total assets may be represented by “nonqualified publicly offered REIT debt instruments” as defined in Section 856(c)(5)(L)(ii) of the IRC.

Our counsel, Sullivan & Worcester LLP, is of the opinion that, although the matter is not free from doubt, our investments in the equity or debt of a TRS of ours, to the extent that and during the period in which they qualify as temporary investments of new capital, will be treated as real estate assets, and not as securities, for purposes of the above REIT asset tests.

The above REIT asset tests must be satisfied at the close of each calendar quarter of each taxable year as a REIT. After a REIT meets the asset tests at the close of any quarter, it will not lose its qualification for taxation as a REIT in any subsequent quarter solely because of fluctuations in the values of its assets. This grandfathering rule may be of limited benefit to a REIT such as us that makes periodic acquisitions of both qualifying and nonqualifying REIT assets. When a failure to satisfy the above asset tests results from an acquisition of securities or other property during a quarter, the failure can be cured by disposition of sufficient nonqualifying assets within thirty days after the close of that quarter.

In addition, if we fail the 5% asset test, the 10% vote test or the 10% value test at the close of any quarter and we do not cure such failure within thirty days after the close of that quarter, that failure will nevertheless be excused if (a) the failure is de minimis and (b) within six months after the last day of the quarter in which we identify the failure, we either dispose of the assets causing the failure or otherwise satisfy the 5% asset test, the 10% vote test and the 10% value test. For purposes of this relief provision, the failure will be de minimis if the value of the assets causing the failure does not exceed the lesser of (a) 1% of the total value of our assets at the end of the relevant quarter or (b) \$10,000,000. If our failure is not de minimis, or if any of the other REIT asset tests have been violated, we may nevertheless qualify for taxation as a REIT if (a) we provide the IRS with a description of each asset causing the failure, (b) the failure was due to reasonable cause and not willful neglect, (c) we pay a tax equal to the greater of (1) \$50,000 or (2) the highest regular corporate income tax rate imposed on the net income generated by the assets causing the failure during the period of the failure, and (d) within six months after the last day of the quarter in which we identify the failure, we either dispose of the assets causing the failure or otherwise satisfy all of the REIT asset tests. These relief provisions may apply to a failure of the applicable asset tests even if the failure first occurred in a year prior to the taxable year in which the failure was discovered.

The IRC also provides an excepted securities safe harbor to the 10% value test that includes among other items (a) “straight debt” securities, (b) specified rental agreements in which payment is to be made in subsequent years, (c) any obligation to pay “rents from real property,” (d) securities issued by governmental entities that are not dependent in whole or in part on the profits of or payments from a nongovernmental entity, and (e) any security issued by another REIT. In addition, any debt instrument issued by an entity classified as a partnership for federal income tax purposes, and not otherwise excepted from the definition of a security for purposes of the above safe harbor, will not be treated as a security for purposes of the 10% value test if at least 75% of the partnership's gross income, excluding income from prohibited transactions, is qualifying income for purposes of the 75% gross income test.

We have maintained and will continue to maintain records of the value of our assets to document our compliance with the above asset tests and intend to take actions as may be required to cure any failure to satisfy the tests within thirty days after the close of any quarter or within the six month periods described above.

Based on the discussion above, we believe that we have satisfied, and will continue to satisfy, the REIT asset tests outlined above on a continuing basis beginning with our first taxable year as a REIT.

Our Relationship with AlerisLife. We currently own (directly and indirectly through one of our TRSs) less than 35% of the outstanding common shares of AlerisLife. We have not elected to treat AlerisLife as a TRS, and it is not otherwise an automatic TRS because no TRS of ours owns more than 35% of AlerisLife. This structure for our AlerisLife ownership permits our continued engagement of a corporate subsidiary of AlerisLife to manage health care facilities leased to our TRSs, as described below in greater detail. For further information regarding our relationship with AlerisLife, see Note 8 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

Our Relationship with Our Taxable REIT Subsidiaries. We currently own properties that we purchased to be leased to our TRSs or which are being leased to our TRSs as a result of modifications to, or expirations of, a prior lease, all as agreed to by applicable parties. For example, in connection with past lease defaults and expirations, we have terminated occupancy of some of our health care properties by the defaulting or expiring tenants and immediately leased these properties to our TRSs and entered into other third-party management agreements for these properties. We may from time to time lease additional health care properties to our TRSs.

In lease transactions involving our TRSs, our general intent is for the rents paid to us by the TRS to qualify as “rents from real property” under the REIT gross income tests summarized above. In order for this to be the case, the manager operating the leased property on behalf of the applicable TRS must be an “eligible independent contractor” within the meaning of Section 856(d)(9)(A) of the IRC, and the properties leased to the TRS must be “qualified health care properties” within the meaning of Section 856(e)(6)(D) of the IRC. Qualified health care properties are defined as health care facilities and other properties necessary or incidental to the use of a health care facility.

For these purposes, a contractor qualifies as an “eligible independent contractor” if it is less than 35% affiliated with the REIT and, at the time the contractor enters into the agreement with the TRS to operate the qualified health care property, that contractor or any person related to that contractor is actively engaged in the trade or business of operating qualified health care properties for persons unrelated to the TRS or its affiliated REIT. For these purposes, an otherwise eligible independent contractor is not disqualified from that status on account of (a) the TRS bearing the expenses of the operation of the qualified health care property, (b) the TRS receiving the revenues from the operation of the qualified health care property, net of expenses for that operation and fees payable to the eligible independent contractor, or (c) the REIT receiving income from the eligible independent contractor pursuant to a preexisting or otherwise grandfathered lease of another property.

We have engaged as an intended eligible independent contractor a particular corporate subsidiary of AlerisLife. This contractor and its affiliates are actively engaged in the trade or business of operating qualified health care properties for their own accounts, including pursuant to management contracts among themselves; however, this contractor and its affiliates have few if any management contracts for qualified health care properties with third parties other than us and our TRSs. Based on a plain reading of the statute as well as applicable legislative history, our counsel, Sullivan & Worcester LLP, has opined that this intended eligible independent contractor should in fact so qualify. If the IRS or a court determines that this opinion is incorrect, then the rental income we receive from our TRSs in respect of properties managed by this particular contractor would be nonqualifying income for purposes of the 75% and 95% gross income tests, possibly jeopardizing our compliance with one or both of these gross income tests. Under those circumstances, however, we expect we would qualify for the gross income tests’ relief provision described above, and thereby would preserve our qualification for taxation as a REIT. If the relief provision were to apply to us, we would be subject to tax at a 100% rate upon the greater of the amount by which we failed the 75% gross income test or the amount by which we failed the 95% gross income test, with adjustments, multiplied by a fraction intended to reflect our profitability for the taxable year; even though we have little or no nonqualifying income from other sources in a typical taxable year, imposition of this 100% tax in this circumstance would be material because a significant number of the properties leased to our TRSs are managed for the TRSs by this contractor.

As explained above, we will be subject to a 100% tax on the rents paid to us by any of our TRSs if the IRS successfully asserts that those rents exceed an arm’s length rental rate. Although there is no clear precedent to distinguish for federal income tax purposes among leases, management contracts, partnerships, financings, and other contractual arrangements, we believe that our leases and our TRSs’ management agreements will be respected for purposes of the requirements of the IRC discussed above. Accordingly, we expect that the rental income from our current and future TRSs will qualify as “rents from real property,” and that the 100% tax on excessive rents from a TRS will not apply.

Annual Distribution Requirements. In order to qualify for taxation as a REIT under the IRC, we are required to make annual distributions other than capital gain dividends to our shareholders in an amount at least equal to the excess of:

- (1) the sum of 90% of our “real estate investment trust taxable income” and 90% of our net income after tax, if any, from property received in foreclosure, over
- (2) the amount by which our noncash income (e.g., imputed rental income or income from transactions inadvertently failing to qualify as like-kind exchanges) exceeds 5% of our “real estate investment trust taxable income.”

For these purposes, our “real estate investment trust taxable income” is as defined under Section 857 of the IRC and is computed without regard to the dividends paid deduction and our net capital gain and will generally be reduced by specified corporate-level income taxes that we pay (e.g., taxes on built-in gains or foreclosure property income).

The IRC generally limits the deductibility of net interest expense paid or accrued on debt properly allocable to a trade or business to 30% of “adjusted taxable income,” subject to specified exceptions. Any deduction in excess of the limitation is carried forward and may be used in a subsequent year, subject to that year’s 30% limitation. Provided a taxpayer makes an election (which is irrevocable), the limitation on the deductibility of net interest expense does not apply to a trade or business involving real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage, within the meaning of Section 469(c)(7)(C) of the IRC. Treasury regulations provide that a real property trade or business includes a trade or business conducted by a REIT. We have made an election to be treated as a real property trade or business and accordingly do not expect the foregoing interest deduction limitations to apply to us or to the calculation of our “real estate investment trust taxable income.”

Distributions must be paid in the taxable year to which they relate, or in the following taxable year if declared before we timely file our federal income tax return for the earlier taxable year and if paid on or before the first regular distribution payment after that declaration. If a dividend is declared in October, November or December to shareholders of record during one of those months and is paid during the following January, then for federal income tax purposes such dividend will be treated as having been both paid and received on December 31 of the prior taxable year to the extent of any undistributed earnings and profits.

The 90% distribution requirements may be waived by the IRS if a REIT establishes that it failed to meet them by reason of distributions previously made to meet the requirements of the 4% excise tax discussed below. To the extent that we do not distribute all of our net capital gain and all of our “real estate investment trust taxable income,” as adjusted, we will be subject to federal income tax at regular corporate income tax rates on undistributed amounts. In addition, we will be subject to a 4% nondeductible excise tax to the extent we fail within a calendar year to make required distributions to our shareholders of 85% of our ordinary income and 95% of our capital gain net income plus the excess, if any, of the “grossed up required distribution” for the preceding calendar year over the amount treated as distributed for that preceding calendar year. For this purpose, the term “grossed up required distribution” for any calendar year is the sum of our taxable income for the calendar year without regard to the deduction for dividends paid and all amounts from earlier years that are not treated as having been distributed under the provision. We will be treated as having sufficient earnings and profits to treat as a dividend any distribution by us up to the amount required to be distributed in order to avoid imposition of the 4% excise tax.

If we do not have enough cash or other liquid assets to meet our distribution requirements, or if we so choose, we may find it necessary or desirable to arrange for new debt or equity financing to provide funds for required distributions in order to maintain our qualification for taxation as a REIT. We cannot be sure that financing would be available for these purposes on favorable terms, or at all.

We may be able to rectify a failure to pay sufficient dividends for any year by paying “deficiency dividends” to shareholders in a later year. These deficiency dividends may be included in our deduction for dividends paid for the earlier year, but an interest charge would be imposed upon us for the delay in distribution. While the payment of a deficiency dividend will apply to a prior year for purposes of our REIT distribution requirements and our dividends paid deduction, it will be treated as an additional distribution to the shareholders receiving it in the year such dividend is paid.

In addition to the other distribution requirements above, to preserve our qualification for taxation as a REIT, we are required to timely distribute all C corporation earnings and profits that we inherit from acquired corporations, as described below.

We may elect to retain, rather than distribute, some or all of our net capital gain and pay income tax on such gain. In addition, if we so elect by making a timely designation to our shareholders, our shareholders would include their proportionate share of such undistributed capital gain in their taxable income, and they would receive a corresponding credit for their share of the federal corporate income tax that we pay thereon. Our shareholders would then increase the adjusted tax basis of their shares by the difference between (a) the amount of capital gain dividends that we designated and that they included in their taxable income, and (b) the tax that we paid on their behalf with respect to that capital gain.

Acquisitions of C Corporations

We have engaged in and may in the future engage in transactions where we acquire all of the outstanding stock of a C corporation. Upon these acquisitions, except to the extent we have made or do make an applicable TRS election, each of our acquired entities and their various wholly-owned corporate and noncorporate subsidiaries generally became or will become our QRSs. Thus, after such acquisitions, all assets, liabilities and items of income, deduction and credit of the acquired and then disregarded entities have been and will be treated as ours for purposes of the various REIT qualification tests described above. In addition, we generally have been and will be treated as the successor to the acquired (and then disregarded) entities' federal income tax attributes, such as those entities' (a) adjusted tax bases in their assets and their depreciation schedules; and (b) earnings and profits for federal income tax purposes, if any. The carryover of these attributes creates REIT implications such as built-in gains tax exposure and additional distribution requirements, as described below. However, when we make an election under Section 338(g) of the IRC with respect to corporations that we acquire, as we have done from time to time in the past, we generally will not be subject to such attribute carryovers in respect of attributes existing prior to such election.

Built-in Gains from C Corporations. Notwithstanding our qualification and taxation as a REIT, under specified circumstances we may be subject to corporate income taxation if we acquire a REIT asset where our adjusted tax basis in the asset is determined by reference to the adjusted tax basis of the asset as owned by a C corporation. For instance, we may be subject to federal income taxation on all or part of the built-in gain that was present on the last date an asset was owned by a C corporation, if we succeed to a carryover tax basis in that asset directly or indirectly from such C corporation and if we sell the asset during the five year period beginning on the day the asset ceased being owned by such C corporation. To the extent of our income and gains in a taxable year that are subject to the built-in gains tax, net of any taxes paid on such income and gains with respect to that taxable year, our taxable dividends paid in the following year will be potentially eligible for taxation to noncorporate U.S. shareholders at the preferential tax rates for "qualified dividends" as described below under the heading "—Taxation of Taxable U.S. Shareholders". We generally do not expect to sell assets if doing so would result in the imposition of a material built-in gains tax liability; but if and when we do sell assets that may have associated built-in gains tax exposure, then we expect to make appropriate provision for the associated tax liabilities on our financial statements.

Earnings and Profits. Following a corporate acquisition, we must generally distribute all of the C corporation earnings and profits inherited in that transaction, if any, no later than the end of our taxable year in which the transaction occurs, in order to preserve our qualification for taxation as a REIT. However, if we fail to do so, relief provisions would allow us to maintain our qualification for taxation as a REIT, provided we distribute any subsequently discovered C corporation earnings and profits and pay an interest charge in respect of the period of delayed distribution. C corporation earnings and profits that we inherit are, in general, specially allocated under a priority rule to the earliest possible distributions following the event causing the inheritance, and only then is the balance of our earnings and profits for the taxable year allocated among our distributions to the extent not already treated as a distribution of C corporation earnings and profits under the priority rule. The distribution of these C corporation earnings and profits is potentially eligible for taxation to noncorporate U.S. shareholders at the preferential tax rates for "qualified dividends" as described below under the heading "—Taxation of Taxable U.S. Shareholders".

Depreciation and Federal Income Tax Treatment of Leases

Our initial tax bases in our assets will generally be our acquisition cost. We will generally depreciate our depreciable real property on a straight-line basis over forty years and our personal property over the applicable shorter periods. These depreciation schedules, and our initial tax bases, may vary for properties that we acquire through tax-free or carryover basis acquisitions, or that are the subject of cost segregation analyses.

We are entitled to depreciation deductions from our properties only if we are treated for federal income tax purposes as the owner of the properties. This means that the leases of our properties must be classified for U.S. federal income tax purposes as true leases, rather than as sales or financing arrangements, and we believe this to be the case.

Distributions to our Shareholders

As described above, we expect to make distributions to our shareholders from time to time. These distributions may include cash distributions, in kind distributions of property, and deemed or constructive distributions resulting from capital market activities. The U.S. federal income tax treatment of our distributions will vary based on the status of the recipient shareholder as more fully described below under the headings “—Taxation of Taxable U.S. Shareholders,” “—Taxation of Tax-Exempt U.S. Shareholders,” and “—Taxation of Non-U.S. Shareholders.”

Section 302 of the IRC treats a redemption of our shares for cash only as a distribution under Section 301 of the IRC, and hence taxable as a dividend to the extent of our available current or accumulated earnings and profits, unless the redemption satisfies one of the tests set forth in Section 302(b) of the IRC enabling the redemption to be treated as a sale or exchange of the shares. The redemption for cash only will be treated as a sale or exchange if it (a) is “substantially disproportionate” with respect to the surrendering shareholder’s ownership in us, (b) results in a “complete termination” of the surrendering shareholder’s entire share interest in us, or (c) is “not essentially equivalent to a dividend” with respect to the surrendering shareholder, all within the meaning of Section 302(b) of the IRC. In determining whether any of these tests have been met, a shareholder must generally take into account shares considered to be owned by such shareholder by reason of constructive ownership rules set forth in the IRC, as well as shares actually owned by such shareholder. In addition, if a redemption is treated as a distribution under the preceding tests, then a shareholder’s tax basis in the redeemed shares generally will be transferred to the shareholder’s remaining shares in us, if any, and if such shareholder owns no other shares in us, such basis generally may be transferred to a related person or may be lost entirely. Because the determination as to whether a shareholder will satisfy any of the tests of Section 302(b) of the IRC depends upon the facts and circumstances at the time that our shares are redeemed, we urge you to consult your own tax advisor to determine the particular tax treatment of any redemption.

Taxation of Taxable U.S. Shareholders

For noncorporate U.S. shareholders, to the extent that their total adjusted income does not exceed applicable thresholds, the maximum federal income tax rate for long-term capital gains and most corporate dividends is generally 15%. For those noncorporate U.S. shareholders whose total adjusted income exceeds the applicable thresholds, the maximum federal income tax rate for long-term capital gains and most corporate dividends is generally 20%. However, because we are not generally subject to federal income tax on the portion of our “real estate investment trust taxable income” distributed to our shareholders, dividends on our shares generally are not eligible for these preferential tax rates, except that any distribution of C corporation earnings and profits and taxed built-in gain items will potentially be eligible for these preferential tax rates. As a result, our ordinary dividends generally are taxed at the higher federal income tax rates applicable to ordinary income (subject to the lower effective tax rates applicable to qualified REIT dividends via the deduction-without-outlay mechanism of Section 199A of the IRC, which is generally available to our noncorporate U.S. shareholders that meet specified holding period requirements for taxable years before 2026). To summarize, the preferential federal income tax rates for long-term capital gains and for qualified dividends generally apply to:

- (1) long-term capital gains, if any, recognized on the disposition of our shares;
- (2) our distributions designated as long-term capital gain dividends (except to the extent attributable to real estate depreciation recapture, in which case the distributions are subject to a maximum 25% federal income tax rate);
- (3) our dividends attributable to dividend income, if any, received by us from C corporations such as TRSs;
- (4) our dividends attributable to earnings and profits that we inherit from C corporations; and
- (5) our dividends to the extent attributable to income upon which we have paid federal corporate income tax (such as taxes on foreclosure property income or on built-in gains), net of the corporate income taxes thereon.

As long as we qualify for taxation as a REIT, a distribution to our U.S. shareholders that we do not designate as a capital gain dividend generally will be treated as an ordinary income dividend to the extent of our available current or accumulated earnings and profits (subject to the lower effective tax rates applicable to qualified REIT dividends via the deduction-without-outlay mechanism of Section 199A of the IRC, which is generally available to our noncorporate U.S. shareholders that meet specified holding period requirements for taxable years before 2026). Distributions made out of our current or accumulated earnings and profits that we properly designate as capital gain dividends generally will be taxed as long-term capital gains, as discussed below, to the extent they do not exceed our actual net capital gain for the taxable year.

However, corporate shareholders may be required to treat up to 20% of any capital gain dividend as ordinary income under Section 291 of the IRC.

If for any taxable year we designate capital gain dividends for our shareholders, then a portion of the capital gain dividends we designate will be allocated to the holders of a particular class of shares on a percentage basis equal to the ratio of the amount of the total dividends paid or made available for the year to the holders of that class of shares to the total dividends paid or made available for the year to holders of all outstanding classes of our shares. We will similarly designate the portion of any dividend that is to be taxed to noncorporate U.S. shareholders at preferential maximum rates (including any qualified dividend income and any capital gains attributable to real estate depreciation recapture that are subject to a maximum 25% federal income tax rate) so that the designations will be proportionate among all outstanding classes of our shares.

We may elect to retain and pay income taxes on some or all of our net capital gain. In addition, if we so elect by making a timely designation to our shareholders:

- (1) each of our U.S. shareholders will be taxed on its designated proportionate share of our retained net capital gains as though that amount were distributed and designated as a capital gain dividend;
- (2) each of our U.S. shareholders will receive a credit or refund for its designated proportionate share of the tax that we pay;
- (3) each of our U.S. shareholders will increase its adjusted basis in our shares by the excess of the amount of its proportionate share of these retained net capital gains over the U.S. shareholder's proportionate share of the tax that we pay; and
- (4) both we and our corporate shareholders will make commensurate adjustments in our respective earnings and profits for federal income tax purposes.

Distributions in excess of our current or accumulated earnings and profits will not be taxable to a U.S. shareholder to the extent that they do not exceed the shareholder's adjusted tax basis in our shares, but will reduce the shareholder's basis in such shares. To the extent that these excess distributions exceed a U.S. shareholder's adjusted basis in such shares, they will be included in income as capital gain, with long-term gain generally taxed to noncorporate U.S. shareholders at preferential maximum rates. No U.S. shareholder may include on its federal income tax return any of our net operating losses or any of our capital losses. In addition, no portion of any of our dividends is eligible for the dividends received deduction for corporate shareholders.

If a dividend is declared in October, November or December to shareholders of record during one of those months and is paid during the following January, then for federal income tax purposes the dividend will be treated as having been both paid and received on December 31 of the prior taxable year.

A U.S. shareholder will generally recognize gain or loss equal to the difference between the amount realized and the shareholder's adjusted basis in our shares that are sold or exchanged. This gain or loss will be capital gain or loss, and will be long-term capital gain or loss if the shareholder's holding period in our shares exceeds one year. In addition, any loss upon a sale or exchange of our shares held for six months or less will generally be treated as a long-term capital loss to the extent of any long-term capital gain dividends we paid on such shares during the holding period.

U.S. shareholders who are individuals, estates or trusts are generally required to pay a 3.8% Medicare tax on their net investment income (including dividends on our shares (without regard to any deduction allowed by Section 199A of the IRC) and gains from the sale or other disposition of our shares), or in the case of estates and trusts on their net investment income that is not distributed, in each case to the extent that their total adjusted income exceeds applicable thresholds. U.S. shareholders are urged to consult their tax advisors regarding the application of the 3.8% Medicare tax.

If a U.S. shareholder recognizes a loss upon a disposition of our shares in an amount that exceeds a prescribed threshold, it is possible that the provisions of Treasury regulations involving "reportable transactions" could apply, with a resulting requirement to separately disclose the loss-generating transaction to the IRS. These Treasury regulations are written quite broadly, and apply to many routine and simple transactions. A reportable transaction currently includes, among other things, a sale or exchange of our shares resulting in a tax loss in excess of (a) \$10 million in any single year or \$20 million in a prescribed combination of taxable years in the case of our shares held by a C corporation or by a partnership with only C corporation partners or (b) \$2 million in any single year or \$4 million in a prescribed combination of taxable years in the case of our shares held by any other partnership or an S corporation, trust or individual, including losses that flow through pass through

entities to individuals. A taxpayer discloses a reportable transaction by filing IRS Form 8886 with its federal income tax return and, in the first year of filing, a copy of Form 8886 must be sent to the IRS's Office of Tax Shelter Analysis. The annual maximum penalty for failing to disclose a reportable transaction is generally \$10,000 in the case of a natural person and \$50,000 in any other case.

Noncorporate U.S. shareholders who borrow funds to finance their acquisition of our shares could be limited in the amount of deductions allowed for the interest paid on the indebtedness incurred. Under Section 163(d) of the IRC, interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment is generally deductible only to the extent of the investor's net investment income. A U.S. shareholder's net investment income will include ordinary income dividend distributions received from us and, only if an appropriate election is made by the shareholder, capital gain dividend distributions and qualified dividends received from us; however, distributions treated as a nontaxable return of the shareholder's basis will not enter into the computation of net investment income.

Taxation of Tax-Exempt U.S. Shareholders

The rules governing the federal income taxation of tax-exempt entities are complex, and the following discussion is intended only as a summary of material considerations of an investment in our shares relevant to such investors. If you are a tax-exempt shareholder, we urge you to consult your own tax advisor to determine the impact of federal, state, local and foreign tax laws, including any tax return filing and other reporting requirements, with respect to your acquisition of or investment in our shares.

We expect that shareholders that are tax-exempt pension plans, individual retirement accounts or other qualifying tax-exempt entities, and that receive (a) distributions from us, or (b) proceeds from the sale of our shares, should not have such amounts treated as UBTI, provided in each case (x) that the shareholder has not financed its acquisition of our shares with "acquisition indebtedness" within the meaning of the IRC, (y) that the shares are not otherwise used in an unrelated trade or business of the tax-exempt entity, and (z) that, consistent with our present intent, we do not hold a residual interest in a real estate mortgage investment conduit or otherwise hold mortgage assets or conduct mortgage securitization activities that generate "excess inclusion" income.

Taxation of Non-U.S. Shareholders

The rules governing the U.S. federal income taxation of non-U.S. shareholders are complex, and the following discussion is intended only as a summary of material considerations of an investment in our shares relevant to such investors. If you are a non-U.S. shareholder, we urge you to consult your own tax advisor to determine the impact of U.S. federal, state, local and foreign tax laws, including any tax return filing and other reporting requirements, with respect to your acquisition of or investment in our shares.

We expect that a non-U.S. shareholder's receipt of (a) distributions from us, and (b) proceeds from the sale of our shares, will not be treated as income effectively connected with a U.S. trade or business and a non-U.S. shareholder will therefore not be subject to the often higher federal tax and withholding rates, branch profits taxes and increased reporting and filing requirements that apply to income effectively connected with a U.S. trade or business. This expectation and a number of the determinations below are predicated on our shares being listed on a U.S. national securities exchange, such as The Nasdaq Stock Market LLC, or Nasdaq. Each class of our shares has been listed on a U.S. national securities exchange; however, we cannot be sure that our shares will continue to be so listed in future taxable years or that any class of our shares that we may issue in the future will be so listed.

Distributions. A distribution by us to a non-U.S. shareholder that is not designated as a capital gain dividend will be treated as an ordinary income dividend to the extent that it is made out of our current or accumulated earnings and profits. A distribution of this type will generally be subject to U.S. federal income tax and withholding at the rate of 30%, or at a lower rate if the non-U.S. shareholder has in the manner prescribed by the IRS demonstrated to the applicable withholding agent its entitlement to benefits under a tax treaty. Because we cannot determine our current and accumulated earnings and profits until the end of the taxable year, withholding at the statutory rate of 30% or applicable lower treaty rate will generally be imposed on the gross amount of any distribution to a non-U.S. shareholder that we make and do not designate as a capital gain dividend. Notwithstanding this potential withholding on distributions in excess of our current and accumulated earnings and profits, these excess portions of distributions are a nontaxable return of capital to the extent that they do not exceed the non-U.S. shareholder's adjusted basis in our shares, and the nontaxable return of capital will reduce the adjusted basis in these shares. To the extent that distributions in excess of our current and accumulated earnings and profits exceed the non-U.S. shareholder's adjusted basis in our shares, the distributions will give rise to U.S. federal income tax liability only in the unlikely event that the non-U.S. shareholder would otherwise be subject to tax on any gain from the sale or exchange of these shares, as discussed

below under the heading “—Dispositions of Our Shares.” A non-U.S. shareholder may seek a refund from the IRS of amounts withheld on distributions to it in excess of such shareholder’s allocable share of our current and accumulated earnings and profits.

For so long as a class of our shares is listed on a U.S. national securities exchange, capital gain dividends that we declare and pay to a non-U.S. shareholder on those shares, as well as dividends to such a non-U.S. shareholder on those shares attributable to our sale or exchange of “United States real property interests” within the meaning of Section 897 of the IRC, or USRPIs, will not be subject to withholding as though those amounts were effectively connected with a U.S. trade or business, and non-U.S. shareholders will not be required to file U.S. federal income tax returns or pay branch profits tax in respect of these dividends. Instead, these dividends will generally be treated as ordinary dividends and subject to withholding in the manner described above.

Tax treaties may reduce the withholding obligations on our distributions. Under some treaties, however, rates below 30% that are applicable to ordinary income dividends from U.S. corporations may not apply to ordinary income dividends from a REIT or may apply only if the REIT meets specified additional conditions. A non-U.S. shareholder must generally use an applicable IRS Form W-8, or substantially similar form, to claim tax treaty benefits. If the amount of tax withheld with respect to a distribution to a non-U.S. shareholder exceeds the shareholder’s U.S. federal income tax liability with respect to the distribution, the non-U.S. shareholder may file for a refund of the excess from the IRS. Treasury regulations also provide special rules to determine whether, for purposes of determining the applicability of a tax treaty, our distributions to a non-U.S. shareholder that is an entity should be treated as paid to the entity or to those owning an interest in that entity, and whether the entity or its owners are entitled to benefits under the tax treaty.

If, contrary to our expectation, a class of our shares was not listed on a U.S. national securities exchange and we made a distribution on those shares that was attributable to gain from the sale or exchange of a USRPI, then a non-U.S. shareholder holding those shares would be taxed as if the distribution was gain effectively connected with a trade or business in the United States conducted by the non-U.S. shareholder. In addition, the applicable withholding agent would be required to withhold from a distribution to such a non-U.S. shareholder, and remit to the IRS, up to 21% of the maximum amount of any distribution that was or could have been designated as a capital gain dividend. The non-U.S. shareholder also would generally be subject to the same treatment as a U.S. shareholder with respect to the distribution (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual), would be subject to fulsome U.S. federal income tax return reporting requirements, and, in the case of a corporate non-U.S. shareholder, may owe the up to 30% branch profits tax under Section 884 of the IRC (or lower applicable tax treaty rate) in respect of these amounts.

Although the law is not entirely clear on the matter, it appears that amounts designated by us as undistributed capital gain in respect of our shares that are held by non-U.S. shareholders generally should be treated in the same manner as actual distributions by us of capital gain dividends. Under this approach, the non-U.S. shareholder would be able to offset as a credit against its resulting U.S. federal income tax liability its proportionate share of the tax paid by us on the undistributed capital gain treated as distributed to the non-U.S. shareholder, and receive from the IRS a refund to the extent its proportionate share of the tax paid by us were to exceed the non-U.S. shareholder’s actual U.S. federal income tax liability on such deemed distribution. If we were to designate any portion of our net capital gain as undistributed capital gain, a non-U.S. shareholder should consult its tax advisors regarding taxation of such undistributed capital gain.

Dispositions of Our Shares. If as expected our shares are not USRPIs, then a non-U.S. shareholder’s gain on the sale of these shares generally will not be subject to U.S. federal income taxation or withholding. We expect that our shares will not be USRPIs because one or both of the following exemptions will be available at all times.

First, for so long as a class of our shares is listed on a U.S. national securities exchange, a non-U.S. shareholder’s gain on the sale of those shares will not be subject to U.S. federal income taxation as a sale of a USRPI. Second, our shares will not constitute USRPIs if we are a “domestically controlled” REIT. We will be a “domestically controlled” REIT if less than 50% of the value of our shares (including any future class of shares that we may issue) is held, directly or indirectly, by non-U.S. shareholders at all times during the preceding five years, after applying specified presumptions regarding the ownership of our shares as described in Section 897(h)(4)(E) of the IRC. For these purposes, we believe that the statutory ownership presumptions apply to validate our status as a “domestically controlled” REIT. Accordingly, we believe that we are and will remain a “domestically controlled” REIT.

If, contrary to our expectation, a gain on the sale of our shares is subject to U.S. federal income taxation (for example, because neither of the above exemptions were then available, *i.e.*, that class of our shares were not then listed on a U.S. national securities exchange and we were not a “domestically controlled” REIT), then (a) a non-U.S. shareholder would generally be subject to the same treatment as a U.S. shareholder with respect to its gain (subject to any applicable alternative minimum tax

and a special alternative minimum tax in the case of nonresident alien individuals), (b) the non-U.S. shareholder would also be subject to fulsome U.S. federal income tax return reporting requirements, and (c) a purchaser of that class of our shares from the non-U.S. shareholder may be required to withhold 15% of the purchase price paid to the non-U.S. shareholder and to remit the withheld amount to the IRS.

Information Reporting, Backup Withholding, and Foreign Account Withholding

Information reporting, backup withholding, and foreign account withholding may apply to distributions or proceeds paid to our shareholders under the circumstances discussed below. If a shareholder is subject to backup or other U.S. federal income tax withholding, then the applicable withholding agent will be required to withhold the appropriate amount with respect to a deemed or constructive distribution or a distribution in kind even though there is insufficient cash from which to satisfy the withholding obligation. To satisfy this withholding obligation, the applicable withholding agent may collect the amount of U.S. federal income tax required to be withheld by reducing to cash for remittance to the IRS a sufficient portion of the property that the shareholder would otherwise receive or own, and the shareholder may bear brokerage or other costs for this withholding procedure.

Amounts withheld under backup withholding are generally not an additional tax and may be refunded by the IRS or credited against the shareholder's federal income tax liability, provided that such shareholder timely files for a refund or credit with the IRS. A U.S. shareholder may be subject to backup withholding when it receives distributions on our shares or proceeds upon the sale, exchange, redemption, retirement or other disposition of our shares, unless the U.S. shareholder properly executes, or has previously properly executed, under penalties of perjury an IRS Form W-9 or substantially similar form that:

- provides the U.S. shareholder's correct taxpayer identification number;
- certifies that the U.S. shareholder is exempt from backup withholding because (a) it comes within an enumerated exempt category, (b) it has not been notified by the IRS that it is subject to backup withholding, or (c) it has been notified by the IRS that it is no longer subject to backup withholding; and
- certifies that it is a U.S. citizen or other U.S. person.

If the U.S. shareholder has not provided and does not provide its correct taxpayer identification number and appropriate certifications on an IRS Form W-9 or substantially similar form, it may be subject to penalties imposed by the IRS, and the applicable withholding agent may have to withhold a portion of any distributions or proceeds paid to such U.S. shareholder. Unless the U.S. shareholder has established on a properly executed IRS Form W-9 or substantially similar form that it comes within an enumerated exempt category, distributions or proceeds on our shares paid to it during the calendar year, and the amount of tax withheld, if any, will be reported to it and to the IRS.

Distributions on our shares to a non-U.S. shareholder during each calendar year and the amount of tax withheld, if any, will generally be reported to the non-U.S. shareholder and to the IRS. This information reporting requirement applies regardless of whether the non-U.S. shareholder is subject to withholding on distributions on our shares or whether the withholding was reduced or eliminated by an applicable tax treaty. Also, distributions paid to a non-U.S. shareholder on our shares will generally be subject to backup withholding, unless the non-U.S. shareholder properly certifies to the applicable withholding agent its non-U.S. shareholder status on an applicable IRS Form W-8 or substantially similar form. Information reporting and backup withholding will not apply to proceeds a non-U.S. shareholder receives upon the sale, exchange, redemption, retirement or other disposition of our shares, if the non-U.S. shareholder properly certifies to the applicable withholding agent its non-U.S. shareholder status on an applicable IRS Form W-8 or substantially similar form. Even without having executed an applicable IRS Form W-8 or substantially similar form, however, in some cases information reporting and backup withholding will not apply to proceeds that a non-U.S. shareholder receives upon the sale, exchange, redemption, retirement or other disposition of our shares if the non-U.S. shareholder receives those proceeds through a broker's foreign office.

Non-U.S. financial institutions and other non-U.S. entities are subject to diligence and reporting requirements for purposes of identifying accounts and investments held directly or indirectly by U.S. persons. The failure to comply with these additional information reporting, certification and other requirements could result in a 30% U.S. withholding tax on applicable payments to non-U.S. persons, notwithstanding any otherwise applicable provisions of an income tax treaty. In particular, a payee that is a foreign financial institution that is subject to the diligence and reporting requirements described above must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by "specified United States persons" or "United States owned foreign entities" (each as defined in the IRC and administrative guidance thereunder), annually report information about such accounts, and withhold 30% on applicable payments to noncompliant foreign financial institutions and account holders. Foreign financial institutions located in

jurisdictions that have an intergovernmental agreement with the United States with respect to these requirements may be subject to different rules. The foregoing withholding regime generally applies to payments of dividends on our shares. In general, to avoid withholding, any non-U.S. intermediary through which a shareholder owns our shares must establish its compliance with the foregoing regime, and a non-U.S. shareholder must provide specified documentation (usually an applicable IRS Form W-8) containing information about its identity, its status, and if required, its direct and indirect U.S. owners. Non-U.S. shareholders and shareholders who hold our shares through a non-U.S. intermediary are encouraged to consult their own tax advisors regarding foreign account tax compliance.

Other Tax Considerations

Our tax treatment and that of our shareholders may be modified by legislative, judicial or administrative actions at any time, which actions may have retroactive effect. The rules dealing with federal income taxation are constantly under review by the U.S. Congress, the IRS and the U.S. Department of the Treasury, and statutory changes, new regulations, revisions to existing regulations and revised interpretations of established concepts are issued frequently. Likewise, the rules regarding taxes other than U.S. federal income taxes may also be modified. No prediction can be made as to the likelihood of passage of new tax legislation or other provisions, or the direct or indirect effect on us and our shareholders. Revisions to tax laws and interpretations of these laws could adversely affect our ability to qualify and be taxed as a REIT, as well as the tax or other consequences of an investment in our shares. We and our shareholders may also be subject to taxation by state, local or other jurisdictions, including those in which we or our shareholders transact business or reside. These tax consequences may not be comparable to the U.S. federal income tax consequences discussed above.

ERISA PLANS, KEOGH PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS

General Fiduciary Obligations

The Employee Retirement Income Security Act of 1974, as amended, or ERISA, the IRC and similar provisions to those described below under applicable foreign or state law, individually and collectively, impose certain duties on persons who are fiduciaries of any employee benefit plan subject to Title I of ERISA, or an ERISA Plan, or an individual retirement account or annuity, or an IRA, a Roth IRA, a tax-favored account (such as an Archer MSA, Coverdell education savings account or health savings account), a Keogh plan or other qualified retirement plan not subject to Title I of ERISA, each a Non-ERISA Plan. Under ERISA and the IRC, any person who exercises any discretionary authority or control over the administration of, or the management or disposition of the assets of, an ERISA Plan or Non-ERISA Plan, or who renders investment advice for a fee or other compensation to an ERISA Plan or Non-ERISA Plan, is generally considered to be a fiduciary of the ERISA Plan or Non-ERISA Plan.

Fiduciaries of an ERISA Plan must consider whether:

- their investment in our shares or other securities satisfies the diversification requirements of ERISA;
- the investment is prudent in light of possible limitations on the marketability of our shares;
- they have authority to acquire our shares or other securities under the applicable governing instrument and Title I of ERISA; and
- the investment is otherwise consistent with their fiduciary responsibilities.

Fiduciaries of an ERISA Plan may incur personal liability for any loss suffered by the ERISA Plan on account of a violation of their fiduciary responsibilities. In addition, these fiduciaries may be subject to a civil penalty of up to 20% of any amount recovered by the ERISA Plan on account of a violation. Fiduciaries of any Non-ERISA Plan should consider that the Non-ERISA Plan may only make investments that are authorized by the appropriate governing instrument and applicable law.

Fiduciaries considering an investment in our securities should consult their own legal advisors if they have any concern as to whether the investment is consistent with the foregoing criteria or is otherwise appropriate. The sale of our securities to an ERISA Plan or Non-ERISA Plan is in no respect a representation by us or any underwriter of the securities that the investment meets all relevant legal requirements with respect to investments by the arrangements generally or any particular arrangement, or that the investment is appropriate for arrangements generally or any particular arrangement.

Prohibited Transactions

Fiduciaries of ERISA Plans and persons making the investment decision for Non-ERISA Plans should consider the application of the prohibited transaction provisions of ERISA and the IRC in making their investment decision. Sales and other transactions between an ERISA Plan or a Non-ERISA Plan and disqualified persons or parties in interest, as applicable, are prohibited transactions and result in adverse consequences absent an exemption. The particular facts concerning the sponsorship, operations and other investments of an ERISA Plan or Non-ERISA Plan may cause a wide range of persons to be treated as disqualified persons or parties in interest with respect to it. A non-exempt prohibited transaction, in addition to imposing potential personal liability upon ERISA Plan fiduciaries, may also result in the imposition of an excise tax under the IRC or a penalty under ERISA upon the disqualified person or party in interest. If the disqualified person who engages in the transaction is the individual on behalf of whom an IRA, Roth IRA or other tax-favored account is maintained (or their beneficiary), the IRA, Roth IRA or other tax-favored account may lose its tax-exempt status and its assets may be deemed to have been distributed to the individual in a taxable distribution on account of the non-exempt prohibited transaction, but no excise tax will be imposed. Fiduciaries considering an investment in our securities should consult their own legal advisors as to whether the ownership of our securities involves a non-exempt prohibited transaction.

“Plan Assets” Considerations

The U.S. Department of Labor has issued a regulation defining “plan assets.” The regulation, as subsequently modified by ERISA, generally provides that when an ERISA Plan or a Non-ERISA Plan otherwise subject to Title I of ERISA and/or Section 4975 of the IRC acquires an interest in an entity that is neither a “publicly offered security” nor a security issued by an investment company registered under the Investment Company Act of 1940, as amended, the assets of the ERISA Plan or Non-ERISA Plan include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless it is

established either that the entity is an operating company or that equity participation in the entity by benefit plan investors is not significant. We are not an investment company registered under the Investment Company Act of 1940, as amended.

Each class of our equity (that is, our common shares and any other class of equity that we may issue) must be analyzed separately to ascertain whether it is a publicly offered security. The regulation defines a publicly offered security as a security that is “widely held,” “freely transferable” and either part of a class of securities registered under the Exchange Act, or sold under an effective registration statement under the Securities Act of 1933, as amended, or the Securities Act, provided the securities are registered under the Exchange Act within 120 days after the end of the fiscal year of the issuer during which the offering occurred. Each class of our outstanding shares has been registered under the Exchange Act within the necessary time frame to satisfy the foregoing condition.

The regulation provides that a security is “widely held” only if it is part of a class of securities that is owned by 100 or more investors independent of the issuer and of one another. However, a security will not fail to be “widely held” because the number of independent investors falls below 100 subsequent to the initial public offering as a result of events beyond the issuer’s control. Although we cannot be sure, we believe our common shares have been and will remain widely held, and we expect the same to be true of any future class of equity that we may issue.

The regulation provides that whether a security is “freely transferable” is a factual question to be determined on the basis of all relevant facts and circumstances. The regulation further provides that, where a security is part of an offering in which the minimum investment is \$10,000 or less, some restrictions on transfer ordinarily will not, alone or in combination, affect a finding that these securities are freely transferable. The restrictions on transfer enumerated in the regulation as not affecting that finding include:

- any restriction on or prohibition against any transfer or assignment that would result in a termination or reclassification for federal or state tax purposes, or would otherwise violate any state or federal law or court order;
- any requirement that advance notice of a transfer or assignment be given to the issuer and any requirement that either the transferor or transferee, or both, execute documentation setting forth representations as to compliance with any restrictions on transfer that are among those enumerated in the regulation as not affecting free transferability, including those described in the preceding clause of this sentence;
- any administrative procedure that establishes an effective date, or an event prior to which a transfer or assignment will not be effective; and
- any limitation or restriction on transfer or assignment that is not imposed by the issuer or a person acting on behalf of the issuer.

We believe that the restrictions imposed under our declaration of trust and bylaws on the transfer of shares do not result in the failure of our shares to be “freely transferable.” Furthermore, we believe that no other facts or circumstances limiting the transferability of our shares exist, other than those that are enumerated under the regulation as not affecting the free transferability of shares. In addition, we do not expect or intend to impose in the future, or to permit any person to impose on our behalf, any limitations or restrictions on transfer that would not be among the enumerated permissible limitations or restrictions.

Assuming that each class of our shares will be “widely held” and that no other facts and circumstances exist that restrict transferability of these shares, our counsel, Sullivan & Worcester LLP, is of the opinion that our shares will not fail to be “freely transferable” for purposes of the regulation due to the restrictions on transfer of our shares in our declaration of trust and bylaws and that under the regulation each class of our currently outstanding shares is publicly offered and our assets will not be deemed to be “plan assets” of any ERISA Plan or Non-ERISA Plan that acquires our shares in a public offering. This opinion is conditioned upon certain assumptions and representations, as discussed above under the heading “Material United States Federal Income Tax Considerations—Taxation as a REIT.”

Item 1A. Risk Factors.

Summary of Risk Factors

Our business is subject to a number of risks and uncertainties. The following is a summary of the principal risk factors described in this section:

- unfavorable market and commercial real estate industry conditions due to, among other things, high interest rates, prolonged high inflation, labor market challenges, supply chain disruptions, volatility in the public equity and debt markets, pandemics, geopolitical instability and tensions (such as the ongoing wars in Ukraine and the Middle East), economic downturns or a possible recession, changes in real estate utilization and other conditions beyond our control, may have a material adverse effect on our and our tenants', managers' and other operators' results of operations and financial conditions, and our and their businesses may not return to the levels experienced prior to the COVID-19 pandemic, and our tenants, managers and other operators may fail to satisfy their obligations to us;
- we are exposed to risks related to our dependence on our managers or other operators for the operation of our senior living communities, and changes and trends in the healthcare industry could negatively impact our managers and other operators and our SHOP segment operating results;
- we and our managers and other operators and tenants face significant competition;
- we have a substantial amount of debt and we are subject to risks related to our debt, including our ability to refinance maturing debt and the cost of any such refinanced debt and our ability to reduce our debt leverage, which may remain at or above current levels for an indefinite period, covenants and conditions contained in our debt agreements which may restrict our operations by increasing our interest expense and limiting our ability to make investments in our properties, sell properties securing our debt and pay distributions to our shareholders, potential downgrades to our credit ratings and other limitations on our ability to access capital at reasonable costs or at all, including the limited availability of debt capital to office and healthcare REITs generally;
- we may be unable to renew our leases when they expire without decreasing rents or incurring significant costs or at all;
- our potential future development or redevelopment projects or sales or acquisitions may not be successful or may not be executed on the terms or within the timing we expect as a result of ongoing market and economic conditions, including capital market disruptions, high interest rates, prolonged high inflation, competition, or otherwise;
- we are subject to risks related to our qualification for taxation as a REIT, including REIT distribution requirements;
- our existing and any future joint ventures may limit our flexibility with jointly owned investments and we may not realize the benefits we expect from these arrangements or our joint ventures could require us to provide additional capital;
- ownership of real estate is subject to environmental risks and liabilities, as well as risks from adverse weather, natural disasters and adverse impact from global climate change;
- insurance may not adequately cover our losses, and insurance costs may continue to increase;
- we are subject to risks related to our dependence upon RMR to implement our business strategies and manage our day to day operations;
- we are subject to risks related to the security of RMR's or our senior living community managers' or other operators' information technology;
- our management structure and agreements with RMR and our relationships with our related parties, including our Managing Trustees, RMR, AlerisLife (including Five Star) and others affiliated with them, may create conflicts of interest;
- sustainability initiatives, requirements and market expectations may impose additional costs and expose us to new risks;

- provisions in our declaration of trust, bylaws and other agreements, as well as certain provisions of Maryland law, may deter, delay or prevent a change in our control or unsolicited acquisition proposals, limit our rights and the rights of our shareholders to take action against our Trustees and officers or limit our shareholders' ability to obtain a favorable judicial forum for certain disputes;
- we may change our operational, financing and investment policies without shareholder approval; and
- our distributions to shareholders may remain at \$0.01 per common share per quarter for an indefinite period or be eliminated and the form of payment could change.

The risks described 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 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 below and the information contained under the caption "Warning Concerning Forward-Looking Statements" and elsewhere in this Annual Report on Form 10-K before deciding whether to invest in our securities. We may update these risk factors in our future periodic reports.

Risks Related to Our Business

Unfavorable market and industry conditions may have a material adverse effect on our results of operations, financial condition and ability to pay distributions to our shareholders.

Our business and operations may be adversely affected by market and economic volatility experienced by the U.S. and global economies, the commercial real estate industry and/or the local economies in the markets in which our properties are located. Unfavorable economic and industry conditions may be due to, among other things, high interest rates, prolonged high inflation, labor market challenges, supply chain disruptions, volatility in the public equity and debt markets, pandemics, geopolitical instability and tensions (such as the ongoing wars in Ukraine and the Middle East), economic downturns or a possible recession, changes in real estate utilization and other conditions beyond our control. As economic conditions in the United States may affect the demand for healthcare related space and senior living communities, real estate values, occupancy levels and property income, current and future economic conditions in the United States, including slower growth or a possible recession and capital market volatility or disruptions, could have a material adverse impact on our earnings and financial condition. Economic conditions may be affected by numerous factors, including, but not limited to, the pace of economic growth and/or recessionary concerns, inflation, increases in the levels of unemployment, energy prices, uncertainty about government fiscal and tax policy, geopolitical events, the regulatory environment, the availability of credit and interest rates. Current conditions have negatively impacted our ability to pay distributions to our shareholders and these or other conditions may continue to have similar impacts in the future and on our results of operations and financial condition.

Our and our managers' and other operators' and tenants' businesses may not return to the levels experienced prior to the COVID-19 pandemic and they may fail to satisfy their obligations to us.

Our business is focused on healthcare related properties, including medical office and life science properties, senior living communities and wellness centers. The senior living industry experienced significant disruptions during, 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 changing market practices, delayed returns to prior market practices, current market and economic conditions, such as high interest rates, wage and commodity price inflation, limited labor availability, increased insurance costs, geopolitical risks and economic downturns or a possible recession, or otherwise. For example, although occupancy in our SHOP segment has increased, the rate of occupancy growth has been slower than previously anticipated and uneven and increased operating costs resulting from wage and commodity price inflation, limited labor availability and increased insurance costs, among other things, continue to negatively impact our 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. It is unclear whether COVID-19 infection rates will surge again in the future or if other variants of that virus or other public health safety conditions will arise in the United States or elsewhere and, if so, what the impact of that would be on human health and safety, the economy, or our managers' and other operators' and tenants' businesses. It is also uncertain what the impact of changing market and economic conditions would be on our and our managers' and other operators' and tenants' businesses. As a result of these uncertainties, our and our managers' and other

operators' and tenants' businesses may not return to the levels experienced prior to the COVID-19 pandemic. If those managers', other operators' and tenants' businesses do not sufficiently improve, they may fail to pay amounts owed to us.

We have a substantial amount of debt and are subject to risks related to our debt, including our ability to refinance maturing debt and the cost of any such refinanced debt.

As of December 31, 2023, our consolidated debt was \$3.1 billion.

We are subject to numerous risks associated with our debt, including our ability to refinance maturing debt and the cost of any refinancing, the risk that our liquidity could be insufficient for us to make required payments and risks associated with high interest rates. There are no limits in our organizational documents on the amount of debt we may incur, and, subject to any limitations in our debt agreements, we may incur additional debt. Our debt may increase our vulnerability to adverse market and economic conditions, limit our flexibility in planning for changes in our business and place us at a disadvantage in relation to competitors that have lower debt levels. Our debt could increase our costs of capital, limit our ability to incur additional debt in the future, and increase our exposure to floating interest rates or expose us to potential events of default (if not cured or waived) under covenants contained in debt instruments that could have a material adverse effect on our business, financial condition and operating results. High interest rates have significantly increased our borrowing costs. Although we have an option to extend the maturity date of certain of our debt upon payment of a fee and meeting other conditions, the applicable conditions may not be met, and we may be required to repay or refinance our existing debt with new debt on less favorable terms. Further, market and economic conditions may limit the availability and cost of government-sponsored enterprise and agency financing that we may otherwise have access to. Excessive or expensive debt could reduce the available cash flow to fund, or limit our ability to obtain financing for, working capital, capital expenditures, acquisitions, development or redevelopment projects, refinancing, lease obligations or other purposes and hinder our ability to pay distributions to our shareholders.

If we default under any of our debt obligations, we may be in default under other debt agreements of ours that have cross default provisions, including our senior notes indentures and their supplements, as applicable. In such case, our lenders or noteholders may demand immediate payment of any outstanding debt and could seek payment from the subsidiary guarantors under our senior notes indentures, seek to sell any pledged equity interests of certain subsidiaries or the mortgaged properties owned by certain pledging subsidiaries, or we could be forced to liquidate our assets for less than the values we would receive in a more orderly process.

We may fail to comply with the terms of our debt agreements, which could adversely affect our business and prohibit us from paying distributions to our shareholders.

Our debt agreements contain financial and/or operating covenants. These covenants may limit our operational flexibility and acquisition and disposition activities. We may not be able to satisfy all of these conditions or may default on some of these covenants for various reasons, including for reasons beyond our control. If any of the covenants in these debt agreements are breached and not cured within the applicable cure period, we could be required to repay the debt immediately, even in the absence of a payment default, or be prevented from refinancing maturing debt. As a result, covenants which limit our operational flexibility or a default under applicable debt covenants could have an adverse effect on our business, financial condition and results of operations.

In the future, we may obtain additional debt financing, and the covenants and conditions applicable to that debt may be more restrictive than the covenants and conditions that are contained in our existing debt agreements.

Secured debt exposes us to the possibility of foreclosure, which could result in the loss of our investment in certain of our subsidiaries or in a property or group of properties or other assets that secure that debt.

More than half of our debt is secured by properties that we or our joint ventures own or by a pledge of the equity interests of certain of our subsidiaries. Secured debt, including mortgage debt, increases our risk of asset and property losses because defaults on debt secured by our assets may result in foreclosure actions initiated by lenders and ultimately our loss of the property or other assets securing any loans for which we are in default. Any foreclosure on a mortgaged property or group of properties could have a material adverse effect on the overall value of our portfolio of properties and more generally on us. For tax purposes, a foreclosure of any of our properties would be treated as a sale of the property for a purchase price equal to the outstanding balance of the debt secured by the mortgage. If the outstanding balance of the debt secured by the mortgage exceeds our tax basis in the property, we would recognize taxable income on foreclosure, but would not receive any cash proceeds, which could materially and adversely affect us.

We are limited in our ability to operate our senior living communities and are thus dependent on our managers or other operators.

Because federal income tax laws restrict REITs and their subsidiaries from operating or managing healthcare facilities, we do not operate or manage our senior living communities. Instead, we lease substantially all of our senior living communities to our subsidiaries that qualify as TRSs under the IRC and retain third parties to manage those senior living communities. Our income from our properties may be adversely affected if our managers or other operators fail to provide quality services and amenities to residents. While we monitor the performance of our managers and other operators and apply asset management strategies and discipline, we have limited recourse under our management agreements and leases if we believe that our managers or other operators are not performing adequately. Any failure by our managers or other operators to fully perform the duties agreed to in our management agreements and leases could adversely affect our results of operations. In addition, our managers and other operators operate, and, in some cases, own or have invested in, properties that compete with our properties, which may result in conflicts of interest. As a result, our managers and other operators have made, and may in the future make, decisions regarding competing properties or our properties' operations that may not be in our best interests and which may result in a reduction of our returns.

We are exposed to operational risks, liabilities and claims with respect to our SHOP segment that could adversely affect our revenues and operations.

We are exposed to various operational risks with respect to our SHOP segment that may increase our costs or adversely affect our ability to generate revenues. These risks include fluctuations in occupancy experienced during the normal course of business, Medicare and Medicaid reimbursement, if applicable, and private pay rates; economic conditions, such as high interest rates, prolonged high inflation, labor market challenges and economic downturns or a possible recession; competition; litigation and regulatory and government proceedings; federal, state, local, and industry-regulated licensure, certification and inspection laws, regulations, and standards; the availability and increases in cost of general and professional liability insurance coverage; increases in property taxes; state regulation and rights of residents related to entrance fees; federal and state housing laws and regulations; the availability and increases in the cost of labor (as a result of unionization or otherwise); and increases in commodity prices, such as the prices of food and construction materials, as a result of, among other things, supply chain challenges or other market conditions in the global economy, including the U.S. economy.

Further, we and our managers and other operators have been, are currently, and expect in the future to be involved in claims, lawsuits and regulatory and government audits, investigations and proceedings arising in the ordinary course of senior living operations. The defense and resolution of such claims, lawsuits and other proceedings may require our managers or other operators or us to incur significant expenses. In several well publicized instances, private litigation by residents of senior living communities for alleged abuses has resulted in large damage awards against senior living companies. As a result of these conditions, the cost of liability insurance continues to increase.

In addition, we generally hold the applicable healthcare license and enroll in applicable government healthcare programs on behalf of the properties in our senior living operations segment. This subjects us to potential liability under various healthcare laws and regulations. Healthcare laws and regulations are wide-ranging, and noncompliance may result in the imposition of civil, criminal, and administrative penalties, including: the loss or suspension of accreditation, licenses or CONs; suspension of or non-payment for new admissions; denial of reimbursement; fines; suspension, decertification, or exclusion from federal and state healthcare programs; or facility closure. We may incur, or be obligated to reimburse our senior living managers or other operators for, compliance related fines, assessments, penalties and returns of government payments (such as Medicare or Medicaid payments) and could have limitations imposed on our healthcare licenses.

Any one or a combination of these operational risks and other factors may adversely affect our revenue and operations.

The trend for seniors to delay moving to senior living communities until they require greater care or to forgo moving to senior living communities altogether could have a material adverse effect on our business, financial condition and results of operations.

Seniors have been increasingly delaying their moves to senior living communities until they require greater care or forgoing moving to senior living communities altogether, and approximately 24% of the senior living communities we own are independent living communities which require residents to be capable of relatively high degrees of independence. These trends may continue and other factors, such as seniors' and their families' concerns regarding the impact on seniors of infectious diseases, virus transmissions or other public health safety conditions, may intensify those trends in the future, as may current economic conditions, such as economic downturns or a possible recession, weak housing market conditions, high interest rates, prolonged high inflation and stock market volatility. Further, rehabilitation therapy and other services are increasingly being

provided to seniors on an outpatient basis or in seniors' personal residences in response to market demand and government regulation, which may increase the trend for seniors to delay moving to senior living communities. Such delays may cause decreases in occupancy rates and increases in resident turnover rates at our senior living communities. Moreover, seniors may have greater care needs and require higher acuity services, which may increase costs at our senior living communities, expose our managers or other operators to additional liability or result in lost business and shorter stays at our senior living communities if our managers or other operators are not able to provide the requisite care services or fail to adequately provide those services. Further, if we or our managers or other operators fail to successfully act upon and address these and other trends and changes in seniors' needs and preferences or in the healthcare industry generally, we or they may be unable to offset associated lost revenues by growing other revenue sources, such as by offering new or increased service offerings to seniors, and our senior living communities may become unprofitable and the value of our senior living communities may decline.

Increased labor costs, decreased labor availability and staffing turnover have negatively impacted our managers and our SHOP segment operating results, and these conditions may continue for an extended period.

Wages and employee benefits associated with the operations of our managed senior living communities represent a significant part of our managed senior living communities' operating expenses. Historical periods of low unemployment and the impacts of the COVID-19 pandemic resulted in increased labor costs, including higher health benefits costs, in the senior living industry. Further, legislation has been enacted and proposed to increase the minimum wage in various jurisdictions in recent years, which has put upward pressure on wages. Moreover, our managers and other operators face a competitive labor market. A periodic or geographic shortage of qualified nurses and other healthcare professionals or care givers or other trained personnel, union activities, wage laws, or general inflationary pressures on wages may require our managers or other operators to enhance pay and benefits packages or to use more expensive contract personnel, and our managers or other operators may be unable to offset these added costs by increasing the rates charged to residents. Staffing turnover at our senior living communities is common, and it increases in a competitive labor market. Heightened levels of staffing turnover at our senior living communities, particularly with respect to key and skilled positions, such as management, regional and executive directors and other skilled and qualified personnel, may disrupt operations, limit or slow the execution of business strategies, and decrease revenues and increase costs at our managed senior living communities. In addition, employee benefit costs, including health insurance and workers' compensation insurance costs, have materially increased in recent years and continue to increase. If these conditions continue, our managers and other operators may increasingly be challenged in fully operating our senior living communities, which may require us to reduce our operations; as a result of these conditions, our revenues and growth may decline and our costs may continue to increase.

Termination of assisted living resident agreements and resident attrition could adversely affect revenues and earnings at our senior living communities.

Unlike apartment leases that typically have a one-year term, state regulations governing assisted living communities typically require that senior living community residents have the right to terminate their assisted living resident agreements for any reason on reasonable (for example, 30 days') notice. Should a large number of our residents elect to terminate their resident agreements at or around the same time, revenues and earnings at our senior living communities could be materially and adversely affected. In addition, the advanced ages of our senior living residents may result in high resident turnover rates.

Our investments in our properties may not yield the returns we expect and may cost more than expected and take longer to complete.

We invest significant amounts in our properties. However, we may not realize the returns we expect from these investments, and these investments may cost more than we expect. For example, in recent years, the global economy, including the U.S. economy, experienced supply chain disruptions due to the COVID-19 pandemic and related factors, and these supply chain challenges reduced the availability of goods and materials, which caused price inflation and increased the time from order to receipt of goods and materials. Although supply chain conditions have since stabilized, we cannot assure that there will not be future, similar supply chain disruptions. Such conditions could result in our planned capital expenditures costing more than expected and taking longer to complete.

Depressed U.S. housing market conditions and other factors may reduce the willingness or ability of seniors to relocate to our senior living communities.

Downturns or stagnation in the U.S. housing market could adversely affect the ability, or perceived ability, of seniors to afford our senior living community entrance and resident fees, as prospective residents frequently use the proceeds from the sale of their homes to cover the cost of such fees. Historically, during periods of high interest rates, the U.S. housing market has experienced declines. If seniors have difficulty selling their homes, their ability to relocate to our senior living communities or

finance their stays at our senior living communities with private resources could be adversely affected. Rising unemployment may also reduce the ability of family members to relocate seniors to senior living communities, and family members' willingness and ability to offer free care may also affect seniors' relocation to senior living communities. If these and other factors reduce seniors' willingness or ability to relocate to our senior living communities, occupancy rates, revenues and cash flows at our senior living communities and our results of operations could be negatively impacted.

REIT distribution requirements and limitations on our ability to access capital at reasonable costs or at all may adversely impact our ability to carry out our business plan.

To maintain our qualification for taxation as a REIT under the IRC, we are required to satisfy distribution requirements imposed by the IRC. See "Material United States Federal Income Tax Considerations—REIT Qualification Requirements—Annual Distribution Requirements" included in Part I, Item 1 of this Annual Report on Form 10-K. Accordingly, we may not be able to retain sufficient cash to fund our operations, repay our debts, invest in our properties or fund our acquisitions or development, redevelopment or repositioning efforts. Our business strategies therefore depend, in part, upon our ability to raise additional capital at reasonable costs. We may also be unable to raise capital at reasonable costs or at all because of reasons related to our business, market perceptions of our prospects, the terms of our debt, the extent of our leverage or for reasons beyond our control, such as capital market volatility, high interest rates and other market conditions. A protracted negative impact on the economy or the industries in which our properties and businesses operate, wage and commodity price inflation, high interest rates, increased insurance costs, geopolitical risks or other economic, market or industry conditions, such as the delayed recovery of the senior housing industry, economic downturns or a possible recession, may have various negative consequences. Such consequences may include a decline in the availability of financing and increased costs for financing, including with respect to government-sponsored enterprise and agency financing that we may otherwise have access to. Because the earnings we are permitted to retain are limited by the rules governing REIT qualification and taxation, if we are unable to raise reasonably priced capital, we may not be able to carry out our business plan.

High interest rates have significantly increased our interest expense and may otherwise materially and negatively affect us.

In response to significant and prolonged increases in inflation, the U.S. Federal Reserve has raised interest rates multiple times since the beginning of 2022, which has significantly increased our interest expense. 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 interest rates may remain at the current high levels or continue to increase. High interest rates may materially and negatively affect us in several ways, including:

- one of the factors that investors typically consider important in deciding whether to buy or sell our common shares is the distribution rate on our common shares relative to prevailing interest rates, and our quarterly cash distribution rate on our common shares is currently \$0.01 per common share in order to enhance our liquidity until our leverage profile otherwise improves. At current interest rate levels, investors may expect a higher distribution rate than we are able to pay, which may increase our cost of capital, or they may sell our common shares and seek alternative investments with higher distribution rates. Sales of our common shares may cause a decline in the market price of our common shares;
- amounts outstanding under future debt we may incur may require interest to be paid at floating interest rates. When interest rates increase, our borrowing costs with respect to any such debt will increase, which could adversely affect our cash flows, our ability to pay principal and interest on our debt, our cost of refinancing our fixed rate debts when they become due and our ability to pay distributions to our shareholders. Additionally, if we choose to hedge our interest rate risk, we cannot be sure that the hedge will be effective or that our hedging counterparty will meet its obligations to us; and
- property values are often determined, in part, based upon a capitalization of rental income formula. When interest rates are high, such as they are currently, real estate transaction volumes slow due to increased borrowing costs and property investors often demand higher capitalization rates, which causes property values to decline. High interest rates could therefore lower the value of our properties and cause the value of our securities to decline.

Our managers or other operators may fail to comply with laws relating to the operation of our senior living communities.

We and our managers or other operators are subject to, or impacted by, extensive and frequently changing federal, state and local laws and regulations, including: licensure laws; laws protecting consumers against deceptive practices; laws relating to the operation of our properties and how our managers and other operators conduct their operations, such as with respect to health and safety, fire and privacy matters; laws affecting communities that participate in Medicaid; laws affecting clinics and other healthcare facilities that participate in both Medicare and Medicaid which mandate allowable costs, pricing, reimbursement procedures and limitations, quality of services and care, food service and physical plants; resident rights laws (including abuse and neglect laws) and fraud laws; anti-kickback and physician referral laws; the Americans with Disabilities Act and similar laws; and safety and health standards established by OSHA. We and our managers and other operators are also required to comply with federal and state laws governing the privacy, security, use and disclosure of individually identifiable information, including financial information and protected health information under HIPAA.

We and our managers and other operators expend significant resources to maintain compliance with these laws and regulations. However, if we or our managers or other operators are alleged to fail, or do fail, to comply with applicable legal requirements, we or they may have to expend significant resources to respond to such allegations, and if we or they are unable to cure deficiencies, certain sanctions may be imposed and we or they may be obligated to return payments and pay fines and interest, which may adversely affect the profitability of our senior living communities and ability to obtain, renew or maintain licenses at those communities.

We and our managers and other operators and tenants face significant competition.

We face competition for tenants at our properties, particularly at our medical office and life science properties. Some competing properties may be newer, better located or more attractive to tenants. Competing properties may have lower rates of occupancy than our properties, which may result in competing owners offering available space at lower rents than we offer at our properties. Development activities may increase the supply of properties of the type we own in the leasing markets in which we own properties and increase the competition we face. Competition may make it difficult for us to attract and retain tenants and may reduce the rents we are able to charge and the values of our properties.

A significant number of new senior living communities were developed in recent years. Although the rate of new development of senior living communities has slowed significantly, the increased supply of senior living communities from such development activity has increased competitive pressures on our managers and other operators, particularly in certain geographic markets where we own senior living communities, and we expect these competitive challenges to continue for at least the next few years. Further, our senior living communities compete with numerous other senior living service providers, such as home healthcare companies and other real estate based service providers. Some of these senior living competitors are larger and have greater financial resources than our managers or other operators do, and some of these competitors are not for-profit entities which have endowment income and may not face the same financial pressures that they do. We cannot be sure that our managers or other operators will be able to attract a sufficient number of residents to our senior living communities at rates that will generate acceptable returns or that our managers or other operators will be able to attract employees and keep wages and other employee benefits, insurance costs and other operating expenses at levels which will allow them to compete successfully and operate our senior living communities profitably.

These competitive challenges may prevent our managers and other operators from maintaining or improving occupancy and rates at our senior living communities, which may reduce our returns from our senior living communities and adversely affect the profitability of our senior living communities, and may cause the values of our properties to decline.

We also face significant competition for acquisition opportunities from other investors, including publicly traded and private REITs, numerous financial institutions, individuals, foreign investors and other public and private companies. Some of our competitors may have greater financial and other resources than us and may be able to accept more risk than we can prudently manage, including risks with respect to the creditworthiness of property operators and the extent of leverage used in their capital structure. Because of competition for acquisitions, as well as limitations on acquisitions included in our debt agreements, we may be unable to acquire desirable properties or we may pay higher prices for, and realize lower net cash flows than we hope to achieve from, acquisitions.

We may be unable to lease our properties when our leases expire.

Although we typically will seek to renew or extend the terms of leases for our properties with tenants when they expire, we cannot be sure that we will be successful in doing so. Economic conditions, including prolonged high inflation, may cause our tenants not to renew or extend their leases when they expire, or to seek to renew their leases for less space than they currently occupy. If we are unable to extend or renew our leases, or we renew leases for reduced space, it may be time consuming and expensive to relet some of these properties.

We are exposed to risks associated with property development, redevelopment and repositioning that could adversely affect us, including our financial condition and results of operations.

We intend to continue to engage in development, redevelopment and repositioning activities with respect to our properties, and, as a result, we are subject to certain risks. These risks include cost overruns and untimely completion of construction due to, among other things, weather conditions, inflation, labor or material shortages or delays in receiving permits or other governmental approvals, inability to achieve desired returns, as well as the availability and pricing of financing on favorable terms or at all. The global economy continues to experience commodity pricing and other inflation, including inflation impacting wages and employee benefits. Although inflation rates have recently declined, they remain higher than pre-pandemic levels. It is uncertain whether inflation will decline further, remain relatively steady or increase; however, some market forecasts indicate that inflation rates may remain elevated for a prolonged period. These conditions have increased the costs for materials, other goods and labor, including construction materials, and caused some delays in construction activities, and these conditions may continue and worsen. These pricing increases, as well as increases in labor costs, could result in substantial unanticipated delays and increased development and renovation costs and could prevent the initiation or the completion of development, redevelopment or repositioning activities. In addition, current economic conditions and volatility in the commercial real estate markets, generally, may cause delays in leasing these properties or possible loss of tenancies and negatively impact our ability to generate cash flows from these properties that meet or exceed our cost of investment. Any of these risks associated with our current or future development, redevelopment and repositioning activities could have a material adverse effect on our business, financial condition and results of operations.

Ownership of real estate is subject to environmental risks and liabilities.

Ownership of real estate is subject to risks associated with environmental hazards. Under various laws, owners as well as operators of real estate may be required to investigate and clean up or remove hazardous substances present at or migrating from properties they own or operate and may be held liable for property damage or personal injuries that result from hazardous substances. These laws also expose us to the possibility that we may become liable to government agencies or third parties for costs and damages they incur in connection with hazardous substances. The costs and damages that may arise from environmental hazards may be substantial and are difficult to assess and estimate for numerous reasons, including uncertainty about the extent of contamination, alternative treatment methods that may be applied, the location of the property which subjects it to differing local laws and regulations and their interpretations, as well as the time it may take to remediate contamination. In addition, these laws also impose various requirements regarding the operation and maintenance of properties and recordkeeping and reporting requirements relating to environmental matters that require us or the operators of our properties to incur costs to comply with. Further, certain of our secured debt agreements contain exceptions to the general non-recourse provisions that obligate us to indemnify the lenders for certain potential environmental losses relating to hazardous materials and violations of environmental law. We may incur substantial liabilities and costs for environmental matters.

We are subject to risks from adverse weather, natural disasters and adverse impact from global climate change, and we incur significant costs and invest significant amounts with respect to these matters.

We are subject to risks and could be exposed to additional costs from adverse weather, natural disasters and adverse impact from global climate change. For example, our properties could be severely damaged or destroyed from either singular extreme weather events (such as floods, storms and wildfires) or through long term impacts of climatic conditions (such as precipitation frequency, weather instability and rise of sea levels). Such events could also adversely impact us or the tenants of our properties if we or they are unable to operate our or their businesses due to damage resulting from such events. Insurance may not adequately cover all losses sustained by us or the tenants of our properties. If we fail to adequately prepare for such events, our revenues, results of operations and financial condition may be impacted. In addition, we may incur significant costs in preparing for possible future climate change or in response to our tenants' requests for such investments and we may not realize desirable returns on those investments.

Vacancies in a property could result in significant capital expenditures and illiquidity and reduce the value of the property.

The loss or downsizing of a tenant may reduce the value of a property and require us to spend significant amounts of capital to renovate the property before it is suitable for a new tenant. Many of the leases we enter into or acquire are for properties that are especially suited to the particular business of our tenants, such as our medical office and life science properties. Because these properties have been designed or physically modified for a particular tenant, if the current lease is terminated, downsized or not renewed, we may be required to renovate the property at substantial costs, decrease the rent we charge or provide other concessions in order to lease the property to another tenant. We may also have difficulty selling the property due to the special purpose for which the property may have been designed or modified. This potential illiquidity may limit our ability to quickly modify our portfolio in response to changes in economic or other conditions, including tenant demand.

RMR and our senior living community managers rely on information technology and systems in providing services to us, and any material failure, inadequacy, interruption or security breach of that technology or those systems could materially harm us.

RMR and our senior living community managers rely on information technology and systems, including the Internet and cloud-based infrastructures and services, commercially available software and their respective internally developed applications, to process, transmit, store and safeguard information and to manage or support a variety of their business processes (including managing our building systems), including financial transactions and maintenance of records, which may include personal identifying information of employees, residents, tenants and guarantors and lease data. If we or our third party vendors experience material security or other failures, inadequacies or interruptions in our or their information technology systems, we could incur material costs and losses and our operations could be disrupted. RMR and our senior living community managers take various actions, and incur significant costs, to maintain and protect the operation and security of information technology and systems, including the data maintained in those systems. However, these measures may not prevent the systems' improper functioning or a compromise in security such as in the event of a cyberattack or the improper disclosure of personally identifiable information.

Security breaches, computer viruses, attacks by hackers, online fraud schemes and similar breaches have created and can create significant system disruptions, shutdowns, fraudulent transfer of assets or unauthorized disclosure of confidential information. The risk of a security breach or disruption, particularly through cyberattack or cyber intrusion, including by computer hackers, foreign governments and cyber terrorists, has generally increased as the intensity and sophistication of attempted attacks and intrusions from around the world have increased. The cybersecurity risks to us or our third party vendors are heightened by, among other things, the evolving nature of the threats faced, advances in computer capabilities, new discoveries in the field of cryptography and new and increasingly sophisticated methods used to perpetrate illegal or fraudulent activities, including cyberattacks, email or wire fraud and other attacks exploiting security vulnerabilities in RMR's, our senior living community managers' or other third parties' information technology networks and systems or operations. Although most of RMR's and our senior living community managers' staff returned to their offices during the pandemic, flexible working arrangements have resulted in a higher extent of remote working than they experienced prior to the pandemic. This and other possible changing work practices have adversely impacted, and may in the future adversely impact, RMR's, our senior living community managers' or other third parties' abilities to maintain the security, proper function and availability of their information technology and systems since remote working by their employees could strain their technology resources and introduce operational risk, including heightened cybersecurity risk. Remote working environments may be less secure and more susceptible to hacking attacks, including phishing and social engineering attempts that have sought, and may seek, to exploit remote working environments. In addition, RMR's, our senior living community managers' or other third parties' data security, data privacy, investor reporting and business continuity processes could be impacted by a third party's inability to perform in a remote work environment or by the failure of, or attack on, their information systems and technology. Any failure by RMR, our senior living community managers or other third party vendors to maintain the security, proper function and availability of their respective information technology and systems could result in financial losses, interrupt our operations, damage our reputation, cause us to be in default of material contracts and subject us to liability claims or regulatory penalties, any of which could materially and adversely affect our business and the value of our securities.

Sustainability initiatives, requirements and market expectations may impose additional costs and expose us to new risks.

There continues to be increased focus from regulators, investors, tenants and other stakeholders concerning corporate sustainability. The SEC is considering climate change related regulations and certain states have enacted climate focused disclosure laws and we may incur significant costs in compliance with such rules. Some investors may use ESG factors to guide their investment strategies and, in some cases, may choose not to invest in us, or otherwise do business with us, if they believe our or RMR's policies relating to corporate sustainability are inadequate. Third party providers of corporate sustainability

ratings and reports on companies have increased in number, resulting in varied and, in some cases, inconsistent standards. In addition, the criteria by which companies' corporate sustainability practices are assessed are evolving, which could result in greater expectations of us and RMR and cause us and RMR to undertake costly initiatives to satisfy such new criteria. Alternatively, if we or RMR elect not to or are unable to satisfy such new criteria or do not meet the criteria of a specific third party provider, some investors may conclude that our or RMR's policies with respect to corporate sustainability are inadequate. Pursuant to RMR's zero emissions goal, RMR has pledged to reduce its Scope 1 and 2 emissions to net zero by 2050 with a 50% reduction commitment by 2030 from a 2019 baseline. We and RMR may face reputational damage in the event that our or their corporate sustainability procedures or standards do not meet the goals that we or RMR have set or the standards set by various constituencies. If we and RMR fail to comply with ESG related regulations and to satisfy the expectations of investors and our tenants and other stakeholders or our or RMR's announced goals and other initiatives are not executed as planned, our and RMR's reputation could be adversely affected, and our revenues, results of operations and ability to grow our business may be negatively impacted. In addition, we may incur significant costs in attempting to comply with regulatory requirements, ESG policies or third party expectations or demands.

Insurance may not adequately cover our losses, and insurance costs may continue to increase.

We or our tenants are generally responsible for the costs of insurance coverage for our properties and the operations conducted on them, including for casualty, liability, malpractice, fire, extended coverage and rental or business interruption loss insurance. In the future, we may acquire properties for which we are responsible for the costs of insurance. The costs of insurance have increased significantly and continue to increase, and these increased costs have had an adverse effect on us and our managers or other operators and tenants. Increased insurance costs may adversely affect our managers' abilities to operate our properties profitably and provide us with desirable returns and our tenants' abilities to pay us rent or result in downward pressure on rents we can charge under new or renewed leases. Losses of a catastrophic nature, such as those caused by hurricanes, flooding, volcanic eruptions and earthquakes or losses as a result of outbreaks of pandemics or acts of terrorism, may be covered by insurance policies with limitations such as large deductibles or co-payments that we or a responsible tenant may not be able to pay. Insurance proceeds may not be adequate to restore an affected property to its condition prior to a loss or to compensate us for our losses, including lost revenues or other costs. Certain losses, such as losses we may incur as a result of known or unknown environmental conditions, are not covered by our insurance. Market conditions or our loss history may limit the scope of insurance or coverage available to us or our tenants on economic terms. If we determine that an uninsured loss or a loss in excess of insured limits occurs and if we are not able to recover amounts from our tenants for certain losses, we may have to incur uninsured costs to mitigate such losses or lose all or a portion of the capital invested in a property, as well as the anticipated future revenue from the property.

We may not succeed in selling properties we may identify for sale and any proceeds we may receive from sales we do complete may be less than expected, and we may incur losses with respect to any such sales.

We plan to selectively sell certain properties from time to time to reduce our leverage, fund capital expenditures and future acquisitions and strategically update, rebalance and reposition our investment portfolio. Our ability to sell properties or other assets and the prices we may receive in any such sales, may be affected by various factors. In particular, these factors could arise from weaknesses in or a lack of established markets for the properties we may identify for sale, the availability of financing to potential purchasers on reasonable terms, changes in the financial condition of prospective purchasers for and the tenants of the properties, the terms of leases with tenants at certain of the properties, the characteristics, quality and prospects of the properties, the number of prospective purchasers, the number of competing properties in the market, unfavorable local, national or international economic conditions, such as high interest rates, prolonged high inflation, labor market challenges, supply chain challenges and economic downturns or a possible recession, and changes in laws, regulations or fiscal policies of jurisdictions in which the properties are located. For example, current market conditions have caused, and may continue to cause, increased capitalization rates which, together with high interest rates, have resulted in reduced commercial real estate transaction volume, and such conditions may continue or worsen. We may not succeed in selling properties or other assets and any sales may be delayed or may not occur or, if sales do occur, the terms may not meet our expectations, and we may incur losses in connection with any sales. If we are unable to realize proceeds from the sale of assets sufficient to allow us to reduce our leverage to a level we, or ratings agencies or possible financing sources, believe appropriate, our credit ratings may be lowered and we may be unable to fund capital expenditures or future acquisitions to grow our business. In addition, we may elect to change or abandon our strategy and forego or abandon property or other asset sales.

We may be unable to grow our business by acquiring additional properties, and we might encounter unanticipated difficulties and expenditures relating to our acquired properties.

Our business plan includes the acquisition of additional properties. Our ability to make profitable acquisitions is subject to risks, including, but not limited to, risks associated with:

- the extent of our debt leverage;
- the availability, terms and cost of debt and equity capital;
- competition from other investors; and
- contingencies in our acquisition agreements.

These risks may limit our ability to grow our business by acquiring additional properties. In addition, we might encounter unanticipated difficulties and expenditures relating to our acquired properties. For example:

- notwithstanding pre-acquisition due diligence, we could acquire a property that contains undisclosed defects in design or construction or unknown liabilities, including those related to undisclosed environmental contamination, or our analyses and assumptions for the properties may prove to be incorrect;
- an acquired property may be located in a new market where we may face risks associated with investing in an unfamiliar market;
- the market in which an acquired property is located may experience unexpected changes that adversely affect the property's value; and
- property operating costs for our acquired properties may be higher than anticipated and our acquired properties may not yield expected returns.

For these reasons, among others, we might not realize the anticipated benefits of our acquisitions, and our business plan to acquire additional properties may not succeed or may cause us to experience losses.

Our existing and any future joint ventures may limit our flexibility with jointly owned investments and we may not realize the benefits we expect from these arrangements.

We are party to joint ventures with institutional investors, and we may in the future sell or contribute additional properties to, or acquire, develop or recapitalize properties in, our existing or any future joint ventures. Our participation in joint ventures is subject to risks, including the following:

- we share approval rights over major decisions affecting the ownership or operation of the joint ventures and any property owned by the joint ventures;
- we may need to contribute additional capital in order to preserve, maintain or grow the joint ventures and their investments;
- joint venture investors may have economic or other business interests or goals that are inconsistent with our business interests or goals, which could affect our ability to lease, relet or operate properties owned by the joint ventures;
- joint venture investors may be subject to different laws or regulations than us, or may be structured differently than us for tax purposes, which could create conflicts of interest and/or affect our ability to maintain our qualification for taxation as a REIT;
- our ability to sell our interest in, or sell additional properties to, the joint ventures or the joint ventures' ability to sell additional interests of, or properties owned by, the joint ventures when we so desire are subject to the approval rights of the other joint venture investors under the terms of the agreements governing the joint ventures; and
- disagreements with joint venture investors could result in litigation or arbitration that could be expensive and distracting to management and could delay important decisions.

Any of the foregoing risks could have a material adverse effect on our business, financial condition and results of operations. Further, these, similar, enhanced or additional risks, including possible mandatory capital contribution requirements, may apply to any future additional or amended joint ventures.

Bankruptcy law may adversely impact us.

The occurrence of a tenant bankruptcy could reduce the rent we receive from that tenant, and the current economic conditions, such as prolonged high inflation, high interest rates, labor market challenges, supply chain challenges and economic downturns or a possible recession, may increase the risk of our tenants and the managers and other operators of our senior living communities filing for bankruptcy. If a tenant files for bankruptcy, federal law may prohibit us from evicting that tenant based solely upon its bankruptcy, and a bankrupt tenant may be authorized to reject and terminate its lease with us. Any claims against a bankrupt tenant for unpaid future rent would be subject to statutory limitations that may be substantially less than the contractually specified rent we are owed under the lease, and any claim we have for unpaid past rent may not be paid in full. If any of our tenants, managers or other operators files for bankruptcy, we may experience delays in enforcing our rights, and may be limited in our ability to replace the tenant, manager or other operator. In the case of any tenant, manager or other operator bankruptcy, we may incur substantial costs in protecting our investment and re-leasing or finding a replacement tenant, manager or other operator.

A severe cold or flu season, epidemics or any other widespread illnesses could adversely affect the operations of our senior living communities.

Our revenues and our managers' and other operators' and tenants' revenues with respect to our senior living communities are dependent on occupancy and could significantly decrease in the event of a severe cold and flu season, an epidemic or pandemic such as a new variant in the COVID-19 pandemic or any other widespread illness. Such a decrease could significantly impact our and our managers' and tenants' revenues from our senior living communities. As experienced during the COVID-19 pandemic, a future flu or other epidemic or pandemic could significantly increase the cost burdens faced by our managers or tenants, including if they are required to implement quarantines for residents, and adversely affect their ability to meet their obligations to us and our returns, which would have a material adverse effect on our financial results.

Risks Related to Our Relationships with RMR and AlerisLife (including Five Star)

We are dependent upon RMR to manage our business and implement our growth strategy.

We have no employees. Personnel and services that we require are provided to us by RMR pursuant to our management agreements with RMR. Our ability to achieve our business objectives depends on RMR and its ability to effectively manage our properties, to appropriately identify and complete our acquisitions and dispositions and to execute our growth strategy. Accordingly, our business is dependent upon RMR's business contacts, its ability to successfully hire, train, supervise and manage its personnel and its ability to maintain its operating systems. If we lose the services provided by RMR or its key personnel, our business and growth prospects may decline. We may be unable to duplicate the quality and depth of management available to us by becoming internally managed or by hiring another manager. In the event RMR is unwilling or unable to continue to provide management services to us, our cost of obtaining substitute services may be greater than the fees we pay RMR under our management agreements, and as a result our expenses may increase.

RMR has broad discretion in operating our day to day business.

Our manager, RMR, is authorized to follow broad operating and investment guidelines and, therefore, has discretion in identifying the properties that will be appropriate investments for us, as well as our individual operating and investment decisions. Our Board of Trustees periodically reviews our operating and investment guidelines and our operating activities and investments, but it does not review or approve each decision made by RMR on our behalf. In addition, in conducting periodic reviews, our Board of Trustees relies primarily on information provided to it by RMR. RMR may exercise its discretion in a manner that results in investment returns that are substantially below expectations or that results in losses.

Our management structure and agreements and relationships with RMR and RMR's and its controlling shareholder's relationships with others may create conflicts of interest, or the perception of such conflicts, and may restrict our investment activities.

RMR is a majority owned subsidiary of RMR Inc. 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., chair of the board of directors, a managing director and the president and chief executive officer of

RMR Inc. and an officer and employee of RMR. RMR or its subsidiaries also act as the manager to certain other Nasdaq listed companies and private companies, and Mr. Portnoy serves as a managing trustee, director or trustee, as applicable, of those companies, and as chair of the board of trustees of those Nasdaq listed companies.

Christopher J. Bilotto, our President and Chief Executive Officer, and Matthew C. Brown, our Chief Financial Officer and Treasurer, are also officers and employees of RMR. Ms. Francis, our other Managing Trustee, served as an officer of RMR until December 31, 2023 and will remain an employee of RMR until her retirement on July 1, 2024. Messrs. Portnoy, Bilotto and Brown and Ms. Francis have duties to RMR, as well as to us, and we do not have their undivided attention. They and other RMR personnel may have conflicts in allocating their time and resources between us and RMR and other companies to which RMR or its subsidiaries provide services. Some of our Independent Trustees also serve as independent trustees of other public companies to which RMR or its subsidiaries provide management services.

In addition, we may in the future enter into additional transactions with RMR, its affiliates or entities managed by it or its subsidiaries. In addition to his investments in RMR Inc. and RMR, Mr. Portnoy holds equity investments in other companies to which RMR or its subsidiaries provide management services and some of these companies have significant cross ownership interests, including, for example: as of December 31, 2023, Mr. Portnoy beneficially owned 9.8% of our outstanding common shares and approximately 6.1% of AlerisLife's outstanding common shares (including through ABP Trust). Our executive officers also own equity investments in other companies to which RMR or its subsidiaries provide management services. These multiple responsibilities, relationships and cross ownerships may give rise to conflicts of interest or the perception of such conflicts of interest with respect to matters involving us, RMR Inc., RMR, our Managing Trustees, the other companies to which RMR or its subsidiaries provide management services and their related parties. Conflicts of interest or the perception of conflicts of interest could have a material adverse impact on our reputation, business and the market price of our common shares and other securities and we may be subject to increased risk of litigation as a result.

In our management agreements with RMR, we acknowledge that RMR may engage in other activities or businesses and act as the manager to any other person or entity (including other REITs) even though such person or entity has investment policies and objectives similar to our policies and objectives and we are not entitled to preferential treatment in receiving information, recommendations and other services from RMR. Accordingly, we may lose investment opportunities to, and may compete for tenants with, other businesses managed by RMR or its subsidiaries, including our existing and any future joint ventures. We cannot be sure that our Code of Conduct or our governance guidelines, or other procedural protections we adopt will be sufficient to enable us to identify, adequately address or mitigate actual or alleged conflicts of interest or ensure that our transactions with related persons are made on terms that are at least as favorable to us as those that would have been obtained with an unrelated person.

Our management agreements with RMR were not negotiated on an arm's length basis and their fee and expense structure may not create proper incentives for RMR, which may increase the risk of an investment in our common shares.

As a result of our relationships with RMR and its current and former controlling shareholder(s), our management agreements with RMR were not negotiated on an arm's length basis between unrelated parties, and therefore, while such agreements were negotiated with the use of a special committee and disinterested Trustees, the terms, including the fees payable to RMR, may be different from those negotiated on an arm's length basis between unrelated parties. Our property management fees are calculated based on rents we receive and we also pay RMR construction supervision fees for construction at our properties overseen and managed by RMR, and our base business management fee is calculated based upon the lower of the historical costs of our real estate investments and our market capitalization. We pay RMR substantial base management fees regardless of our financial results. These fee arrangements could incentivize RMR to pursue acquisitions, capital transactions, tenancies and construction projects or to avoid disposing of our assets in order to increase or maintain its management fees and might reduce RMR's incentive to devote its time and effort to seeking investments that provide attractive returns for us. If we do not effectively manage our investment, disposition and capital transactions and leasing, construction and other property management activities, we may pay increased management fees without proportional benefits to us. In addition, we are obligated under our management agreements to reimburse RMR for 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 and as otherwise agreed. We are also required to pay for third party costs incurred with respect to us. Our obligation to reimburse RMR for certain of its costs and to pay third party costs may reduce RMR's incentive to efficiently manage those costs, which may increase our costs.

The termination of our management agreements with RMR may require us to pay a substantial termination fee, including in the case of a termination for unsatisfactory performance, which may limit our ability to end our relationship with RMR.

The terms of our management agreements with RMR automatically extend on December 31 of each year so that such terms thereafter end on the 20th anniversary of the date of the extension. We have the right to terminate these agreements: (1) at any time on 60 days' written notice for convenience, (2) immediately upon written notice for cause, as defined in the agreements, (3) on written notice given within 60 days after the end of any applicable calendar year for a performance reason, as defined in the agreements, and (4) by written notice during the 12 months following a manager change of control, as defined in the agreements. However, if we terminate a management agreement for convenience, or if RMR terminates a management agreement with us for good reason, as defined in such agreement, we are obligated to pay RMR a termination fee in an amount equal to the sum of the present values of the monthly future fees, as defined in the applicable agreement, payable to RMR for the term that was remaining before such termination, which, depending on the time of termination, would be between 19 and 20 years. Additionally, if we terminate a management agreement for a performance reason, as defined in the agreement, we are obligated to pay RMR the termination fee calculated as described above, but assuming a remaining term of 10 years. These provisions substantially increase the cost to us of terminating the management agreements without cause, which may limit our ability to end our relationship with RMR as our manager. The payment of the termination fee could have a material adverse effect on our financial condition, including our ability to pay distributions to our shareholders.

Our management arrangements with RMR may discourage a change of control of us.

Our management agreements with RMR have continuing 20 year terms that renew annually. As noted in the preceding risk factor, if we terminate either of these management agreements other than for cause or upon a change of control of our manager, we are obligated to pay RMR a substantial termination fee. For these reasons, our management agreements with RMR may discourage a change of control of us, including a change of control which might result in payment of a premium for our common shares.

Our business dealings with AlerisLife (including Five Star) comprise a significant part of our business and operations and they may create conflicts of interest or the perception of such conflicts of interest.

In March 2023, in connection with ABP Trust's acquisition of AlerisLife by tender offer, we tendered all of the AlerisLife common shares we then owned, subject to the right to purchase AlerisLife common shares at the Tender Offer Price. On February 16, 2024, we exercised this purchase right and acquired, together with our applicable TRS, approximately 34.0% of the currently outstanding AlerisLife common shares from ABP Trust at the Tender Offer Price, for a total purchase price of \$14.9 million. Following this acquisition, ABP Trust owns the remaining approximate 66.0% of AlerisLife. RMR provides management services to both us and AlerisLife. 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, and Mr. Portnoy is the sole director of AlerisLife. Five Star, an operating division of AlerisLife, manages many of our senior living communities.

The historical and continuing relationships which we, RMR, ABP Trust and Mr. Portnoy have with AlerisLife could create, or appear to create, conflicts of interest with respect to matters involving us, the other companies to which RMR or its subsidiaries provide management services and their related parties. As a result of these relationships, our agreements with AlerisLife (including Five Star) were not negotiated on an arm's length basis between unrelated parties, and therefore, while such agreements were negotiated with the use of a special committee and/or disinterested Trustees, their terms may be different from those negotiated on an arm's length basis between unrelated parties. Conflicts of interest or the perception of conflicts of interest could have a material adverse impact on our reputation, business and the market price of our common shares and other securities and we may be subject to increased risk of litigation as a result.

We may be required to pay a substantial termination fee to Five Star if Five Star terminates our management agreements due to our default.

If Five Star terminates our management agreements due to certain defaults by us, we are required to pay Five Star a termination fee equal to the present value of the base management fees that we would have paid to Five Star and the allocated incentive fee for the applicable communities, if any, between the date of termination and the scheduled initial expiration date of such management agreements (but not for a period exceeding 10 years), with such amounts determined based on the average base management and incentive fees for the applicable communities for each of the three calendar years ended prior to the date of termination. Further, the payment of the termination fee could have a material adverse effect on our financial condition, including our ability to pay distributions to our shareholders.

We may not realize the benefits we expect from our ownership interest in AlerisLife.

We own an approximately 34.0% ownership interest in AlerisLife. Risks that we have identified elsewhere in this Risk Factors section, particularly those relating to the senior living industry, are applicable to our ownership of AlerisLife common shares. In addition, AlerisLife is a private company that is owned by ABP Trust, of which Adam D. Portnoy, one of our Managing Trustees, is the sole trustee, an officer and the controlling shareholder. We have a minority interest in AlerisLife, and we will be limited in our ability to direct or influence AlerisLife's corporate level decisions or to affect changes in AlerisLife's business, strategies, operations and management. In addition, AlerisLife's common shares are no longer publicly traded, therefore our ability to sell our AlerisLife shares will be limited. Further, any attempt we may make to sell our AlerisLife common shares may be unsuccessful and any price that we may be able to realize for those shares may be at a discount due to the minority interest they represent and the lack of an active trading market for those shares. As a result of the foregoing, and for other possible reasons, we may not realize any of the benefits we currently expect from our ownership of AlerisLife common shares, we may be prevented from selling our AlerisLife common shares and we could incur losses from our ownership of AlerisLife common shares, including our proportion of any operating or other losses that AlerisLife may realize.

We are party to transactions with related parties that may increase the risk of allegations of conflicts of interest.

We are party to transactions with related parties, including with entities controlled by Adam D. Portnoy or to which RMR or its subsidiaries provide management services. Our agreements with related parties or in respect of transactions among related parties may not be on terms as favorable to us as they would have been if they had been negotiated among unrelated parties. Our shareholders or the shareholders of RMR Inc. or other related parties may challenge such related party transactions. If any challenges to related party transactions were to be successful, we might not realize the benefits expected from the transactions being challenged. Moreover, any such challenge could result in substantial costs and a diversion of our management's attention, could have a material adverse effect on our reputation, business and growth and could adversely affect our ability to realize the benefits expected from the transactions, whether or not the allegations have merit or are substantiated.

We may be at an increased risk for dissident shareholder activities due to perceived conflicts of interest arising from our management structure and relationships.

Companies with business dealings with related persons and entities may more often be the target of dissident shareholder trustee nominations, dissident shareholder proposals and shareholder litigation alleging conflicts of interest in their business dealings. The various relationships noted above may precipitate such activities. Certain proxy advisory firms which have significant influence over the voting by shareholders of public companies have, in the past, recommended, and in the future may recommend, that shareholders withhold votes for the election of our incumbent Trustees, vote against our say on pay vote or other management proposals or vote for shareholder proposals that we oppose. These recommendations by proxy advisory firms have affected the outcomes of past Board of Trustees elections and votes on our say on pay, and similar recommendations in the future would likely affect the outcome of future Board of Trustees elections and votes on our say on pay or other shareholder votes, which may increase shareholder activism and litigation. These activities, if instituted against us, could result in substantial costs and diversion of our management's attention and could have a material adverse impact on our reputation and business.

Risks Related to Our Organization and Structure

We may change our operational, financing and investment policies without shareholder approval and we may become more highly leveraged, which may increase our risk of default under our debt obligations.

Our Board of Trustees determines our operational, financing and investment policies and may amend or revise our policies, including our policies with respect to our intention to remain qualified for taxation as a REIT, acquisitions, dispositions, growth, operations, indebtedness, capitalization and distributions, or approve transactions that deviate from these policies, without a vote of, or notice to, our shareholders. Policy changes could adversely affect the market price of our common shares and our ability to pay distributions to our shareholders. Further, our organizational documents do not limit the amount or percentage of indebtedness, funded or otherwise, that we may incur; however, provisions in our debt agreements may limit us from incurring additional debt. Our Board of Trustees may alter or eliminate our current policy on borrowing at any time without shareholder approval. If this policy changes, we could become more highly leveraged, which could result in an increase in our debt service costs. Higher leverage also increases the risk of default on our obligations. In addition, a change in our investment policies, including the manner in which we allocate our resources across our portfolio or the types of assets in which we seek to invest, may increase our exposure to interest rate risk, real estate market fluctuations and liquidity risk.

Ownership limitations and certain provisions in our declaration of trust, bylaws and agreements, as well as certain provisions of Maryland law, may deter, delay or prevent a change in our control or unsolicited acquisition proposals.

Our declaration of trust contains provisions that generally prohibit shareholders from owning more than 5% (in value or in number of shares, whichever is more restrictive) of any class or series of our outstanding shares, including our common shares. The ownership limitation in our declaration of trust is intended to help us preserve our ability to use our net operating losses and other tax benefits to reduce our future taxable income. We also believe these provisions promote good orderly governance. However, these provisions may also inhibit acquisitions of a significant stake in us and may deter, delay or prevent a change in control of us or unsolicited acquisition proposals that a shareholder may consider favorable. Additionally, provisions contained in our declaration of trust and bylaws or under Maryland law may have a similar impact, including, for example, provisions relating to:

- limitations on shareholder voting rights with respect to certain actions that are not approved by our Board of Trustees;
- the authority of our Board of Trustees, and not our shareholders, to adopt, amend or repeal our bylaws and to fill vacancies on our Board of Trustees;
- shareholder voting standards which require a supermajority of shares for approval of certain actions;
- the fact that only our Board of Trustees, or, if there are no Trustees, our officers, may call shareholder meetings and that shareholders are not entitled to act without a meeting;
- required qualifications for an individual to serve as a Trustee and a requirement that certain of our Trustees be "Managing Trustees" and other Trustees be "Independent Trustees," as defined in our governing documents;
- limitations on the ability of our shareholders to propose nominees for election as Trustees and propose other business to be considered at a meeting of our shareholders;
- limitations on the ability of our shareholders to remove our Trustees;
- the authority of our Board of Trustees to create and issue new classes or series of shares (including shares with voting rights and other rights and privileges that may deter a change in control) and issue additional common shares;
- restrictions on business combinations between us and an interested shareholder that have not first been approved by our Board of Trustees (including a majority of Trustees not related to the interested shareholder); and
- the authority of our Board of Trustees, without shareholder approval, to implement certain takeover defenses.

As changes occur in the marketplace for corporate governance policies, the above provisions may change, be removed, or new ones may be added.

Our rights and the rights of our shareholders to take action against our Trustees and officers are limited.

Our declaration of trust limits the liability of our Trustees and officers to us and our shareholders for money damages to the maximum extent permitted under Maryland law. Under current Maryland law, our Trustees and officers will not have any liability to us and our shareholders for money damages other than liability resulting from:

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

Our declaration of trust and indemnification agreements require us to indemnify, to the maximum extent permitted by Maryland law, any present or former Trustee or officer who is made or threatened to be made a party to a proceeding by reason of his or her service in these and certain other capacities. In addition, we may be obligated to pay or reimburse the expenses incurred by our present and former Trustees and officers without requiring a preliminary determination of their ultimate entitlement to indemnification.

As a result of these limitations on liability and indemnification obligations, we and our shareholders may have more limited rights against our present and former Trustees and officers than might exist with other companies, which could limit shareholder recourse in the event of actions which some shareholders may believe are not in our best interest.

Shareholder litigation against us or our Trustees, officers, managers or other agents may be referred to mandatory arbitration proceedings, which follow different procedures than in-court litigation and may be more restrictive to shareholders asserting claims than in-court litigation.

Our shareholders agree, by virtue of becoming shareholders, that they are bound by our governing documents, including the arbitration provisions of our bylaws, as they may be amended from time to time. Our bylaws provide that certain actions by one or more of our shareholders against us or any of our Trustees, officers, managers or other agents, other than disputes, or any portion thereof, regarding the meaning, interpretation or validity of any provision of our declaration of trust or bylaws, will be referred to mandatory, binding and final arbitration proceedings if we, or any other party to such dispute, including any of our Trustees, officers, managers or other agents, unilaterally so demands. As a result, we and our shareholders would not be able to pursue litigation in state or federal court against us or our Trustees, officers, managers or other agents, including, for example, claims alleging violations of federal securities laws or breach of fiduciary duties or similar director or officer duties under Maryland law, if we or any of our Trustees, officers, managers or other agents against whom the claim is made unilaterally demands the matter be resolved by arbitration. Instead, our shareholders would be required to pursue such claims through binding and final arbitration.

Our bylaws provide that such arbitration proceedings would be conducted in accordance with the procedures of the Commercial Arbitration Rules of the American Arbitration Association, as modified in our bylaws. These procedures may provide materially more limited rights to our shareholders than litigation in a federal or state court. For example, arbitration in accordance with these procedures does not include the opportunity for a jury trial, document discovery is limited, arbitration hearings generally are not open to the public, there are no witness depositions in advance of arbitration hearings and arbitrators may have different qualifications or experiences than judges. In addition, although our bylaws' arbitration provisions contemplate that arbitration may be brought in a representative capacity or on behalf of a class of our shareholders, the rules governing such representation or class arbitration may be different from, and less favorable to shareholders than, the rules governing representative or class action litigation in courts. Our bylaws also generally provide that each party to such an arbitration is required to bear its own costs in the arbitration, including attorneys' fees, and that the arbitrators may not render an award that includes shifting of such costs or, in a derivative or class proceeding, award any portion of our award to any shareholder or such shareholder's attorneys. The arbitration provisions of our bylaws may discourage our shareholders from bringing, and attorneys from agreeing to represent our shareholders wishing to bring, litigation against us or our Trustees, officers, managers or other agents. Our agreements with AlerisLife (including Five Star) and RMR have similar arbitration provisions to those in our bylaws.

We believe that the arbitration provisions in our bylaws are enforceable under both state and federal law, including with respect to federal securities laws claims. We are a Maryland real estate investment trust and Maryland courts have upheld the enforceability of arbitration bylaws. In addition, the U.S. Supreme Court has repeatedly upheld agreements to arbitrate other federal statutory claims, including those that implicate important federal policies. However, some academics, legal practitioners and others are of the view that charter or bylaw provisions mandating arbitration are not enforceable with respect to federal securities laws claims. It is possible that the arbitration provisions of our bylaws may ultimately be determined to be unenforceable.

By agreeing to the arbitration provisions of our bylaws, shareholders will not be deemed to have waived compliance by us with federal securities laws and the rules and regulations thereunder.

Our bylaws designate the Circuit Court for Baltimore City, Maryland as the sole and exclusive forum for certain actions and proceedings that may be initiated by our shareholders, which could limit our shareholders' ability to obtain a favorable judicial forum for disputes with us or our Trustees, officers, managers or other agents.

Our bylaws currently provide that, unless the dispute has been referred to binding arbitration, the Circuit Court for Baltimore City, Maryland will be the sole and exclusive forum for: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a claim for breach of a fiduciary duty owed by any of our Trustees, officers, managers or other agents to us or our shareholders; (3) any action asserting a claim against us or any of our Trustees, officers, managers or other agents arising pursuant to Maryland law, our declaration of trust or bylaws brought by or on behalf of a shareholder, either on such shareholder's own behalf, on our behalf or on behalf of any series or class of shares of beneficial interest of ours or by our shareholders against us or any of our Trustees, officers, managers or other agents, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of our declaration of trust or

bylaws; or (4) any action asserting a claim against us or any of our Trustees, officers, managers or other agents that is governed by the internal affairs doctrine of the State of Maryland. Our bylaws currently also provide that the Circuit Court for Baltimore City, Maryland will be the sole and exclusive forum for any dispute, or portion thereof, regarding the meaning, interpretation or validity of any provision of our declaration of trust or bylaws. The exclusive forum provision of our bylaws does not apply to any action for which the Circuit Court for Baltimore City, Maryland does not have jurisdiction or to a dispute that has been referred to binding arbitration in accordance with our bylaws. The exclusive forum provision of our bylaws does not establish exclusive jurisdiction in the Circuit Court for Baltimore City, Maryland for claims that arise under the Securities Act, the Exchange Act or other federal securities laws if there is exclusive or concurrent jurisdiction in the federal courts. Any person or entity purchasing or otherwise acquiring or holding any interest in our shares of beneficial interest shall be deemed to have notice of and to have consented to these provisions of our bylaws, as they may be amended from time to time. The arbitration and exclusive forum provisions of our bylaws may limit a shareholder's ability to bring a claim in a judicial forum that the shareholder believes is favorable for disputes with us or our Trustees, officers, managers or other agents, which may discourage lawsuits against us and our Trustees, officers, managers or other agents.

Disputes with RMR may be referred to mandatory arbitration proceedings, which follow different procedures than in-court litigation and may be more restrictive to those asserting claims than in-court litigation.

Our agreements with RMR provide that any dispute arising thereunder will be referred to mandatory, binding and final arbitration proceedings if we, or any other party to such dispute, unilaterally so demands. As a result, we and our shareholders would not be able to pursue litigation in state or federal court against RMR if we or any other parties against whom the claim is made unilaterally demands the matter be resolved by arbitration. In addition, the ability to collect attorneys' fees or other damages may be limited in the arbitration proceedings, which may discourage attorneys from agreeing to represent parties wishing to bring such litigation.

Risks Related to Our Taxation

Our failure to remain qualified for taxation as a REIT under the IRC could have significant adverse consequences.

As a REIT, we generally do not pay federal or most state income taxes as long as we distribute all of our REIT taxable income and meet other qualifications set forth in the IRC. However, actual qualification for taxation as a REIT under the IRC depends on our satisfying complex statutory requirements, for which there are only limited judicial and administrative interpretations. We believe that we have been organized and have operated, and will continue to be organized and to operate, in a manner that qualified and will continue to qualify us to be taxed as a REIT under the IRC. However, we cannot be sure that the IRS, upon review or audit, will agree with this conclusion. Furthermore, we cannot be sure that the federal government, or any state or other taxation authority, will continue to afford favorable income tax treatment to REITs and their shareholders.

Maintaining our qualification for taxation as a REIT under the IRC will require us to continue to satisfy tests concerning, among other things, the nature of our assets, the sources of our income and the amounts we distribute to our shareholders. In order to meet these requirements, it may be necessary for us to sell or forgo attractive investments.

If we cease to qualify for taxation as a REIT under the IRC, then our ability to raise capital might be adversely affected, we may be subject to material amounts of federal and state income taxes, our cash available for distribution to our shareholders could be reduced, and the market price of our common shares could decline. In addition, if we lose or revoke our qualification for taxation as a REIT under the IRC for a taxable year, we will generally be prevented from requalifying for taxation as a REIT for the next four taxable years.

Distributions to shareholders generally will not qualify for reduced tax rates applicable to "qualified dividends."

Dividends payable by U.S. corporations to noncorporate shareholders, such as individuals, trusts and estates, are generally eligible for reduced federal income tax rates applicable to "qualified dividends." Distributions paid by REITs generally are not treated as "qualified dividends" under the IRC and the reduced rates applicable to such dividends do not generally apply. However, for tax years beginning before 2026, REIT dividends paid to noncorporate shareholders are generally taxed at an effective tax rate lower than applicable ordinary income tax rates due to the availability of a deduction under the IRC for specified forms of income from passthrough entities. More favorable rates will nevertheless continue to apply to regular corporate "qualified" dividends, which may cause some investors to perceive that an investment in a REIT is less attractive than an investment in a non-REIT entity that pays dividends, thereby reducing the demand and market price of our common shares.

REIT distribution requirements could adversely affect us and our shareholders.

We generally must distribute annually at least 90% of our REIT taxable income, subject to specified adjustments and excluding any net capital gain, in order to maintain our qualification for taxation as a REIT under the IRC. To the extent that we satisfy this distribution requirement, federal corporate income tax will not apply to the earnings that we distribute, but if we distribute less than 100% of our REIT taxable income, then we will be subject to federal corporate income tax on our undistributed taxable income. We intend to pay distributions to our shareholders to comply with the REIT requirements of the IRC. In addition, we will be subject to a 4% nondeductible excise tax if the actual amount that we pay to our shareholders in a calendar year is less than a minimum amount specified under federal tax laws.

From time to time, we may generate taxable income greater than our income for financial reporting purposes prepared in accordance with U.S. generally accepted accounting principles, or GAAP, or differences in timing between the recognition of taxable income and the actual receipt of cash may occur. If we do not have other funds available in these situations, among other things, we may borrow funds on unfavorable terms, sell investments at disadvantageous prices or distribute amounts that would otherwise be invested in future acquisitions in order to pay distributions sufficient to enable us to distribute enough of our taxable income to satisfy the REIT distribution requirement and to avoid corporate income tax and the 4% excise tax in a particular year. These alternatives could increase our costs or reduce our shareholders' equity. Thus, compliance with the REIT distribution requirements may hinder our ability to grow, which could cause the market price of our common shares to decline.

Even if we remain qualified for taxation as a REIT under the IRC, we may face other tax liabilities that reduce our cash flow.

Even if we remain qualified for taxation as a REIT under the IRC, we may be subject to federal, state and local taxes on our income and assets, including taxes on any undistributed income, excise taxes, state or local income, property and transfer taxes, and other taxes. Also, some jurisdictions may in the future limit or eliminate favorable income tax deductions, including the dividends paid deduction, which could increase our income tax expense. In addition, in order to meet the requirements for qualification and taxation as a REIT under the IRC, prevent the recognition of particular types of non-cash income, or avert the imposition of a 100% tax that applies to specified gains derived by a REIT from dealer property or inventory, we may hold or dispose of some of our assets and conduct some of our operations through our TRSs or other subsidiary corporations that will be subject to corporate level income tax at regular rates. In addition, while we intend that our transactions with our TRSs will be conducted on arm's length bases, we may be subject to a 100% excise tax on a transaction that the IRS or a court determines was not conducted at arm's length. Any of these taxes would decrease cash available for distribution to our shareholders.

If arrangements involving our TRSs fail to comply as intended with the REIT qualification and taxation rules, we may fail to qualify for taxation as a REIT under the IRC or be subject to significant penalty taxes.

We lease substantially all of our senior living communities to our TRSs pursuant to arrangements that, under the IRC, are intended to qualify the rents we receive from our TRSs as income that satisfies the REIT gross income tests. We also intend that our transactions with our TRSs be conducted on arm's length bases so that we and our TRSs will not be subject to penalty taxes under the IRC applicable to mispriced transactions. While relief provisions can sometimes excuse REIT gross income test failures, significant penalty taxes may still be imposed.

For our TRS arrangements to comply as intended with the REIT qualification and taxation rules under the IRC, a number of requirements must be satisfied, including:

- our TRSs may not directly or indirectly operate or manage a healthcare facility, as defined by the IRC;
- the leases to our TRSs must be respected as true leases for federal income tax purposes and not as service contracts, partnerships, joint ventures, financings or other types of arrangements;
- the leased properties must constitute qualified healthcare properties (including necessary or incidental property) under the IRC;
- our leased properties must be managed and operated on behalf of the TRSs by independent contractors who are less than 35% affiliated with us and who are actively engaged (or have affiliates so engaged) in the trade or business of managing and operating qualified healthcare properties for any person unrelated to us; and

- the rental and other terms of the leases must be arm's length.

We cannot be sure that the IRS or a court will agree with our assessment that our TRS arrangements comply as intended with REIT qualification and taxation rules. If arrangements involving our TRSs fail to comply as we intended, we may fail to qualify for taxation as a REIT under the IRC or be subject to significant penalty taxes.

Legislative or other actions affecting REITs could materially and adversely affect us and our shareholders.

The rules dealing with U.S. federal, state, and local taxation are constantly under review by persons involved in the legislative process and by the IRS, the U.S. Department of the Treasury and other taxation authorities. Changes to the tax laws, with or without retroactive application, could materially and adversely affect us and our shareholders. We cannot predict how changes in the tax laws might affect us or our shareholders. New legislation, Treasury regulations, administrative interpretations or court decisions could significantly and negatively affect our ability to remain qualified for taxation as a REIT or the tax consequences of such qualification to us and our shareholders.

Risks Related to Our Securities

Our quarterly cash distribution rate on our common shares is currently \$0.01 per common share and future distributions may remain at this level for an indefinite period or be eliminated and the form of payment could change.

During 2020, we reduced our quarterly cash distribution rate on our common shares to \$0.01 per common share to enhance our liquidity until our leverage profile otherwise improves, subject to applicable REIT tax requirements; however:

- our ability to pay distributions to our shareholders or sustain the rate of distributions may continue to be adversely affected if any of the risks described in this Annual Report on Form 10-K occur, including any negative impact caused by current market and economic conditions, such as high interest rates, prolonged high inflation and economic downturns or a possible recession, on our business, results of operations and liquidity; and
- the timing and amount of any distributions will be determined at the discretion of our Board of Trustees and will depend on various factors that our Board of Trustees deems relevant, including, but not limited to, our funds from operations, or FFO, our normalized funds from operations, or Normalized FFO, requirements to maintain our qualification for taxation as a REIT, limitations in our debt agreements, 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.

For these reasons, among others, our distribution rate may not increase for an indefinite period or we may cease paying distributions to our shareholders.

Further, in order to preserve liquidity, we may elect to, in part, pay distributions to our shareholders in a form other than cash, such as issuing additional common shares to our shareholders, as permitted by the applicable tax rules.

The Notes and the Guarantees are structurally subordinated to the payment of all indebtedness and other liabilities of our subsidiaries that do not guarantee the 2025 Notes, the 2026 Notes and the 2031 Notes.

We are the sole obligor on our senior secured notes due 2026, or the 2026 Notes, our outstanding senior unsecured notes, including our 9.75% senior notes due 2025, or the 2025 Notes, and our 4.375% senior notes due 2031, or the 2031 Notes, and any notes or other debt securities we may issue in the future, or, together with the 2026 Notes and our outstanding senior unsecured notes, the Notes. Our subsidiaries that guarantee the Notes are the sole obligor on the guarantees of such notes, or the Guarantees. The subsidiaries that guarantee the 2025 Notes, the 2026 Notes and the 2031 Notes do not currently guarantee any of our other Notes. Our non-guarantor subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due on the Notes or the Guarantees, or to make any funds available therefor, whether by dividend, distribution, loan or other payments. The rights of holders of the Notes to benefit from any of the assets of our non-guarantor subsidiaries are subject to the prior satisfaction of claims of those subsidiaries' creditors. As a result, the Notes and the Guarantees are, and, except to the extent that future Notes are guaranteed by our non-guarantor subsidiaries, will be, structurally subordinated to all indebtedness and other liabilities of our subsidiaries that do not guarantee the 2025 Notes, the 2026 Notes and the 2031 Notes, including guarantees of or pledges under other indebtedness of ours, payment obligations under lease agreements, trade payables and preferred equity. As of December 31, 2023, our non-guarantor subsidiaries had total indebtedness and other liabilities of approximately \$31.5 million (including guarantees of other indebtedness and trade payables

but excluding liabilities to us or a subsidiary guarantor), which are structurally senior to the 2025 Notes, the 2026 Notes and the 2031 Notes.

The Notes and the Guarantees, other than the 2026 Notes and related Guarantees on a senior secured basis, are unsecured and effectively subordinated to all of our and the subsidiary guarantors' existing and future secured debt to the extent of the value of the assets securing such debt.

The outstanding Notes and Guarantees, other than the 2026 Notes and related Guarantees on a senior secured basis, or the Unsecured Notes and Guarantees, are not secured and any Notes we may issue in the future may not be secured. Upon any distribution to our creditors in a bankruptcy, liquidation, reorganization or similar proceeding relating to us or our property, the holders of our secured debt, including debt under the 2026 Notes (to the extent such debt remains outstanding and is still then secured), will be entitled to exercise the remedies available to a secured lender under applicable law and pursuant to the instruments governing such debt and to be paid in full, from the assets securing that secured debt before any payment may be made with respect to the Notes that are not secured by those assets. In that event, because the Unsecured Notes and Guarantees will not be secured by any of our assets, it is possible that there will be no assets from which claims of holders of such unsecured Notes can be satisfied or, if any assets remain, that the remaining assets will be insufficient to satisfy those claims in full. If the value of such remaining assets is less than the aggregate outstanding principal amount of such unsecured Notes and accrued interest and all future debt ranking equally with such Unsecured Notes and Guarantees, we will be unable to fully satisfy our obligations under such unsecured Notes. In addition, if we fail to meet our payment or other obligations under our secured debt, the holders of that secured debt would be entitled to foreclose on our assets securing that secured debt and liquidate those assets. Accordingly, we may not have sufficient funds to pay amounts due on such unsecured Notes. As a result, noteholders may lose a portion or the entire value of their investment in such unsecured Notes. Further, the terms of the outstanding Unsecured Notes and Guarantees permit, and the terms of any Notes we may issue in the future may permit, us to incur additional secured debt subject to compliance with certain debt ratios. The Unsecured Notes and Guarantees will be effectively subordinated to any such additional secured debt.

Federal and state statutes allow courts, under specific circumstances, to void guarantees and require holders of notes to return payments received from guarantors.

Under the federal bankruptcy law and comparable provisions of state fraudulent transfer laws, the Guarantees and the related liens, if applicable (or any future Notes that are guaranteed by our subsidiaries), could be voided, or claims in respect of a guarantee and the related lien, if applicable, could be subordinated to all other debts of that guarantor if, among other things, the guarantor, at the time it incurred the debt evidenced by its guarantee and related lien, if applicable:

- received less than reasonably equivalent value or fair consideration for the incurrence of such guarantee or granting of such lien, if applicable;
- was insolvent or rendered insolvent by reason of such incurrence;
- was engaged in a business or transaction for which the guarantor's remaining assets constituted unreasonably small capital; or
- intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature.

In addition, any payment by that guarantor pursuant to its guarantee could be voided and required to be returned to the guarantor, or to a fund for the benefit of our creditors or the creditors of the guarantor.

The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, a guarantor would be considered insolvent if:

- the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all of its assets;
- the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they become due.

We cannot be sure as to what standard a court would apply in making these determinations. In addition, each Guarantee contains, and any future guarantees may contain, a provision intended to limit the guarantor's liability to the maximum amount that it could incur without causing the incurrence of obligations under its guarantee to be a fraudulent transfer. This provision may not be effective to protect the Guarantees or any future guarantees from being voided under fraudulent transfer laws, or may eliminate the guarantor's obligations or reduce the guarantor's obligations to an amount that effectively makes the guarantee worthless.

There may be no public market for certain of the Notes, and one may not develop, be maintained or be liquid.

We have not applied for listing of certain of the Notes on any securities exchange or for quotation on any automatic dealer quotation system, and we may not do so for Notes issued in the future. We cannot be sure of the liquidity of any market that may develop for such Notes, the ability of any holder to sell such Notes or the price at which holders would be able to sell such Notes. If a market for such Notes does not develop, holders may be unable to resell such Notes for an extended period of time, if at all. If a market for such Notes does develop, it may not continue or it may not be sufficiently liquid to allow holders to resell such Notes. Consequently, holders of the Notes may not be able to liquidate their investment readily, and lenders may not readily accept such Notes as collateral for loans.

The Notes may trade at a discount from their initial issue price or principal amount, depending upon many factors, including prevailing interest rates, the ratings assigned by rating agencies, the market for similar securities and other factors, including general economic conditions and our financial condition, performance and prospects. Any decline in market prices, regardless of cause, may adversely affect the liquidity and trading markets for the Notes.

A further downgrade in credit ratings could materially adversely affect the market price of the Notes and may increase our cost of capital.

The outstanding Notes are rated by two rating agencies and any Notes we may issue in the future may be rated by one or more rating agencies. These credit ratings are continually reviewed by rating agencies and may change at any time based upon, among other things, our results of operations and financial condition. In January 2023, Moody's Investor Services, or Moody's, downgraded the 2025 Notes and 2031 Notes ratings from B3 to Caa3 and our senior unsecured debt rating from Caa1 to Ca. In February 2023, Standard & Poor's Rating Services, or Standard & Poor's, downgraded the 2025 Notes and 2031 Notes ratings from BB- to B and our senior unsecured debt rating from B to CCC+. In September 2023, Moody's downgraded the 2025 Notes and 2031 Notes ratings from Caa3 to Ca and our senior unsecured debt rating from Ca to C. In September 2023, Standard & Poor's downgraded the 2025 Notes and 2031 Notes ratings from B to CCC+ and our senior unsecured debt rating from CCC+ to CCC-. In January 2024, Standard & Poor's upgraded the 2025 Notes and 2031 Notes ratings from CCC+ to B and our senior unsecured debt rating from CCC- to CCC+ and assigned a B rating for the 2026 Notes. Also in January 2024, Moody's upgraded the 2025 Notes and 2031 Notes ratings from Ca to Caa3 and our senior unsecured debt rating from C to Ca and assigned a Caa2 rating for the 2026 Notes. Negative changes in the ratings assigned to our debt securities could have an adverse effect on the market price of the Notes and our cost and availability of capital, which could in turn have a material adverse effect on our results of operations and our ability to satisfy our debt service obligations.

We may not have the ability to raise the funds necessary to finance the repurchase of the 2025 Notes, the 2026 Notes and the 2031 Notes upon a change of control event as will be required.

Upon the occurrence of a change of control, we will be required to offer to repurchase the outstanding 2025 Notes and 2031 Notes at 101% of the principal amount thereof, and the outstanding 2026 Notes at 100% of the principal amount thereof, in each case plus accrued and unpaid interest on such Notes, if any, to, but not including, the date of repurchase. However, it is possible that we will not have sufficient funds, or the ability to raise sufficient funds, at the time of the change of control to make the required repurchase of such Notes. In addition, restrictions under future debt we may incur may not allow us to repurchase such Notes upon a change of control, which could result in such debt becoming immediately due and payable and the commitments thereunder terminated. If we could not refinance such debt or otherwise obtain a waiver from the holders of such debt, we would be prohibited from repurchasing the 2025 Notes, the 2026 Notes and the 2031 Notes, which would constitute an event of default under the indentures and related supplements governing such Notes, which in turn would constitute a default under such debt arrangements. In addition, certain important corporate events, such as leveraged recapitalizations that would increase the level of our indebtedness, would not constitute a "Change of Control" under the indentures and related supplements governing the 2025 Notes, the 2026 Notes and the 2031 Notes although these types of transactions could affect our capital structure or credit ratings and the holders of such Notes. Further, courts interpreting change of control provisions under New York law (which is the governing law of the indentures governing the 2025 Notes, the 2026 Notes and the 2031 Notes) have not provided clear and consistent meanings of such change of control provisions which leads to subjective judicial interpretation of what may constitute a "Change of Control."

Some or all of the Guarantees may be released automatically.

A subsidiary guarantor may be released from its Guarantee under certain circumstances. Such release may occur at any time upon a sale, disposition or transfer, in compliance with the provisions of the indentures and related supplements governing 2025 Notes, the 2026 Notes and the 2031 Notes, of the capital stock of such subsidiary guarantor or of substantially all of the assets of such subsidiary guarantor, or if such subsidiary guarantor becomes an Excluded Subsidiary or a Foreign Subsidiary, as such terms are defined in the applicable indenture or supplemental indenture. In addition, if the 2025 Notes and the 2031 Notes have a rating equal to or higher than Baa2 (or the equivalent) by Moody's or BBB (or the equivalent) by Standard & Poor's and at such time no default or event of default under the indenture and related supplements governing the 2025 Notes and the 2031 Notes has occurred and is continuing, the Guarantees and all other obligations of the subsidiary guarantors under the indenture will automatically terminate and be released. Accordingly, the 2025 Notes, the 2026 Notes and the 2031 Notes may not at all times be guaranteed by some or all of the subsidiaries which guaranteed the 2025 Notes, the 2026 Notes and the 2031 Notes on the date they were initially issued.

Item 1B. Unresolved Staff Comments.

None.

Item 1C. Cybersecurity.

We rely on the information technology and systems maintained by our managers, including RMR, and rely on our managers to identify and manage material risks from cybersecurity threats. RMR and our senior living community managers take various actions, and incur significant costs, to maintain and protect the operation and security of information technology and systems, including the data maintained in those systems. Our Audit Committee oversees cybersecurity matters, including the material risks related thereto, and regularly receives updates from RMR's chief information officer regarding the development and advancement of its cybersecurity strategy, as well as the related risks. In the event of a cybersecurity incident, RMR has a detailed incident response plan in place for contacting authorities and informing key stakeholders, including our management. We have not been materially affected and do not believe we are reasonably likely to be materially affected by any risks from cybersecurity threats, including as a result of previous incidents.

Item 2. Properties.

At December 31, 2023, our portfolio was comprised of 371 owned properties. The gross book value of real estate assets at cost plus certain acquisition costs, before depreciation and purchase price allocations and less impairment write downs, or gross book value of real estate assets, of these properties totaled \$7.2 billion at December 31, 2023. As of December 31, 2023, two properties with a gross book value of real estate assets of \$43.4 million were subject to finance lease obligations with an aggregate principal balance of \$3.9 million. As of December 31, 2023, one property with a gross book value of real estate assets of \$25.0 million was encumbered by a mortgage with a principal balance of \$9.1 million. As of December 31, 2023, 95 properties with a gross book value of real estate assets of \$1.6 billion were encumbered by our senior secured notes with a principal balance of \$940.5 million. The eleven properties owned by our unconsolidated joint ventures in which we own 10% and 20% interests were encumbered by three mortgages totaling \$1.1 billion as of December 31, 2023. For more information regarding our finance leases, mortgages, senior secured notes and two unconsolidated joint ventures, see Notes 3 and 9 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

The following table summarizes certain information about our owned properties as of December 31, 2023. All dollar amounts are in thousands:

State	Office Portfolio			Senior Housing Operating Portfolio			All Other			Consolidated		
	Number of Properties	Gross Book		Number of Properties	Gross Book		Number of Properties	Gross Book		Number of Properties	Gross Book	
		Value of Real Estate Assets ⁽¹⁾	Net Book Value		Value of Real Estate Assets ⁽¹⁾	Net Book Value		Value of Real Estate Assets ⁽¹⁾	Net Book Value		Value of Real Estate Assets ⁽¹⁾	Net Book Value
AL	—	\$ —	\$ —	8	\$ 105,624	\$ 73,132	—	\$ —	\$ —	8	\$ 105,624	\$ 73,132
AR	—	—	—	3	46,373	27,703	—	—	—	3	46,373	27,703
AZ	4	77,357	54,998	6	171,288	103,994	1	3,510	1,885	11	252,155	160,877
CA	10	448,262	328,089	9	211,388	134,862	1	7,281	3,994	20	666,931	466,945
CO	2	20,780	12,373	8	116,698	75,925	2	18,594	11,783	12	156,072	100,081
CT	1	7,928	5,243	—	—	—	—	—	—	1	7,928	5,243
DC	2	107,529	80,622	—	—	—	—	—	—	2	107,529	80,622
DE	—	—	—	6	125,926	82,377	—	—	—	6	125,926	82,377
FL	7	43,691	30,271	19	667,684	429,150	2	18,487	16,501	28	729,862	475,922
GA	5	89,609	60,611	25	322,044	214,549	2	50,028	36,416	32	461,681	311,576
HI	1	80,643	56,944	—	—	—	—	—	—	1	80,643	56,944
ID	—	—	—	—	—	—	2	23,298	15,541	2	23,298	15,541
IL	4	70,142	44,639	11	186,787	109,603	1	20,641	13,115	16	277,570	167,357
IN	1	22,296	12,445	11	183,207	121,584	2	69,406	48,704	14	274,909	182,733
KS	2	63,299	39,240	3	71,093	44,037	—	—	—	5	134,392	83,277
KY	—	—	—	9	120,188	67,793	—	—	—	9	120,188	67,793
MA	6	166,169	123,338	1	35,524	20,967	—	—	—	7	201,693	144,305
MD	1	8,252	5,707	11	269,741	180,513	1	20,964	14,605	13	298,957	200,825
MI	—	—	—	—	—	—	5	15,942	8,617	5	15,942	8,617
MN	9	128,542	85,784	1	16,969	12,514	2	6,319	3,440	12	151,830	101,738
MO	3	141,111	89,045	5	73,817	46,698	—	—	—	8	214,928	135,743
NC	2	61,899	42,663	16	240,351	174,940	1	6,839	3,689	19	309,089	221,292
NE	—	—	—	1	8,661	5,312	1	26,702	18,239	2	35,363	23,551
NJ	—	—	—	3	128,507	88,895	1	2,277	2,277	4	130,784	91,172
NM	2	39,879	28,465	1	34,237	19,433	3	33,303	20,620	6	107,419	68,518
NV	—	—	—	2	85,927	58,415	—	—	—	2	85,927	58,415
NY	3	80,821	53,425	1	115,283	80,642	—	—	—	4	196,104	134,067
OH	1	18,601	11,573	1	50,011	29,616	1	4,428	1,643	3	73,040	42,832
OR	—	—	—	1	50,225	43,158	—	—	—	1	50,225	43,158
PA	4	57,376	37,442	7	93,517	57,080	2	3,535	1,952	13	154,428	96,474
SC	1	4,942	3,291	17	141,655	99,483	2	3,935	2,195	20	150,532	104,969
TN	1	9,764	6,159	13	185,177	137,456	2	15,667	9,698	16	210,608	153,313
TX	11	223,296	149,414	13	390,146	251,462	1	20,502	13,618	25	633,944	414,494
VA	8	130,117	83,289	11	150,770	97,382	—	—	—	19	280,887	180,671
WA	—	—	—	—	—	—	2	18,743	10,714	2	18,743	10,714
WI	10	169,236	112,860	7	121,620	83,833	—	—	—	17	290,856	196,693
WY	—	—	—	2	14,997	7,940	—	—	—	2	14,997	7,940
Total	101	2,271,541	1,557,930	232	4,535,435	2,980,448	37	390,401	259,246	370	7,197,377	4,797,624
Held for Sale	1	13,405	9,377	—	—	—	—	—	—	1	13,405	9,377
Grand Total	102	\$ 2,284,946	\$ 1,567,307	232	\$ 4,535,435	\$ 2,980,448	37	\$ 390,401	\$ 259,246	371	\$ 7,210,782	\$ 4,807,001

(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.

Item 3. Legal Proceedings.

From time to time, we may become involved in litigation matters incidental to the ordinary course of our business. Although we are unable to predict with certainty the eventual outcome of any litigation, we are currently not a party to any litigation which we expect to have a material adverse effect on our business.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

Our common shares are traded on Nasdaq (symbol: DHC).

As of February 21, 2024, there were 3,269 shareholders of record of our common shares, although there is a larger number of beneficial owners.

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

Calendar Month	Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
December 1 - December 31, 2023	2,451	\$ 3.06	—	—

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

Our current cash distribution rate to common shareholders is \$0.01 per share per quarter, or \$0.04 per share per year. However, the timing, amount and form of future distributions will be determined at the discretion of our Board of Trustees and will depend upon various factors that our Board of Trustees deems relevant, including, but not limited to, our FFO, our Normalized FFO, requirements to maintain our qualification for taxation as a REIT, limitations in our debt agreements, 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. Therefore, we cannot be sure that we will continue to pay distributions in the future or that the amount of any distributions we do pay will not decrease.

Item 6. [Reserved]**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

The following discussion should be read in conjunction with our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

OVERVIEW

We are a REIT organized under Maryland law that primarily owns medical office and life science properties, senior living communities and other healthcare related properties throughout the United States. As of December 31, 2023, we owned 371 properties located in 36 states and Washington, D.C., including one property classified as held for sale and three closed senior living communities. At December 31, 2023, 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.

As of December 31, 2023, 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 98% leased with an average (by annualized rental income) remaining lease term of 5.3 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, high interest rates, prolonged high inflation, labor market challenges, supply chain disruptions, volatility in the public equity and debt markets, geopolitical risks, economic downturns or a possible recession and changes in real estate utilization. We expect continued volatility in labor, insurance and food costs in our SHOP segment. For further information and risks relating to these economic uncertainties and their impact on our business and financial condition, see elsewhere in this Annual Report on Form 10-K, including "Warning Concerning Forward-Looking Statements," Part I, Item 1, "Business" and Part I, Item 1A, "Risk Factors".

In response to significant and prolonged increases in inflation, the U.S. Federal Reserve has raised interest rates multiple times since the beginning of 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 interest rates may remain at the current high levels or continue to increase. These inflationary pressures in the United States, as well as global geopolitical instability and tensions, have given rise to uncertainty regarding economic downturns or a possible recession and 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 amounts 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.

We are encouraged by positive trends, including increases in rates and occupancy, in our SHOP segment. Additionally, we also expect favorable supply and demand dynamics in the senior living industry to enable our operators to generate better returns at our communities than we have 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 and decline, which will provide our operators the opportunity to increase rates in excess of increases in costs, resulting in improving returns to us.

On April 11, 2023, we and Office Properties Income Trust, or 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. On September 1, 2023, we and OPI mutually terminated the Merger Agreement, effective September 1, 2023. Neither we nor OPI were required to pay any termination fee as a result of the mutual decision to terminate the Merger Agreement, and we and OPI bore our and its respective costs and expenses related to the Merger Agreement in accordance with the terms of the Merger Agreement. We recorded \$9.9 million of expenses during the year ended December 31, 2023 related to the terminated merger with OPI, which is included in acquisition and certain other transaction related costs in our consolidated statement of operations. For more information regarding the merger, see Note 8 to our consolidated financial statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

PORTFOLIO OVERVIEW

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

(As of December 31, 2023)	Number of Properties	Square Feet or Number of Units	Gross Book Value of Real Estate Assets ⁽¹⁾	% of Total Gross Book Value of Real Estate Assets	Investment per Square Foot or Unit ⁽²⁾	2023 Revenues	% of 2023 Revenues	2023 NOI ⁽³⁾	% of 2023 NOI
Office Portfolio ⁽⁴⁾	102	8,609,921 sq. ft.	\$ 2,284,946	31.7 %	\$ 265	\$ 220,530	15.6 %	\$ 122,566	51.9 %
SHOP	232	25,209 units	4,535,435	62.9 %	\$ 179,913	1,151,908	81.7 %	76,817	32.5 %
Triple net leased senior living communities	27	2,062 units	202,908	2.8 %	\$ 98,403	24,588	1.7 %	24,583	10.4 %
Wellness centers	10	812,000 sq. ft.	187,493	2.6 %	\$ 231	13,282	1.0 %	12,191	5.2 %
Total	371		\$ 7,210,782	100.0 %		\$ 1,410,308	100.0 %	\$ 236,157	100.0 %

	Occupancy	
	As of and for the Year Ended	
	December 31,	
	2023	2022
Office Portfolio ⁽⁵⁾	86.9 %	84.7 %
SHOP	78.1 %	74.4 %
Triple net leased senior living communities ⁽⁶⁾⁽⁷⁾	80.7 %	79.9 %
Wellness centers ⁽⁷⁾	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, at December 31, 2023.
- (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 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 December 31, 2023 and 2022 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 periods prior to our ownership of certain properties, 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 our 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 the 12 months ended September 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.

We operate in, and report financial information for, the following two segments: Office Portfolio and SHOP. 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.

We also report "non-segment" operations, which consists of triple net leased senior living communities that are leased to third party operators from which we receive rents and wellness centers.

Office Portfolio

As of December 31, 2023, we owned 102 medical office and life science properties located in 24 states and Washington, D.C. These properties have a total of 8.6 million square feet.

During the year ended December 31, 2023, we entered into new and renewal leases in our Office Portfolio segment as summarized in the following table (dollars and square feet in thousands, except per square foot amounts):

	Year Ended December 31, 2023					
	New Leases		Renewals		Total	
Square feet leased during the period	284		602		886	
Weighted average rental rate change (by rentable square feet)	12.8	%	10.4	%	11.1	%
Weighted average lease term (years)	10.3		6.2		7.5	
Total leasing costs and concession commitments ⁽¹⁾	\$	24,151	\$	11,932	\$	36,083
Total leasing costs and concession commitments per square foot ⁽¹⁾	\$	85.08	\$	19.82	\$	40.74
Total leasing costs and concession commitments per square foot per year ⁽¹⁾	\$	8.24	\$	3.20	\$	5.42

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

As of December 31, 2023, lease expirations in our Office Portfolio segment were as follows (dollars in thousands):

Year	Number of Tenants	Square Feet Leased	Percent of Total	Cumulative Percent of Total	Annualized Rental Income ⁽¹⁾	Percent of Total	Cumulative Percent of Total
2024	73	654,793	9.1 %	9.1%	\$ 15,150	7.1%	7.1%
2025	76	617,857	8.5 %	17.6%	17,251	8.0%	15.1%
2026	57	759,842	10.5 %	28.1%	23,768	11.1%	26.2%
2027	62	944,509	13.1 %	41.2%	22,875	10.6%	36.8%
2028	55	1,192,516	16.5 %	57.7%	33,660	15.7%	52.5%
2029	49	550,397	7.6 %	65.3%	16,408	7.6%	60.1%
2030	22	287,954	4.0 %	69.3%	7,239	3.4%	63.5%
2031	20	905,907	12.5 %	81.8%	26,296	12.2%	75.7%
2032	15	266,009	3.7 %	85.5%	11,858	5.5%	81.2%
2033 and thereafter	44	1,054,763	14.5 %	100.0%	40,289	18.8%	100.0%
Total	473	7,234,547	100.0 %		\$ 214,794	100.0%	
Weighted average remaining lease term (in years)		5.2			5.7		

(1) Annualized rental income is based on rents pursuant to existing leases as of December 31, 2023, 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.

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The following table presents information concerning our Office Portfolio tenants that represent 1% or more of total Office Portfolio annualized rental income as of December 31, 2023 (dollars in thousands):

Tenant	Square Feet Leased	Percent of Total Square Feet Leased	Annualized Rental Income ⁽¹⁾	Percent of Total Annualized Rental Income ⁽¹⁾	Lease Expiration
Advocate Aurora Health	631,529	8.7%	\$ 16,939	7.9%	2026 - 2031
Alamar Biosciences, Inc.	88,508	1.2%	6,194	2.9%	2034
KSQ Therapeutics, Inc.	54,633	0.8%	5,595	2.6%	2032
Boston Children's Hospital	99,063	1.4%	5,573	2.6%	2028
Merck & Co., Inc.	55,102	0.8%	5,290	2.5%	2033
Sonova Holding AG	116,444	1.6%	4,875	2.3%	2033
Magellan Health Inc.	232,521	3.2%	4,643	2.2%	2025
Medtronic, Inc.	201,522	2.8%	4,512	2.1%	2027 - 2028
Tokio Marine Holdings Inc.	81,072	1.1%	3,982	1.9%	2024 - 2033
Abbvie Inc.	197,976	2.7%	3,972	1.8%	2027
United Healthcare Services, Inc.	149,719	2.1%	3,947	1.8%	2026
Cigna Holding Co.	219,644	3.0%	3,914	1.8%	2024
PerkinElmer Health Sciences, Inc.	105,462	1.5%	3,681	1.7%	2028
McKesson Corporation	475,204	6.6%	3,556	1.7%	2025 - 2029
HCA Holdings Inc.	80,478	1.1%	3,490	1.6%	2024 - 2027
Duke University	126,225	1.7%	3,359	1.6%	2024
Hawaii Pacific Health	85,956	1.2%	3,289	1.5%	2024 - 2029
New York University	109,983	1.5%	3,248	1.5%	2024 - 2028
Ultragenyx Pharmaceutical Inc.	63,048	0.9%	3,123	1.5%	2026
Virginia Commonwealth University Health System	135,375	1.9%	2,920	1.4%	2032
WRA Management, Inc.	35,067	0.5%	2,609	1.2%	2025 - 2045
The University of Kansas Health System	104,815	1.4%	2,462	1.1%	2027 - 2028
Organogenesis Holdings Inc.	22,966	0.3%	2,431	1.1%	2031
Covenant Health System	55,807	0.8%	2,376	1.1%	2034
Warner Chilcott Limited	81,712	1.1%	2,280	1.1%	2027
Cytek BioSciences, Inc.	99,378	1.4%	2,241	1.0%	2029
All Other Tenants	3,525,338	48.7%	104,293	48.5%	2024 - 2043
Totals	7,234,547	100.0%	\$ 214,794	100.0%	

(1) Annualized rental income is based on rents pursuant to existing leases as of December 31, 2023, 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.

Senior Housing Operating Portfolio

Our managed senior living communities are operated by third parties pursuant to management agreements. Five Star, which is an operating division of AlerisLife, manages many of our SHOP communities, and we lease nearly all of our senior living communities, including those managed by third party managers, to our TRSS.

In June 2021, we amended our then existing management arrangements with Five Star and Five Star agreed to cooperate with us in transitioning 108 of our senior living communities to other third party managers. We and Five Star entered into an amended and restated master management agreement, or the Master Management Agreement, for the senior living communities that Five Star is continuing to manage. Pursuant to the Master Management Agreement, Five Star receives a

management fee equal to 5% of the gross revenues realized at the applicable senior living communities plus reimbursement for its direct costs and expenses related to such communities. Five Star may receive an annual incentive fee equal to 15% of the amount by which the annual EBITDA of all communities on a combined basis exceeds the target EBITDA for all communities on a combined basis for such calendar year. The target EBITDA for those senior living communities on a combined basis is increased annually based on the greater of the annual increase of the consumer price index, or CPI, or 2%, plus 6% of any capital investments funded at the managed senior living communities on a combined basis in excess of the target capital investment. Unless otherwise agreed, the target capital investment increases annually based on the greater of the annual increase of CPI or 2%. Any senior living communities that are undergoing a major renovation or repositioning are excluded from the calculation of the incentive fee. The Master Management Agreement expires in 2036, subject to Five Star's right to extend for two consecutive five year terms if Five Star achieves certain performance targets for the combined managed communities portfolio, unless earlier terminated. Pursuant to the Master Management Agreement, beginning in 2025, we have the right to terminate up to 10% of the senior living communities that Five Star is continuing to manage, based on total revenues per year for failure to meet 80% of a target EBITDA for the applicable period. In addition, Five Star delivered to us a related amended and restated guaranty agreement pursuant to which Five Star is continuing to guarantee the payment and performance of each of its applicable subsidiary's obligations under the applicable management agreements. As of December 31, 2023, Five Star managed 119 senior living communities for our account.

We completed the transition of 107 senior living communities from Five Star to other third party managers in 2021 and we have closed the remaining senior living community. In October 2022, we and one of our operators agreed to terminate the lease agreements for three of these senior living communities and replaced them with management agreements under our TRS structure, and an affiliate of the same operator will continue to operate these properties. Additionally, effective October 31, 2022, Five Star ceased managing our active adult community, and RMR assumed management of that community. For the years ended December 31, 2023, 2022 and 2021, we recorded \$0, \$2.1 million and \$17.4 million, respectively, of costs that we incurred related to retention and other transition costs to acquisition and certain other transaction related costs in our consolidated statements of operations.

The terms of the management agreements with the other third party managers are generally as follows: the other third party managers will receive a management fee equal to 5% to 6% of the gross revenues realized at the applicable senior living communities plus reimbursement for direct costs and expenses related to such communities. These agreements generally also provide for the other third party managers to earn a minimum base fee for a portion of the term of the agreement. Additionally, the other third party managers have the ability to earn incentive fees equal to 15% to 25% of the amount by which EBITDA of the applicable communities exceeds the target EBITDA for the applicable communities. The other third party managers can also earn a construction supervision fee ranging between 3% and 5% of construction costs.

The initial terms of the management agreements with the other third party managers are generally five years, subject to automatic extensions of successive terms of two years each unless earlier terminated or timely notice of nonrenewal is delivered. The management agreements with the other third party managers also generally provide us with the right to terminate the management agreements for communities that do not earn 70% to 80% of the target EBITDA for such communities, after an agreed upon stabilized period.

In December 2023, we notified one of our third party managers, Cedarhurst Senior Living, which manages certain of our communities located in Wisconsin and Illinois, that we will be terminating our management agreement with respect to these communities. We expect to transition these communities during the first half of 2024 to another third party manager, Charter Senior Living, which we have an existing relationship with. We expect the terms of the management agreement for these communities to be generally consistent with the terms outlined above. We expect to pay a termination fee of approximately \$1.0 million in connection with this transition.

The following table presents a summary of the other third party managers as of December 31, 2023:

Manager	Location	Number of Communities	Number of Units
Cedarhurst Senior Living	IL/WI	13	767
Charter Senior Living	FL/MD/TN/VA	17	977
IntegraCare Senior Living	PA	2	143
Life Care Services	DE	3	517
Navion Senior Solutions	SC	5	235
Northstar Senior Living	AZ/CA	7	418
Oaks-Caravita Senior Care	GA/SC	26	1,415
Oaks Senior Living	GA	3	264
Omega Senior Living	NE	1	69
Phoenix Senior Living	AL/AR/KY/MO/NC/SC	23	1,486
RMR	TX	1	169
Stellar Senior Living	CO/TX/WY	10	1,094
Total		111	7,554

For further information regarding the terms of the Master Management Agreement and of the management agreements with the other third party managers and our other business arrangements with Five Star, see Note 6 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K, and for more information about our dealings and relationships with Five Star generally, and the risks which may arise as a result of these related person transactions, see “Risk Factors—Risks Related to Our Relationships with RMR and AlerisLife (including Five Star)” in Part I, Item 1A of this Annual Report on Form 10-K, “—Related Person Transactions” below and Note 8 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

All Other

As of December 31, 2023, lease expirations at our triple net leased senior living communities leased to third party operators and wellness centers were as follows (dollars in thousands):

Year	Number of Properties	Number of Units or Square Feet	Annualized Rental Income ⁽¹⁾	Percent of Total	Cumulative Percent of Total
2024	—	—	\$ —	— %	— %
2025	3	129,500 sq. ft.	1,458	3.7 %	3.7 %
2026	—	—	—	— %	3.7 %
2027	4	533 units	4,612	11.8 %	15.5 %
2028	—	—	—	— %	15.5 %
2029	1	155 units	547	1.4 %	16.9 %
2030	2	283 units	3,496	8.9 %	25.8 %
2031	1	—	—	— %	25.8 %
2032	18	876 units	9,836	25.1 %	50.9 %
2033 and thereafter	8	215 units and 682,500 sq. ft.	19,227	49.1 %	100.0 %
Total	37		\$ 39,176	100.0 %	

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

During the year ended December 31, 2023 we entered into new leases at certain of our wellness centers in our "non-segment" operations as summarized in the following table (dollars and square feet in thousands, except per square foot amounts):

	Year Ended December 31, 2023	
	New Leases	
Square feet leased during the period		225
Weighted average rental rate change (by rentable square feet)		(9.9) %
Weighted average lease term (years)		18.6
Total leasing costs and concession commitments ⁽¹⁾	\$	30,071
Total leasing costs and concession commitments per square foot ⁽¹⁾	\$	133.95
Total leasing costs and concession commitments per square foot per year ⁽¹⁾	\$	7.20

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

GENERAL INDUSTRY TRENDS

The healthcare industry remains one of the most resilient commercial real estate sectors, in part due to the scale of the U.S. healthcare market, which collectively represents approximately 17% of the U.S. GDP, according to CMS. The healthcare sector's continued expansion has been driven by rising standards of care, increasing life expectancies and other demographic trends, as well as funding from both public and private sources.

In the medical office sector, the industry has been trending toward a greater proportion of outpatient care resulting in an increasing number of multi-practice medical office buildings, anchor leased by hospital systems, and a decline in free-standing medical practices, a potential benefit to our Office Portfolio. The pandemic further accelerated this trend because of stronger consumer preference for off-campus care in more convenient locations. Costs within the industry continue to be in focus with health system operating margins being under pressure in recent years, which is, while moderating, a theme that may continue in 2024.

In the life science sector, particularly with properties that provide laboratory or medical manufacturing space, over the years there has been significant capital invested across the bio-medical research space, driving a large increase in demand for laboratory and research space. Venture capital funding reached an all-time high in 2021; however, such funding significantly declined in 2022 and 2023. Funding in the past two years has been increasingly concentrated on companies located in the top three markets of Boston, San Francisco and San Diego with more stringent requirements.

New construction of life science properties hit record levels in 2021 and 2023 across major markets, and the construction pipeline, while decreasing, remains elevated into 2024. This has been met by softening demand from tenants and resulted in rising vacancy rates across the major life science markets.

We believe that the primary market for senior living services is individuals age 80 and older. According to U.S. Census data, the age 75+ demographic is projected to be among the fastest growing age cohorts in the United States over the next 20 years, and according to CMS, the age 85+ demographic is projected to grow over 30% over the next five years. Also, as a result of medical advances, seniors are living longer. Due to these demographic trends, we expect the demand for senior living services and housing to increase for the foreseeable future. Despite this trend, future economic downturns, softness in the U.S. housing market, higher levels of unemployment among our potential residents' family members, changes in demand and market practices, lower levels of consumer confidence, stock market volatility and/or changes in demographics could adversely affect the ability of seniors to afford the resident fees at our senior living communities.

The medical advances which are increasing average life spans are also causing some seniors to delay moving to senior living communities until they require greater care or to forgo moving to senior living communities altogether, but we do not believe this factor is sufficient to offset the long term positive demographic trends causing increased demand for senior living communities for the foreseeable future.

We believe there is a favorable mix of increased demand and limited supply for senior living communities which we expect will benefit us and our existing portfolio of senior living communities in the future. As a result of elevated financing and construction costs over recent years, inventory growth for senior living communities has reached a new low. According to NIC, annual inventory growth was 1.3% across all markets during the fourth quarter of 2023. Additionally, annual absorption was

4.1% for the fourth quarter of 2023, according to NIC. We expect improving market fundamentals and constrained supply to continue to result in increased occupancy at our senior living communities over the next 12 to 24 months.

The senior living industry is subject to extensive and frequently changing federal, state and local laws and regulations. For further information regarding these laws and regulations, and possible legislative and regulatory changes, see "Business—Government Regulation and Reimbursement" in Part I, Item 1 of this Annual Report on Form 10-K.

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

The following table summarizes the results of operations of each of our segments for the years ended December 31, 2023 and 2022:

	For the Year Ended December 31,	
	2023	2022
Revenues:		
Office Portfolio	\$ 220,530	\$ 222,390
SHOP	1,151,908	1,022,826
Non-Segment	37,870	38,350
Total revenues	\$ 1,410,308	\$ 1,283,566
Net income (loss):		
Office Portfolio	\$ (12,183)	\$ 378,282
SHOP	(99,620)	(139,589)
Non-Segment	(181,769)	(254,467)
Net income (loss)	\$ (293,572)	\$ (15,774)

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

Year Ended December 31, 2023 Compared to Year Ended December 31, 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 year ended December 31, 2023 to the year ended December 31, 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." For a comparison of consolidated results for the year ended December 31, 2022 compared to the year ended December 31, 2021, see Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended December 31, 2022.

	For the Year Ended December 31,			
	2023	2022	\$ Change	% Change
NOI by segment:				
Office Portfolio	\$ 122,566	128,095	(5,525)	(4.3)%
SHOP	76,817	8,726	68,091	nm
Non-Segment	36,774	37,679	(905)	(2.4)%
Total NOI	236,157	174,496	61,661	35.3%
Depreciation and amortization	284,083	239,280	44,803	18.7%
General and administrative	26,131	26,435	(304)	(1.1)%
Acquisition and certain other transaction related costs	10,853	2,605	8,248	nm
Impairment of assets	18,380	—	18,380	100.0%
Gain on sale of properties	1,205	321,862	(320,657)	(99.6)%
Gains and losses on equity securities, net	8,126	(25,660)	33,786	(131.7)%
Interest and other income	15,536	15,929	(393)	(2.5)%
Interest expense	(191,775)	(209,383)	17,608	(8.4)%
Loss on modification or early extinguishment of debt	(2,468)	(30,043)	27,575	(91.8)%
Loss before income tax expense and equity in net (losses) earnings of investees	(272,666)	(21,119)	(251,547)	nm
Income tax expense	(445)	(710)	265	(37.3)%
Equity in net (losses) earnings of investees	(20,461)	6,055	(26,516)	nm
Net loss	\$ (293,572)	(15,774)	(277,798)	nm

nm – not meaningful

Office Portfolio:

	Comparable Properties ⁽¹⁾		All Properties	
	As of December 31,		As of December 31,	
	2023	2022	2023	2022
Total buildings	91	91	102	105
Total square feet	7,683	7,689	8,610	8,811
Occupancy	92.1 %	92.1 %	86.9 %	84.7 %

	Year Ended December 31,									
	Comparable ⁽¹⁾				Non-Comparable					
	Properties Results				Properties Results		Consolidated Properties Results			
			\$	%					\$	%
	2023	2022	Change	Change	2023	2022	2023	2022	Change	Change
Rental income	\$ 197,840	\$ 194,212	\$ 3,628	1.9 %	\$ 22,690	\$ 28,178	\$ 220,530	\$ 222,390	\$ (1,860)	(0.8) %
Property operating expenses	(83,177)	(79,598)	3,579	4.5 %	(14,787)	(14,701)	(97,964)	(94,299)	3,665	3.9 %
NOI	\$ 114,663	\$ 114,614	\$ 49	0.0 %	\$ 7,903	\$ 13,477	\$ 122,566	\$ 128,091	\$ (5,525)	(4.3) %

(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 decreased due to 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, partially offset by the 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. Rental income increased at our comparable properties primarily due to higher average rents resulting from our new and renewal leasing activity, increases in property operating expense reimbursements at certain of our comparable properties, an early termination fee recognized at one of our properties and increased parking revenue 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 is primarily due to an increase in property operating expenses at our comparable properties and at certain of our recently developed 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 costs, repairs and maintenance expense, utilities expense and other direct costs at certain of our comparable properties, partially offset by decreases in real estate taxes.

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 Year Ended		As of and For the Year Ended	
	December 31,		December 31,	
	2023	2022	2023	2022
Total properties	225	225	232	237
Number of units	24,499	24,499	25,209	25,346
Occupancy	78.5 %	74.5 %	78.1 %	74.4 %
Average monthly rate ⁽²⁾	\$ 4,824	\$ 4,527	\$ 4,821	\$ 4,506

	Year Ended December 31,									
	Comparable ⁽¹⁾					Non-Comparable				
	Properties Results					Properties Results				
			\$	%				Consolidated Properties Results		
	2023	2022	Change	Change		2023	2022	2023	2022	
Residents fees and services	\$ 1,132,280	\$ 1,010,723	\$ 121,557	12.0 %	\$ 19,628	\$ 12,103	\$ 1,151,908	\$ 1,022,826	\$ 129,082	12.6 %
Property operating expenses	(1,054,545)	(996,954)	57,591	5.8 %	(20,546)	(17,146)	(1,075,091)	(1,014,100)	60,991	6.0 %
NOI	\$ 77,735	\$ 13,769	\$ 63,966	464.6 %	\$ (918)	\$ (5,043)	\$ 76,817	\$ 8,726	\$ 68,091	780.3 %

- (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 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 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 in October 2022 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 consist of wages and benefit costs of community level personnel, real estate taxes, utility expenses, insurance, repairs and maintenance expense, management fees, cleaning expense and other direct costs of operating these communities. Property operating expenses increased primarily due to increases in labor costs, dietary expenses, 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 Year Ended		As of and For the Year Ended	
	December 31,		December 31,	
	2023	2022	2023	2022
Total properties:				
Triple net leased senior living communities	26	26	27	27
Wellness centers	10	10	10	10

	Year Ended December 31,									
	Comparable ⁽²⁾					Non-Comparable				
	Properties Results					Properties Results				
			\$	%				Consolidated Properties Results		
	2023	2022	Change	Change		2023	2022	2023	2022	
Rental income	\$ 37,033	\$ 36,371	\$ 662	1.8 %	\$ 837	\$ 1,979	\$ 37,870	\$ 38,350	\$ (480)	(1.3) %
Property operating expenses	(1,096)	(671)	425	63.3 %	—	—	(1,096)	(671)	425	63.3 %
NOI	\$ 35,937	\$ 35,700	\$ 237	0.7 %	\$ 837	\$ 1,979	\$ 36,774	\$ 37,679	\$ (905)	(2.4) %

- (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, partially offset by an increase in rental income at our comparable properties. The increase in comparable properties rental income was primarily due to net leasing activity and increased property operating expense reimbursements 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 direct costs of operating certain of our wellness centers. Pursuant to an agreement with a previously defaulted 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:

References to changes in the income and expense categories below relate to the comparison of consolidated results for the year ended December 31, 2023, compared to the year ended December 31, 2022.

Depreciation and amortization expense. Depreciation and amortization expense increased primarily due to the purchase of capital improvements at certain of our properties, the write off of unamortized assets as a result of a tenant default at one property in our Office Portfolio and the 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 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 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 2023 compared to 2022, partially offset by an increase in legal and other professional fees.

Acquisition and certain other transaction related costs. For the year ended December 31, 2023, acquisition and certain other transaction related costs primarily represent costs incurred in connection with our terminated merger with OPI and costs incurred for financial advisory services regarding our then 2024 debt maturities. For the years ended December 31, 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 3 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

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 2023 and 2022. Our aggregate gain on sale of properties during 2023 was not significant. The gain on sale of properties during the year ended December 31, 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 3 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

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 Note 10 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

Interest and other income. The decrease in interest and other income is primarily due to \$1,581 of funds we received from certain programs under the CARES Act, ARPA and various state programs during the year ended December 31, 2023 compared to \$4,327 received during the year ended December 31, 2022, partially offset by higher interest earned during the year ended December 31, 2023, as a result of higher interest rates compared to the year ended December 31, 2022.

Interest expense. Interest expense decreased primarily due to our redemption in June 2022 of \$500,000 of our 9.75% senior notes due 2025 and a decrease in average borrowings under our former credit facility in connection with repayments aggregating \$700,000 during 2023 related to amendments to and repayment in full of such credit facility in December 2023.

This decrease was partially offset by an increase in interest rates under our former credit facility during 2023 and the issuance of \$940,534 of our senior secured notes due 2026 in December 2023, resulting in accretion of the discount totaling \$2,720 in the 2023 period.

Loss on modification or early extinguishment of debt. During the year ended December 31, 2023, we recorded a loss on modification or early extinguishment of debt in connection with amendments to and repayment in full of our then credit facility as well as redemption of \$250,000 of our 4.750% senior notes due May 2024. During the year ended December 31, 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 in April 2023.

Income tax expense. 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 earnings of investees. Equity in net earnings of investees is the change in the fair value of our investments in our unconsolidated joint ventures.

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

We present certain "non-GAAP financial measures" within the meaning of applicable SEC rules, including FFO, Normalized FFO and NOI for the years ended December 31, 2023 and 2022. These measures do not represent cash generated by operating activities in accordance with GAAP and should not be considered alternatives to net income (loss) or net income (loss) attributable to common shareholders as indicators of our operating performance or as measures of our liquidity. These measures should be considered in conjunction with net income (loss) and net income (loss) attributable to common shareholders as presented in our consolidated statements of operations. We consider these non-GAAP measures to be appropriate supplemental measures of operating performance for a REIT, along with net income (loss) and net income (loss) attributable to common shareholders. 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) attributable to common shareholders, calculated in accordance with GAAP, excluding any gain or loss on sale of properties, equity in net earnings or losses of unconsolidated joint ventures, 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, 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. FFO and Normalized FFO are among the factors considered by our Board 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 real estate companies and REITs may calculate FFO and Normalized FFO differently than we do.

Our calculations of FFO and Normalized FFO for the years ended December 31, 2023 and 2022 and reconciliations of net income (loss), the most directly comparable financial measure under GAAP reported in our 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.

	For the Year Ended December 31,	
	2023	2022
Net loss	\$ (293,572)	\$ (15,774)
Depreciation and amortization	284,083	239,280
Gain on sale of properties	(1,205)	(321,862)
Impairment of assets	18,380	—
Gains and losses on equity securities, net	(8,126)	25,660
Equity in net losses (earnings) of unconsolidated joint ventures	20,461	(6,055)
Share of FFO from unconsolidated joint ventures	7,738	11,518
Adjustments to reflect our share of FFO attributable to an equity method investment	(1,586)	(7,715)
FFO	26,173	(74,948)
Acquisition and certain other transaction related costs	10,853	2,605
Loss on modification or early extinguishment of debt	2,468	30,043
Adjustments to reflect our share of Normalized FFO attributable to an equity method investment	1,576	3,975
Normalized FFO	\$ 41,070	\$ (38,325)
Weighted average common shares outstanding (basic and diluted)	238,836	238,314
Per common share data (basic and diluted):		
Net loss	\$ (1.23)	\$ (0.07)
FFO	\$ 0.11	\$ (0.31)
Normalized FFO	\$ 0.17	\$ (0.16)
Distributions declared	\$ 0.04	\$ 0.04

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 7. The following table includes the reconciliation of net loss to NOI for the years ended December 31, 2023 and 2022.

	For the Year Ended December 31,	
	2023	2022
Reconciliation of Net Loss to NOI:		
Net loss	\$ (293,572)	\$ (15,774)
Equity in net losses (earnings) of investees	20,461	(6,055)
Income tax expense	445	710
Loss from continuing operations before income tax expense and equity in net (losses) earnings of investees	(272,666)	(21,119)
Loss on modification or early extinguishment of debt	2,468	30,043
Interest expense	191,775	209,383
Interest and other income	(15,536)	(15,929)
Gains and losses on equity securities, net	(8,126)	25,660
Gain on sale of properties	(1,205)	(321,862)
Impairment of assets	18,380	—
Acquisition and certain other transaction related costs	10,853	2,605
General and administrative	26,131	26,435
Depreciation and amortization	284,083	239,280
Total NOI	\$ 236,157	\$ 174,496
Office Portfolio NOI	\$ 122,566	\$ 128,091
SHOP NOI	76,817	8,726
Non-Segment NOI	36,774	37,679
Total NOI	\$ 236,157	\$ 174,496

LIQUIDITY AND CAPITAL RESOURCES

Our principal sources of cash to meet operating and capital expenses, pay 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 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 and increased demand when compared to the low levels 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 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. As a result of the slow recovery of our SHOP segment and having \$700.0 million of outstanding debt then becoming due within one year and only \$338.4 million in cash and cash equivalents as of June 30, 2023, we concluded as of May 8, 2023 that there was a substantial doubt about our ability to continue as a going concern for at least one year from the date of issuance of those condensed consolidated financial statements. Additionally, as of November 1, 2023 we were unable to demonstrate that our plans to alleviate the substantial doubt about our ability to continue as a going concern would be probable in mitigating the conditions that raised the substantial doubt given our plans were beyond our control.

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 then secured credit facility and to redeem \$250.0 million of our senior notes that were scheduled to mature in May 2024. As a result of these transactions, we have no significant debt maturities until June 2025 when \$500.0 million of our senior notes will become due, and as of December 31, 2023, we had \$245.9 million of cash and cash equivalents. Additionally, as of December 31, 2023, our ratio of consolidated income available for debt service to debt service is above the 1.5x incurrence requirement under our senior notes, on a pro forma basis. As a result, we are able to refinance existing or maturing debt and issue new debt as long as this ratio is at or above 1.5x on a pro forma basis at the time of such refinancing or issuance. Our management has concluded that these transactions have successfully alleviated the conditions that raised the substantial doubt about our ability to continue as a going concern and that no substantial doubt about our ability to continue as going concern exists as of February 26, 2024.

Until its repayment in full and termination on December 21, 2023, we had a \$450.0 million credit facility that was fully drawn.

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.

In February 2023, we sold three properties 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. In November 2023, we sold one property for \$1.8 million, excluding closing costs. In December 2023, we sold one property for \$3.5 million, excluding closing costs.

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

	Year Ended December 31,	
	2023	2022
Cash and cash equivalents and restricted cash at beginning of period	\$ 688,302	\$ 1,016,945
Net cash provided by (used in):		
Operating activities	10,483	(40,353)
Investing activities	(202,111)	387,708
Financing activities	(249,713)	(675,998)
Cash and cash equivalents and restricted cash at end of period	\$ 246,961	\$ 688,302

Our Operating Liquidity and Resources

We generally receive minimum rents from tenants at our Office Portfolio 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 year ended December 31, 2023 compared to the prior year was primarily due to increased NOI as a result of increased rates and occupancy at the senior living communities in our SHOP segment. Additionally, interest payments decreased in 2023 compared to 2022 primarily due to our redemption of \$500,000 of our 9.75% senior notes due 2025 in June 2022. These increases were partially offset by an increase in costs incurred in connection with our terminated merger with OPI.

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 investing activities for the year ended December 31, 2023 compared to the prior year was primarily due to proceeds in 2022 from 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, partially offset by a property acquisition in 2022, a decrease in real estate improvements in 2023 compared to 2022, additional proceeds from the sale of properties in 2023 as compared to 2022 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 2023.

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

	For the Year Ended December 31,	
	2023	2022
Office Portfolio segment capital expenditures:		
Lease related costs ⁽¹⁾	\$ 38,070	\$ 25,227
Building improvements ⁽²⁾	12,984	11,955
Recurring capital expenditures - Office Portfolio segment	51,054	37,182
SHOP fixed assets and capital improvements	100,981	109,529
Wellness centers lease related costs ⁽¹⁾	9,721	—
Recurring capital expenditures	\$ 161,756	\$ 146,711
Development, redevelopment and other activities - Office Portfolio segment ⁽³⁾	\$ 9,244	\$ 48,390
Development, redevelopment and other activities - SHOP segment ⁽³⁾	82,207	118,601
Total development, redevelopment and other activities	\$ 91,451	\$ 166,991

- (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 in the future defer, our capital expenditures to preserve liquidity.

As of December 31, 2023, we had estimated unspent leasing related obligations at our triple net leased wellness centers and our medical office and life science properties of approximately \$54.1 million, of which we expect to spend approximately \$43.3 million during calendar year 2024. 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, future financing activities with unencumbered properties and proceeds related to distributions from our two unconsolidated joint ventures.

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

In July 2022, we acquired one life science property located in California with approximately 88,508 square feet for approximately \$75.1 million, including closing costs and credits. We funded this acquisition using cash on hand.

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 acquisitions and dispositions, see Note 3 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

Our Financing Liquidity and Resources

The change in cash used in financing activities for the year ended December 31, 2023 compared to the prior year was primarily due to the issuance of \$940.5 million in aggregate principal amount at maturity of our senior secured notes due 2026 in a private offering, raising net proceeds of \$730.4 million, after deducting initial purchaser discounts and estimated offering costs. Additionally, we redeemed in June 2022 \$500.0 million of our outstanding 9.75% senior notes due 2025. We also made repayments under our former credit facility aggregating \$700.0 million during 2023 as compared to \$100.0 million during 2022, and we redeemed in December 2023 all \$250.0 million of our outstanding 4.750% senior notes due May 2024.

As of December 31, 2023, we had \$245.9 million of cash and cash 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.

Until its repayment in full and termination on December 21, 2023, we had a \$450,000 credit facility that was fully drawn. At December 21, 2023, our former credit facility required interest to be paid on borrowings at the annual rate of 8.4%, plus a facility fee of \$0.3 million per quarter.

During the year ended December 31, 2023, we paid quarterly cash distributions to our shareholders totaling approximately \$9.6 million using existing cash balances. For further information regarding the distributions we paid during 2022, see Note 5 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

On January 11, 2024, we declared a quarterly distribution to common shareholders of record on January 22, 2024 of \$0.01 per share, or approximately \$2.4 million in aggregate. We paid this distribution on February 15, 2024, using cash on hand.

We believe we may have access to certain types of financings, including debt or equity offerings, to fund our operations and to 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, 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 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 February 2022, we and our lenders amended our credit agreement. Pursuant to the amendment, among other things, the facility commitments were reduced from \$800.0 million to \$700.0 million following our repayment of \$100.0 million. In February 2022, we exercised our option to extend the maturity date of our former credit facility by one year to January 2024. In January 2023, pursuant to our credit agreement, we repaid \$113.6 million in outstanding borrowings under our former credit facility and the facility commitments were reduced to \$586.4 million. In February 2023, we and our lenders further amended our credit agreement. Pursuant to the amendment the facility commitments were reduced from \$586.4 million to \$450.0 million following our repayment of \$136.4 million in then outstanding borrowings.

In April 2022, we prepaid a mortgage note secured by one of our medical office properties with an outstanding principal balance of approximately \$10.9 million, a maturity date in July 2022 and an annual interest rate of 6.28%, using cash on hand.

In June 2022, we redeemed \$500.0 million of our outstanding 9.75% senior notes due 2025 for a redemption price equal to 104.875% of the \$500.0 million principal amount of the notes being redeemed plus accrued and unpaid interest of \$1.1 million, using restricted cash on hand.

In July 2022, we prepaid a mortgage note secured by two of our senior living communities with an outstanding principal balance of approximately \$15.3 million, a maturity date in October 2022 and an annual interest rate of 5.75%, using cash on hand.

In October 2022, we repaid at maturity a mortgage note secured by one of our life science properties with an outstanding principal balance of approximately \$10.3 million and an annual interest rate of 4.85%, using cash on hand.

In April 2023, we prepaid a mortgage note secured by one of our senior living communities with an outstanding principal balance of approximately \$14.6 million, a maturity date in June 2023 and an annual interest rate of 6.64% using cash on hand.

In December 2023, we issued \$940.5 million in aggregate principal amount at maturity of our senior secured notes due 2026 in a private offering, raising net proceeds of \$730.4 million, after deducting initial purchaser discounts and estimated offering costs. These notes are fully and unconditionally guaranteed, on a joint, several and senior secured basis, by certain of our subsidiaries that own 95 properties, or the Collateral Guarantors, and on a joint, several and unsecured basis, by all our subsidiaries other than the Collateral Guarantors, except for certain excluded subsidiaries. These notes and the guarantees provided by the Collateral Guarantors are secured by a first priority lien and security interest on each of the collateral properties and 100% of the equity interests in each of the Collateral Guarantors. These notes require no cash interest payments to accrue prior to maturity. The accreted value of these secured notes will increase at a rate of 11.25% per annum compounded semiannually on 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, Moody's downgraded our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031 ratings from B3 to Caa3 and our senior unsecured debt rating from Caa1 to Ca. In September 2023, Moody's downgraded our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031 ratings from Caa3 to Ca and our senior unsecured debt rating from Ca to C. In January 2024, Moody's upgraded our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031 ratings from Ca to Caa3 and our senior unsecured debt rating from C to Ca, and Moody's also assigned a Caa2 rating to our senior secured notes due 2026.

In February 2023, Standard & Poor's downgraded our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031 ratings from BB- to B and our senior unsecured debt rating from B to CCC+. In September 2023, Standard & Poor's downgraded our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031 ratings from B to CCC+ and our senior unsecured debt rating from CCC+ to CCC-. In January 2024, Standard & Poor's upgraded our 9.75% senior notes due 2025 rating from CCC+ to B, our 4.375% senior notes due 2031 rating from CCC+ to B and our senior unsecured debt rating from CCC- to CCC, and Standard & Poor's also assigned a B rating to our senior secured notes due 2026.

Our next significant debt maturity is \$500.0 million of senior unsecured notes that mature in June 2025.

For further information regarding our outstanding debt, see Note 9 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

Debt Covenants

Our principal debt obligations at December 31, 2023 were: (1) \$2.1 billion outstanding principal amount of senior unsecured notes; (2) \$940.5 million outstanding principal amount of senior secured notes; and (3) \$9.1 million aggregate principal amount of mortgage notes (excluding premiums, discounts and net debt issuance costs) secured by one property. For further information regarding our indebtedness, see Note 9 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K.

Our senior notes are governed by our senior notes indentures and their supplements. Our senior notes indentures and their supplements provide for acceleration of payment of all amounts outstanding upon the occurrence and continuation of certain events of default. Our senior notes indentures and their supplements 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. As of December 31, 2023, we believe we were in compliance with all of the covenants under our senior notes indentures and their supplements and our other debt obligations. Although we continue to take steps to enhance our ability to maintain sufficient liquidity, as noted elsewhere in this Annual Report on Form 10-K, a protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from wage or commodity price inflation, high interest rates, geopolitical risks or other economic, market or industry conditions, including the delayed recovery of the senior housing industry, economic downturns or 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.

Our senior notes indentures and their supplements 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 changes to our issuer credit rating and senior debt 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 notes indentures and supplements entered in February 2016, February 2018, June 2020, February 2021 and December 2023).

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 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 December 31, 2023, 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, several and unsecured basis, by all of our subsidiaries, except for certain excluded subsidiaries. The notes and the 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 \$1.1 billion of senior unsecured notes do not have the benefit of any guarantees as of December 31, 2023.

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):

	December 31, 2023	
Real estate properties, net	\$	3,694,759
Other assets, net		502,729
Total assets	\$	4,197,488
Indebtedness, net	\$	2,803,829
Other liabilities		242,093
Total liabilities	\$	3,045,922

	Year Ended December 31, 2023	
Revenues	\$	1,225,573
Expenses		1,359,041
Loss from continuing operations		(302,313)
Net loss		(323,219)

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 3, 6, 7 and 8 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K, which are incorporated herein by reference and our other filings with the SEC including our definitive Proxy Statement for our 2024 Annual Meeting of Shareholders, or our definitive Proxy Statement, to be filed with the SEC within 120 days after the fiscal year ended December 31, 2023. For further information about the risks that may arise as a result of these and other related person transactions and relationships, see elsewhere in this Annual Report on Form 10-K, including "Warning Concerning Forward-Looking Statements," Part I, Item 1, "Business" and Part I, Item 1A, "Risk Factors." We may engage in additional transactions with related persons, including businesses to which RMR or its subsidiaries provide management services.

Critical Accounting Estimates

Our critical accounting policies are those that will have the most impact on the reporting of our financial condition and results of operations and those requiring significant judgments and estimates. We believe that our judgments and estimates have been and will be consistently applied and produce financial information that fairly presents our results of operations. Our most critical accounting policies involve our investments in real property. These policies affect our:

- allocation of purchase prices among various asset categories, including allocations to above and below market leases, and the related impact on the recognition of rental income and depreciation and amortization expenses; and
- assessment of the carrying values and impairments of long lived assets.

We allocate the purchase prices of our properties to land, building and improvements based on determinations of the fair values of these assets assuming the properties are vacant. We determine the fair value of each property using methods similar to those used by independent appraisers, which may involve estimated cash flows that are based on a number of factors, including capitalization rates and discount rates, among others. In some circumstances, we engage independent real estate appraisal firms to provide market information and evaluations which are relevant to our purchase price allocations and determinations of depreciable useful lives; however, we are ultimately responsible for the purchase price allocations and determinations of useful lives. We allocate a portion of the purchase price to above market and below market leases based on the present value (using an interest rate which reflects the risks associated with acquired in place leases at the time each property was acquired by us) of the difference, if any, between (i) the contractual amounts to be paid pursuant to the acquired in place leases and (ii) our estimates of fair market lease rates for the corresponding leases, measured over a period equal to the terms of the respective leases. The terms of below market leases that include bargain renewal options, if any, are further adjusted if we determine that renewal is probable. We allocate a portion of the purchase price to acquired in place leases and tenant relationships based upon market estimates to lease up the property based on the leases in place at the time of purchase. In making these allocations, we consider factors such as estimated carrying costs during the expected lease up periods, including real estate taxes, insurance and other operating income and expenses and costs, such as leasing commissions, legal and other related expenses, to execute similar leases in current market conditions at the time a property was acquired by us. We allocate this aggregate value between acquired in place lease values and tenant relationships based on our evaluation of the specific characteristics of each tenant's lease. However, we have not separated the value of tenant relationships from the value of acquired in place leases because such value and related amortization expense is immaterial to our consolidated financial statements. If the value of tenant relationships becomes material in the future, we may separately allocate those amounts and amortize the allocated amount over the estimated life of the relationships.

We regularly evaluate our properties 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 a property. If indicators of impairment are present, we evaluate the carrying value of the related property by comparing it to the expected future cash flows to be generated from that property. If the sum of these expected future cash flows is less than the carrying value, we reduce the net carrying value of the property to its estimated fair value. This analysis requires us to judge whether indicators of impairment exist and to estimate likely future cash flows. The future cash flows are subjective and are based in part on assumptions regarding hold periods, market rents and terminal capitalization rates. If we misjudge or estimate incorrectly or if future tenant operations, market or industry factors differ from our expectations, we may record an impairment charge that is inappropriate or fail to record a charge when we should have done so, or the amount of any such charges may be inaccurate.

These accounting policies involve significant judgments made based upon our experience and the experience of our management and our Board of Trustees, including judgments about current valuations, ultimate realizable value, estimated useful lives, salvage or residual value, the ability and willingness of our tenants to perform their obligations to us, and the current and likely future operating and competitive environments in which our properties are operated. In the future, we may need to revise our carrying value assessments to incorporate information which is not now known, and such revisions could increase or decrease our depreciation expense or impairment charges related to properties we own, result in the classification of our leases as other than operating leases or decrease the carrying values of our assets.

Impact of Government Reimbursement

For the year ended December 31, 2023, 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. Because of shifting policy priorities, the current and projected federal budget deficit, other federal spending priorities and challenging fiscal conditions in some states, there have been numerous recent legislative and regulatory actions or proposed actions with respect to federal Medicare rates, state Medicaid rates and federal payments to states for Medicaid programs, as well as existing regulations that impact these matters. Further, there are other existing and recently enacted legislation, and related litigation, related to government payments, insurance and healthcare delivery. Examples of these, and other information regarding such matters and developments, are provided under the caption "Business—Government Regulation and Reimbursement" above in Part I, Item 1 of this Annual Report on Form 10-K. We cannot currently predict the type and magnitude of the potential Medicare and Medicaid policy changes, rate changes or other changes that may be implemented, but we believe that some of these changes will cause these government funded

healthcare programs to fail to provide rates that match our and our tenants' increasing expenses and that such changes may be material and adverse to our future financial results.

During the years ended December 31, 2023, December 31, 2022 and December 31, 2021, we recognized \$1.6 million, \$4.3 million and \$19.6 million, respectively, in interest and other income in our consolidated statements of operations related to funds received under the CARES Act and ARPA.

Seasonality

Senior housing operations have historically reflected modest seasonality. During fourth quarter holiday periods, residents at such communities are sometimes discharged to spend time with family and admission decisions are often deferred. The first quarter of each calendar year usually coincides with increased illness among residents which can result in increased costs or discharges to hospitals. As a result of these and other factors, these operations sometimes produce greater earnings in the second and third quarters of a calendar year and lesser earnings in the fourth and first calendar quarters. We do not expect these seasonal differences to have a material impact upon the ability of our tenants to pay our rent or our ability to fund our managed senior living operations or our other businesses. Our medical office and life science properties and wellness centers do not typically experience seasonality.

Impact of Climate Change

Concerns about climate change have resulted in various treaties, laws and regulations that are intended to limit carbon emissions and address other environmental concerns. These and other laws may cause energy or other costs at our properties to increase. We do not expect the direct impact of these increases to be material to our results of operations, because the increased costs either would be the responsibility of our tenants directly or in the longer term, passed through and paid by tenants of our properties. Although we do not believe it is likely in the foreseeable future, laws enacted to mitigate climate change may make some of our buildings obsolete or cause us to make material investments in our properties, which could materially and adversely affect our financial condition or the financial condition of our tenants or managers and their ability to pay rent or returns to us.

In an effort to reduce the effects of any increased energy costs in the future, we continuously study ways to improve the energy efficiency at all of our properties. Our property manager, RMR, is a member of the ENERGY STAR program, a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that is focused on promoting energy efficiency at commercial properties through its "ENERGY STAR" partner program, and a member of the U.S. Green Building Council, a nonprofit organization focused on promoting energy efficiency at commercial properties through its leadership in energy and environmental design, or LEED®, green building program. RMR's annual Sustainability Report summarizes the ESG initiatives RMR and its clients, including DHC, employ. RMR's Sustainability Report may be accessed on RMR Inc.'s website at www.rmrgroup.com/corporate-sustainability/default.aspx. The information on or accessible through RMR Inc.'s website is not incorporated by reference into this Annual Report on Form 10-K. For more information, see "Business—Corporate Sustainability" in Part I, Item 1 of this Annual Report on Form 10-K.

Some observers believe severe weather in different parts of the world over the last few years is evidence of global climate change. Severe weather may have an adverse effect on certain properties we own. Rising sea levels could cause flooding at some of our properties, which may have an adverse effect on individual properties we own. We mitigate these risks by procuring, or requiring our tenants to procure, insurance coverage we believe adequate to protect us from material damages and losses resulting from the consequences of losses caused by climate change. However, we cannot be sure that our mitigation efforts will be sufficient or that future storms, rising sea levels or other changes that may occur due to future climate change could not have a material adverse effect on our financial results.

Item 7A. 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 December 31, 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	500,000	9.750 %	48,750	2025	Semi-Annually
Senior secured notes ⁽²⁾	940,534	0.000 %	—	2026	At Maturity
Senior unsecured notes	500,000	4.750 %	23,750	2028	Semi-Annually
Senior unsecured notes	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	9,109	6.444 %	587	2043	Monthly
	<u>\$ 3,049,643</u>		<u>\$ 130,275</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) These notes require no cash interest to accrue prior to maturity and will accrete 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.

No principal repayments are due under our senior notes until maturity. Our mortgage notes generally require principal and interest payments through maturity pursuant 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 \$21.1 million, which amount excludes our \$940.5 million of our senior secured notes due 2026 as no interest is due until maturity.

Changes in market interest rates also would affect the fair value of our fixed rate debt obligations; increases in market interest rates decrease the fair value of our fixed rate debt, while decreases in market interest rates increase the fair value of our fixed rate debt. In response to significant and prolonged increases in inflation, the U.S. Federal Reserve has raised interest rates multiple times since the beginning of 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 interest rates may remain at the current high levels or continue to increase.

Our debt agreements 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 December 31, 2023 and February 21, 2024, we did not have any floating rate debt obligations. In December 2023, we repaid all amounts outstanding under our then secured credit facility and terminated the agreement governing such credit facility.

Item 8. Financial Statements and Supplementary Data.

The information required by this item is included in Part IV, Item 15 of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

As of the end of the period covered by this Annual Report on Form 10-K, 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 Exchange Act. 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 December 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management Report on Assessment of Internal Control Over Financial Reporting.

We are responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control system is designed to provide reasonable assurance to our management and Board of Trustees regarding the preparation and fair presentation of published financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023. In making this assessment, it used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—Integrated Framework* (2013 framework). Based on this assessment, we believe that, as of December 31, 2023, our internal control over financial reporting is effective.

Deloitte & Touche LLP, the independent registered public accounting firm that audited our 2023 Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K, has issued an attestation report on our internal control over financial reporting. The report appears elsewhere herein.

Item 9B. Other Information.

During the three months ended December 31, 2023, none of our Trustees and officers adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement", as each term is defined in Item 408(a) of Regulation S-K.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

We have a Code of Conduct that applies to our officers and Trustees. Our Code of Conduct is posted on our website, www.dhcreit.com. A printed copy of our Code of Conduct is also available free of charge to any person who requests a copy by writing to our Secretary, Diversified Healthcare Trust, Two Newton Place, 255 Washington Street, Suite 300, Newton, MA 02458-1634. We intend to satisfy the requirements under Item 5.05 of Form 8-K regarding disclosure of amendments to, or waivers from, provisions of our Code of Conduct that apply to our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, on our website.

The remainder of the information required by Item 10 is incorporated by reference to our definitive Proxy Statement.

Item 11. Executive Compensation.

The information required by Item 11 is incorporated by reference to our definitive Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Equity Compensation Plan Information. We may award common shares to our officers and other employees of RMR under our Amended and Restated 2012 Equity Compensation Plan, or the 2012 Plan. In addition, each of our Trustees receives common shares as part of his or her annual compensation for serving as a Trustee and such shares are awarded under the 2012 Plan. The terms of awards made under the 2012 Plan are determined by the Compensation Committee of our Board of Trustees at the time of the awards. The following table is as of December 31, 2023:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under our equity compensation plan excluding securities reflected in column (a)
	(a)	(b)	(c)
Equity compensation plans approved by securityholders—2012 Plan	None.	None.	1,938,197 ⁽¹⁾
Equity compensation plan not approved by securityholders	None.	None.	None.
Total	None.	None.	1,938,197 ⁽¹⁾

(1) Consists of common shares available for issuance pursuant to the terms of the 2012 Plan. Share awards that are repurchased or forfeited will be added to the common shares available for issuance under the 2012 Plan.

Payments by us to RMR employees are described in Notes 5 and 8 to our Consolidated Financial Statements included in Part IV, Item 15 of this Annual Report on Form 10-K. The remainder of the information required by Item 12 is incorporated by reference to our definitive Proxy Statement.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by Item 13 is incorporated by reference to our definitive Proxy Statement.

Item 14. Principal Accountant Fees and Services.

The information required by Item 14 is incorporated by reference to our definitive Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a) Index to Financial Statements and Financial Statement Schedules

The following consolidated financial statements and financial statement schedules of Diversified Healthcare Trust are included on the pages indicated:

	Page
Reports of Independent Registered Public Accounting Firm (PCAOB ID No. 34)	
Consolidated Balance Sheets as of December 31, 2023 and 2022	
Consolidated Statements of Operations for each of the three years in the period ended December 31, 2023	
Consolidated Statements of Shareholders' Equity for each of the three years in the period ended December 31, 2023	
Consolidated Statements of Cash Flows for each of the three years in the period ended December 31, 2023	
Notes to Consolidated Financial Statements	
Schedule III – Real Estate and Accumulated Depreciation as of December 31, 2023	

All other schedules for which provision is made in the applicable accounting regulations of the SEC are not required under the related instructions, or are inapplicable, and therefore have been omitted.

(b) [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. (Incorporated by reference to the 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 S-3, File No. 333-76588.)
4.4	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.)
4.5	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.)
4.6	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.)
4.7	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.)
4.8	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.)
4.9	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.)
4.10	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	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.)
4.12	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.)

- 4.13 [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. \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022.\)](#)
- 4.14 [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. \(Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2022.\)](#)
- 4.15 [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. \(Incorporated by reference to the Company's Current Report on Form 8-K filed on December 22, 2023.\)](#)
- 4.16 [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. \(Incorporated by reference to the Company's Current Report on Form 8-K filed on June 8, 2015.\)](#)
- 4.17 [Description of Securities. \(Filed herewith.\)](#)
- 8.1 [Opinion of Sullivan & Worcester LLP as to certain tax matters. \(Filed herewith.\)](#)
- 10.1 [Second Amended and Restated Business Management Agreement, dated as of June 5, 2015, between the Company and The RMR Group LLC.\(+\) \(Incorporated by reference to the Company's Current Report on Form 8-K filed on June 8, 2015.\)](#)
- 10.2 [First Amendment to Second Amended and Restated Business Management Agreement, effective as of August 1, 2021, between the Company and The RMR Group LLC.\(+\) \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021.\)](#)
- 10.3 [Third Amended and Restated Property Management Agreement, dated as of June 9, 2021, between the Company and The RMR Group LLC.\(+\) \(Incorporated by reference to the Company's Current Report on Form 8-K filed on June 9, 2021.\)](#)
- 10.4 [Diversified Healthcare Trust Amended and Restated 2012 Equity Compensation Plan.\(+\) \(Incorporated by reference to the Company's Current Report on Form 8-K filed on June 6, 2022.\)](#)
- 10.5 [Form of Share Award Agreement.\(+\) \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020.\)](#)
- 10.6 [Form of Share Award Agreement.\(+\) \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022.\)](#)
- 10.7 [Form of Share Award Agreement.\(+\) \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023.\)](#)
- 10.8 [Form of Indemnification Agreement.\(+\) \(Filed herewith.\)](#)
- 10.9 [Release of Certain Guarantors, dated as of March 5, 2021, 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 \(as successor in interest to U.S. Bank National Association\). \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021.\)](#)
- 10.10 [Release of Certain Guarantors, dated as of January 28, 2022, 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 \(as successor in interest to U.S. Bank National Association\). \(Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2021.\)](#)
- 10.11 [Release of Certain Guarantors, dated as of October 12, 2023, 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 \(as successor in interest to U.S. Bank National Association\). \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023.\)](#)
- 10.12 [Release of Certain Guarantors, dated as of December 21, 2023, 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 \(as successor in interest to U.S. Bank National Association\). \(Filed herewith.\)](#)
- 10.13 [Release of Certain Guarantors, dated as of January 28, 2022, 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 \(as successor in interest to U.S. Bank National Association\). \(Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2021.\)](#)
- 10.14 [Release of Certain Guarantors, dated as of October 12, 2023, 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 \(as successor in interest to U.S. Bank National Association\). \(Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023.\)](#)
- 10.15 [Release of Certain Guarantors, dated as of December 21, 2023, 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 \(as successor in interest to U.S. Bank National Association\). \(Filed herewith.\)](#)

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10.16	Amended and Restated Master Management Agreement, dated as of June 9, 2021, among the Company and certain of its subsidiaries, and AlerisLife Inc. and certain of its subsidiaries. (Incorporated by reference to the Company's Current Report on Form 8-K filed on June 9, 2021.)
10.17	Amended and Restated Guaranty Agreement, dated as of June 9, 2021, by AlerisLife Inc. for the benefit of certain subsidiaries of the Company. (Incorporated by reference to the Company's Current Report on Form 8-K filed on June 9, 2021.)
10.18	Stockholders Agreement, dated as of February 16, 2024, by and among AlerisLife Inc., the Company, DHC Holdings LLC and ABP Trust. (Filed herewith.)
21.1	Subsidiaries of the Company. (Filed herewith.)
22.1	List of Subsidiary Guarantors. (Filed herewith.)
23.1	Consent of Deloitte & Touche LLP. (Filed herewith.)
23.2	Consent of Sullivan & Worcester LLP. (Contained in Exhibit 8.1.)
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.)
97.1	Clawback Policy. (Filed 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.)

(+) Management contract or compensatory plan or arrangement.

Item 16. Form 10-K Summary.

None.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Trustees and Shareholders of Diversified Healthcare Trust

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Diversified Healthcare Trust (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations, shareholders' equity, and cash flows, for each of the three years in the period ended December 31, 2023, and the related notes and the schedule listed in the Index at Item 15(a) (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 26, 2024, expressed an unqualified opinion on the Company's internal control over financial reporting.

Basis for Opinion

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

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

Critical Audit Matter

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

Impairment of Real Estate Properties - Refer to Note 3 to the financial statements

Critical Audit Matter Description

The Company's real estate properties are evaluated for impairment periodically or when events or changes in circumstances indicate that the carrying amount of a real estate property may not be recoverable. Impairment indicators may include declining tenant or resident occupancy, weak or declining profitability from the property, decreasing tenant cash flows or liquidity, the Company's decision to dispose of a property before the end of its estimated useful life, and legislative, market or industry changes that could permanently reduce the value of a property. If indicators of impairment are identified for any real estate property, the Company evaluates the recoverability of that real estate property by comparing undiscounted future cash flows expected to be generated by the real estate property over the Company's expected remaining hold period to the respective carrying amount. The Company's undiscounted future cash flows analysis requires management to make significant estimates and assumptions related to expected remaining hold periods, market rents, and terminal capitalization rates.

We identified the impairment of real estate properties as a critical audit matter, specifically the significant estimates and assumptions management makes to evaluate the recoverability of real estate properties. This required a high degree of auditor judgment and an increased extent of effort when performing audit procedures to evaluate the reasonableness of the significant estimates and assumptions related to expected remaining hold periods, market rents, and terminal capitalization rates within management's undiscounted future cash flows analysis which are sensitive to future market or industry considerations.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the undiscounted cash flows analysis for each real estate property or group of properties with possible impairment indicators included the following among others:

- We tested the effectiveness of controls over management's evaluation of the recoverability of real estate properties, including the key assumptions utilized in estimating the undiscounted future cash flows.
- We evaluated the undiscounted cash flow analysis including estimates of expected remaining hold period, market rents, and terminal capitalization rates for each real estate property or group of properties with possible impairment indicators by (1) evaluating the source information and assumptions used by management and (2) comparing management's projections to external market sources and evidence obtained in other areas of our audit.
- We evaluated the reasonableness of management's undiscounted future cash flows analysis by developing an independent expectation of future undiscounted cash flows based on third party market data and compared that independent estimate to the carrying amount of the real estate property or group of properties with possible indicators of impairment. We compared our analysis of the recoverability of the real estate property or group of properties to the Company's analysis.
- We made inquiries of management about the current status of potential transactions and about management's judgments to understand the probability of future events that could affect the expected remaining hold period and other cash flow assumptions for the properties.

/s/ Deloitte & Touche LLP

Boston, Massachusetts
February 26, 2024

We have served as the Company's auditor since 2020.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Trustees and Shareholders of Diversified Healthcare Trust

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Diversified Healthcare Trust (the "Company") as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2023, of the Company and our report dated February 26, 2024, expressed an unqualified opinion on those financial statements.

Basis for Opinion

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

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

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

/s/ Deloitte & Touche LLP

Boston, Massachusetts
February 26, 2024

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

	December 31,	
	2023	2022
ASSETS		
Real estate properties:		
Land	\$ 652,977	\$ 668,918
Buildings and improvements	6,165,490	6,023,625
Total real estate properties, gross	6,818,467	6,692,543
Accumulated depreciation	(2,020,843)	(1,828,352)
Total real estate properties, net	4,797,624	4,864,191
Investments in unconsolidated joint ventures	129,916	155,477
Assets of properties held for sale	9,447	385
Cash and cash equivalents	245,939	658,065
Restricted cash	1,022	30,237
Investments in equity securities	—	5,880
Due from affiliates	6,081	8,716
Acquired real estate leases and other intangible assets, net	33,948	45,351
Other assets, net	222,159	233,791
Total assets	\$ 5,446,136	\$ 6,002,093
LIABILITIES AND SHAREHOLDERS' EQUITY		
Secured credit facility	\$ —	\$ 700,000
Senior secured notes, net	731,211	—
Senior unsecured notes, net	2,072,618	2,317,700
Secured debt and finance leases, net	13,020	30,177
Liabilities of properties held for sale	32	—
Accrued interest	22,847	29,417
Due to affiliates	7,061	5,202
Other liabilities	262,456	280,986
Total liabilities	3,109,245	3,363,482
Commitments and contingencies		
Shareholders' equity:		
Common shares of beneficial interest, \$.01 par value: 300,000,000 shares authorized, 240,423,898 and 239,694,842 shares issued and outstanding, respectively	2,405	2,397
Additional paid in capital	4,618,470	4,617,031
Cumulative net income	1,778,278	2,071,850
Cumulative distributions	(4,062,262)	(4,052,667)
Total shareholders' equity	2,336,891	2,638,611
Total liabilities and shareholders' equity	\$ 5,446,136	\$ 6,002,093

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

DIVERSIFIED HEALTHCARE TRUST
CONSOLIDATED STATEMENTS OF OPERATIONS
(amounts in thousands, except per share data)

	Year Ended December 31,		
	2023	2022	2021
Revenues:			
Rental income	\$ 258,400	\$ 260,740	\$ 408,589
Residents fees and services	1,151,908	1,022,826	974,623
Total revenues	1,410,308	1,283,566	1,383,212
Expenses:			
Property operating expenses	1,174,151	1,109,070	1,091,812
Depreciation and amortization	284,083	239,280	271,131
General and administrative	26,131	26,435	34,087
Acquisition and certain other transaction related costs	10,853	2,605	17,506
Impairment of assets	18,380	—	(174)
Total expenses	1,513,598	1,377,390	1,414,362
Gain on sale of properties	1,205	321,862	492,272
Gains and losses on equity securities, net	8,126	(25,660)	(42,232)
Interest and other income	15,536	15,929	20,635
Interest expense (including net amortization of debt premiums, discounts and issuance costs of \$ 11,811 , \$ 8,658 and \$ 13,408 , respectively)	(191,775)	(209,383)	(255,759)
Loss on modification or early extinguishment of debt	(2,468)	(30,043)	(2,410)
(Loss) income from continuing operations before income tax expense and equity in net (losses) earnings of investees	(272,666)	(21,119)	181,356
Income tax expense	(445)	(710)	(1,430)
Equity in net (losses) earnings of investees	(20,461)	6,055	—
Net (loss) income	(293,572)	(15,774)	179,926
Net income attributable to noncontrolling interest	—	—	(5,411)
Net (loss) income attributable to common shareholders	\$ (293,572)	\$ (15,774)	\$ 174,515
Weighted average common shares outstanding (basic and diluted)	238,836	238,314	237,967
Per common share amounts (basic and diluted)			
Net (loss) income attributable to common shareholders	\$ (1.23)	\$ (0.07)	\$ 0.73

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

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

	Number of Shares	Common Shares	Additional Paid In Capital	Cumulative Net Income	Cumulative Distributions	Total Equity Attributable to Common Shareholders	Total Equity Attributable to Noncontrolling Interest	Total Shareholders' Equity
Balance at December 31, 2020:	238,268,478	\$ 2,383	\$ 4,613,904	\$ 1,913,109	\$ (4,033,559)	\$ 2,495,837	\$ 123,385	\$ 2,619,222
Net income	—	—	—	174,515	—	174,515	5,411	179,926
Distributions	—	—	—	—	(9,540)	(9,540)	—	(9,540)
Share grants	838,000	8	1,956	—	—	1,964	—	1,964
Share repurchases	(109,384)	(1)	(382)	—	—	(383)	—	(383)
Share forfeitures	(2,200)	—	(3)	—	—	(3)	—	(3)
Distributions to noncontrolling interest	—	—	—	—	—	—	(22,348)	(22,348)
Sale of interest in joint venture	—	—	—	—	—	—	(106,448)	(106,448)
Balance at December 31, 2021:	238,994,894	2,390	4,615,475	2,087,624	(4,043,099)	2,662,390	—	2,662,390
Net loss	—	—	—	(15,774)	—	(15,774)	—	(15,774)
Distributions	—	—	—	—	(9,568)	(9,568)	—	(9,568)
Share grants	847,000	8	1,737	—	—	1,745	—	1,745
Share repurchases	(133,752)	(1)	(170)	—	—	(171)	—	(171)
Share forfeitures	(13,300)	—	(11)	—	—	(11)	—	(11)
Balance at December 31, 2022:	239,694,842	2,397	4,617,031	2,071,850	(4,052,667)	2,638,611	—	2,638,611
Net loss	—	—	—	(293,572)	—	(293,572)	—	(293,572)
Distributions	—	—	—	—	(9,595)	(9,595)	—	(9,595)
Share grants	960,000	9	1,841	—	—	1,850	—	1,850
Share repurchases	(184,344)	(1)	(392)	—	—	(393)	—	(393)
Share forfeitures	(46,600)	—	(10)	—	—	(10)	—	(10)
Balance at December 31, 2023:	240,423,898	\$ 2,405	\$ 4,618,470	\$ 1,778,278	\$ (4,062,262)	\$ 2,336,891	\$ —	\$ 2,336,891

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

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

	Year Ended December 31,		
	2023	2022	2021
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net (loss) income	\$ (293,572)	\$ (15,774)	\$ 179,926
Adjustments to reconcile net (loss) income to cash provided by (used in) operating activities:			
Depreciation and amortization	284,083	239,280	271,131
Net amortization of debt premiums, discounts and issuance costs	11,811	8,658	13,408
Straight line rental income	1,095	(8,916)	(5,846)
Amortization of acquired real estate leases and assumed real estate lease obligations, net	(242)	245	(7,211)
Loss on modification or early extinguishment of debt	2,468	30,043	2,410
Impairment of assets	18,380	—	(174)
Gain on sale of properties	(1,205)	(321,862)	(492,272)
Gains and losses on equity securities, net	(8,126)	25,660	42,232
Other non-cash adjustments, net	(1,932)	(2,038)	(1,811)
Unconsolidated joint venture distributions	5,100	8,769	—
Equity in net losses (earnings) of investees	20,461	(6,055)	—
Change in assets and liabilities:			
Deferred leasing costs, net	(9,834)	(7,874)	(20,701)
Other assets	10,672	10,946	(51,201)
Accrued interest	(6,570)	(428)	7,654
Other liabilities	(22,106)	(1,007)	(868)
Net cash provided by (used in) operating activities	10,483	(40,353)	(63,323)
CASH FLOWS FROM INVESTING ACTIVITIES:			
Real estate acquisitions and deposits	—	(75,105)	—
Real estate improvements	(235,007)	(299,387)	(227,605)
Proceeds from sale of properties, net	18,356	822	103,257
Proceeds from sale of properties to joint venture, net	—	638,488	—
Proceeds from sale of interest in joint venture, net	—	108,424	367,033
Proceeds from insurance recoveries	534	14,466	—
Proceeds from AlerisLife Inc. tender offer	14,006	—	—
Distributions in excess of earnings from Affiliates Insurance Company	—	—	11
Net cash (used in) provided by investing activities	(202,111)	387,708	242,696
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of senior unsecured notes, net	—	—	492,500
Proceeds from issuance of senior secured notes, net	750,001	—	—
Proceeds from borrowings on secured credit facility	—	—	800,000
Repayments of borrowings on secured credit facility	(700,000)	(100,000)	—
Redemption of senior unsecured notes	(250,000)	(500,000)	(300,000)
Repayment of term loan	—	—	(200,000)
Repayment of other debt	(17,049)	(39,067)	(3,159)
Loss on early extinguishment of debt settled in cash	(978)	(24,375)	—
Payment of debt issuance costs	(21,699)	(2,817)	(10,347)
Repurchase of common shares	(393)	(171)	(383)
Distributions to noncontrolling interest	—	—	(22,348)
Distributions to shareholders	(9,595)	(9,568)	(9,540)
Net cash (used in) provided by financing activities	(249,713)	(675,998)	746,723
(Decrease) increase in cash and cash equivalents and restricted cash	(441,341)	(328,643)	926,096
Cash and cash equivalents and restricted cash at beginning of period	688,302	1,016,945	90,849
Cash and cash equivalents and restricted cash at end of period	\$ 246,961	\$ 688,302	\$ 1,016,945

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

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

	Year Ended December 31,		
	2023	2022	2021
SUPPLEMENTAL CASH FLOW INFORMATION:			
Interest paid	\$ 186,534	\$ 201,153	\$ 235,994
Income taxes paid	\$ 677	\$ 935	\$ 2,798
NON-CASH INVESTING ACTIVITIES:			
Decrease in assets and liabilities resulting from the deconsolidation of investments that were previously consolidated:			
Real estate, net	\$ —	\$ (355,669)	\$ (686,320)
Mortgage notes, net	\$ —	\$ —	\$ 618,452
Real estate improvements accrued, not paid	\$ 38,777	\$ 32,064	\$ 20,031
Capitalized interest	\$ —	\$ —	\$ 1,297

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 consolidated balance sheets to the amount shown in our consolidated statements of cash flows:

	As of December 31,		
	2023	2022	2021
Cash and cash equivalents	\$ 245,939	\$ 658,065	\$ 634,848
Restricted cash ⁽¹⁾	1,022	30,237	382,097
Total cash and cash equivalents and restricted cash shown in our consolidated statements of cash flows	\$ 246,961	\$ 688,302	\$ 1,016,945

(1) As of December 31, 2022 and 2021, 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 former credit facility, or our credit agreement. In December 2023, we repaid all \$ 450,000 outstanding under such secured credit facility with Wells Fargo Bank, National Association, as administrative agent and a lender, and a syndicate of other lenders, and then terminated our credit agreement in accordance with its terms and without penalty. As such, we are no longer required to hold any proceeds from the sale of properties as restricted cash. 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 consolidated financial statements.

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

Note 1. Business

Diversified Healthcare Trust is a real estate investment trust, or REIT, organized under Maryland law, which owns medical office and life science properties, senior living communities and other healthcare related properties throughout the United States. As of December 31, 2023, we owned 371 properties located in 36 states and Washington, D.C. On that date, the gross book value of our real estate assets was \$ 6,818,467 , excluding properties held for sale, if any.

As of December 31, 2023, we also owned an equity interest in each of two unconsolidated joint ventures that own medical office and life science properties located in five states with an aggregate of approximately 2.2 million rentable square feet.

Going Concern

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 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. As a result of the slow recovery of our SHOP segment and having \$ 700,000 of outstanding debt then becoming due within one year and only \$ 338,431 in cash and cash equivalents as of June 30, 2023, we concluded as of May 8, 2023 that there was a substantial doubt about our ability to continue as a going concern for at least one year from the date of issuance of those condensed consolidated financial statements. Additionally, as of November 1, 2023 we were unable to demonstrate that our plans to alleviate the substantial doubt about our ability to continue as a going concern would be probable in mitigating the conditions that raised the substantial doubt given our plans were beyond our control.

On December 21, 2023, we completed a private offering of \$ 940,534 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 \$ 730,359 after deducting initial purchaser discounts and estimated offering costs. We used a portion of the net proceeds to repay in full the \$ 450,000 outstanding under our then secured credit facility and to redeem \$ 250,000 of our senior notes that were scheduled to mature in May 2024. As a result of these transactions, we have no significant debt maturities until June 2025 when \$ 500,000 of our senior notes will become due, and as of December 31, 2023, we had \$ 245,939 of cash and cash equivalents. Additionally, as of December 31, 2023, our ratio of consolidated income available for debt service to debt service is above the 1.5 x incurrence requirement under our debt covenants, on a pro forma basis. As a result, we are able to refinance existing or maturing debt and issue new debt as long as this ratio continues to be at or above 1.5 x on a pro forma basis at the time of such refinancing or issuance. With a significant amount of unencumbered assets, including our entire SHOP segment properties, we believe we can refinance existing or maturing debt as maturities near or we believe the terms of any new debt are satisfactory. Our management has concluded that these transactions have successfully alleviated the conditions that raised the substantial doubt about our ability to continue as a going concern and that no substantial doubt about our ability to continue as going concern exists as of the date of issuance of these financial statements, or February 26, 2024.

Note 2. Summary of Significant Accounting Policies

BASIS OF PRESENTATION. Our consolidated financial statements include the accounts of Diversified Healthcare Trust, we, us or our, and our subsidiaries, all of which are 100 % owned directly or indirectly by us as of December 31, 2023. All intercompany transactions and balances with or among our consolidated subsidiaries have been eliminated.

REAL ESTATE PROPERTIES. We record properties at our cost and calculate depreciation on real estate investments on a straight line basis over estimated useful lives generally up to 40 years.

We allocate the purchase prices of our properties to land, building and improvements based on determinations of the fair values of these assets assuming the properties are vacant. We determine the fair value of each property using methods similar to those used by independent appraisers, which may involve estimated cash flows that are based on a number of factors, including capitalization rates and discount rates, among others. In some circumstances, we engage independent real estate appraisal firms to provide market information and evaluations which are relevant to our purchase price allocations and determinations of depreciable useful lives; however, we are ultimately responsible for the purchase price allocations and determinations of useful lives. We allocate a portion of the purchase price to above market and below market leases based on the present value (using an interest rate which reflects the risks associated with acquired in place leases at the time each property was acquired by us) of the difference, if any, between (i) the contractual amounts to be paid pursuant to the acquired in place leases and (ii) our estimates of fair market lease rates for the corresponding leases, measured over a period equal to the terms of the respective leases. The terms of below market leases that include bargain renewal options, if any, are further adjusted if we determine that renewal is probable. We allocate a portion of the purchase price to acquired in place leases and tenant relationships based upon market estimates to lease up the property based on the leases in place at the time of purchase. In making these allocations, we consider factors such as estimated carrying costs during the expected lease up periods, including real estate taxes, insurance and other operating income and expenses and costs, such as leasing commissions, legal and other related expenses, to execute similar leases in current market conditions at the time a property was acquired by us. We allocate this aggregate value between acquired in place lease values and tenant relationships based on our evaluation of the specific characteristics of each tenant's lease. However, we have not separated the value of tenant relationships from the value of acquired in place leases because such value and related amortization expense is immaterial to our consolidated financial statements. If the value of tenant relationships becomes material in the future, we may separately allocate those amounts and amortize the allocated amount over the estimated life of the relationships.

We amortize capitalized above market lease values (included in acquired real estate leases and other intangible assets, net in our consolidated balance sheets) as a reduction to rental income over the remaining non-cancelable terms of the respective leases. We amortize capitalized below market lease values (included in other liabilities in our consolidated balance sheets) as an increase to rental income over the non-cancelable periods of the respective leases. For the years ended December 31, 2023, 2022 and 2021, such amortization resulted in a net increase in rental income of \$ 242 , \$(245) and \$ 7,211 , respectively. We amortize the value of in place leases exclusive of the value of above market and below market in place leases to expense over the remaining non-cancelable periods of the respective leases. During the years ended December 31, 2023, 2022 and 2021, such amortization included in depreciation and amortization expense totaled \$ 10,996 , \$ 11,524 and \$ 42,783 , respectively. If a lease is terminated prior to its stated expiration, the unamortized amount relating to that lease is written off.

As of December 31, 2023 and 2022, our acquired real estate leases and assumed real estate lease obligations, excluding properties held for sale, if any, were as follows:

	December 31,	
	2023	2022
Acquired real estate leases:		
Capitalized above market lease values	\$ 3,804	\$ 5,187
Less: accumulated amortization	(3,001)	(3,978)
Capitalized above market lease values, net	803	1,209
Lease origination value	88,569	107,171
Less: accumulated amortization	(55,424)	(63,029)
Lease origination value, net	33,145	44,142
Acquired real estate leases and other intangible assets, net	\$ 33,948	\$ 45,351
Assumed real estate lease obligations:		
Capitalized below market lease values	\$ 2,340	\$ 3,685
Less: accumulated amortization	(1,872)	(2,567)
Assumed real estate lease obligations, net	\$ 468	\$ 1,118

As of December 31, 2023, the weighted average amortization periods for capitalized above market lease values, lease origination value and capitalized below market lease values were 4.8 years, 7.3 years and 3.7 years, respectively. Future amortization of net intangible acquired real estate lease assets and obligations to be recognized over the current terms of the

associated leases as of December 31, 2023 are estimated to be \$ 7,501 in 2024, \$ 5,167 in 2025, \$ 4,473 in 2026, \$ 3,506 in 2027, \$ 2,553 in 2028 and \$ 10,280 thereafter.

CASH AND CASH EQUIVALENTS. We consider highly liquid investments with original maturities of three months or less at the date of purchase to be cash equivalents.

RESTRICTED CASH. Restricted cash consists of amounts escrowed for real estate taxes, insurance and capital expenditures at certain of our mortgaged properties. Prior to our repayment in full of the \$ 450,000 outstanding under our then secured credit facility and termination of our credit agreement in December 2023, restricted cash also consisted of amounts held as collateral pursuant to our credit agreement.

INVESTMENTS IN EQUITY SECURITIES. We classified the common shares we formerly owned of AlerisLife Inc., or AlerisLife, as an equity method investment. This equity method investment was included in investments in equity securities in our consolidated balance sheets.

In February 2023, in connection with the acquisition by ABP Trust of all of the publicly held outstanding AlerisLife common shares, at a price of \$ 1.31 per share, or the Tender Offer Price, by tender offer, or the AlerisLife Transaction, 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 at the time of any such purchase. On December 20, 2023, we and ABP Trust extended our right to purchase AlerisLife common shares until March 31, 2024.

At December 31, 2023 and 2022, our investment in AlerisLife had a fair value of \$ 0 and \$ 5,880 , respectively, including a realized gain of \$ 8,126 and an unrealized loss of \$ 25,660 , respectively. We concluded that we had significant influence, but not control, over AlerisLife's most significant activities and therefore we determined that AlerisLife was not a variable interest entity, or VIE, and accounted for our former investment in AlerisLife as an equity method investment. We elected the fair value option for our investment in AlerisLife.

See Note 8 for further information regarding our former investment in AlerisLife.

EQUITY METHOD INVESTMENTS. As of December 31, 2023, we owned a 10 % equity interest in an unconsolidated joint venture that owns a life science property located in Boston, Massachusetts, or the Seaport JV, and a 20 % equity interest in an unconsolidated joint venture for 10 medical office and life science properties, or the LSMD JV. The property owned by the Seaport JV is encumbered by an aggregate \$ 620,000 of mortgage debts. The properties owned by the LSMD JV are encumbered by an aggregate \$ 456,625 of mortgage debts. We do not control the activities that are most significant to these joint ventures and, as a result, we account for our investment in these joint ventures under the equity method of accounting under the fair value option. See Notes 3, 10 and 11 for more information regarding these joint ventures.

DEBT ISSUANCE COSTS. Debt issuance costs include issuance or assumption costs related to borrowings and we amortize those costs as interest expense over the terms of the respective loans. During 2023, we repaid all amounts outstanding under our then secured credit facility, including repayment in full of \$ 450,000 under such credit facility in December 2023, and terminated the agreement governing such credit facility. As a result, we expensed unamortized debt issuance costs and recorded an aggregate loss on early extinguishment of debt of \$ 1,389 during the year ended December 31, 2023. Debt issuance costs for our former credit facility totaled \$ 0 and \$ 29,717 at December 31, 2023 and 2022, respectively, and accumulated amortization of debt issuance costs totaled \$ 0 and \$ 26,315 at December 31, 2023 and 2022, respectively, and are included in other assets, net in our consolidated balance sheets. Debt issuance costs for our senior secured and unsecured notes and other secured debt totaled \$ 67,475 and \$ 47,661 at December 31, 2023 and 2022, respectively, and accumulated amortization of debt issuance costs totaled \$ 22,065 and \$ 19,791 , respectively, and are presented in our consolidated balance sheet as a direct deduction from the associated debt liability. Future amortization of debt issuance costs to be recognized with respect to our loans as of December 31, 2023 are estimated to be \$ 14,226 in 2024, \$ 13,279 in 2025, \$ 2,417 in 2026, \$ 1,955 in 2027, \$ 1,581 in 2028 and \$ 11,952 thereafter.

DEFERRED LEASING COSTS. Deferred leasing costs include capitalized brokerage costs and inducements associated with the successful negotiation of leases. We amortize deferred leasing costs, which are included in depreciation and amortization expense, and inducements, which are included as a reduction in rental income, on a straight line basis over the terms of the respective leases. Deferred leasing costs are included in other assets, net in our consolidated balance sheets. Deferred leasing costs totaled \$ 62,980 and \$ 55,043 at December 31, 2023 and 2022, respectively, and accumulated amortization of deferred leasing costs totaled \$ 19,985 and \$ 15,482 at December 31, 2023 and 2022, respectively. At December 31, 2023, the remaining weighted average amortization period is approximately 8.2 years. Future amortization of

deferred leasing costs to be recognized during the current terms of our existing leases as of December 31, 2023 are estimated to be \$ 7,090 in 2024, \$ 6,613 in 2025, \$ 6,059 in 2026, \$ 5,032 in 2027, \$ 4,344 in 2028 and \$ 13,857 thereafter.

REVENUE RECOGNITION. 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 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.

Certain of our leases contain non-lease components, such as property level operating expenses and capital expenditures reimbursed by our tenants as well as other required lease payments. We have determined that all of our leases qualify for the practical expedient to not separate the lease and non-lease components because (i) the lease components are operating leases and (ii) the timing and pattern of recognition of the non-lease components are the same as those of the lease components. We apply Codification Topic 842, *Leases*, to the combined component. Income derived by our leases is recorded in rental income in our consolidated statements of operations.

Certain tenants are obligated to pay directly their obligations under their leases for insurance, real estate taxes and certain other expenses. These obligations, which have been assumed by the tenants under the terms of their respective leases, are not reflected in our consolidated financial statements. To the extent any tenant responsible for any such obligations under the applicable lease defaults on such lease or if it is deemed probable that the tenant will fail to pay for such obligations, we would record a liability for such obligations.

For the years ended December 31, 2023, 2022 and 2021, we recognized the rental income from our operating leases on a straight line basis over the term of each lease agreement. We recognized percentage rents when realizable and earned, which was generally during the fourth quarter of the year. For the years ended December 31, 2023, 2022 and 2021, percentage rents earned aggregated \$ 2,949 , \$ 2,978 and \$ 1,993 , respectively.

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 right of use assets and related lease liabilities are included within other assets, net and other liabilities, respectively, within our 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 consolidated balance sheets.

As of December 31, 2023, we owned 232 senior living communities that are managed by third party managers for our account. We derive our revenues at these managed senior living communities primarily from services our managers provide to residents on our behalf and we record revenues when the services are provided. We use the taxable REIT subsidiary, or TRS, structure authorized by the REIT Investment Diversification and Empowerment Act for nearly all of our managed senior living communities.

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. During the years ended December 31, 2023, 2022 and 2021, we received \$ 1,581 , \$ 605 and \$ 20,800 , respectively, in funds to be

used to support the operations of our managed senior living communities; we have currently determined that \$ 1,581 , \$ 4,327 and \$ 19,554 , of such funds meet the required terms and conditions. We have recognized \$ 1,581 , \$ 4,327 and \$ 19,554 as interest and other income in our consolidated statements of operations with respect to our SHOP segment for the years ended December 31, 2023, 2022 and 2021, respectively. As of December 31, 2023 and 2022, we have recognized all funds and no amount remained in other liabilities in our consolidated balance sheets.

PER COMMON SHARE AMOUNTS. We calculate basic earnings per common share by dividing net income (loss) by the weighted average number of our common shares of beneficial interest, \$.01 par value, or our common shares, outstanding during the period. We calculate diluted earnings per common share using the more dilutive of the two class method or the treasury stock method. Unvested share awards and other potentially dilutive common shares and the related impact on earnings, are considered when calculating diluted earnings per share.

INCOME TAXES. We have elected to be taxed as a REIT under the United States 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.

The Income Taxes Topic of the Codification prescribes how we should recognize, measure and present in our financial statements uncertain tax positions that have been taken or are expected to be taken in a tax return. Tax benefits are recognized to the extent that it is "more likely than not" that a particular tax position will be sustained upon examination or audit. To the extent the "more likely than not" standard has been satisfied, the benefit associated with a tax position is measured as the largest amount that has a greater than 50% likelihood of being realized upon settlement. We classify interest and penalties related to uncertain tax positions, if any, in our financial statements as a component of general and administrative expense.

USE OF ESTIMATES. Preparation of these financial statements in conformity with accounting principles generally accepted in the United States, or GAAP, requires us to make estimates and assumptions that affect the amounts reported in these consolidated financial statements and related notes. The actual results could differ from these estimates. Significant estimates in the consolidated financial statements include purchase price allocations, useful lives of fixed assets and assessment of impairment of real estate and the related intangibles.

SEGMENT REPORTING. As of December 31, 2023, we operate in, and report financial information for, the following two segments: our portfolio of medical office and life science properties, or our Office Portfolio, and SHOP. We aggregate the operating results of our properties in these two reporting segments based on their similar operating and economic characteristics. See Note 12 for further information regarding our reportable operating segments.

RECENT ACCOUNTING PRONOUNCEMENTS. On November 27, 2023, the Financial Accounting Standards Board, or 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 ASC 280, Segment Reporting, or ASC 280, in interim periods; and (iii) disclose the CODM's title and position, as well as an explanation of how the CODM uses the reported measures and 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 the requirements in ASC 280 and do not change how a 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 consolidated financial statements 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 its annual income tax disclosures by requiring: (i) consistent categories and greater disaggregation of information in the rate reconciliation, and (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

beginning after December 15, 2024, with early adoption permitted. We are currently evaluating the impact ASU No. 2023-09 will have on our consolidated financial statements and disclosures.

Note 3. Real Estate Investments

As of December 31, 2023, our owned properties include: 102 medical office and life science properties with approximately 8.6 million rentable square feet; 259 senior living communities, including independent living (including active adult), assisted living, memory care and skilled nursing facilities, or SNFs, with 27,271 living units; and 10 wellness centers with approximately 812,000 square feet of interior space plus outdoor developed facilities.

Acquisitions:

The table below represents the purchase price allocations (including net closing adjustments) of acquisitions for the years ended December 31, 2023, 2022 and 2021:

Date	Location	Type of Property	Number of Properties	Square Feet	Cash Paid ⁽¹⁾	Land	Buildings and Improvements	Acquired Real Estate Leases
<u>Acquisitions during the year ended December 31, 2023:</u>								
We did not acquire any properties during the year ended December 31, 2023.								
<u>Acquisitions during the year ended December 31, 2022 ⁽²⁾:</u>								
July 2022	California	Life Science	1	88,508	\$ 75,105	\$ 15,774	\$ 45,249	\$ 14,082

Acquisitions during the year ended December 31, 2021:

We did not acquire any properties during the year ended December 31, 2021.

(1) Cash paid includes closing costs.

(2) We have accounted for our 2022 acquisition as an acquisition of assets. We funded this acquisition using cash on hand.

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 2023, we recorded impairment charges of \$ 14,034 to adjust the carrying value of four life science and medical office properties to their estimated fair value. We sold three of these life science and medical office properties in 2023. One of these medical office properties was classified as held for sale in our consolidated balance sheet as of December 31, 2023. During 2023, we also recorded impairment charges of \$ 4,346 to adjust the carrying values of two senior living communities to their aggregate estimated fair value. We sold one of these senior living communities in 2023. These impairment charges, in aggregate, are included in impairment of assets in our consolidated statements of operations.

During 2022, no impairment charges were recorded.

Dispositions:

During the years ended December 31, 2023 and 2021, we sold eight and five properties, respectively, for aggregate sales prices of \$ 18,880 and \$ 104,500 , respectively, excluding closing costs, as presented in the table below. During the year ended December 31, 2022, we did not dispose of any properties. The sales of these properties do not represent significant dispositions, individually or in the aggregate, and we do not believe these sales represent a strategic shift in our business. As a result, the results of operations for these properties are included in continuing operations through the date of sale of such properties in our consolidated statements of operations.

Date of Sale	Location	Type of Property	Number of Properties	Square Feet or Number of Units	Sales Price ⁽¹⁾	Gain (Loss) on Sale
<u>Dispositions during the year ended December 31, 2023:</u>						
February 2023	Pennsylvania and South Carolina	Senior Living	3	— units ⁽²⁾	\$ 2,800	\$ 293
October 2023	Pennsylvania	Medical Office	1	30,866 sq. ft.	1,800	15
October 2023	Tennessee	Senior Living	1	— units ⁽²⁾	2,830	627
October 2023	Maryland	Life Science	1	58,880 sq. ft.	6,200	(360)
November 2023	Virginia	Senior Living	1	— units ⁽²⁾	1,800	945
December 2023	South Carolina	Medical Office	1	115,108 sq. ft.	3,450	(1,255)
			8		\$ 18,880	\$ 265
<u>Dispositions during the year ended December 31, 2022:</u>						
We did not dispose of any properties during the year ended December 31, 2022.						
<u>Dispositions during the year ended December 31, 2021:</u>						
February 2021	Pennsylvania	Medical Office	1	92,000 sq. ft.	\$ 9,000	\$ (122)
April 2021	Florida	Life Science / Medical Office	4	263,656 sq. ft.	95,500	30,760
			5		\$ 104,500	\$ 30,638

(1) Sales price excludes closing costs.

(2) These communities were closed prior to their respective dispositions.

During the year ended December 31, 2023, we recognized a gain of \$ 940 related to the sales of skilled nursing bed licenses at certain of our senior living communities.

We classify all properties as held for sale in our consolidated balance sheets that meet the applicable criteria for that treatment as set forth in the Property, Plant and Equipment Topic of the Codification. As of December 31, 2023, we had one medical office property classified as held for sale. As of December 31, 2022, we had one closed senior living community classified as held for sale.

Investments and Capital Expenditures:

During 2023, we committed an aggregate \$ 62,180 for leasing related costs related to 0.9 million and 0.2 million square feet of leases executed at our medical office and life science properties and wellness centers, respectively. During 2022, we committed \$ 22,911 for leasing related costs related to 0.9 million square feet of leases executed at our medical office and life science properties.

Committed and unspent tenant related obligations based on executed leases as of December 31, 2023 and 2022 were \$ 54,124 and \$ 39,314 , respectively.

Other:

In September 2022, certain of our managed senior living communities located in Florida experienced hurricane related damage. We carry comprehensive property, casualty, flood and business interruption insurances that we anticipate will cover our losses at these senior living communities, subject to a deductible. During the year ended December 31, 2022, we incurred total losses of \$ 11,253 related to the property damage sustained and deductible incurred. For the year ended December 31, 2022, we recognized a loss of \$ 7,635 for the involuntary conversion of nonmonetary assets and wrote off a portion of the net book value of the damaged assets and included this amount in our consolidated statements of operations. During the year ended December 31, 2022, we received \$ 14,466 in cash from our insurance provider, and as such, we have recovered the total losses of \$ 11,253 incurred during the year ended December 31, 2022. The loss of \$ 7,635 for the involuntary conversion of nonmonetary assets, recovery of those \$ 7,635 in losses and the deductible of \$ 3,618 are included in property operating expenses in our consolidated statements of operations. We received \$ 534 and \$ 3,213 in cash in excess of our losses during the

years ended December 31, 2023 and 2022, respectively. These amounts are included in other liabilities in our consolidated balance sheets.

Unconsolidated Joint Venture Investments:

As of December 31, 2023, we had equity investments in unconsolidated joint ventures as follows:

Equity Method Investments in Joint Venture	DHC Ownership	DHC Carrying Value of Investment at December 31, 2023	Number of Properties	Location	Square Feet
Seaport Innovation LLC	10 %	\$ 85,699	1	MA	1,134,479
The LSMD Fund REIT LLC	20 %	44,217	10	CA, MA, NY, TX, WA	1,068,763
		<u>\$ 129,916</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 December 31, 2023 ⁽¹⁾
Mortgage Notes Payable (secured by one property in Massachusetts) ⁽²⁾	3.53 %	8/6/2026	\$ 620,00
Mortgage Notes Payable (secured by nine properties in five states) ⁽³⁾	3.46 %	2/11/2032	189,80
Mortgage Notes Payable (secured by one property in California) ⁽³⁾⁽⁴⁾	5.90 %	2/9/2025	266,82
Weighted Average / Total	4.10 %		<u>\$ 1,076,62</u>

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

(2) Following the deconsolidation in December 2021 of the net assets of the Seaport JV, we no longer include this \$ 620,000 of secured debt financing in our 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 joint venture exercised its option to extend the maturity date of this mortgage loan by one year to February 9, 2025, and this mortgage loan requires interest to be paid at an annual rate of SOFR, plus a premium of 1.90 %. The interest rate is as of December 31, 2023. 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.

In March 2017, we entered into the Seaport JV with an institutional investor. The investor owned a 45 % equity interest in the joint venture, and we owned the remaining 55 % equity interest in the joint venture. We determined that, while we owned a 55 % equity interest in this joint venture, this joint venture was a VIE as defined under the Consolidation Topic of the Financial Accounting Standards Board Codification. We concluded that we must consolidate this VIE, and we did so, until we sold an additional 35 % equity interest in the joint venture in December 2021. We reached this determination because we were the entity with the power to direct the activities that most significantly impacted the VIE's economic performance and we had the obligation to absorb losses of, and the right to receive benefits from, the VIE that could be significant to the VIE, and therefore were the primary beneficiary of the VIE. The joint venture investor's interest in this consolidated entity was reflected as noncontrolling interest in our consolidated financial statements.

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 the net assets of this joint venture and recognized a net gain on sale of \$ 461,434 related to this transaction during the year ended December 31, 2021, which is included in gain on sale of properties in our consolidated statements of operations. After giving effect to the sale, we owned a 20 % equity interest in this joint venture but determined that we were no longer the primary beneficiary. 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. Prior to the deconsolidation of the net assets of this joint venture, the joint venture investor's interest in this consolidated entity was reflected as noncontrolling interest in our consolidated financial statements. 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 received net proceeds of \$ 108,424 from this transaction, which included working capital prorrations and formation costs. We recognized a net loss on sale of \$ 1,428 related to this transaction during the year ended December 31, 2022, which is included in gain on sale of properties in our consolidated statements of operations. 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 10 for more information regarding the valuation of our investment in this joint venture.

In January 2022, we entered into the LSMD JV with two unrelated third party institutional investors. 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 year ended December 31, 2022, which is included in gain on sale of properties in our consolidated statements of operations. 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 10 for more information regarding the valuation of our investment in this joint venture.

Note 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 \$(1,095), \$ 8,916 and \$ 5,846 for the years ended December 31, 2023, 2022 and 2021, respectively. Rents receivable, excluding receivables related to our properties classified as held for sale, if any, include \$ 75,306 and \$ 76,363 of straight line rent receivables at December 31, 2023 and 2022, respectively, and are included in other assets, net in our 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 \$ 51,367 , \$ 47,669 and \$ 74,860 for the years ended December 31, 2023, 2022 and 2021, respectively, of which tenant reimbursements totaled \$ 48,215 , \$ 44,470 and \$ 72,690 , respectively.

The following table presents our operating lease maturity analysis, excluding lease payments from properties classified as held for sale, if any, as of December 31, 2023:

Year	Amount
2024	\$ 191,360
2025	182,672
2026	174,881
2027	153,170
2028	131,872
Thereafter	597,208
Total	\$ 1,431,163

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 \$ 23,366 and \$ 23,748 , respectively, as of December 31, 2023, and \$ 26,508 and \$ 26,889 , respectively, as of December 31, 2022. The right of use assets and related lease liabilities are included within other assets, net and other liabilities, respectively, within our 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 consolidated balance sheets.

Note 5. Shareholders' Equity

We have common shares available for issuance under the terms of our equity compensation plan adopted in 2012, as amended, or the 2012 Plan. During the years ended December 31, 2023, 2022 and 2021, we awarded to our officers and other employees of The RMR Group LLC, or RMR, annual share awards of 800,000, 707,000 and 718,000 of our common shares, respectively, valued at \$ 1,864, \$ 919 and \$ 2,448, in aggregate, respectively. In accordance with our Trustee compensation arrangements, we also awarded each of our then Trustees 20,000 common shares with an aggregate value of \$ 244 (\$ 35 per Trustee), 20,000 common shares with an aggregate value of \$ 300 (\$ 43 per Trustee) and 20,000 common shares with an aggregate value of \$ 444 (\$ 74 per Trustee) in 2023, 2022 and 2021, respectively. Also in September 2023, in connection with the election of one of our Trustees, we awarded 20,000 of our common shares to this Trustee with a value of \$ 45. The values of the share awards were based upon the closing price of our common shares trading on The Nasdaq Stock Market LLC, or Nasdaq, on the dates of awards. The common shares awarded to our Trustees vested immediately. The common shares awarded to our officers and certain other employees of RMR (in those capacities) vest in five equal annual installments beginning on the date of award. We include the value of awarded shares in general and administrative expenses in our consolidated statements of operations ratably over the vesting period. At December 31, 2023, 1,938,197 of our common shares remain available for issuance under the 2012 Plan.

A summary of shares awarded, forfeited, vested and unvested under the terms of the 2012 Plan from January 1, 2021 to December 31, 2023 is as follows:

	Number of Shares	Weighted Average Award Date Fair Value
Unvested shares at December 31, 2020	434,550	\$ 6.15
Shares awarded in 2021	838,000	\$ 3.45
Shares vested / forfeited in 2021	(426,930)	\$ 4.98
Unvested shares at December 31, 2021	845,620	\$ 4.07
Shares awarded in 2022	847,000	\$ 1.44
Shares vested / forfeited in 2022	(576,620)	\$ 3.24
Unvested shares at December 31, 2022	1,116,000	\$ 2.50
Shares awarded in 2023	960,000	\$ 2.24
Shares vested / forfeited in 2023	(847,800)	\$ 2.53
Unvested shares at December 31, 2023	1,228,200	\$ 2.28

The 1,228,200 unvested shares as of December 31, 2023 are scheduled to vest as follows: 428,200 shares in 2024, 377,200 shares in 2025, 270,400 shares in 2026 and 152,400 shares in 2027. As of December 31, 2023, the estimated future compensation for the unvested shares was \$ 2,489 based on the adjusted award date fair value of these shares. At December 31, 2023, the weighted average period over which the compensation expense will be recorded is approximately 1.8 years. We recorded share based compensation expense of \$ 1,840 in 2023, \$ 1,733 in 2022 and \$ 1,960 in 2021. We recognize forfeitures as they occur.

During 2023, 2022 and 2021, we purchased an aggregate of 184,344, 133,752 and 109,384, respectively, of our common shares from certain of our Trustees and officers and certain other 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. See Note 8 for further information regarding these purchases.

A summary of cash distributions paid to common shareholders, for federal income tax purposes, are as follows for the periods presented:

Year	Annual Per Share Distribution	Total Distribution	Characterization of Distribution			
			Ordinary Income	Capital Gain	Return of Capital	
2023	\$ 0.04	\$ 9,595	— %	— %	100.0 %	
2022	\$ 0.04	\$ 9,568	— %	14.0 %	86.0 %	
2021	\$ 0.04	\$ 9,540	— %	100.0 %	— %	

On January 11, 2024, we declared a quarterly distribution to common shareholders of record on January 22, 2024 of \$ 0.01 per share, or approximately \$ 2,403 in aggregate. We paid this distribution on February 15, 2024, using cash on hand.

Note 6. Senior Living Community Management Agreements

Our managed senior living communities are operated by third parties pursuant to management agreements. Five Star, which is an operating division of AlerisLife, manages many of our SHOP communities, and we lease nearly all of our senior living communities managed by third party managers, to our TRSS.

Management Arrangements with Five Star. On June 9, 2021, we and Five Star entered into an amended and restated master management agreement, or the Master Management Agreement, for the senior living communities that Five Star manages for us and interim management agreements for the senior living communities that we and Five Star agreed to transition to other third party managers. In addition, AlerisLife delivered to us an amended and restated guaranty agreement pursuant to which AlerisLife is continuing to guarantee the payment and performance of each of its applicable subsidiary's obligations under the applicable management agreements. The principal changes to the management arrangements included:

- that Five Star agreed to cooperate with us in transitioning 108 of our senior living communities with approximately 7,500 living units to other third party managers without our payment of any termination fee to Five Star;
- that we no longer have the right to sell up to an additional \$ 682,000 of senior living communities currently managed by Five Star and terminate Five Star's management of those communities without our payment of a fee to Five Star upon sale;
- that Five Star is continuing to manage 119 of the 120 of our senior living communities that were included as part of the management arrangements (the management for one active adult community was terminated by mutual agreement effective October 31, 2022), and that the skilled nursing units in all of our continuing care retirement communities that Five Star is continuing to manage, which then included approximately 1,500 living units, were closed and are being evaluated and repositioned;
- that beginning in 2025, we will have the right to terminate up to 10 % of the senior living communities that Five Star is continuing to manage, based on total revenues per year for failure to meet 80 % of a target earnings before interest, taxes, depreciation and amortization, or EBITDA, for the applicable period;
- that the incentive fee that Five Star may earn in any calendar year for the senior living communities that Five Star is continuing to manage is no longer subject to a cap and that any senior living communities that are undergoing a major renovation or repositioning are excluded from the calculation of the incentive fee;
- that RMR will oversee any major renovation or repositioning activities at the senior living communities that Five Star is continuing to manage; and
- that the term of our management agreements with Five Star for our senior living communities that Five Star is continuing to manage was extended by two years to December 31, 2036.

Pursuant to the Master Management Agreement, Five Star receives a management fee equal to 5 % of the gross revenues realized at the applicable senior living communities plus reimbursement for its direct costs and expenses related to such communities. Five Star may receive an annual incentive fee equal to 15 % of the amount by which the annual EBITDA of all communities on a combined basis exceeds the target EBITDA for all communities on a combined basis for such calendar year. The target EBITDA for those senior living communities on a combined basis is increased annually based on the greater of the annual increase of the consumer price index, or CPI, or 2 %, plus 6 % of any capital investments funded at the managed senior living communities on a combined basis in excess of the target capital investment. Unless otherwise agreed, the target capital investment increases annually based on the greater of the annual increase of CPI or 2 %. Any senior living communities that are undergoing a major renovation or repositioning are excluded from the calculation of the incentive fee.

The Master Management Agreement expires in 2036, subject to Five Star's right to extend for two consecutive five year terms if Five Star achieves certain performance targets for the combined managed communities portfolio, unless earlier terminated. Pursuant to the Master Management Agreement, beginning in 2025, we have the right to terminate up to 10 % of the senior living communities that Five Star is continuing to manage, based on total revenues per year for failure to meet 80 % of a target EBITDA for the applicable period.

In connection with ABP Trust's acquisition of AlerisLife on March 20, 2023, we amended the Master Management Agreement to eliminate any change of control default or event of default provisions effective upon the consummation of the AlerisLife acquisition by ABP Trust. See Note 8 for further information regarding ABP Trust's acquisition of AlerisLife.

In 2021, we completed the transition of 107 of the 108 senior living communities, containing 7,340 living units, from Five Star to other third party managers. The remaining senior living community was closed in February 2022 and we are assessing opportunities to redevelop that property. We recorded \$ 0 , \$ 2,096 and \$ 17,363 for the years ended December 31, 2023, 2022 and 2021, respectively, of costs that we incurred related to retention and other transition costs to acquisition and certain other transaction related costs in our consolidated statements of operations.

Our Senior Living Communities Managed by Five Star. Five Star managed 119 , 119 and 120 of our senior living communities as of December 31, 2023, 2022 and 2021, respectively. We lease our senior living communities that are managed by Five Star to our TRSs, and Five Star manages these communities pursuant to the Master Management Agreement. Effective October 31, 2022, Five Star ceased managing an active adult community we own located in Plano, TX, and RMR assumed management of that community pursuant to our property management agreement with RMR. We paid Five Star a termination fee of \$ 350 in connection with the termination of Five Star's management of this community.

We incurred management fees payable to Five Star of \$ 40,119 , \$ 37,037 and \$ 47,479 for the years ended December 31, 2023, 2022 and 2021, respectively. For the years ended December 31, 2023, 2022 and 2021, \$ 37,436 , \$ 33,737 and \$ 43,864 , respectively, of the total management fees were expensed to property operating expenses in our consolidated statements of operations and \$ 2,683 , \$ 3,300 and \$ 3,615 , respectively, were capitalized in our consolidated balance sheets. The amounts capitalized are being depreciated over the estimated useful lives of the related capital assets.

In addition to providing management services to us, Five Star also provides certain other services to residents at some of the senior living communities it manages for us, such as rehabilitation services. At senior living communities Five Star manages for us where Five Star provides rehabilitation services on an outpatient basis, the residents, third party payers or government programs pay Five Star for those rehabilitation services. At senior living communities Five Star manages for us where Five Star provides both inpatient and outpatient rehabilitation services, we generally pay Five Star for those rehabilitation services and charges for these services are included in amounts charged to residents, third party payers or government programs. During 2023, Five Star closed all inpatient clinics and as such we do not expect to incur these fees to Five Star in the future. We incurred fees of \$ 1,213 , \$ 6,289 and \$ 11,233 for the years ended December 31, 2023, 2022 and 2021, 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 consolidated statements of operations.

Since January 1, 2021, we sold certain senior living communities that were then managed by Five Star. We and Five Star terminated our management agreements for these senior living communities in connection with these sales. See Note 3 for further information regarding these sales.

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. As of December 31, 2023, 2022 and 2021, respectively, our other third party managers managed 113 , 111 and 107 of our senior living communities. The terms of the management agreements with the other third party managers are generally as follows: the other third party managers will receive a management fee equal to 5 % to 6 % of the gross revenues realized at the applicable senior living communities plus reimbursement for direct costs and expenses related to such communities. These agreements generally also provide for the other third party managers to earn a minimum base fee for a portion of the term of the agreement. Additionally, the other third party managers have the ability to earn incentive fees equal to 1.5 % to 2.5 % of the amount by which EBITDA of the applicable communities exceeds the target EBITDA for the applicable communities. The other third party managers can also earn a construction supervision fee ranging between 3 % and 5 % of construction costs.

The initial terms of the management agreements with the other third party managers are generally five years , subject to automatic extensions of successive terms of two years each unless earlier terminated or timely notice of nonrenewal is delivered. The management agreements with the other third party managers also generally provide us with the right to terminate the management agreements for communities that do not earn 70 % to 80 % of the target EBITDA for such communities, after an agreed upon stabilized period.

In December 2023, we notified one of our third party managers which manages certain of our communities located in Wisconsin and Illinois that we will be terminating our management agreement with respect to these communities. We expect to

transition these communities during the first half of 2023 to another third party manager which we have an existing relationship with. We expect the terms of the management agreement for these communities to be generally consistent with the terms outlined above. We expect to pay a termination fee of approximately \$ 1,000 in connection with this transition.

We incurred management fees payable to our other third party managers of \$ 21,863 , \$ 20,739 and \$ 6,239 for the years ended December 31, 2023, 2022 and 2021, respectively. These amounts are included in property operating expenses in our consolidated statements of operations.

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:

Revenue from contracts with customers:	Year Ended December 31,		
	2023	2022	2021
Basic housing and support services	\$ 915,528	\$ 806,500	\$ 750,644
Medicare and Medicaid programs	89,613	82,106	98,273
Private pay and other third party payer SNF services	146,767	134,220	125,706
Total residents fees and services	\$ 1,151,908	\$ 1,022,826	\$ 974,623

Note 7. 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 8 for further information regarding our relationship, agreements and transactions with RMR.

Management Agreements with RMR. Our management agreements with RMR provide for an annual base management fee, an annual incentive management fee and property management and construction supervision fees, payable in cash, among other terms:

- *Base Management Fee.* The annual base management fee payable to RMR by us for each applicable period is equal to the lesser of:
 - the sum of (a) 0.5 % of the daily weighted average of the aggregate book value of our real estate assets owned by us or our subsidiaries as of October 12, 1999, or the Transferred Assets, plus (b) 0.7 % of the average aggregate historical cost of our real estate investments excluding the Transferred Assets up to \$ 250,000 , plus (c) 0.5 % of the average aggregate historical cost of our real estate investments excluding the Transferred Assets exceeding \$ 250,000 ; and
 - the sum of (a) 0.7 % of the average closing price per share of our common shares on the stock exchange on which such shares are principally traded during such period, multiplied by the average number of our common shares outstanding during such period, plus the daily weighted average of the aggregate liquidation preference of each class of our preferred shares outstanding during such period, plus the daily weighted average of the aggregate principal amount of our consolidated indebtedness during such period, or, together, our Average Market Capitalization, up to \$ 250,000 , plus (b) 0.5 % of our Average Market Capitalization exceeding \$ 250,000 .

The average aggregate historical cost of our real estate investments includes our consolidated assets invested, directly or indirectly, in equity interests in or loans secured by real estate and personal property owned in connection with such real estate (including acquisition related costs and costs which may be allocated to intangibles or are unallocated), all before reserves for depreciation, amortization, impairment charges or bad debts or other similar non-cash reserves.

- *Incentive Management Fee.* The incentive management fee which may be earned by RMR for an annual period is calculated as follows:

- An amount, subject to a cap, based on the value of our common shares outstanding, equal to 12.0 % of the product of:
 - our equity market capitalization on the last trading day of the year immediately prior to the relevant three year measurement period, and
 - the amount (expressed as a percentage) by which the total return per share, as defined in the business management agreement and further described below, of our common shareholders (i.e., share price appreciation plus dividends) exceeds the total shareholder return of the applicable market index, or the benchmark return per share, for the relevant measurement period. The MSCI U.S. REIT/Health Care REIT Index is the benchmark index for periods on or after August 1, 2021, and the SNL U.S. REIT Healthcare Index is the benchmark index for periods prior to August 1, 2021.

For purposes of the total return per share of our common shareholders, share price appreciation for a measurement period is determined by subtracting (1) the closing price of our common shares on Nasdaq on the last trading day of the year immediately before the first year of the applicable measurement period, or the initial share price, from (2) the average closing price of our common shares on the 10 consecutive trading days having the highest average closing prices during the final 30 trading days in the last year of the measurement period.

- The calculation of the incentive management fee (including the determinations of our equity market capitalization, initial share price and the total return per share of our common shareholders) is subject to adjustments if we issue or repurchase our common shares, or if our common shares are forfeited, during the measurement period.
- No incentive management fee is payable by us unless our total return per share during the measurement period is positive.
- The measurement periods are three year periods ending with the year for which the incentive management fee is being calculated.
- If our total return per share exceeds 12.0 % per year in any measurement period, the benchmark return per share is adjusted to be the lesser of the total shareholder return of the applicable market index for such measurement period and 12.0 % per year, or the adjusted benchmark return per share. In instances where the adjusted benchmark return per share applies, the incentive management fee will be reduced if our total return per share is between 200 basis points and 500 basis points below the applicable market index in any year, by a low return factor, as defined in the business management agreement, and there will be no incentive management fee paid if, in these instances, our total return per share is more than 500 basis points below the applicable market index in any year, determined on a cumulative basis (i.e. between 200 basis points and 500 basis point per year multiplied by the number of years in the measurement period and below the applicable market index).
- The incentive management fee is subject to a cap. The cap is equal to the value of the number of our common shares which would, after issuance, represent 1.5 % of the number of our common shares then outstanding multiplied by the average closing price of our common shares during the 10 consecutive trading days having the highest average closing prices during the final 30 trading days of the relevant measurement period.
- Incentive management fees we paid to RMR for any period may be subject to “clawback” if our financial statements for that period are restated due to material non-compliance with any financial reporting requirements under the securities laws as a result of the bad faith, fraud, willful misconduct or gross negligence of RMR and the amount of the incentive management fee we paid was greater than the amount we would have paid based on the restated financial statements.

Pursuant to our business management agreement with RMR, we recognized net business management fees of \$ 13,965 , \$ 16,646 and \$ 23,378 for the years ended December 31, 2023, 2022 and 2021, respectively. The net business management fees we recognized are included in general and administrative expenses in our consolidated statements of operations for these periods. The net business management fees we recognized for the years ended December 31, 2023, 2022 and 2021 reflect a reduction of \$ 2,974 , for each of those years for the amortization of the liability we recorded in connection with our former investment in RMR Inc.

We did not recognize an incentive management fee payable to RMR for the years ended December 31, 2023, 2022 or 2021.

- *Property Management and Construction Supervision Fees*. The property management fees payable to RMR by us for each applicable period are equal to 3.0 % of gross collected rents and the construction supervision fees payable to RMR by us for each applicable period are equal to 5.0 % of construction costs. In connection with our entry into the Master Management Agreement, on June 9, 2021, we and RMR amended our property management agreement to, among other things, provide for RMR's oversight of any major capital projects and repositionings at our senior living communities, including our senior living communities which Five Star is continuing to manage, and that RMR receives the same fee previously paid to Five Star for such services, which is equal to 3.0 % of the cost of any such major capital project or repositioning.

We recognized aggregate net property management and construction supervision fees of \$ 8,886 , \$ 10,329 and \$ 12,504 for the years ended December 31, 2023, 2022 and 2021, respectively. The net property management and construction supervision fees we recognized for the years ended December 31, 2023, 2022 and 2021 reflect a reduction of \$ 797 for each of those years for the amortization of the liability we recorded in connection with our former investment in RMR Inc., as further described in Note 8. For the years ended December 31, 2023, 2022 and 2021, \$ 5,686 , \$ 5,657 and \$ 9,684 , respectively, of the total property management fees were expensed to property operating expenses in our consolidated statements of operations and \$ 3,200 , \$ 4,672 and \$ 2,820 , respectively, were capitalized as building improvements in our consolidated balance sheets. The amounts capitalized are being depreciated over the estimated useful lives of the related capital assets.

Expense Reimbursement. 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 \$ 14,587 , \$ 12,901 and \$ 13,161 for these expenses and costs for the years ended December 31, 2023, 2022 and 2021, respectively. These amounts are included in property operating expenses or general and administrative expenses, as applicable, in our consolidated statements of operations for these periods.

Term. Our management agreements with RMR have terms that end on December 31, 2043, and automatically extend on December 31st of each year for an additional year, so that the terms of our management agreements thereafter end on the 20th anniversary of the date of the extension.

Termination Rights. We have the right to terminate one or both of our management agreements with RMR: (i) at any time on 60 days' written notice for convenience, (ii) immediately on written notice for cause, as defined therein, (iii) on written notice given within 60 days after the end of an applicable calendar year for a performance reason, as defined therein, and (iv) by written notice during the 12 months following a change of control of RMR, as defined therein. RMR has the right to terminate the management agreements for good reason, as defined therein.

Termination Fee. If we terminate one or both of our management agreements with RMR for convenience, or if RMR terminates one or both of our management agreements for good reason, we have agreed to pay RMR a termination fee in an amount equal to the sum of the present values of the monthly future fees, as defined therein, for the terminated management agreement(s) for the term that was remaining prior to such termination, which, depending on the time of termination would be between 19 and 20 years. If we terminate one or both of our management agreements with RMR for a performance reason, we have agreed to pay RMR the termination fee calculated as described above, but assuming a 10 year term was remaining prior to the termination. We are not required to pay any termination fee if we terminate our management agreements with RMR for cause or as a result of a change of control of RMR.

Transition Services. RMR has agreed to provide certain transition services to us for 120 days following an applicable termination by us or notice of termination by RMR, including cooperating with us and using commercially reasonable efforts to facilitate the orderly transfer of the management and real estate investment services provided under our business management agreement and to facilitate the orderly transfer of the management of the managed properties under our property management agreement, as applicable.

Vendors. Pursuant to our management agreements with RMR, RMR may from time to time negotiate on our behalf with certain third party vendors and suppliers for the procurement of goods and services to us. As part of this arrangement, we

may enter agreements with RMR and other companies to which RMR or its subsidiaries provide management services for the purpose of obtaining more favorable terms from such vendors and suppliers.

Investment Opportunities. Under our business management agreement with RMR, we acknowledge that RMR may engage in other activities or businesses and act as the manager to any other person or entity (including other REITs) even though such person or entity has investment policies and objectives similar to ours and we are not entitled to preferential treatment in receiving information, recommendations and other services from RMR.

Management Agreements 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. Prior to December 23, 2021, the Seaport JV was our consolidated subsidiary and, as such, we were previously obligated to pay management fees to RMR under our management agreements with RMR for the services it provided that joint venture; however, that joint venture paid management fees directly to RMR, and those fees were credited against the fees payable by us to RMR. In addition, 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 8. Related Person Transactions

We have relationships and historical and continuing transactions with AlerisLife (including Five Star), RMR, RMR Inc. 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 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., 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 a director of AlerisLife. Jennifer F. Francis, our other Managing Trustee, our former President and 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 employees and 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. Adam D. 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. As of December 31, 2023, ABP Trust and Adam D. Portnoy owned 9.8 % of our outstanding common 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 pursuant to the Master Management Agreement. RMR provides management services to both us and AlerisLife. AlerisLife participates in our property insurance program for the senior living communities AlerisLife owns. The premiums AlerisLife pays for this coverage are allocated pursuant to a formula based on the profiles of the properties included in the program. See Note 6 for further information regarding our relationships, agreements and transactions with AlerisLife (including Five Star) and Note 10 for further information regarding our investment in AlerisLife.

On February 2, 2023, AlerisLife entered into an Agreement and Plan of Merger, or the ALR Merger Agreement, with certain subsidiaries of ABP Trust, pursuant to which ABP Trust acquired all of the publicly held outstanding AlerisLife common shares at a price of \$ 1.31 per share by tender 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 at the time of any such purchase. On December 20, 2023, we and ABP Trust extended our right to purchase AlerisLife common shares until March 31, 2024.

On February 16, 2024, we exercised this purchase right and acquired, together with our applicable TRS, approximately 34.0 % of the currently outstanding AlerisLife common shares from ABP Trust at the Tender Offer Price, for a total purchase price of \$ 14,890 , and we, our applicable TRS, ABP Trust and AlerisLife entered into a stockholders agreement. Following this acquisition, ABP Trust owns the remaining approximate 66.0 % of AlerisLife.

See Note 6 for further information regarding our relationships, agreements and transactions with AlerisLife (including Five Star) and Note 10 for further information regarding our investment in AlerisLife.

Termination of the Merger Agreement with Office Properties Income Trust. As previously disclosed, on April 11, 2023, we and Office Properties Income Trust, or 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. On September 1, 2023, we and OPI mutually terminated the Merger Agreement, effective September 1, 2023. Neither we nor OPI were required to pay any termination fee as a result of the mutual decision to terminate the Merger Agreement, and we and OPI bore our and its respective costs and expenses related to the Merger Agreement in accordance with the terms of the Merger Agreement. We recorded \$ 9,900 of expenses during the year ended December 31, 2023 related to the terminated merger with OPI, which is included in acquisition and certain other transaction related costs in our consolidated statement of operations.

Our Manager, 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 7 for further information regarding our management agreements with RMR.

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 December 31, 2023 and are included in other assets, net, in our consolidated balance sheet. RMR provides management services to each of the Seaport JV and the LSMD JV. See Note 7 for further information regarding those management agreements with RMR.

Leases with RMR. We lease office space to RMR in certain of our properties for RMR's property management offices. We recognized rental income from RMR for leased office space of \$ 196 , \$ 303 and \$ 190 for the years ended December 31, 2023, 2022 and 2021, respectively. Our office space leases with RMR are terminable by RMR if our management agreements with RMR are terminated.

Share Awards to RMR Employees. As described in Note 5, we award shares to our officers and other employees of RMR annually. Generally, one fifth of these awards vest on the grant date and one fifth vests on each of the next four anniversaries of the grant dates. In certain instances, we may accelerate the vesting of an award, such as in connection with the award holder's retirement as an officer of us or an officer or employee of RMR. These awards to RMR employees are in addition to the share awards to our Managing Trustees, as Trustee compensation, and the fees we paid to RMR. See Note 5 for information regarding our share awards and activity as well as certain share purchases we made in connection with share award recipients satisfying tax withholding obligation on vesting share awards.

Note 9. Indebtedness

At December 31, 2023 and 2022, our outstanding indebtedness consisted of the following:

Floating Rate Debt	Maturity	Principal Balance as of December 31,	
		2023	2022
Credit facility ⁽¹⁾	N/A	\$ —	\$ 700,000
Total floating rate debt		\$ —	\$ 700,000

- (1) In December 2023, we repaid the remaining principal balance of our then credit facility which had an original maturity date of January 2024 and terminated the agreement.

Senior Unsecured Notes ⁽¹⁾	Coupon	Maturity	December 31, 2023		December 31, 2022	
			Face Amount	Unamortized Discount	Face Amount	Unamortized Discount
Senior unsecured notes	4.750 %	May 2024	\$ —	—	\$ 250,000	105
Senior unsecured notes ⁽²⁾	9.750 %	June 2025	500,000	—	500,000	—
Senior unsecured notes	4.750 %	February 2028	500,000	3,483	500,000	4,325
Senior unsecured notes ⁽²⁾	4.375 %	March 2031	500,000	—	500,000	—
Senior unsecured notes	5.625 %	August 2042	350,000	—	350,000	—
Senior unsecured notes	6.250 %	February 2046	250,000	—	250,000	—
Total senior unsecured notes			\$ 2,100,000	\$ 3,483	\$ 2,350,000	\$ 4,430

- (1) As of December 31, 2023 and 2022, the unamortized net debt issuance costs on certain of these notes were \$ 23,899 and \$ 27,870 , respectively.
- (2) These notes are fully and unconditionally guaranteed, on a joint, several and unsecured basis, by all of our subsidiaries, except for certain excluded subsidiaries. The notes and the 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.

Secured and Other Debt	Principal Balance as of December 31,		Interest Rate	Maturity	Number of Properties as Collateral At December 31, 2023	Net Book Value of Collateral as of December 31,	
	2023 ⁽¹⁾	2022 ⁽¹⁾				2023	2022
Mortgage note	\$ —	\$ 14,732	6.64 %	June 2023	1	\$ —	\$ 24,645
Senior secured notes ⁽²⁾⁽³⁾⁽⁴⁾	940,534	—	0.00 %	January 2026	95	1,075,889	—
Mortgage note	9,109	9,997	6.44 %	July 2043	1	13,589	13,234
Finance Leases	3,911	5,339	7.70 %	April 2026	2	22,765	20,624
Total secured	\$ 953,554	\$ 30,068			99	\$ 1,112,243	\$ 58,503

- (1) The principal balances are the amounts stated in the contracts. In accordance with GAAP, our carrying values and recorded interest expense may be different because of market conditions at the time we assumed certain of these debts. As of December 31, 2023 and 2022, the unamortized net premiums and debt issuance costs on certain of these mortgages were \$ 0 and \$(109) , respectively.
- (2) These notes are fully and unconditionally guaranteed, on a joint, several and senior secured basis by certain of our subsidiaries that own 95 properties, or the Collateral Guarantors, and on a joint, several and unsecured basis, by all our subsidiaries other than the Collateral Guarantors, except for certain excluded subsidiaries, or the Non-Collateral Guarantors. These notes and the guarantees provided by the Collateral Guarantors are secured by a first priority lien and security interest on each of the collateral properties and 100 % of the equity interests in each of the Collateral Guarantors. The guarantees provided by the Non-Collateral Guarantors are effectively subordinated to all of the subsidiary guarantors' secured indebtedness to the extent of the value of the collateral securing such secured indebtedness, and the notes and the 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.
- (3) These notes require no cash interest to accrue prior to maturity and will accrete 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. These notes have an unamortized discount balance of \$ 187,813 and unamortized net debt issuance costs of \$ 21,510 as of December 31, 2023, respectively.
- (4) We have a one-time option to extend the maturity date of these notes by one year , to January 15, 2027, subject to satisfaction of certain conditions and payment of an extension fee. If we exercise this option, interest payments will be due semiannually during the extension period at an initial interest rate of 11.25 % with increases of 50 basis points every 90 days these notes remain outstanding.

Until its repayment in full on December 21, 2023, we had a \$ 450,000 credit facility that was fully drawn. At December 21, 2023, our former credit facility required interest to be paid on borrowings at the annual rate of 8.4 % , plus a facility fee of \$ 338 per quarter. As of December 31, 2023, our former credit facility is fully paid off and our credit agreement is terminated. The weighted average annual interest rates for borrowings under our credit facility were 7.9 % , 4.5 % and 2.9 % for the years ended December 31, 2023, 2022 and 2021, respectively.

As of December 31, 2023, all \$ 940,534 of our senior secured notes due 2026 are fully and unconditionally guaranteed, on a joint, several and senior secured basis by the Collateral Guarantors and on a joint, several and unsecured basis by the Non-Collateral Guarantors, 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 the guarantees (other than our senior secured notes and the guarantees provided by the 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 the 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 \$ 1,100,000 of senior unsecured notes do not have the benefit of any guarantees as of December 31, 2023.

In February 2022, we and our lenders amended our credit agreement. Pursuant to the amendment, among other things, the facility commitments were reduced from \$ 800,000 to \$ 700,000 following our repayment of \$ 100,000 . In February 2022, we exercised our option to extend the maturity date of our former credit facility by one year to January 2024. In January 2023, pursuant to our credit agreement, we repaid \$ 113,627 in outstanding borrowings under our former credit facility and the facility commitments were reduced to \$ 586,373 . In February 2023, we and our lenders further amended our credit agreement. Pursuant to the amendment 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 year ended December 31, 2023.

In February 2021, we issued \$ 500,000 aggregate principal amount of our 4.375 % senior notes due 2031 in an underwritten public offering raising net proceeds of \$ 491,357 , after deducting estimated offering expenses and underwriters' discounts. These notes are guaranteed by all of our subsidiaries, except for certain excluded subsidiaries, and require semi-annual interest payments through maturity. We used the net proceeds from this offering to prepay in full in February 2021 our \$ 200,000 term loan which was scheduled to mature in September 2022. The weighted average interest rate under our \$ 200,000 term loan was 2.9 % for the period from January 1, 2021 to February 7, 2021. As a result of the prepayment of our \$ 200,000 term loan, we recorded a loss on early extinguishment of debt of \$ 1,477 for the year ended December 31, 2021. In June 2021, we used the remaining net proceeds from this offering and cash on hand to redeem all of our outstanding 6.75 % senior notes due 2021 for a redemption price equal to the principal amount of \$ 300,000 plus accrued and unpaid interest of \$ 10,125 , when these notes became redeemable with no prepayment premium. In connection with this redemption, we recorded a loss on early extinguishment of debt of \$ 370 for the year ended December 31, 2021.

In April 2022, we prepaid a mortgage note secured by one of our medical office properties with an outstanding principal balance of approximately \$ 10,934 , a maturity date in July 2022 and an annual interest rate of 6.28 %, using cash on hand.

In June 2022, we redeemed \$ 500,000 of our outstanding 9.75 % senior notes due 2025 for a redemption price equal to 104.875 % of the \$ 500,000 principal amount of the notes being redeemed plus accrued and unpaid interest of \$ 1,083 , using restricted cash on hand. As a result of this redemption, we recorded a loss on early extinguishment of debt of \$ 29,576 for the year ended December 31, 2022.

In July 2022, we prepaid a mortgage note secured by two of our senior living communities with an outstanding principal balance of approximately \$ 15,273 , a maturity date in October 2022 and an annual interest rate of 5.75 %, using cash on hand.

In October 2022, we repaid at maturity a mortgage note secured by one of our life science properties with an outstanding principal balance of approximately \$ 10,287 and an annual interest rate of 4.85 %, using cash on hand.

In April 2023, we prepaid a mortgage note secured by one of our senior living communities with an outstanding principal balance of approximately \$ 14,565 , a maturity date in June 2023 and an annual interest rate of 6.64 % using cash on hand.

In December 2023, we issued \$ 940,534 in aggregate principal amount at maturity of our senior secured notes due 2026 in a private offering, raising net proceeds of \$ 730,359 , after deducting initial purchaser discounts and estimated offering costs. These notes are fully and unconditionally guaranteed, on a joint, several and senior secured basis, by the Collateral Guarantors, and on a joint, several and unsecured basis, by the Non-Collateral Guarantors. These notes and the guarantees provided by the Collateral Guarantors are secured by a first priority lien and security interest on each of the collateral properties and 100 % of the equity interests in each of the Collateral Guarantors. These notes require no cash interest payments to accrue prior to maturity. The accreted value of these secured notes will increase at a rate of 11.25 % per annum compounded semiannually on

January 15 and July 15 of each year. We used the net proceeds from this offering to repay in full and terminate our then \$ 450,000 secured credit facility and to redeem all \$ 250,000 of our outstanding 4.750 % senior notes, which were scheduled to mature in January 2024 and May 2024, respectively. As a result of the prepayment in full of our credit facility and redemption of our 4.750 % senior notes, we recorded a loss on modification or early extinguishment of debt of \$ 314 and \$ 1,079 for the year ended December 31, 2023, respectively.

Interest on our senior unsecured notes are payable either semi-annually or quarterly in arrears; however, no principal repayments are due until maturity. No interest is payable on our senior secured notes with the full principal amount due at maturity. Required monthly payments on our mortgages include principal and interest. Payments under our finance leases are due monthly. We include amortization of finance lease assets in depreciation and amortization expense.

Our senior notes indentures and their supplements provide for acceleration of payment of all amounts outstanding upon the occurrence and continuation of certain events of default. Our senior notes indentures and their supplements 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.

Required principal payments on our outstanding debt as of December 31, 2023, were as follows:

Year	Principal Payment
2024	\$ 1,811
2025	501,980
2026	941,422
2027	291
2028	500,310
Thereafter	1,107,740 ⁽¹⁾

(1) The carrying value of our total debt outstanding as of December 31, 2023, including unamortized debt issuance costs, premiums and discounts was \$ 2,816,849 .

Note 10. Fair Value of Assets and Liabilities

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

Description	As of December 31, 2023		As of December 31, 2022	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
<i>Recurring Fair Value Measurements Assets:</i>				
Investment in AlerisLife (Level 1) ⁽¹⁾	\$ —	\$ —	\$ 5,880	\$ 5,880
Investment in unconsolidated joint venture (Level 3) ⁽²⁾	\$ 85,699	\$ 85,699	\$ 104,697	\$ 104,697
Investment in unconsolidated joint venture (Level 3) ⁽³⁾	\$ 44,217	\$ 44,217	\$ 50,780	\$ 50,780

- (1) On February 2, 2023, in connection with the proposed acquisition of AlerisLife by a subsidiary of ABP Trust, which is the controlling shareholder of RMR Inc., we agreed to tender all of the 10,691,658 AlerisLife common shares 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 investments in equity securities in our consolidated balance sheets and were reported at fair value, which was based upon quoted market prices on Nasdaq (Level 1 inputs). During the years ended December 31, 2023 and 2022, we recorded unrealized gains (losses) of \$ 8,126 and \$ 25,660 , respectively, which are included in gains and losses on equity securities, net in our consolidated statements of operations, to adjust the carrying value of our former investment in AlerisLife common shares to their fair value. See Notes 6 and 8 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 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 a discount rate of 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 3 for further information regarding this joint venture.

- (3) The 20 % equity interest we own in the LSMD JV is included in investments in unconsolidated joint ventures in our 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 % 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 3 for further information regarding this joint venture.

In addition to the assets described in the table above, our financial instruments at December 31, 2023 and December 31, 2022 included cash and cash equivalents, restricted cash, certain other assets, our former credit facility, senior unsecured 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 consolidated financial statements as of such dates, except as follows:

Description	As of December 31, 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	\$ —	\$ —	\$ 249,628	\$ 211,250
Senior unsecured notes, 9.750 % coupon rate, due 2025	497,454	490,750	495,710	478,985
Senior secured notes, zero coupon rate, due 2026	731,211	771,981	—	—
Senior unsecured notes, 4.750 % coupon rate, due 2028	494,746	384,110	493,473	284,375
Senior unsecured notes, 4.375 % coupon rate, due 2031	493,845	375,000	492,986	317,130
Senior unsecured notes, 5.625 % coupon rate, due 2042	342,946	211,400	342,565	151,200
Senior unsecured notes, 6.250 % coupon rate, due 2046	243,627	154,000	243,338	115,300
Secured debts ⁽²⁾	13,020	12,284	30,177	28,275
	<u>\$ 2,816,849</u>	<u>\$ 2,399,525</u>	<u>\$ 2,347,877</u>	<u>\$ 1,586,515</u>

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

(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 Nasdaq (Level 1 inputs as defined in the fair value hierarchy under GAAP) as of December 31, 2023 and 2022. We estimated the fair values of our four issuances of senior unsecured notes due 2024, 2025, 2028 and 2031 and our senior secured notes due 2026 using an average of the bid and ask price on Nasdaq on or about December 31, 2023 and 2022 (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 11. Noncontrolling Interest

In March 2017, we entered into the Seaport JV. The investor owned a 45 % equity interest in the joint venture, and we owned the remaining 55 % equity interest in the joint venture. We determined that, while we owned a 55 % equity interest in this joint venture, this joint venture was a VIE and that we controlled the activities that most significantly impacted the economic performance of this entity; we therefore consolidated the results of this joint venture in our financial statements. In December 2021, we sold an additional 35 % equity interest in the Seaport JV to another third party institutional investor. After giving effect to the sale, we owned a 20 % equity interest in this joint venture but determined that we are no longer the primary beneficiary. Effective as of the date of the sale, we deconsolidated these properties and accounted 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 this joint venture to an existing joint venture investor and continue to account for this joint venture using the equity method of accounting under the fair value option. The portion of the joint venture's net income and comprehensive income not attributable to us, or \$ 5,411 for the year ended December 31, 2021, is reported as a

noncontrolling interest in our consolidated statements of operations. This joint venture made aggregate cash distributions to the other joint venture investor of \$ 22,348 for the year ended December 31, 2021, which are reflected as a decrease in total equity attributable to noncontrolling interest in our consolidated statements of shareholders' equity.

Note 12. Segment Reporting

We operate in, and report financial information for, the following two segments: Office Portfolio and SHOP. We aggregate the operating results of our properties in 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.

	For the Year Ended December 31, 2023			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 220,530	\$ —	\$ 37,870	\$ 258,400
Residents fees and services	—	1,151,908	—	1,151,908
Total revenues	220,530	1,151,908	37,870	1,410,308
Expenses:				
Property operating expenses	97,964	1,075,091	1,096	1,174,151
Depreciation and amortization	98,205	175,926	9,952	284,083
General and administrative	—	—	26,131	26,131
Acquisition and certain other transaction related costs	—	—	10,853	10,853
Impairment of assets	14,034	4,346	—	18,380
Total expenses	210,203	1,255,363	48,032	1,513,598
(Loss) gain on sale of properties	(1,600)	2,805	—	1,205
Gains on equity securities, net	—	—	8,126	8,126
Interest and other income	—	1,581	13,955	15,536
Interest expense	(449)	(551)	(190,775)	(191,775)
Loss on modification or early extinguishment of debt	—	—	(2,468)	(2,468)
Income (loss) from continuing operations before income tax expense and equity in net losses of investees	8,278	(99,620)	(181,324)	(272,666)
Income tax expense	—	—	(445)	(445)
Equity in net losses of investees	(20,461)	—	—	(20,461)
Net loss	\$ (12,183)	\$ (99,620)	\$ (181,769)	\$ (293,572)
	As of December 31, 2023			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 1,866,422	\$ 3,134,978	\$ 444,736	\$ 5,446,136

	For the Year Ended December 31, 2022			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 222,390	\$ —	\$ 38,350	\$ 260,740
Residents fees and services	—	1,022,826	—	1,022,826
Total revenues	222,390	1,022,826	38,350	1,283,566
Expenses:				
Property operating expenses	94,299	1,014,100	671	1,109,070
Depreciation and amortization	76,007	151,930	11,343	239,280
General and administrative	—	—	26,435	26,435
Acquisition and certain other transaction related costs	—	—	2,605	2,605
Total expenses	170,306	1,166,030	41,054	1,377,390
Gain on sale of properties	321,040	822	—	321,862
Losses on equity securities, net	—	—	(25,660)	(25,660)
Interest and other income	—	4,327	11,602	15,929
Interest expense	(913)	(1,534)	(206,936)	(209,383)
Gain (loss) on modification or early extinguishment of debt	16	—	(30,059)	(30,043)
Income (loss) from continuing operations before income tax expense and equity in net earnings of investees	372,227	(139,589)	(253,757)	(21,119)
Income tax expense	—	—	(710)	(710)
Equity in net earnings of investees	6,055	—	—	6,055
Net income (loss)	\$ 378,282	\$ (139,589)	\$ (254,467)	\$ (15,774)
As of December 31, 2022				
	Office Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 1,967,244	\$ 3,147,785	\$ 887,064	\$ 6,002,093

	For the Year Ended December 31, 2021			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 367,597	\$ —	\$ 40,992	\$ 408,589
Residents fees and services	—	974,623	—	974,623
Total revenues	367,597	974,623	40,992	1,383,212
Expenses:				
Property operating expenses	127,313	964,499	—	1,091,812
Depreciation and amortization	127,632	132,044	11,455	271,131
General and administrative	—	—	34,087	34,087
Acquisition and certain other transaction related costs	—	—	17,506	17,506
Impairment of assets	—	(174)	—	(174)
Total expenses	254,945	1,096,369	63,048	1,414,362
Gain on sale of properties	492,072	200	—	492,272
Losses on equity securities, net	—	—	(42,232)	(42,232)
Interest and other income	—	19,554	1,081	20,635
Interest expense	(23,477)	(2,089)	(230,193)	(255,759)
Loss on modification or early extinguishment of debt	—	—	(2,410)	(2,410)
Income (loss) before income tax expense	581,247	(104,081)	(295,810)	181,356
Income tax expense	—	—	(1,430)	(1,430)
Net income (loss)	581,247	(104,081)	(297,240)	179,926
Net income attributable to noncontrolling interest	(5,411)	—	—	(5,411)
Net income (loss) attributable to common shareholders	\$ 575,836	\$ (104,081)	\$ (297,240)	\$ 174,515
As of December 31, 2021				
	Office Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 2,282,652	\$ 2,995,819	\$ 1,345,043	\$ 6,623,514

Note 13. Income Taxes

Our provision for income taxes consists of the following:

	For the Year Ended December 31,		
	2023	2022	2021
Current:			
Federal	\$ 168)	\$ —	\$ 200
State	613	710	1,230
	445	710	1,430
Deferred:			
Federal	—	—	—
State	—	—	—
	—	—	—
Income tax provision	\$ 445	\$ 710	\$ 1,430

A reconciliation of our effective tax rate and the U.S. federal statutory income tax rate is as follows:

	For the Year Ended December 31,					
	2023		2022		2021	
Taxes at statutory U.S. federal income tax rate	21.0	%	21.0	%	21.0	%
Nontaxable income	(21.0)	%	(21.0)	%	(21.0)	%
Federal excise tax	0.1	%	—	%	0.1	%
State and local income taxes, net of federal tax benefit	(0.2)	%	(4.5)	%	0.8	%
Effective tax rate	(0.1)	%	(4.5)	%	0.9	%

Deferred income tax balances reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities in our consolidated balance sheets and the amounts used for income tax purposes and are stated at enacted tax rates expected to be in effect when taxes are actually paid or recovered. Significant components of our deferred tax assets and liabilities were as follows:

	For the Year Ended December 31,	
	2023	2022
Deferred tax assets:		
Deferred income	\$ 1,849	\$ 3,277
Fair market value adjustment	—	6,556
Other	1,196	1,010
Tax loss carryforwards	83,707	60,188
	86,752	71,031
Valuation allowance	(86,752)	(71,031)
	—	—
Net deferred income taxes	\$ —	\$ —

Because of our TRSs' history of losses, we are not able to conclude that it is more likely than not we will realize the future benefit of our deferred tax assets; thus we have provided a 100 % valuation allowance as of December 31, 2023 and 2022. If and when we believe it is more likely than not that we will recover our deferred tax assets, we will reverse the valuation allowance as an income tax benefit in our consolidated statements of operations. As of December 31, 2023, our consolidated TRSs had net operating loss carry forwards for federal income tax purposes of approximately \$ 316,314 , which do not expire. As of December 31, 2023, we, excluding our subsidiaries, had net operating loss carry forwards for federal income tax purposes of approximately \$ 403,477 , which do not expire. In the normal course of business, income tax authorities in various income tax jurisdictions conduct routine audits of our income tax returns filed in prior years. Income tax years subsequent to 2019 may be open to examination in some of the income tax jurisdictions in which we operate.

Note 14. 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.

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				Initial Cost to Company				Cost at December 31, 2023							
Address	City	State	Encumbrances ⁽¹⁾	Cost				Cost Basis Adjustment ⁽²⁾	Buildings, Improvements &			Accumulated Depreciation ⁽⁴⁾	Date Acquired	Original Construction Date	
				Land	Equipment	Buildings, Improvements &	Capitalized Subsequent to Acquisition		Impairment	Equipment	Total ⁽³⁾				
2184 Parkway Lake Drive															
	Birmingham	AL	\$ —	\$ 580	\$ 5,980	\$ 2,838	\$ —	\$ —	\$ 580	\$ 8,818	\$ 9,398	\$ 3,209	8/1/2008	2001	
2634 Valleydale Road															
	Birmingham	AL	—	600	7,574	2,988	—	(83)	1,559	9,520	11,079	3,526	8/1/2008	2000	
2021 Dahlke Drive NE															
	Cullman	AL	—	287	3,415	1,015	—	(301)	287	4,129	4,416	1,857	11/19/2004	1998	
101 Tulip Lane															
	Dothan	AL	—	3,543	14,619	2,825	—	(80)	3,543	17,364	20,907	3,331	12/27/2017	2000	
49 Hughes Road															
	Madison	AL	—	334	3,981	1,377	—	(243)	334	5,115	5,449	2,292	11/19/2004	1998	
200 Terrace Lane															
	Priceville	AL	—	1,300	9,447	2,919	—	(202)	1,365	12,099	13,464	3,566	2/1/2012	2006	
413 Cox Boulevard															
	Sheffield	AL	—	394	4,684	2,151	—	(294)	394	6,541	6,935	2,612	11/19/2004	1998	
2435 Columbiana Road															
	Vestavia Hills	AL	—	843	23,472	5,010	—	(379)	902	28,044	28,946	7,069	7/12/2016	1991	
4461 N Crossover Road															
	Fayetteville	AR	—	733	10,432	1,572	—	—	733	12,004	12,737	2,842	5/1/2015	2011	
4210 S Caraway Road															
	Jonesboro	AR	—	653	9,515	733	—	—	653	10,248	10,901	2,601	5/1/2015	2008	
672 Jones Road															
	Springdale	AR	—	572	9,364	2,427	—	—	572	11,791	12,363	2,855	5/1/2015	2007	
13840 North Desert Harbor Drive															
	Peoria	AZ	—	2,687	15,843	11,561	—	(2,481)	2,693	24,917	27,610	11,840	1/11/2002	1990	
11209 N. Tatum Boulevard															
	Phoenix	AZ	—	1,380	6,349	6,927	—	(711)	1,586	12,359	13,945	4,143	9/30/2011	1987	
2444 West Las Palmaritas Drive															
	Phoenix	AZ	—	3,820	6,669	3,459	—	(170)	3,831	9,947	13,778	4,299	12/22/2010	1982	
4121 East Cotton Center ⁽⁵⁾															
	Phoenix	AZ	—	5,166	12,724	4,091	—	—	5,205	16,776	21,981	3,034	1/29/2015	2000	
3850 North US Hwy 89															
	Prescott	AZ	—	2,017	17,513	9,599	—	(221)	2,017	26,891	28,908	5,347	2/1/2018	1986	
6001 East Thomas Road															
	Scottsdale	AZ	—	941	8,807	6,602	—	(971)	946	14,433	15,379	8,477	9/1/2012	1990	
7090 East Mescal Street															
	Scottsdale	AZ	—	2,315	13,650	27,818	—	(2,257)	2,349	39,177	41,526	12,745	1/11/2002	1984	
17225 North Boswell Boulevard															
	Sun City	AZ	—	1,189	10,569	5,225	—	(836)	1,189	14,958	16,147	8,750	9/1/2012	1990	
14001 W. Meeker Boulevard ⁽⁵⁾															
	Sun City West	AZ	—	395	3,307	—	—	(192)	395	3,115	3,510	1,625	2/28/2003	1998	
1415 West 3rd Street															
	Tempe	AZ	—	2,186	13,446	4,334	—	—	4,896	15,070	19,966	3,195	1/29/2015	1981	
2500 North Rosemont Boulevard															
	Tucson	AZ	—	4,429	26,119	11,276	—	(3,197)	4,576	34,051	38,627	17,043	1/11/2002	1989	
710 North Euclid															
	Anaheim	CA	—	2,850	6,964	2,586	(1,350)	(2,405)	2,518	6,127	8,645	1,179	7/9/2008	1992	
5000 Marina Boulevard ⁽⁵⁾															
	Brisbane	CA	—	7,957	13,430	752	—	—	7,965	14,174	22,139	2,370	11/14/2017	2000	
5770 Armada Drive ⁽⁵⁾															
	Carlsbad	CA	—	3,875	18,543	100	—	—	3,875	18,643	22,518	4,134	1/29/2015	1997	
1350 South El Camino Real															
	Encinitas	CA	—	1,510	18,042	4,126	—	(53)	1,517	22,108	23,625	7,956	3/31/2008	1999	
47071 Bayside Parkway															
	Fremont	CA	—	15,774	45,249	9,648	—	—	15,774	54,897	70,671	2,317	7/27/2022	1991	
47201 Lakeview Boulevard ⁽⁵⁾															
	Fremont	CA	—	3,200	10,177	805	—	—	3,226	10,956	14,182	3,152	9/30/2011	1990	
47211/47215 Lakeview Boulevard ⁽⁵⁾															
	Fremont	CA	—	3,750	12,656	3,891	—	—	3,782	16,515	20,297	4,894	9/30/2011	1985	
577 South Peach Street ⁽⁵⁾															
	Fresno	CA	—	738	2,577	4,175	—	(211)	738	6,541	7,279	3,285	12/28/1990	1963	
6075 North Marks Avenue															
	Fresno	CA	—	880	12,751	2,014	—	—	889	14,756	15,645	5,646	3/31/2008	1996	
1319 Brookside Avenue															
	Redlands	CA	—	1,770	9,982	2,437	—	—	1,770	12,419	14,189	4,592	3/31/2008	1999	
110 Sterling Court															
	Roseville	CA	—	1,620	10,262	3,420	—	—	1,620	13,682	15,302	4,918	3/31/2008	1998	

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Initial Cost to Company																Cost at December 31, 2023			
					Cost									Original					
					Buildings,	Capitalized				Buildings,	Accumulated			Date	Construction				
					Improvements &	Subsequent to	Cost Basis			Improvements &				Acquired					
Address	City	State	Encumbrances ⁽¹⁾	Land	Equipment	Acquisition	Impairment	Adjustment ⁽²⁾	Land	Equipment	Total ⁽³⁾	Depreciation ⁽⁴⁾			Date				
16925 & 16916 Hierba																			
Drive	San Diego	CA	—	9,142	53,904	32,832	—	(7,115)	9,180	79,583	88,763	35,169	1/11/2002		1987				
3030 Science Park ⁽⁵⁾	San Diego	CA	—	2,466	46,473	45,393	—	(15,755)	2,466	76,111	78,577	19,158	8/6/2009		1986				
3040 Science Park ⁽⁵⁾	San Diego	CA	—	1,225	23,077	24,823	—	—	1,225	47,900	49,125	11,020	8/6/2009		1986				
3050 Science Park ⁽⁵⁾	San Diego	CA	—	1,508	28,753	36,057	—	—	1,535	64,783	66,318	14,535	8/6/2009		1986				
3530 Deer Park Drive	Stockton	CA	—	670	14,419	3,345	—	—	682	17,752	18,434	6,511	3/31/2008		1999				
877 East March Lane	Stockton	CA	—	1,176	11,171	8,427	—	(2,159)	1,411	17,204	18,615	7,777	9/30/2003		1988				
28515 Westinghouse																			
Place ⁽⁵⁾	Valencia	CA	—	4,669	41,440	1,536	—	—	4,689	42,956	47,645	9,270	1/29/2015		2008				
1866 San Miguel Drive	Walnut Creek	CA	—	2,010	9,290	6,937	—	(1,421)	3,417	13,399	16,816	3,956	12/1/2011		1996				
1950 South Dayton																			
Street	Aurora	CO	—	3,062	46,195	11,422	—	(340)	3,120	57,219	60,339	13,355	5/1/2015		1987				
515 Fairview Avenue	Canon City	CO	—	292	6,228	4,298	(3,512)	(517)	299	6,490	6,789	2,908	9/26/1997		1970				
110 West Van Buren																			
Street	Springs	CO	—	245	5,236	5,556	(3,031)	(810)	245	6,951	7,196	2,893	9/26/1997		1972				
3920 East San Miguel																			
Street	Springs	CO	—	1,380	8,894	4,315	—	(370)	1,612	12,607	14,219	4,417	7/31/2012		1977				
2050 South Main																			
Street	Delta	CO	—	167	3,570	3,261	—	(415)	167	6,416	6,583	3,153	9/26/1997		1963				
2501 Little Bookcliff																			
Drive	Grand Junction	CO	—	204	3,875	4,078	—	(974)	207	6,976	7,183	3,673	12/30/1993		1968				
2825 Patterson Road	Grand Junction	CO	—	173	2,583	4,831	—	(786)	173	6,628	6,801	3,639	12/30/1993		1978				
1599 Ingalls Street	Lakewood	CO	—	232	3,766	8,014	—	(1,339)	232	10,441	10,673	5,092	12/28/1990		1972				
5555 South Elati Street	Littleton	CO	—	185	5,043	7,019	—	(1,409)	191	10,647	10,838	5,763	12/28/1990		1965				
8271 South Continental Divide																			
Road ⁽⁵⁾	Littleton	CO	—	400	3,507	—	—	(202)	400	3,305	3,705	1,724	2/28/2003		1998				
9005 Grant Street ⁽⁵⁾	Thornton	CO	—	961	10,867	1,203	—	—	1,269	11,762	13,031	3,408	12/28/2012		2001				
7809 W. 38th Avenue																			
⁽⁵⁾	Wheat Ridge	CO	—	470	3,373	86	—	—	475	3,454	3,929	1,178	4/1/2010		2004				
40 Sebeth Drive ⁽⁵⁾	Cromwell	CT	—	570	5,304	2,071	—	(424)	798	6,723	7,521	2,278	12/22/2010		1998				
1145 19th Street NW	Washington	DC	—	13,600	24,880	37,553	—	(1,580)	13,600	60,853	74,453	17,007	5/20/2009		1976				
2141 K Street, NW	Washington	DC	—	13,700	8,400	7,174	—	(1,353)	13,700	14,221	27,921	4,746	12/22/2008		1966				
255 Possum Park																			
Road	Newark	DE	—	2,010	11,852	14,103	—	(1,903)	2,761	23,301	26,062	8,339	1/11/2002		1982				
4175 Ogletown																			
Stanton Rd	Newark	DE	—	1,500	19,447	3,158	—	—	1,563	22,542	24,105	8,556	3/31/2008		1998				
1212 Foulk Road	Wilmington	DE	—	1,179	6,950	10,870	—	(1,460)	1,202	16,337	17,539	4,701	1/11/2002		1974				
1912 Marsh Road	Wilmington	DE	—	4,365	25,739	10,752	—	(2,436)	4,431	33,989	38,420	16,438	1/11/2002		1988				
2723 Shipley Road	Wilmington	DE	—	869	5,126	13,168	—	(1,934)	1,034	16,195	17,229	4,502	1/11/2002		1989				
407 Foulk Road	Wilmington	DE	—	38	227	2,838	—	(531)	84	2,488	2,572	1,013	1/11/2002		1965				
22601 Camino Del Mar	Boca Raton	FL	—	3,200	46,800	11,991	—	(3,307)	3,204	55,480	58,684	16,339	12/15/2011		1990				
1325 S Congress																			
Avenue	Boynton Beach	FL	—	1,620	5,341	2,623	—	(207)	1,628	7,749	9,377	2,274	7/27/2012		1985				
1425 Congress Avenue	Boynton Beach	FL	—	2,390	14,768	5,497	—	(1,370)	2,390	18,895	21,285	5,856	8/9/2011		1994				
1416 Country Club																			
Blvd. ⁽⁵⁾	Cape Coral	FL	—	400	2,907	—	—	(173)	400	2,734	3,134	1,426	2/28/2003		1998				

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Initial Cost to Company								Cost at December 31, 2023						
Address	City	State	Encumbrances ⁽¹⁾	Land	Buildings,	Cost	Impairment	Cost Basis	Land	Buildings,	Total ⁽³⁾	Accumulated	Date	Original
					Improvements &	Capitalized				Improvements &				
					Equipment	Subsequent to		Adjustment ⁽²⁾		Equipment			Acquired	Date
8500 Royal Palm														
Boulevard	Coral Springs	FL	—	3,410	20,104	35,126	—	(4,015)	3,421	51,204	54,625	22,010	1/11/2002	1984
1208 South Military														
Trail	Deerfield Beach	FL	—	1,690	14,972	36,321	—	(5,778)	1,777	45,428	47,205	18,727	10/1/2012	1986
3001 DC Country														
Club Boulevard	Deerfield Beach	FL	—	3,196	18,848	25,317	—	(3,198)	3,222	40,941	44,163	18,302	1/11/2002	1990
12780 Kenwood														
Lane	Fort Myers	FL	—	369	2,174	5,302	—	(1,148)	859	5,838	6,697	2,215	1/11/2002	1990
2525 First Street	Fort Myers	FL	—	2,385	21,137	45,642	—	(13,880)	2,577	52,707	55,284	16,771	10/1/2012	1984
1825 Ridgewood														
Avenue	Holly Hill	FL	—	700	16,700	6,818	(2,636)	(8,866)	684	12,032	12,716	1,528	7/22/2011	1926/2006
2480 North Park														
Road	Hollywood	FL	—	4,500	40,500	25,358	—	(3,431)	4,556	62,371	66,927	19,243	12/15/2011	1986
8901 Tamiami Trail														
East	Naples	FL	—	3,200	2,898	16,214	—	(837)	3,200	18,275	21,475	7,084	8/31/2006	1984
12780 Waterford														
Lakes Parkway ⁽⁵⁾	Orlando	FL	—	977	3,946	820	—	—	1,052	4,691	5,743	1,218	12/18/2013	2002
1603 S. Hiawassee														
Road	Orlando	FL	—	488	2,621	434	—	(81)	488	2,974	3,462	794	12/18/2013	2003
1825 N. Mills Avenue														
⁽⁵⁾	Orlando	FL	—	519	1,799	670	—	(117)	580	2,291	2,871	768	12/22/2008	1997
1911 N. Mills Avenue														
⁽⁵⁾	Orlando	FL	—	1,946	7,197	2,903	—	(538)	2,042	9,466	11,508	2,779	12/22/2008	1997
1925 N. Mills Avenue														
⁽⁵⁾	Orlando	FL	—	135	532	307	—	(107)	199	668	867	239	12/22/2008	1997
250 N. Alafaya Trail														
⁽⁵⁾	Orlando	FL	—	967	4,362	477	—	—	967	4,839	5,806	1,291	12/18/2013	1999
45 Katherine														
Boulevard	Palm Harbor	FL	—	3,379	29,945	12,316	—	(2,428)	3,392	39,820	43,212	26,071	10/1/2012	1992
900 West Lake Road	Palm Harbor	FL	—	3,449	20,336	15,210	—	(3,395)	3,493	32,107	35,600	15,662	1/11/2002	1989
8500 West Sunrise														
Boulevard	Plantation	FL	—	4,700	24,300	12,975	—	(5,391)	4,717	31,867	36,584	9,840	12/15/2011	1989
1371 South Ocean														
Boulevard	Beach	FL	—	2,500	15,500	18,386	—	(3,554)	2,560	30,272	32,832	9,888	12/15/2011	1991
2701 North Course														
Drive	Beach	FL	—	7,700	2,127	44,391	—	(2,857)	7,700	43,661	51,361	17,371	8/31/2006	1985
20480 Veterans														
Boulevard	Port Charlotte	FL	—	400	11,934	3,729	—	(3,147)	440	12,476	12,916	3,839	7/22/2011	1996
1699 S.E. Lyngate														
Drive	Port St. Lucie	FL	—	1,242	11,009	5,634	—	(1,055)	1,249	15,581	16,830	9,768	10/1/2012	1993
501 N.W. Cashmere														
Boulevard	Port St. Lucie	FL	—	890	9,345	3,760	—	(463)	1,673	11,859	13,532	3,680	7/22/2011	2007
900 South Harbour														
Island Blvd. ⁽⁶⁾	Tampa	FL	—	4,850	6,349	6,168	—	—	4,850	12,517	17,367	2,574	10/30/2007	1986
111 Executive Center West Palm														
Drive	Beach	FL	—	2,061	12,153	24,463	—	(3,077)	2,075	33,525	35,600	14,185	1/11/2002	1988
2347 Cedarcrest														
Road	Acworth	GA	—	1,674	—	88	—	—	1,674	88	1,762	—	5/1/2016	2008
2351 Cedarcrest														
Road	Acworth	GA	—	326	6,674	832	—	(511)	327	6,994	7,321	1,409	5/1/2016	2014
1200 Bluegrass														
Lakes Parkway	Alpharetta	GA	—	1,689	15,936	201	—	—	1,761	16,065	17,826	3,594	1/29/2015	2001
855 North Point Pkwy														
⁽⁶⁾	Alpharetta	GA	—	5,300	26,712	—	—	—	5,300	26,712	22,102	10,266	8/31/2008	2006

177	Alpharetta	GA	—	3,330	20,712	—	—	—	3,330	20,712	32,132	10,200	06/21/2000	2000
253 N. Main Street	Alpharetta	GA	—	1,325	12,377	1,320	—	(155)	1,221	13,646	14,867	3,448	5/1/2015	1997
1291 Cedar Shoals Drive	Athens	GA	—	337	4,006	1,844	—	(290)	368	5,529	5,897	2,433	11/19/2004	1998
1515 Sheridan Road														
(8)	Atlanta	GA	—	5,800	9,305	3,225	—	—	5,800	12,530	18,330	3,751	11/30/2007	1978
240 Marietta Highway	Canton	GA	—	806	8,555	3,445	—	(378)	806	11,622	12,428	3,237	10/1/2013	1997
4500 South Stadium Drive	Columbus	GA	—	294	3,505	1,161	—	(225)	298	4,437	4,735	1,910	11/19/2004	1999

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Address	City	State	Encumbrances ⁽¹⁾	Cost				Cost Basis	Buildings,			Accumulated	Date	Original
				Land	Buildings, Improvements & Equipment	Capitalized Subsequent to Acquisition	Impairment		Improvements & Total ⁽³⁾	Depreciation ⁽⁴⁾				
								Adjustment ⁽²⁾					Acquired	Date
1352 Wellbrook														
Circle	Conyers	GA	—	342	4,068	1,994	(1,366)	(2,032)	206	2,800	3,006	416	11/19/2004	1997
1501 Milstead Road														
Conyers	GA	—	750	7,796	1,204	—	(116)	777	777	8,857	9,634	2,999	9/30/2010	2008
3875 Post Road														
Cumming	GA	—	954	12,796	446	—	—	—	960	13,236	14,196	3,610	5/1/2015	2007
4960 Jot Em Down														
Road	Cumming	GA	—	1,548	18,666	13,418	—	(1,057)	3,416	29,159	32,575	8,089	8/1/2013	2011
5610 Hampton Park														
Drive	Cumming	GA	—	3,479	14,771	330	—	(938)	3,498	14,144	17,642	3,010	9/3/2015	2014
7955 Majors Road														
Cumming	GA	—	1,325	7,770	1,107	—	(115)	1,325	1,325	8,762	10,087	2,217	5/1/2015	2009
2470 Dug Gap Road														
Dalton	GA	—	262	3,119	1,434	—	(133)	262	262	4,420	4,682	1,947	11/19/2004	1997
101 West Ponce De														
Leon Avenue	Decatur	GA	—	3,500	13,179	12,007	—	—	3,500	25,186	28,686	4,346	5/30/2012	1992
2801 North Decatur														
Road ⁽⁶⁾	Decatur	GA	—	3,100	4,436	3,084	—	(519)	3,260	6,841	10,101	2,430	7/9/2008	1986
114 Penland Street														
Ellijay	GA	—	496	7,107	1,625	—	(157)	496	496	8,575	9,071	2,419	10/1/2013	2008
353 North Belair														
Road	Evans	GA	—	230	2,663	1,608	—	(244)	230	4,027	4,257	1,694	11/19/2004	1998
1294 Highway 54														
West	Fayetteville	GA	—	853	9,903	1,542	—	(148)	943	11,207	12,150	2,987	5/1/2015	1999
2435 Limestone														
Parkway	Gainesville	GA	—	268	3,186	1,694	—	(224)	268	4,656	4,924	1,941	11/19/2004	1998
3315 Thompson														
Bridge Road	Gainesville	GA	—	934	30,962	3,436	—	(352)	956	34,024	34,980	8,204	5/1/2015	1999
5373 Thompson Mill														
Road	Hoschton	GA	—	944	12,171	509	—	—	959	12,665	13,624	3,286	5/1/2015	2011
8080 Summit														
Business Parkway	Jonesboro	GA	—	1,800	20,664	6,676	—	(1,579)	1,800	25,761	27,561	8,261	6/20/2011	2007
6191 Peake Road														
Macon	GA	—	183	2,179	1,540	(848)	(1,142)	110	110	1,802	1,912	270	11/19/2004	1998
1360 Upper Hembree														
Road ⁽⁶⁾	Roswell	GA	—	1,080	6,138	843	—	—	1,095	6,966	8,061	2,091	5/7/2012	2007
1 Savannah Square														
Drive	Savannah	GA	—	1,200	19,090	10,362	(6,993)	(8,926)	835	13,898	14,733	2,166	10/1/2006	1987
5200 Habersham														
Street	Savannah	GA	—	800	7,800	2,821	(3,082)	(2,754)	476	5,109	5,585	698	6/23/2011	2005
7410 Skidaway Road														
Savannah	GA	—	400	5,670	2,319	(1,870)	(2,626)	252	252	3,641	3,893	520	11/1/2006	1989
2078 Scenic Highway														
Snellville	GA	—	870	4,030	1,791	—	(256)	870	870	5,565	6,435	1,843	12/10/2009	1997
475 Country Club														
Drive	Stockbridge	GA	—	512	9,560	1,312	—	(206)	551	10,627	11,178	2,754	5/1/2015	1998
1300 Montreal Road														
Tucker	GA	—	690	6,210	2,366	—	(469)	694	694	8,103	8,797	3,431	6/3/2005	1997
1100 Ward Avenue ⁽⁶⁾														
Honolulu	HI	—	11,200	55,618	9,811	—	(304)	11,247	11,247	65,078	76,325	19,381	6/18/2012	1961
2340 West Seltice														
Way	Coeur d'Alene	ID	—	910	7,170	3,687	—	(214)	1,052	10,501	11,553	3,454	7/31/2012	1993
850 Lincoln Drive														
Idaho Falls	ID	—	510	6,640	3,599	—	(147)	760	760	9,842	10,602	3,161	7/31/2012	1978
1250 West Central														
Road	Heights	IL	—	3,665	32,587	17,225	—	(1,932)	3,781	47,764	51,545	28,468	11/1/2012	1986
1450 Busch Parkway														
Buffalo Grove	IL	—	3,800	11,456	1,173	—	(122)	3,837	3,837	12,470	16,307	4,159	9/16/2010	2009
2601 Patriot														
Boulevard ⁽⁶⁾	Glenview	IL	—	2,285	9,593	—	—	—	2,285	9,593	11,878	2,139	1/29/2015	2005
1373 D'Adrian														
Professional Park	Godfrey	IL	—	281	15,088	1,986	—	(210)	281	16,864	17,145	3,988	5/1/2015	2010
900 43rd Avenue														
Moline	IL	—	482	7,651	746	—	(76)	482	482	8,321	8,803	1,972	5/1/2015	2003 / 2012
221 11th Avenue														
Moline	IL	—	161	7,244	1,759	—	(54)	161	161	8,949	9,110	2,290	5/1/2015	2008

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					Improvements &	Capitalized				Improvements &				
					Equipment	Subsequent to		Adjustment ⁽²⁾		Equipment			Acquired	Date
2700 14th Street	Pekin	IL	—	171	11,475	747	—	(280)	172	11,941	12,113	2,956	5/1/2015	2009
7130 Crimson Ridge Drive														
	Rockford	IL	—	200	7,300	3,135	—	(389)	1,596	8,650	10,246	2,624	5/1/2011	1999
1220 Lakeview Drive														
⁽⁵⁾	Romeoville	IL	—	1,120	19,582	(61)	—	—	1,058	19,583	20,641	7,526	8/21/2008	2005
1201 Hartman Lane	Shiloh	IL	—	743	7,232	2,369	—	(620)	1,237	8,487	9,724	1,669	12/8/2016	2003
900 Southwind Road	Springfield	IL	—	300	6,744	3,227	—	(403)	300	9,568	9,868	3,949	8/31/2006	1990
2705 Avenue E	Sterling	IL	—	341	14,331	1,030	—	(144)	343	15,215	15,558	3,830	5/1/2015	2008
39 Dorothy Drive	Troy	IL	—	1,002	7,010	1,781	—	(626)	1,002	8,165	9,167	1,590	12/8/2016	2003
100 Grand Victorian Place														
	Washington	IL	—	241	12,046	542	—	(57)	241	12,531	12,772	3,113	5/1/2015	2009
1615 Lakeside Drive ⁽⁶⁾	Waukegan	IL	—	2,700	9,590	4,262	—	(944)	3,515	12,093	15,608	3,760	9/30/2011	1990
1675 Lakeside Drive ⁽⁶⁾	Waukegan	IL	—	2,420	9,382	3,568	—	(957)	2,906	11,507	14,413	3,510	9/30/2011	1998
406 Smith Drive	Auburn	IN	—	380	8,246	874	—	(253)	524	8,723	9,247	3,328	9/1/2008	1999
6990 East County Road 100 North														
	Avon	IN	—	850	11,888	1,905	—	(333)	850	13,460	14,310	5,025	9/1/2008	1999
2455 Tamarack Trail	Bloomington	IN	—	5,400	25,129	34,518	—	(621)	6,339	58,087	64,426	17,846	11/1/2008	1983
2460 Glebe Street ⁽⁵⁾	Carmel	IN	—	2,108	57,741	1,493	—	(148)	2,133	59,061	61,194	14,252	5/1/2015	2008
701 East County Line Road ⁽⁵⁾														
	Greenwood	IN	—	1,830	14,303	1,410	—	(305)	1,877	15,361	17,238	4,793	12/1/2011	2007
8505 Woodfield Crossing Boulevard														
	Indianapolis	IN	—	2,785	16,396	9,462	—	(2,183)	2,838	23,622	26,460	11,528	1/11/2002	1986
2501 Friendship Boulevard														
	Kokomo	IN	—	512	13,009	2,286	—	(58)	512	15,237	15,749	2,752	12/27/2017	1997
603 Saint Joseph Drive	Kokomo	IN	—	220	5,899	1,413	—	(256)	220	7,056	7,276	2,647	9/1/2008	1998
1211 Longwood Drive	La Porte	IN	—	770	5,550	1,772	—	(288)	923	6,881	7,804	2,586	9/1/2008	1998
1590 West Timberview Drive														
	Marion	IN	—	410	5,409	1,691	—	(267)	410	6,833	7,243	2,428	9/1/2008	2000
1473 East McKay Road														
	Shelbyville	IN	—	190	5,328	1,550	—	(236)	190	6,642	6,832	2,313	9/1/2008	1999
17441 State Road 23														
⁽⁵⁾	South Bend	IN	—	400	3,107	(38)	—	(182)	363	2,924	3,287	1,526	2/28/2003	1998
222 South 25th Street	Terra Haute	IN	—	300	13,115	1,527	—	(492)	300	14,150	14,450	5,295	9/1/2008	2005
150 Fox Ridge Drive	Vincennes	IN	—	110	3,603	2,380	—	(208)	110	5,775	5,885	2,349	9/1/2008	1985
1501 Inverness Drive	Lawrence	KS	—	1,600	18,565	5,131	—	(1,232)	1,758	22,306	24,064	7,896	10/1/2009	1988
5799 Broadmoor Street ⁽⁵⁾														
	Mission	KS	—	1,522	7,246	2,846	—	—	1,530	10,084	11,614	2,271	1/17/2017	1986
3501 West 95th Street	Overland Park	KS	—	2,568	15,140	12,521	—	(2,232)	2,580	25,417	27,997	10,978	1/11/2002	1989
6555 West 75th Street	Overland Park	KS	—	1,274	1,126	17,556	—	(1,102)	1,487	17,367	18,854	8,003	10/25/2002	1985
6700 W. 115th Street	Overland Park	KS	—	4,503	29,387	501	—	—	4,537	29,854	34,391	4,494	1/3/2018	2006
981 Campbell Lane	Bowling Green	KY	—	365	4,345	1,987	—	(203)	365	6,129	6,494	2,620	11/19/2004	1999
102 Leonardwood Drive														
	Frankfort	KY	—	560	8,282	4,134	—	(605)	579	11,792	12,371	4,604	8/31/2006	1989
4190 Lafayette Road	Hopkinsville	KY	—	316	3,761	1,348	—	(246)	316	4,863	5,179	2,054	11/19/2004	1999
690 Mason Headley Road ⁽⁶⁾														
	Lexington	KY	3,144	—	10,848	18,298	—	(1,441)	42	27,663	27,705	13,260	1/11/2002	1985

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					Buildings, Improvements &	Capitalized Subsequent to				Improvements &	Equipment		Depreciation ⁽⁴⁾	Acquired	Construction
					Equipment	Acquisition		Adjustment ⁽³⁾							Date
700 Mason Headley Road ⁽⁵⁾															
	Lexington	KY	767	—	6,394	10,364	—	(1,061)	52	15,645		15,697	7,377	1/11/2002	1980
200 Brookside Drive															
	Louisville	KY	—	3,524	20,779	13,048	—	(3,357)	3,549	30,445		33,994	14,828	1/11/2002	1984
1517 West Broadway															
	Mayfield	KY	—	268	2,730	2,197	—	(305)	268	4,622		4,890	1,986	11/19/2004	1999
1700 Elmdale Road															
	Paducah	KY	—	450	5,358	2,034	—	(416)	451	6,975		7,426	3,108	11/19/2004	2000
100 Neighborly Way															
	Somerset	KY	—	200	4,919	1,315	—	—	200	6,234		6,434	2,558	11/6/2006	2000
1295 Boylston Street ⁽⁵⁾															
	Boston	MA	—	7,600	18,140	3,166	—	(109)	7,625	21,172		28,797	7,366	1/26/2011	1930
549 Albany Street															
	Boston	MA	—	4,576	45,029	—	—	—	4,569	45,036		49,605	11,638	8/22/2013	1895
4 Maguire Road															
	Lexington	MA	—	3,600	15,555	34,794	(7,255)	(1,003)	3,884	41,807		45,691	6,595	12/22/2008	1994
100 Hampshire Street ⁽⁵⁾															
	Mansfield	MA	—	2,090	8,215	4,079	—	—	2,486	11,898		14,384	3,339	12/22/2010	1975
15 Hampshire Street ⁽⁵⁾															
	Mansfield	MA	—	1,360	7,326	992	—	—	1,748	7,930		9,678	2,676	12/22/2010	1988
5 Hampshire Street ⁽⁵⁾															
	Mansfield	MA	—	1,190	5,737	2,962	—	(143)	1,477	8,269		9,746	2,949	12/22/2010	1988
299 Cambridge Street															
	Winchester	MA	—	3,218	18,988	15,791	—	(2,473)	3,218	32,306		35,524	14,557	1/11/2002	1991
2717 Riva Road															
	Annapolis	MD	—	1,290	12,373	3,828	—	(150)	1,290	16,051		17,341	5,381	3/31/2008	2001
658 Boulton Street ⁽⁵⁾															
	Bel Air	MD	—	4,750	16,504	2	—	—	4,750	16,506		21,256	6,651	11/30/2007	1980
7600 Laurel Bowie Road															
	Bowie	MD	—	408	3,421	2,730	—	(464)	408	5,687		6,095	2,250	10/25/2002	2000
8100 Connecticut Avenue															
	Chevy Chase	MD	—	15,170	92,830	17,817	—	(3,997)	15,177	106,643		121,820	32,365	12/15/2011	1990
8220 Snowden River Parkway															
	Columbia	MD	—	1,390	10,303	2,035	—	—	1,390	12,338		13,728	4,483	3/31/2008	2001
700 Port Street															
	Easton	MD	—	383	4,555	4,506	—	(633)	394	8,417		8,811	3,751	10/25/2002	2000
3004 North Ridge Road															
	Ellicott City	MD	—	1,409	22,691	14,819	—	(2,730)	1,613	34,576		36,189	15,552	3/1/2004	1997
1820 Latham Drive															
	Frederick	MD	—	385	3,444	2,158	—	(444)	385	5,158		5,543	2,247	10/25/2002	1998
2100 Whittier Drive															
	Frederick	MD	—	1,260	9,464	4,088	—	(109)	1,260	13,443		14,703	4,771	3/31/2008	1999
10116 Sharpsburg Pike															
	Hagerstown	MD	—	1,040	7,471	6,270	—	(661)	1,044	13,076		14,120	4,780	3/31/2008	1999
4000 Old Court Road															
	Pikesville	MD	—	2,000	4,974	1,190	—	(82)	2,125	5,957		8,082	2,374	12/22/2008	1987
715 Benfield Road															
	Severna Park	MD	—	229	9,798	3,261	—	(1,258)	246	11,784		12,030	5,820	10/25/2002	1998
14400 Homecrest Road															
	Silver Spring	MD	—	1,200	9,288	10,440	—	(1,568)	1,207	18,153		19,360	7,829	10/25/2002	1996
720 & 734 N. Pine Road ⁽⁵⁾															
	Hampton	MI	—	300	2,406	—	—	(142)	300	2,264		2,564	1,181	2/28/2003	1998
4004 & 4012 Waldo Road ⁽⁵⁾															
	Midland	MI	—	400	2,606	—	—	(162)	400	2,444		2,844	1,275	2/28/2003	1998
1605 & 1615 Fredericks Drive ⁽⁵⁾															
	Monroe	MI	—	300	2,506	—	—	(152)	300	2,354		2,654	1,228	2/28/2003	1998
3150 & 3100 Old Centre Road ⁽⁵⁾															
	Portage	MI	—	300	2,206	—	—	(133)	300	2,073		2,373	1,082	2/28/2003	1998
2445 & 2485 Mc Carty Road ⁽⁵⁾															
	Saginaw	MI	—	600	5,212	—	—	(305)	600	4,907		5,507	2,560	2/28/2003	1998
11855 Ulysses Street NE ⁽⁵⁾															
	Blaine	MN	—	2,774	9,276	2,274	—	(190)	2,781	11,353		14,134	2,773	12/21/2012	2007
1305 Corporate Center Drive															
	Eagan	MN	—	2,300	13,105	12,996	—	(72)	2,735	25,594		28,329	7,613	12/22/2010	1986
8301 Golden Valley Road ⁽⁵⁾															
	Golden Valley	MN	—	1,256	4,680	1,202	—	—	1,288	5,850		7,138	1,145	2/10/2016	1998

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8401 Golden Valley Road ⁽⁵⁾															
Road ⁽⁵⁾	Golden Valley	MN	—	1,510	5,742	3,672	—	—	1,543	9,381	10,924	2,167	2/10/2016	1998	
8501 Golden Valley Road ⁽⁵⁾															
Road ⁽⁵⁾	Golden Valley	MN	—	1,263	4,288	2,356	—	—	1,295	6,612	7,907	1,394	2/10/2016	1998	
1201 Northland Drive ⁽⁵⁾															
Heights	Mendota Heights	MN	—	1,220	10,208	1,294	—	(771)	1,496	10,455	11,951	3,484	1/25/2011	1989	
12700 Whitewater Drive ⁽⁵⁾															
Drive ⁽⁵⁾	Minnetonka	MN	—	5,453	8,108	8,415	—	—	5,453	16,523	21,976	4,776	10/2/2017	1998	
20600 South Diamond Lake Road															
Rogers		MN	—	2,760	45,789	4,465	(20,359)	(15,686)	1,195	15,774	16,969	4,455	3/1/2008	1999	
2200 County Road C West ⁽⁵⁾															
West ⁽⁵⁾	Roseville	MN	—	590	702	731	—	(82)	792	1,149	1,941	436	9/30/2011	1991	
4166 Lexington Avenue N															
Avenue N	Shoreview	MN	—	1,300	4,547	1,285	—	—	1,508	5,624	7,132	1,863	5/20/2011	1988	
1365 Crestridge Lane ⁽⁵⁾															
West St. Paul		MN	—	400	2,506	—	—	(292)	400	2,214	2,614	1,155	2/28/2003	1998	
305 & 315 Thompson Avenue ⁽⁵⁾															
Avenue ⁽⁵⁾	West St. Paul	MN	—	400	3,608	99	—	(402)	400	3,305	3,705	1,724	2/28/2003	1998	
5351 Gretna Road															
Branson		MO	—	743	10,973	1,395	—	(288)	754	12,069	12,823	2,964	5/1/2015	2002	
845 N New Ballas Court															
Court	Creve Coeur	MO	—	1,582	16,328	2,534	—	—	2,181	18,263	20,444	3,010	1/22/2018	2006	
3828 College View Drive															
Drive	Joplin	MO	—	260	11,382	2,182	—	(136)	260	13,428	13,688	4,211	8/31/2012	2003	
14100 Magellan Plaza															
Plaza	Maryland Heights	MO	—	3,719	37,304	5,449	—	—	3,179	43,293	46,472	12,371	1/29/2015	2003	
640 E Highland Avenue															
Avenue	Nevada	MO	—	311	5,703	888	—	—	311	6,591	6,902	1,629	5/1/2015	1997	
2410 W Chesterfield Blvd															
Blvd	Springfield	MO	—	924	12,772	1,100	—	—	924	13,872	14,796	3,361	5/1/2015	1999	
3540 East Cherokee Street															
Street	Springfield	MO	—	1,084	11,339	1,611	—	(123)	1,129	12,782	13,911	3,258	5/1/2015	1996	
4700 North Hanley Road															
Road	St. Louis	MO	—	5,166	41,587	150	—	—	5,166	41,737	46,903	9,393	1/29/2015	2014	
118 Alamance Road															
Burlington		NC	—	575	9,697	2,632	—	(449)	575	11,880	12,455	3,724	6/20/2011	1998	
1050 Crescent Green Drive															
Drive	Cary	NC	—	713	4,628	4,438	—	(1,123)	713	7,943	8,656	3,536	10/25/2002	1999	
2220 & 2230 Farmington Drive ⁽⁵⁾															
Chapel Hill		NC	—	800	6,414	—	—	(375)	800	6,039	6,839	3,151	2/28/2003	1996	
2101 Runnymede Lane															
Charlotte		NC	—	2,475	11,451	3,345	—	(1,122)	2,458	13,691	16,149	4,121	6/20/2011	1999	
5920 McChesney Drive & 6101 Clarke Creek Parkway															
Creek Parkway	Charlotte	NC	—	1,320	21,750	3,977	—	(1,310)	1,320	24,417	25,737	8,409	11/17/2009	1999 / 2001	
500 Penny Lane NE															
Concord		NC	—	1,687	17,603	2,124	—	—	1,687	19,727	21,414	4,658	6/29/2016	1997	
1002 Highway 54															
Durham		NC	—	595	5,200	1,853	—	(212)	595	6,841	7,436	1,923	6/20/2011	1988	
4505 Emperor Boulevard ⁽⁵⁾															
Durham		NC	—	1,285	16,932	1,672	—	—	1,474	18,415	19,889	3,151	10/11/2017	2001	
5213 South Alston Avenue															
Avenue	Durham	NC	—	1,093	31,377	559	—	—	1,093	31,936	33,029	7,103	1/29/2015	2010	
2755 Union Road															
Gastonia		NC	—	1,104	17,834	1,766	—	(1,133)	1,104	18,467	19,571	3,827	6/29/2016	1998	
1001 Phifer Road															
Kings Mountain		NC	—	655	8,283	1,875	—	(497)	657	9,659	10,316	3,029	6/23/2011	1998	
128 Brawley School Road															
Road	Mooresville	NC	—	595	7,305	1,766	—	(467)	613	8,586	9,199	2,721	6/23/2011	1999	

1309 , 1321, & 1325														
McCarthy Boulevard	New Bern	NC	—	1,245	20,898	3,309	—	(507)	1,245	23,700	24,945	7,554	6/20/2011	2001/2005/2008
13150 & 13180														
Dorman Road	Pineville	NC	—	1,180	22,800	4,440	—	(1,338)	1,180	25,902	27,082	9,008	11/17/2009	1998
801 Dixie Trail	Raleigh	NC	—	3,233	17,788	2,558	—	(1,114)	3,236	19,229	22,465	3,867	6/29/2016	1992
2744 South 17th														
Street	Wilmington	NC	—	1,134	14,771	2,301	—	(1,290)	1,139	15,777	16,916	3,494	4/18/2016	1998

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Address	City	State	Encumbrances ⁽¹⁾	Land	Buildings,	Cost	Impairment	Cost Basis	Land	Buildings,	Total ⁽³⁾	Accumulated	Date	Original
					Improvements &	Capitalized				Improvements &				Depreciation ⁽⁴⁾
					Equipment	Subsequent to		Adjustment ⁽²⁾		Equipment			Acquired	Date
1730 Parkwood														
Boulevard West	Wilson	NC	—	610	14,787	2,763	—	(465)	610	17,085	17,695	5,225	6/20/2011	2004/2006
17007 Elm Plaza ⁽⁵⁾	Omaha	NE	—	4,680	22,022	—	—	—	4,680	22,022	26,702	8,464	8/21/2008	2007
3030 South 80th														
Street	Omaha	NE	—	650	5,850	2,580	—	(419)	650	8,011	8,661	3,349	6/3/2005	1992
490 Cooper Landing														
Road	Cherry Hill	NJ	—	1,001	8,175	3,344	(6,080)	(4,163)	2,240	37	2,277	—	12/29/2003	1999
1400 Route 70	Lakewood	NJ	—	4,885	28,803	20,018	—	(2,965)	4,905	45,836	50,741	18,507	1/11/2002	1987
2 Hillside Drive	Mt. Arlington	NJ	—	1,375	11,232	2,786	—	(471)	1,393	13,529	14,922	6,301	12/29/2003	2001
655 Pomander Walk	Teaneck	NJ	—	4,950	44,550	17,236	—	(3,897)	4,984	57,855	62,839	14,803	12/15/2011	1989
10500 Academy Road														
NE	Albuquerque	NM	—	3,828	22,572	10,440	—	(2,603)	3,828	30,409	34,237	14,804	1/11/2002	1986
4100 Prospect Avenue														
NE ⁽⁵⁾	Albuquerque	NM	—	540	10,105	8	—	—	540	10,113	10,653	4,096	10/30/2007	1977
4300 Landau Street														
NE ⁽⁵⁾	Albuquerque	NM	—	1,060	9,875	8	—	—	1,060	9,883	10,943	4,003	10/30/2007	1973
4411 The 25 Way ⁽⁵⁾	Albuquerque	NM	—	3,480	25,245	6,864	—	(1,980)	4,103	29,506	33,609	9,384	12/22/2010	1970
4420 The 25 Way ⁽⁵⁾	Albuquerque	NM	—	1,430	2,609	1,519	—	(152)	1,711	3,695	5,406	1,166	12/22/2010	1970
9190 Coors Boulevard														
NW ⁽⁵⁾	Albuquerque	NM	—	1,660	9,173	8	—	—	1,660	9,181	10,841	3,719	10/30/2007	1983
2200 East Long Street	Carson City	NV	—	622	17,900	1,517	—	(213)	622	19,204	19,826	4,753	5/1/2015	2009
3201 Plumas Street	Reno	NV	—	2,420	49,580	10,179	—	(1,648)	2,420	58,111	60,531	17,188	12/15/2011	1989
4939 Brittonfield														
Parkway ⁽⁵⁾	East Syracuse	NY	—	720	17,084	2,256	(2,826)	(5,312)	1,004	10,918	11,922	1,782	9/30/2008	2001
5008 Brittonfield														
Parkway ⁽⁵⁾	East Syracuse	NY	—	420	18,407	2,080	(3,144)	(5,393)	586	11,784	12,370	1,651	7/9/2008	1999
200 Old County Road	Mineola	NY	—	4,920	24,056	17,255	—	(851)	4,920	40,460	45,380	12,814	9/30/2011	1971
537 Riverdale Avenue	Yonkers	NY	—	8,460	90,561	16,695	—	(2,978)	8,463	104,275	112,738	31,888	8/31/2012	2000
4590 Knightsbridge														
Boulevard	Columbus	OH	—	3,623	27,778	22,843	—	(4,233)	3,732	46,279	50,011	20,394	1/11/2002	1989
3929 Hoover Road ⁽⁵⁾	Grove City	OH	—	332	3,081	1,015	—	—	332	4,096	4,428	2,786	6/4/1993	1965
7555 Innovation Way														
⁽⁵⁾	Mason	OH	—	1,025	12,883	—	—	—	1,025	12,883	13,908	2,334	10/6/2016	2015
8709 S.E. Causey														
Avenue	Portland	OR	—	3,303	77,428	4,813	(26,073)	(9,815)	2,201	47,455	49,656	6,498	5/1/2015	1985 / 1991
71 Darlington Road	Beaver Falls	PA	—	1,500	13,500	2,679	—	(879)	1,523	15,277	16,800	6,381	10/31/2005	1997
950 Morgan Highway	Clarks Summit	PA	—	1,001	8,233	2,355	—	(277)	1,017	10,295	11,312	4,564	12/29/2003	2001
600 N. Pottstown Pike	Exton	PA	—	1,001	8,233	3,748	—	(395)	1,001	11,586	12,587	4,921	12/29/2003	2000
242 Baltimore Pike	Glen Mills	PA	—	1,001	8,233	4,183	—	(382)	1,001	12,034	13,035	4,564	12/29/2003	2001
20 Capital Drive ⁽⁵⁾	Harrisburg	PA	—	397	9,333	15	—	—	397	9,348	9,745	2,084	1/29/2015	2013
210 Mall Boulevard	King of Prussia	PA	—	1,540	4,743	2,757	—	—	1,952	7,088	9,040	2,843	8/8/2008	1970
5300 Old William Penn														
Highway ⁽⁵⁾	Murrysville	PA	—	300	2,506	—	—	(272)	300	2,234	2,534	1,165	2/28/2003	1998
	New Britain													
800 Manor Drive	(Chalfont)	PA	—	979	8,052	3,469	—	(440)	981	11,079	12,060	4,814	12/29/2003	1998
7151 Saltsburg Road														
⁽⁵⁾	Penn Hills	PA	—	200	904	—	—	(103)	200	801	1,001	418	2/28/2003	1997
5750 Centre Avenue	Pittsburgh	PA	—	3,000	11,828	5,879	—	(354)	3,788	16,565	20,353	6,481	6/11/2008	1991

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				Buildings, Improvements &	Capitalized Subsequent to			Buildings, Improvements &	Accumulated		Date	Construction		
Address	City	State	Encumbrances ⁽¹⁾	Land	Equipment	Acquisition	Impairment	Cost Basis Adjustment ⁽²⁾	Land	Equipment	Total ⁽³⁾	Depreciation ⁽⁴⁾	Acquired	Date
730 Holiday Drive	Pittsburgh	PA	—	2,480	6,395	6,123	—	(1,445)	2,751	10,802	13,553	3,841	12/22/2010	1985
700 Northampton Street	Tiffany Court (Kingston)	PA	—	—	5,682	2,764	—	(499)	—	7,947	7,947	3,536	12/29/2003	1997
5250 Meadowgreen Drive	Whitehall	PA	—	1,599	14,401	4,882	—	(1,106)	1,599	18,177	19,776	7,657	10/31/2005	1987
1304 McLees Road	Anderson	SC	—	295	3,509	1,961	—	(253)	295	5,217	5,512	2,104	11/19/2004	1999
109 Old Salem Road	Beaufort	SC	—	188	2,234	1,714	(807)	(1,514)	104	1,711	1,815	438	11/19/2004	1999
1119 Pick Pocket Plantation Drive	Beaufort	SC	—	1,200	10,810	1,940	(3,927)	(3,270)	733	6,020	6,753	681	6/20/2011	2005
719 Kershaw Highway	Camden	SC	—	322	3,697	2,114	—	(432)	324	5,377	5,701	2,503	11/19/2004	1999
2333 Ashley River Road	Charleston	SC	—	848	14,000	3,483	(7,118)	(4,761)	377	6,075	6,452	1,538	6/20/2011	1999
320 Seven Farms Drive	Charleston	SC	—	1,092	6,605	1,856	—	(333)	1,092	8,128	9,220	2,595	5/29/2012	1998
251 Springtree Drive ⁽⁵⁾	Columbia	SC	—	300	1,905	—	—	(112)	300	1,793	2,093	935	2/28/2003	1998
355 Berkman's Lane	Greenville	SC	—	700	7,240	2,139	(2,593)	(2,456)	417	4,613	5,030	550	11/17/2009	2002
116 Enterprise Court	Greenwood	SC	—	310	2,790	1,445	—	(213)	310	4,022	4,332	1,708	6/3/2005	1999
1901 West Carolina Avenue	Hartsville	SC	—	401	4,775	2,671	—	(302)	401	7,144	7,545	2,928	11/19/2004	1999
218 Old Chapin Road	Lexington	SC	—	363	4,322	1,549	—	(400)	363	5,471	5,834	2,535	11/19/2004	1999
491 Highway 17	Little River	SC	—	750	9,018	2,746	—	(562)	750	11,202	11,952	3,441	6/23/2011	2000
1010 Anna Knapp Boulevard	Mt. Pleasant	SC	—	1,797	6,132	759	(3,618)	(1,486)	806	2,778	3,584	183	6/29/2016	1997
601 Mathis Ferry Road	Mt. Pleasant	SC	—	1,687	12,612	706	(10,794)	(2,021)	2,190	—	2,190	—	6/29/2016	1999
937 Bowman Road	Mt. Pleasant	SC	—	3,898	31,613	9,928	—	(2,245)	3,830	39,364	43,194	12,313	7/1/2012	1997 / 1983
9547 Highway 17 North	Myrtle Beach	SC	—	543	3,202	12,360	(3,192)	(4,437)	333	8,143	8,476	1,137	1/11/2002	1980
2306 Riverbank Drive	Orangeburg	SC	—	303	3,607	1,530	—	(358)	303	4,779	5,082	2,191	11/19/2004	1999
1920 Ebenezer Road ⁽⁵⁾	Rock Hill	SC	—	300	1,705	—	—	(162)	300	1,543	1,843	805	2/28/2003	1998
15855 Wells Highway	Seneca	SC	—	396	4,714	1,629	—	(417)	396	5,926	6,322	2,654	11/19/2004	2000
One Southern Court ⁽⁶⁾	West Columbia	SC	—	520	3,831	765	—	(557)	557	4,002	4,559	1,268	12/22/2010	2000
6716 Nolensville Road	Brentwood	TN	—	1,528	6,037	418	—	—	1,528	6,455	7,983	1,824	11/30/2012	2010
207 Uffelman Drive	Clarksville	TN	—	320	2,994	2,368	—	(161)	320	5,201	5,521	1,875	12/31/2006	1997
51 Patel Way	Clarksville	TN	—	800	10,322	9,261	—	(619)	833	18,931	19,764	5,182	12/19/2012	2005
2900 Westside Drive NW	Cleveland	TN	—	305	3,627	2,533	—	(284)	305	5,876	6,181	2,263	11/19/2004	1998
1010 East Spring Street	Cookeville	TN	—	322	3,828	2,226	—	(230)	322	5,824	6,146	2,476	11/19/2004	1998
105 Sunrise Circle	Franklin	TN	—	322	3,833	1,588	—	(268)	329	5,146	5,475	2,250	11/19/2004	1997
1085 Hartsville Pike	Gallatin	TN	—	280	3,327	2,293	—	(212)	282	5,406	5,688	2,154	11/19/2004	1998
2025 Caldwell Drive ⁽⁶⁾	Goodlettsville	TN	—	400	3,507	8,547	—	(202)	400	11,852	12,252	4,344	2/28/2003	1998
1200 North Parkway	Jackson	TN	—	295	3,506	2,004	—	(300)	299	5,206	5,505	1,941	11/19/2004	1999
550 Deer View Way	Jefferson City	TN	—	940	8,057	2,546	—	(228)	948	10,367	11,315	2,821	10/15/2013	2001

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					Improvements & Equipment	Capitalized Subsequent to Acquisition	Impairment			Improvements & Equipment	Total ⁽³⁾			
								Adjustment ⁽²⁾					Acquired	Date
10914 Kingston Pike	Knoxville	TN	—	613	12,410	1,414	—	—	613	13,824	14,437	2,673	6/29/2018	2008
3030 Holbrook Drive	Knoxville	TN	—	352	7,128	1,985	—	—	360	9,105	9,465	1,798	6/29/2018	1999
100 Chatuga Drive														
West	Loudon	TN	—	580	16,093	33,065	—	—	580	49,158	49,738	5,306	1/19/2018	2003
511 Pearson Springs														
Road ⁽⁵⁾	Maryville	TN	—	300	3,207	100	—	(192)	300	3,115	3,415	1,625	2/28/2003	1998
1710 Magnolia														
Boulevard	Nashville	TN	—	750	6,750	18,680	—	(1,190)	750	24,240	24,990	6,876	6/3/2005	1979
350 Volunteer Drive	Paris	TN	—	110	12,100	2,011	—	(905)	110	13,206	13,316	2,469	6/29/2016	1997
971 State Hwy 121 ⁽⁵⁾	Allen	TX	—	2,590	17,912	—	—	—	2,590	17,912	20,502	6,884	8/21/2008	2006
6818 Austin Center														
Boulevard ⁽⁵⁾	Austin	TX	—	1,540	27,467	4,283	—	(862)	1,620	30,808	32,428	11,254	10/31/2008	1994
7600 N Capital														
Texas Highway	Austin	TX	—	300	4,557	1,608	—	—	300	6,165	6,465	1,980	12/22/2010	1996
4620 Bellaire														
Boulevard	Bellaire	TX	—	1,238	11,010	7,166	—	(1,011)	1,325	17,078	18,403	10,260	10/1/2012	1991
120 Crosspoint Drive	Boerne	TX	—	220	4,926	1,873	—	—	227	6,792	7,019	2,480	2/7/2008	1990
4015 Interstate 45	Conroe	TX	—	620	14,074	2,285	—	(373)	620	15,986	16,606	5,142	10/26/2010	2009
5455 La Sierra Drive	Dallas	TX	—	2,300	25,200	11,156	—	(1,822)	2,324	34,510	36,834	10,833	12/15/2011	1989
7831 Park Lane	Dallas	TX	—	4,709	27,768	26,448	—	(3,163)	5,432	50,330	55,762	22,734	1/11/2002	1990
1575 Belvidere														
Street	El Paso	TX	—	2,301	13,567	10,846	—	(1,779)	2,316	22,619	24,935	9,932	1/11/2002	1987
96 Frederick Road	Fredericksburg	TX	—	280	4,866	6,976	—	(182)	280	11,660	11,940	3,580	2/7/2008	1999
6435 S.F.M. 549	Heath	TX	—	1,135	7,892	1,152	(288)	(1,493)	1,192	7,206	8,398	1,094	12/31/2012	2004
13215 Dotson Road														
⁽⁵⁾	Houston	TX	—	990	13,887	2,338	—	(735)	990	15,490	16,480	4,403	7/17/2012	2007
777 North Post Oak														
Road	Houston	TX	—	5,537	32,647	36,370	—	(4,749)	5,540	64,265	69,805	27,118	1/11/2002	1989
10030 North														
MacArthur Boulevard	Irving	TX	—	2,186	15,869	3,319	—	—	2,186	19,188	21,374	3,912	1/29/2015	1999
9812 Slide Road ⁽⁵⁾	Lubbock	TX	—	1,110	9,798	680	—	—	1,110	10,478	11,588	3,474	6/4/2010	2009
605 Gateway Central	Marble Falls	TX	—	1,440	7,125	2,319	—	(502)	1,440	8,942	10,382	2,713	12/19/2012	1994 / 2002
7150 N. President														
George Bush														
Turnpike ⁽⁵⁾	North Garland	TX	—	1,981	8,548	1,203	(346)	(1,616)	1,941	7,829	9,770	1,179	12/31/2012	2006
500 Coit Road	Plano	TX	—	3,463	44,841	324	—	—	3,468	45,160	48,628	4,844	12/20/2019	2016
2265 North														
Lakeshore Drive ⁽⁵⁾	Rockwall	TX	—	497	3,582	11	—	—	497	3,593	4,090	798	1/29/2015	2013
18302 Talavera														
Ridge	San Antonio	TX	—	6,855	30,630	160	—	—	6,855	30,790	37,645	6,828	1/29/2015	2008
21 Spurs Lane	San Antonio	TX	—	3,141	23,142	5,271	—	(68)	3,192	28,294	31,486	6,851	4/10/2014	2006
311 West Nottingham														
Place	San Antonio	TX	—	4,283	25,256	17,068	—	(3,823)	4,359	38,425	42,784	18,283	1/11/2002	1989
511 & 575 Knights														
Cross Drive	San Antonio	TX	—	2,300	20,400	4,573	—	(1,150)	2,306	23,817	26,123	8,257	11/17/2009	2003
5055 West Panther														
Creek Drive	Woodlands	TX	—	3,694	21,782	12,628	—	(3,490)	3,706	30,908	34,614	14,733	1/11/2002	1988
491 Crestwood Drive	Charlottesville	VA	—	641	7,633	3,473	—	(732)	646	10,369	11,015	4,569	11/19/2004	1998
1005 Elysian Place	Chesapeake	VA	—	2,370	23,705	3,823	—	(791)	2,381	26,726	29,107	8,476	6/20/2011	2006
4027 Martinsburg														
Pike ⁽⁵⁾	Clear Brook	VA	—	3,775	21,768	—	—	—	3,775	21,768	25,543	4,853	1/29/2015	2013

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					Improvements &	Capitalized				Improvements &				Depreciation ⁽⁴⁾
					Equipment	Subsequent to		Adjustment ⁽²⁾		Equipment			Acquired	Date
4001 Fair Ridge Drive														
⁽⁵⁾	Fairfax	VA	—	2,500	7,147	3,769	—	(222)	2,646	10,548	13,194	3,985	12/22/2008	1990
20 HeartFields Lane														
	Fredericksburg	VA	—	287	8,480	2,661	—	(884)	287	10,257	10,544	5,048	10/25/2002	1998
2800 Polo Parkway														
	Midlothian	VA	—	1,103	13,126	5,611	—	(1,340)	1,108	17,392	18,500	7,410	11/19/2004	1996
655 Denbigh														
Boulevard														
	Newport News	VA	—	581	6,921	2,649	—	(553)	584	9,014	9,598	3,939	11/19/2004	1998
6160 Kempsville Circle														
⁽⁵⁾	Norfolk	VA	—	3,263	7,615	4,771	—	(115)	3,374	12,160	15,534	2,660	12/22/2017	1987
6161 Kempsville Road														
⁽⁵⁾	Norfolk	VA	—	1,530	9,531	4,336	—	(686)	1,530	13,181	14,711	4,690	12/22/2008	1999
6311 Granby Street														
	Norfolk	VA	—	1,920	16,538	5,430	—	(595)	1,932	21,361	23,293	6,874	6/20/2011	2005
885 Kempsville Road														
⁽⁵⁾	Norfolk	VA	—	1,780	8,354	3,857	—	(976)	2,014	11,001	13,015	3,893	5/20/2009	1981
531 Wythe Creek														
Road	Poquoson	VA	—	220	2,041	1,671	—	(275)	220	3,437	3,657	1,337	5/30/2003	1987
10800 Nuckols Road ⁽⁷⁾														
	Glen Allen	VA	9,109	2,863	11,105	1,687	—	—	2,863	12,792	15,655	2,066	3/28/2018	2000
3000 Skipwith Road														
	Richmond	VA	—	732	8,717	2,253	—	(655)	732	10,315	11,047	4,508	11/19/2004	1999
9900 Independence														
Park Drive	Richmond	VA	—	326	3,166	636	—	(226)	326	3,576	3,902	983	11/22/2011	2005
9930 Independence														
Park Drive	Richmond	VA	—	604	4,975	1,194	—	(84)	700	5,989	6,689	1,823	11/22/2011	2005
5620 Wesleyan Drive														
	Virginia Beach	VA	—	893	7,926	4,409	—	(283)	893	12,052	12,945	7,307	9/1/2012	1990
4132 Longhill Road														
	Williamsburg	VA	—	270	2,468	1,875	(945)	(1,583)	162	1,923	2,085	270	5/30/2003	1987
440 McLaws Circle														
	Williamsburg	VA	—	1,466	17,340	859	—	(1,040)	1,466	17,159	18,625	3,298	6/29/2016	1998
516 Kenosia Avenue														
South	Kent	WA	—	1,300	8,458	3,835	—	(304)	1,368	11,921	13,289	3,923	7/31/2012	1971
555 16th Avenue ⁽⁵⁾														
	Seattle	WA	—	256	4,869	68	—	(513)	256	4,424	4,680	3,333	11/1/1993	1964
3003 West Good Hope														
Road ⁽⁵⁾	Glendale	WI	—	1,500	33,747	—	—	—	1,500	33,747	35,247	12,023	9/30/2009	1963
7007 North Range														
Line Road	Glendale	WI	—	250	3,797	—	—	—	250	3,797	4,047	1,353	9/30/2009	1964
215 Washington Street														
⁽⁵⁾	Grafton	WI	—	500	10,058	—	—	—	500	10,058	10,558	3,583	9/30/2009	2009
N168W22022 Main														
Street	Jackson	WI	—	188	5,962	1,383	—	(308)	192	7,033	7,225	1,741	12/1/2014	2005
8351 Sheridan Road														
	Kenosha	WI	—	750	7,669	1,621	—	—	758	9,282	10,040	3,328	1/1/2008	2000
5601 Burke Road														
	Madison	WI	—	700	7,461	2,086	—	—	712	9,535	10,247	3,436	1/1/2008	2000
7707 N. Brookline														
Drive	Madison	WI	—	2,615	35,545	4,605	—	(509)	2,631	39,625	42,256	9,978	12/1/2014	1999 / 2004
10803 North Port														
Washington Road	Mequon	WI	—	800	8,388	3,922	—	(221)	805	12,084	12,889	3,633	1/1/2008	1999
701 East Puetz Road														
	Oak Creek	WI	—	650	18,396	3,331	—	(213)	1,375	20,789	22,164	8,330	1/1/2008	2001
W231 N1440														
Corporate Court ⁽⁵⁾	Pewaukee	WI	—	3,900	41,140	—	—	—	3,900	41,140	45,040	14,656	9/30/2009	1994
8348 & 8400														
Washington Avenue ⁽⁵⁾	Racine	WI	—	1,150	22,436	—	—	—	1,150	22,436	23,586	7,993	9/30/2009	1986
1221 North 26th Street														
⁽⁵⁾	Sheboygan	WI	—	300	975	—	—	—	300	975	1,275	348	9/30/2009	1987
1222 North 23rd Street														
⁽⁵⁾	Sheboygan	WI	—	120	4,014	—	—	—	120	4,014	4,134	1,430	9/30/2009	1987
2414 Kohler Memorial														
Drive ⁽⁵⁾	Sheboygan	WI	—	1,400	35,168	—	—	—	1,400	35,168	36,568	12,529	9/30/2009	1986

DIVERSIFIED HEALTHCARE TRUST
SCHEDULE III
REAL ESTATE AND ACCUMULATED DEPRECIATION
DECEMBER 31, 2023
(dollars in thousands)

Initial Cost to Company									Cost at December 31, 2023					
Address	City	State	Encumbrances ⁽¹⁾	Land	Buildings, Improvements &	Cost Capitalized Subsequent to	Impairment	Cost Basis Adjustment ⁽²⁾	Land	Buildings, Improvements &	Total ⁽³⁾	Accumulated Depreciation ⁽⁴⁾	Date Acquired	Original Construction Date
					Equipment	Acquisition				Equipment				
1125 N Edge Trail	Verona	WI	—	1,365	9,581	2,095	—	(458)	1,372	11,211	12,583	3,126	11/1/2013	2001
3289 North														
Mayfair Road ⁽⁵⁾	Wauwatosa	WI	—	2,300	6,245	—	—	—	2,300	6,245	8,545	2,225	9/30/2009	1964
503 South 18th														
Street	Laramie	WY	—	191	3,632	4,623	—	(941)	202	7,303	7,505	3,879	12/30/1993	1964
1901 Howell														
Avenue	Worland	WY	—	132	2,508	5,502	—	(649)	132	7,361	7,493	3,178	12/30/1993	1970
Total			\$ 13,020	\$ 630,902	\$ 4,726,568	\$ 1,941,514	\$ (124,053)	\$ (356,464)	\$ 652,977	\$ 6,165,490	\$ 6,818,467	\$ 2,020,843		
Property Held for Sale			—	1,900	12,858	1,943	(2,790)	(4,534)	1,464	7,913	9,377	—		
Grand Total			\$ 13,020	\$ 632,802	\$ 4,739,426	\$ 1,943,457	\$ (126,843)	\$ (360,998)	\$ 654,441	\$ 6,173,403	\$ 6,827,844	\$ 2,020,843		

- (1) Represents mortgage debts and finance leases.
- (2) Represents reclassifications between accumulated depreciation and buildings, improvements and equipment made to record certain properties at fair value in accordance with GAAP.
- (3) Aggregate cost for federal income tax purposes is approximately \$ 7,189,441 .
- (4) We depreciate buildings and improvements over periods ranging up to 40 years and equipment over periods ranging up to 12 years.
- (5) These properties are collateral for our \$ 940,534 senior secured notes due 2026.
- (6) These properties are subject to our \$ 3,911 of finance leases.
- (7) These properties are collateral for our \$ 9,109 of mortgage notes.

DIVERSIFIED HEALTHCARE TRUST
SCHEDULE III
REAL ESTATE AND ACCUMULATED DEPRECIATION
DECEMBER 31, 2023
(dollars in thousands)

Analysis of the carrying amount of real estate and equipment and accumulated depreciation during the period:

	Real Estate and Equipment	Accumulated Depreciation
Balance as of December 31, 2020	\$ 7,410,730	\$ 1,694,901
Additions	229,735	223,039
Disposals	(910,372)	(158,523)
Impairment	174	—
Cost basis adjustment ⁽¹⁾	(29,762)	(29,762)
Reclassification of assets held for sale, net	113,051	8,152
Balance as of December 31, 2021	6,813,556	1,737,807
Additions	372,443	220,536
Disposals	(452,233)	(96,788)
Cost basis adjustment ⁽¹⁾	(40,838)	(33,203)
Reclassification of assets held for sale, net	(385)	—
Balance as of December 31, 2022	6,692,543	1,828,352
Additions	241,720	264,171
Disposals	(16,750)	—
Impairment	(18,380)	—
Cost basis adjustment ⁽¹⁾	(71,608)	(71,608)
Reclassification of assets held for sale, net	(9,058)	(72)
Balance as of December 31, 2023	\$ 6,818,467	\$ 2,020,843

(1) Represents reclassifications between accumulated depreciation and buildings, improvements and equipment made to record certain properties at fair value in accordance with GAAP.

SIGNATURES

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

DIVERSIFIED HEALTHCARE TRUST

By: /s/ Christopher J. Bilotto
Christopher J. Bilotto
President and Chief Executive Officer
Dated: February 26, 2024

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

Signature	Title	Date
<u>/s/ Christopher J. Bilotto</u> Christopher J. Bilotto	President and Chief Executive Officer	February 26, 2024
<u>/s/ Matthew C. Brown</u> Matthew C. Brown	Chief Financial Officer and Treasurer (principal financial and accounting officer)	February 26, 2024
<u>/s/ Jennifer F. Francis</u> Jennifer F. Francis	Managing Trustee	February 26, 2024
<u>/s/ John L. Harrington</u> John L. Harrington	Independent Trustee	February 26, 2024
<u>/s/ Phyllis M. Hollis</u> Phyllis M. Hollis	Independent Trustee	February 26, 2024
<u>/s/ Lisa Harris Jones</u> Lisa Harris Jones	Independent Trustee	February 26, 2024
<u>/s/ Adam D. Portnoy</u> Adam D. Portnoy	Managing Trustee	February 26, 2024
<u>/s/ Jeffrey P. Somers</u> Jeffrey P. Somers	Independent Trustee	February 26, 2024

**DESCRIPTION OF THE REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12
OF THE SECURITIES EXCHANGE ACT OF 1934**

Diversified Healthcare Trust (formerly known as Senior Housing Properties Trust), or the Company, we, us or our, has three classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, or the Exchange Act: (i) Common Shares of Beneficial Interest, \$.01 par value per share, or common shares; (ii) 5.625% Senior Notes due 2042, or the 2042 Notes; and (iii) 6.25% Senior Notes due 2046, or the 2046 Notes, and together with the 2042 Notes, the Notes. Each of the Company's securities registered under Section 12 of the Exchange Act are listed on The Nasdaq Stock Market LLC, or Nasdaq.

DESCRIPTION OF SHARES OF BENEFICIAL INTEREST

The following description of the terms of our shares of beneficial interest is a summary only. This summary is not complete and is qualified in its entirety by reference to the Company's declaration of trust and bylaws and applicable Maryland law, including but not limited to provisions of Maryland law applicable to Maryland real estate investment trusts, or the Maryland REIT Law. The Company's declaration of trust and bylaws are filed as exhibits to this Annual Report on Form 10-K.

General

Our declaration of trust authorizes us to issue up to an aggregate of 300,000,000 shares of beneficial interest, all of which are currently designated as common shares. No other class or series of shares of beneficial interest has been established or is outstanding.

Our declaration of trust contains a provision permitting our Board of Trustees, without any action by our shareholders, to amend our declaration of trust to increase or decrease the total number of shares of beneficial interest or the number of shares of any class or series that we have authority to issue. Our declaration of trust further authorizes our Board of Trustees to reclassify any unissued shares from time to time by setting the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of our shares of beneficial interest or any new class or series of shares created by our Board of Trustees.

Common Shares

Voting rights. Subject to the provisions of our declaration of trust regarding the restriction on the transfer of shares of beneficial interest, each outstanding common share entitles the holder to one vote on all matters submitted to a vote of shareholders, including the election of Trustees. Holders of our common shares do not have cumulative voting rights in the election of Trustees. Whenever shareholders are required or permitted to take any action by a vote, the action may only be taken by a vote at a shareholders meeting. Under our bylaws, shareholders do not have the right to take any action by written consent. With respect to matters brought before a meeting of shareholders other than the election of Trustees, except where a different voting standard is required by any applicable law, the listing requirements of the principal securities exchange on which our common shares are listed or a specific provision of our declaration of trust or bylaws, 75% of all common shares entitled to vote at the meeting shall be required to approve the matter unless such matter has been previously approved by our Board of Trustees, in which case the vote required for approval is a majority of votes cast at the meeting.

Under our declaration of trust, subject to the provisions of any class or series of our shares then outstanding, our shareholders are entitled to vote on the following matters: (1) the election of Trustees and the removal of Trustees; (2) any amendment to our declaration of trust; (3) termination of the Company; (4) merger or consolidation of the Company to the extent required by Title 8 of the Maryland General Corporation Law, or the MGCL, or the sale or disposition of substantially all our assets, in each case, to the extent a shareholder vote is required under the Maryland REIT Law, provided that such action has first been approved by our Board of Trustees; and (5) such other matters with respect to which our Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to our shareholders for approval or ratification. Our shareholders will also be entitled to vote on such matters as may be required by our declaration of trust, bylaws or applicable law.

Under the Maryland REIT Law, a Maryland real estate investment trust, or REIT, generally cannot dissolve, amend its declaration of trust, convert or merge unless these actions are approved by at least two-thirds of all shares entitled to be cast on the matter. The Maryland REIT Law allows a trust's declaration of trust to set a lower percentage, so long as the percentage is

not less than a majority of the votes entitled to be cast on the matter. Our declaration of trust provides for approval of any of the foregoing actions (except amendments to certain provisions of the declaration of trust) by a majority of shares entitled to vote on these actions provided the action in question has been approved by a majority of our Board of Trustees. Our declaration of trust further provides that if permitted in the future by Maryland law, the majority required to approve any of the foregoing actions (subject to such exceptions) will be the majority of shares voted. Under the Maryland REIT Law, a declaration of trust may permit the trustees by a two-thirds vote to amend the declaration of trust from time to time to qualify as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, or the Maryland REIT Law without the affirmative vote or written consent of the shareholders. Our declaration of trust permits this type of action by our Board of Trustees.

Board of Trustees. All of our Trustees are elected annually at each annual meeting of shareholders of the Company.

Except as may be mandated by any applicable law or the listing requirements of the principal exchange on which our common shares are listed, and subject to the voting rights of any class or series of our shares of beneficial interest which may be hereafter created, a plurality of all the votes cast at a meeting of our shareholders duly called and at which a quorum is present shall be sufficient to elect a Trustee.

In case of failure to elect Trustees at an annual meeting of shareholders, the incumbent Trustees will hold over and continue to direct the management of our business and affairs until they resign or their successors are elected and qualify. Any vacancy on our Board of Trustees may be filled only by a majority of the remaining Trustees, even if the remaining Trustees do not constitute a quorum, for the remaining term of the class in which the vacancy exists and until a successor is elected and qualifies. Our declaration of trust and bylaws provide that a Trustee may be removed only for cause, subject to conditions, by the affirmative vote of the holders of not less than two-thirds of our common shares entitled to vote in the election of Trustees. This provision precludes shareholders from removing our incumbent Trustees unless for cause and they can obtain the requisite affirmative vote of shares. Under our bylaws, a Trustee may also be removed by the affirmative vote of all the remaining Trustees.

Distribution rights. Subject to the preferential rights of any other class or series of shares then outstanding or which may be issued, and to the ownership restrictions described in our declaration of trust, all of our common shares are entitled to receive distributions on our common shares if, as and when authorized by our Board of Trustees and declared by us out of assets legally available for distribution (as determined by our Board of Trustees).

Liquidation rights. Subject to the preferential rights of any other class or series of shares then outstanding or which may be issued, and to the ownership restrictions described in our declaration of trust, all of our common shares are entitled to share ratably in our assets legally available for distribution to our shareholders (as determined by our Board of Trustees) in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all of our known debts and liabilities.

Registration rights. Some of our shareholders have certain demand registration rights and piggyback and other registration rights with respect to our common shares held by them, as described from time to time in our periodic reports filed with the Securities and Exchange Commission, or SEC.

Other rights and preferences. Holders of our common shares have no preference, conversion, exchange, sinking fund, redemption or appraisal rights, or preemptive rights to subscribe for any of our securities.

Preferred Shares

Pursuant to our declaration of trust, our Board of Trustees, without any action by our shareholders, may issue preferred shares of beneficial interest, or preferred shares, from time to time, in one or more classes or series, with the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption of any preferred shares as determined by our Board of Trustees from time to time. The issuance of preferred shares, the issuance of rights to purchase preferred shares or the possibility of the issuance of preferred shares or such rights could have the effect of delaying or preventing a change in our control. In addition, the rights of holders of common shares will be subject to, and may be adversely affected by, the rights of holders of any preferred shares that we have issued or may issue in the future.

Restrictions on Transfer and Ownership of Shares

Our declaration of trust provides that no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% in value or in number of our outstanding shares or 9.8% in value or in number, whichever is more

restrictive, of our outstanding common shares. Our declaration of trust also prohibits (1) any person from beneficially or constructively owning our shares if that ownership would result in us being "closely held" under Section 856(h) of the Code or otherwise cause us to fail to qualify for taxation as a REIT and (2) any person from transferring our shares if the transfer would result in our shares being owned by fewer than 100 persons.

Our Board of Trustees, in its discretion, may exempt a person from the share ownership limitation if (1) it obtains such representations and undertakings from the person who makes a request therefor, as are reasonably necessary to ascertain that no individual's ownership of shares would result in our being "closely held" under Section 856(h) of the Code or otherwise failing to qualify for taxation as a REIT; (2) such person does not and represents that it will not own, actually or constructively, an interest in one of our tenants (or a tenant of any entity which we own or control) that would cause us to own, actually or constructively, more than a 9.9% interest in the tenant; and (3) such person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in our declaration of trust) will result in such shares being automatically transferred to a charitable trust in accordance with our declaration of trust. In connection with any requested exemption, our Board of Trustees may require such rulings from the Internal Revenue Service, or IRS, or opinions of counsel as it deems advisable in order to determine or ensure our qualification for taxation as a REIT and such representations, undertakings and agreements it deems advisable in order for it to make the foregoing determinations.

In determining whether to grant an exemption, our Board of Trustees may consider, among other factors, the following:

- the general reputation and moral character of the person requesting an exemption;
- whether the person's ownership of shares would be direct or through ownership attribution;
- whether the person's ownership of shares would adversely affect our ability to acquire additional properties or engage in other business; and
- whether granting an exemption would adversely affect any of our existing contractual arrangements.

Any attempted transfer of our shares which, if effective, would result in our shares being owned by fewer than 100 persons shall be void ab initio, and the intended transferee shall acquire no rights in such shares.

If a person attempts a transfer of our shares in violation of the ownership limitations described above, then the number of shares which would cause the violation shall (a) be automatically transferred to a charitable trust for the exclusive benefit of one or more charitable beneficiaries designated by us or (b) if such transfer is not effective to prevent the violation of the ownership limitations, be void ab initio. A transfer to the charitable trust will be deemed to be effective as of the close of business on the business day prior to the purported transfer or other event that results in the transfer to the charitable trust. The prohibited owner will not acquire any rights in these excess shares (except to the extent provided below upon sale of the shares), will not benefit economically from ownership of any excess shares, will have no rights to distributions and will not possess any rights to vote.

Shares of beneficial interest held in the trust shall be issued and outstanding shares of beneficial interest. The trustee of the charitable trust shall have all voting rights and rights to distributions with respect to shares of beneficial interest held in the charitable trust, which rights shall be exercised for the exclusive benefit of the charitable beneficiary. Any dividend or other distribution paid prior to the discovery by us that shares of beneficial interest have been transferred to the trustee shall be paid by the recipient of such distribution to the trustee upon demand, and any distribution authorized but unpaid shall be paid when due to the trustee. Any dividend or other distribution so paid to the trustee shall be held in trust for the charitable beneficiary. The prohibited owner shall have no voting rights with respect to shares of beneficial interest held in the trust and, subject to Maryland law, the trustee of the charitable trust will have the authority to rescind as void any vote cast by the proposed transferee prior to our discovery that the shares have been transferred to the trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if we have already taken irreversible trust action, then the trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from us that our shares have been transferred to a charitable trust, the trustee will sell the shares held in the charitable trust to a person designated by the trustee whose ownership of the shares will not violate the ownership limitations set forth in our declaration of trust. Upon this sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and to the charitable beneficiary as follows:

- the prohibited owner will receive the lesser of:
 - (1) the price paid by the prohibited owner for the shares or, if the prohibited owner did not give value for the shares in connection with the event causing the shares to be held in the charitable trust, for example, in the case of a gift, devise or other similar transaction, the market price (as defined in our declaration of trust) of the shares on the day of the event causing the shares to be transferred to the charitable trust; and
 - (2) the price per share received by the trustee from the sale or other disposition of the shares held in the charitable trust.
- any net sale proceeds in excess of the amount payable to the prohibited owner shall be immediately paid to the charitable beneficiary.

If, prior to our discovery that shares have been transferred to the charitable trust, a prohibited owner sells those shares, then:

- those shares will be deemed to have been sold on behalf of the charitable trust; and
- to the extent that the prohibited owner received an amount for those shares that exceeds the amount that the prohibited owner was entitled to receive from a sale by the trustee, the prohibited owner must pay the excess to the trustee upon demand.

Also, shares held in the charitable trust will be offered for sale to us, or our designee, at a price per share equal to the lesser of:

- the price per share in the transaction that resulted in the transfer to the charitable trust or, in the case of a devise or gift, the market price at the time of the devise or gift; and
- the market price on the date we or our designee accepts the offer.

We will have the right to accept the offer until the trustee has sold the shares held in the charitable trust. The net proceeds of the sale to us will be distributed to the prohibited owner.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of any shares that will or may violate the foregoing share ownership limitations, or any person who would have owned shares that resulted in a transfer to a charitable trust, is required to immediately give written notice to us of such event, or in the case of such a proposed or attempted transaction, give at least 15 days' prior written notice, and to provide to us such other information as we may request.

Every owner of more than 5% of our shares is required to give written notice to us within 30 days after the end of each taxable year stating the name and address of the owner, the number of our shares which the owner beneficially owns and a description of the manner in which those shares are held. If the Code or applicable tax regulations specify a threshold below 5%, this notice provision will apply to those persons who own our shares of beneficial interest at the lower percentage. In addition, each shareholder is required to provide us upon demand with any additional information that we may request, in good faith, in order to determine our qualification for taxation as a REIT, to ensure compliance with the foregoing share ownership limitations and determine our compliance with the requirements of any taxing authority or other governmental authority.

Our bylaws generally provide 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. Shares relating to attempted transfers in violation of these bylaw provisions may be subject to transfer to a charitable trust in accordance with the provisions of our declaration of trust, as described above. 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 bylaw provisions.

The restrictions in our declaration of trust and bylaws described above will not preclude the settlement of any transaction entered into through the facilities of any national securities exchange or automated interdealer quotation system. Our declaration of trust and bylaws provide, however, that the fact that the settlement of any transaction occurs will not negate the effect of any of the foregoing limitations and any transferee in this kind of transaction will be subject to all of the provisions and limitations described above.

All certificates evidencing our shares and any share statements for our uncertificated shares may bear legends referring to the foregoing restrictions.

The restrictions on transfer in our declaration of trust and bylaws are intended to assist with REIT compliance under the Code, to help us preserve the tax treatment of our net operating losses and other tax benefits and otherwise to promote our orderly governance. These restrictions do not apply to our Advisor (as defined in our declaration of trust) or its affiliates.

Business Combinations

The MGCL contains a provision which regulates business combinations with interested shareholders. This provision applies to REITs formed under Maryland law like us. Under the MGCL, business combinations such as mergers, consolidations, share exchanges, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities between a REIT formed under Maryland law and an interested shareholder or an affiliate of an interested shareholder are prohibited for five years after the most recent date on which the interested shareholder becomes an interested shareholder. Under the MGCL the following persons are deemed to be interested shareholders:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the trust's outstanding voting shares; or
- an affiliate or associate of the trust who, at any time within the two year period immediately prior to the date in question, was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding voting shares of the trust.

After the five year prohibition period has ended, a business combination between a trust and an interested shareholder generally must be recommended by the board of trustees of the trust and must receive the following shareholder approvals:

- the affirmative vote of at least 80% of the votes entitled to be cast by holders of outstanding voting shares of the trust; and
- the affirmative vote of at least two-thirds of the votes entitled to be cast by holders of voting shares other than shares held by the interested shareholder with whom or with whose affiliate or associate the business combination is to be effected or held by an affiliate or associate of the interested shareholder.

The shareholder approvals discussed above are not required if the trust's shareholders receive the minimum price set forth in the MGCL for their shares and the consideration is received in cash or in the same form as previously paid by the interested shareholder for its shares.

The foregoing provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by our Board of Trustees prior to the time that the interested shareholder becomes an interested shareholder. A person is not an interested shareholder under the statute if the board of trustees approves in advance the transaction by which that shareholder otherwise would have become an interested shareholder. The board of trustees may provide that its approval is subject to compliance with any terms and conditions determined by the board of trustees. Our Board of Trustees has adopted a resolution that any business combination between us and any other person is exempted from the provisions of the MGCL described in the preceding paragraphs, provided that the business combination is first approved by our Board of Trustees, including the approval of a majority of the members of our Board of Trustees who are not affiliates or associates of the interested shareholder. This resolution, however, may be altered or repealed in whole or in part at any time.

Control Share Acquisitions

The MGCL contains a provision which regulates control share acquisitions. This provision applies to REITs formed under Maryland law like us. The MGCL provides that control shares of a REIT formed under Maryland law acquired in a control share acquisition have no voting rights except to the extent that the acquisition is approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares owned by the acquiror, by officers or by trustees who are employees of

the trust. Control shares are voting shares, which, if aggregated with all other shares previously acquired by the acquiror, or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing trustees within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

An acquiror must obtain the necessary shareholder approval each time it acquires control shares in an amount sufficient to cross one of the thresholds noted above.

Control shares do not include shares which the acquiring person is entitled to vote as a result of having previously obtained shareholder approval or shares acquired directly from the company. The MGCL provides for certain exceptions from the definition of control share acquisition.

A person who has made or proposes to make a control share acquisition, upon satisfaction of the conditions set forth in the statute, including an undertaking to pay the expenses of the meeting, may compel the board of trustees of the trust to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the trust may itself present the matter at any shareholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the MGCL, then the trust may redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the trust to redeem control shares is subject to conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or of any meeting of shareholders at which the voting rights of the shares are considered and not approved. If voting rights for control shares are approved at a shareholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.

The control share acquisition statute of the MGCL does not apply to the following:

- shares acquired in a merger, consolidation or share exchange if the trust is a party to the transaction; or
- acquisitions approved or exempted by a provision in the declaration of trust or bylaws of the trust adopted before the acquisition of shares.

Our bylaws contain a provision exempting any and all acquisitions by any person of our common shares from the control share acquisition statute. This provision may be amended or eliminated at any time in the future.

Subtitle 8

Subtitle 8 of Title 3 of the MGCL permits a Maryland REIT with a class of equity securities registered under the Exchange Act and at least three independent trustees to elect to be subject, by provision in its declaration of trust or bylaws or a resolution of its board of trustees and notwithstanding any contrary provision in the declaration of trust or bylaws, to any or all of five provisions:

- a classified board;
- a two-thirds vote requirement for removing a trustee;
- a requirement that the number of trustees be fixed only by vote of the trustees;
- a requirement that a vacancy on the board be filled only by the remaining trustees in office and for the replacement trustee to serve for the remainder of the full term of the class of trustees in which the vacancy occurred; and

- a majority requirement for the calling of a shareholder requested special meeting of shareholders.

Through provisions in our declaration of trust unrelated to Subtitle 8, we previously divided our Board of Trustees into three classes, with shareholders electing the Trustees of each class for three year terms and only one class of Trustees being elected each year. Pursuant to an amendment to our declaration of trust approved at our 2020 annual meeting of shareholders, effective at our 2021 annual meeting of shareholders, Trustees of the class of Trustees whose term expires at that meeting or that expires at a subsequent annual meeting of shareholders are elected annually, with all of our Trustees being elected annually as of our 2023 annual meeting of shareholders. Through other provisions in our declaration of trust and bylaws unrelated to Subtitle 8, we (1) require the affirmative vote of the holders of not less than two-thirds of all of the votes entitled to be cast in the election of such Trustee for the removal of any Trustee from our Board of Trustees, which removal will be allowed only for cause, subject to conditions, (2) vest in our Board of Trustees the exclusive power to fix the number of our Trustees, (3) require that only our Board of Trustees may fill vacancies on our Board of Trustees, and (4) vest in our Board of Trustees the exclusive power to call meetings of our shareholders. Under our bylaws, we have also elected to be subject to the provisions of Subtitle 8 that (1) require that a vacancy on our Board of Trustees be filled only by the remaining Trustees in office and for the remainder of the full term of the class of Trustees in which the vacancy occurred and (2) vest in our Board of Trustees the exclusive power to fix the number of our Trustees.

Anti-Takeover Effect of Maryland Law and of Our Declaration of Trust and Bylaws

The following provisions in our declaration of trust and bylaws and in Maryland law could delay or prevent a change in our control:

- the prohibition in our declaration of trust of any shareholder other than excepted holders and The RMR Group LLC, or RMR LLC, and its affiliates from owning more than 9.8% in value or in number, whichever is more restrictive, of any class or series of our outstanding shares, including our common shares;
- shareholder voting rights and standards for the election of Trustees and other matters which generally require larger majorities for approval of actions which are not approved by our Trustees than for actions which are approved by our Trustees;
- the authority of our Board of Trustees, and not our shareholders, to adopt, amend or repeal our bylaws and to fill vacancies on our Board of Trustees;
- the fact that only our Board of Trustees, or if there are no Trustees, our officers, may call shareholder meetings and that shareholders are not entitled to act without a meeting;
- required qualifications for an individual to serve as a Trustee and a requirement that certain of our Trustees be Managing Trustees and other Trustees be Independent Trustees;
- limitations on the ability of, and various requirements that must be satisfied in order for, our shareholders to propose nominees for election to our Board of Trustees and propose other business to be considered at a meeting of our shareholders;
- the requirement that an individual Trustee may be removed only for cause, subject to conditions, by the affirmative vote of the holders of not less than two-thirds of our common shares entitled to vote in the election of Trustees or, with or without cause, by the affirmative vote of all the remaining Trustees;
- the authority of our Board of Trustees to adopt certain amendments to our declaration of trust without shareholder approval, including the authority to increase or decrease the number of authorized shares, to create new classes or series of shares (including a class or series of shares that could delay or prevent a transaction or a change in our control that might involve a premium for our shares or otherwise be in the best interests of our shareholders), to increase or decrease the number of shares of any class or series, and to classify or reclassify any unissued shares from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of our shares or any new class or series of shares created by our Board of Trustees;
- the requirement that amendments to our declaration of trust may be made only if approved by a majority of our Trustees;

- the business combination provisions of the MGCL, if the applicable resolution of our Board of Trustees is rescinded or if our Board's approval of a combination is not obtained; and
- the control share acquisition provisions of the MGCL, if the provision in our bylaws exempting acquisitions of our shares from such provisions is amended or eliminated.

In addition, the agreements governing our revolving credit facility and term loan each also contain change in control provisions, as further described in those agreements, and our business and property management agreements with RMR LLC contain provisions that allow for termination for convenience and termination for a performance reason but require the payment of a termination fee, as further described in those agreements.

For all of these reasons, among others, our shareholders may be unable to realize a change of control premium for any of our shares they own or otherwise effect a change of our policies.

Transfer Agent and Registrar

The transfer agent and registrar for our common shares is Equiniti Trust Company.

Listing

Our common shares are listed on Nasdaq under the symbol "DHC."

DESCRIPTION OF DEBT SECURITIES

The following description of the Notes is a summary only. This summary is not complete and is qualified in its entirety by reference to the Indenture, dated as of December 20, 2001, or the 2042 Notes Base Indenture, between the Company and U.S. Bank National Association, as trustee, or the Trustee, as supplemented by Supplemental Indenture No. 7, dated as of July 20, 2012, between the Company and the Trustee, the 2042 Notes Base Indenture as supplemented, the 2042 Notes Indenture, in the case of the 2042 Notes, and by reference to the Indenture, dated as of February 18, 2016, or the 2046 Notes Base Indenture, between the Company the Trustee, as supplemented by the First Supplemental Indenture, dated as of February 18, 2016, between the Company and the Trustee, the 2046 Notes Base Indenture as supplemented, the 2046 Notes Indenture, in the case of the 2046 Notes, and, together with the 2042 Notes Indenture, the Indentures. The Indentures are filed as exhibits to this Annual Report on Form 10-K. We have provided a Glossary at the end of section to define certain capitalized words used in discussing the terms of the Notes.

General

The Indentures do not limit the amount of debt securities that we may issue thereunder. We may issue debt securities of a different series or we may reopen each series of notes and, from time to time, issue additional Notes, in each case without the consent of holders of the Notes. Any additional Notes would have the same terms as the outstanding Notes (except for the issue date, the public offering price and, if applicable, the first interest payment date and related interest accrual date) and would rank equally with the then outstanding Notes; provided that if such additional Notes are not fungible with the outstanding Notes for U.S. federal income tax purposes, or to the extent required by applicable securities laws or regulations or procedures of The Depository Trust Company, New York, New York, or DTC, such additional Notes would have a different CUSIP number. Unless the context otherwise requires, references herein to "Notes" are deemed to include any additional notes actually issued. The Indentures and the Notes issued thereunder are governed by and construed in accordance with the laws of the State of New York.

The 2042 Notes

We issued an aggregate principal amount of \$350.0 million of the 2042 Notes on July 20, 2012. The maturity date of the 2042 Notes is August 1, 2042 (unless previously redeemed) and the 2042 Notes bear interest at a rate of 5.625% per annum. The 2042 Notes were issued in denominations of \$25.00 and integral multiples of \$25.00 in excess thereof.

Interest. Interest is payable quarterly in arrears on February 1, May 1, August 1 and November 1 of each year, commencing November 1, 2012, to the persons in whose names the 2042 Notes are registered at the close of business on the January 15, April 15, July 15 or October 15, as the case may be, immediately before the relevant interest payment date. Accrued and unpaid interest is also payable on the date of maturity or earlier redemption of the 2042 Notes. Interest on the 2042 Notes

will be computed on the basis of a 360 day year of twelve 30 day months. If any interest payment date, maturity date or redemption date falls on a day that is not a Business Day, the payment may be made on the next Business Day.

Optional Redemption. We may redeem the 2042 Notes, in whole or in part, at any time and from time to time on or after August 1, 2017 at a redemption price equal to 100% of the principal amount of the 2042 Notes being redeemed plus accrued and unpaid interest, if any, to, but not including, the redemption date.

We are required to give notice of such a redemption not less than 30 days nor more than 60 days prior to the redemption date to each holder's address appearing in the securities register maintained by the Trustee. In the event we elect to redeem less than all of the 2042 Notes, the particular 2042 Notes to be redeemed will be selected by the Trustee by such method as the Trustee shall deem fair and appropriate. See "—Book-Entry System and Form of Notes" below.

The 2046 Notes

We issued an aggregate principal amount of \$250.0 million of the 2046 Notes on February 18, 2016. The maturity date of the 2046 Notes is February 1, 2046 (unless previously redeemed) and the 2046 Notes bear interest at a rate of 6.25% per annum. The 2046 Notes were issued in denominations of \$25.00 and integral multiples of \$25.00 in excess thereof.

Interest. Interest is payable quarterly in arrears on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2016, to the persons in whose names the 2046 Notes are registered at the close of business on February 15, May 15, August 15 or November 15, as the case may be, immediately before the relevant interest payment date. Accrued and unpaid interest is also payable on the date of maturity or earlier redemption of the 2046 Notes. Interest on the 2046 Notes will be computed on the basis of a 360 day year of twelve 30 day months. If any interest payment date, maturity date or redemption date falls on a day that is not a Business Day, the payment will be made on the next Business Day and no interest will accrue for the period from and after such interest payment date, maturity date or redemption date.

Payments of principal, premium, if any, and interest to holders of book-entry interests in 2046 Notes in global form will be made in accordance with the procedures of DTC and its participants in effect from time to time. See "—Book-Entry System and Form of Notes" below.

Optional Redemption. We may redeem the 2046 Notes, in whole or in part, at any time and from time to time on or after February 18, 2021 at a redemption price equal to 100% of the principal amount of the notes being redeemed plus accrued and unpaid interest, if any, to, but not including, the redemption date.

We are required to give notice of such a redemption not less than 30 days nor more than 60 days prior to the redemption date to each holder's address appearing in the securities register maintained by the Trustee or, in the case of book-entry interests in notes in global form, in accordance with the procedures of DTC and its participants in effect from time to time. In the event we elect to redeem less than all of the 2046 Notes, the particular 2046 Notes to be redeemed will be selected by the Trustee by such method as the Trustee shall deem fair and appropriate and in accordance with the procedures of DTC and its participants in effect from time to time. See "—Book-Entry System and Form of Notes" below.

Ranking

The Notes are our senior unsecured obligations and rank equally with all of our other unsecured and unsubordinated indebtedness outstanding from time to time. The Notes are not guaranteed by our Subsidiaries. The Notes are effectively subordinated to our mortgages and other secured indebtedness, and to all liabilities of our Subsidiaries. Accordingly, such prior indebtedness will have to be satisfied in full before holders of the Notes will be able to realize any value from our encumbered or indirectly held properties.

Certain Covenants

Limitations on Incurrence of Debt. We will not, and will not permit any Subsidiary to, incur any Debt if, immediately after giving effect to the incurrence of such Debt and the application of the proceeds therefrom, the aggregate principal amount of all of our and our Subsidiaries' outstanding Debt on a consolidated basis determined in accordance with GAAP is greater than 60% of the sum of (without duplication):

- (1) our Total Assets as of the end of the fiscal quarter covered by our Annual Report on Form 10-K or our Quarterly Report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if such filing is not permitted or required under the Exchange Act, with the Trustee) prior to the incurrence of such Debt; and

- (2) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Debt), by us or any Subsidiary since the end of such fiscal quarter, including those proceeds obtained in connection with the incurrence of such Debt.

The sum of (1) and (2) above is referred to as our Adjusted Total Assets.

In addition to the above limitations on the incurrence of Debt, we will not, and will not permit any Subsidiary to, incur any Secured Debt if, immediately after giving effect to the incurrence of such Secured Debt and the application of the proceeds therefrom, the aggregate principal amount of all our and our Subsidiaries' outstanding Secured Debt on a consolidated basis determined in accordance with GAAP is greater than 40% of Adjusted Total Assets.

In addition to the above limitations on the incurrence of Debt, we will not, and will not permit any Subsidiary to, incur any Debt if, immediately after giving effect to the incurrence of such Debt and on a pro forma basis, including the application of the proceeds therefrom, the ratio of Consolidated Income Available for Debt Service to Annual Debt Service for the four consecutive fiscal quarters most recently ended prior to the date on which such Debt is to be incurred is less than 1.5 to 1.0, calculated on the assumptions that:

- (1) such Debt and any other Debt incurred by us and our Subsidiaries on a consolidated basis since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Debt, had occurred at the beginning of such period;
- (2) the repayment, retirement or other discharge of any other Debt by us and our Subsidiaries on a consolidated basis since the first date of such four-quarter period had occurred at the beginning of such period (except that, in making such computation, the amount of Debt under any revolving credit facility shall be computed based upon the average daily balance of such Debt during such period);
- (3) in the case of Acquired Debt or Debt incurred in connection with (or, in the case of the 2046 Notes, in contemplation of) any acquisition (including, in the case of the 2046 Notes, any Person becoming a Subsidiary), since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period with appropriate adjustments with respect to such acquisition being included in such pro forma calculation; and
- (4) in the case of any acquisition or disposition by us and our Subsidiaries on a consolidated basis of any asset or group of assets since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition or disposition or any related repayment of Debt had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition or disposition being included in such pro forma calculation.

If the Debt giving rise to the need to make the foregoing calculation or any other Debt incurred after the first day of the relevant four-quarter period bears interest at a floating rate then, for purposes of calculating the Annual Debt Service, the interest rate on such Debt will be computed on a pro forma basis as if the average interest rate which would have been in effect during the entirety of such four-quarter period had been the applicable rate for the entirety of such period.

Maintenance of Total Unencumbered Assets. We and our Subsidiaries will at all times maintain Total Unencumbered Assets of not less than 150% of the aggregate outstanding principal amount of our and our Subsidiaries' Unsecured Debt on a consolidated basis in accordance with GAAP.

Merger, Consolidation or Sale of Assets

2042 Notes. Under the 2042 Notes Indenture, we are generally permitted to consolidate or merge with another company. We are also permitted to sell substantially all of our assets to another company, or to buy substantially all of the assets of another company. However, we may not take any of these actions unless the following conditions are met:

- if we merge out of existence or sell substantially all our assets, the surviving company must be an entity organized under the laws of the United States, any state or the District of Columbia and must agree to be legally responsible for the 2042 Notes;

- immediately after the merger, sale of assets or other transaction, we may not be in default under the 2042 Notes Indenture. A default for this purpose would include any event that would be an event of default if the requirements for giving us default notice or our default having to exist for a specific period of time were disregarded;
- immediately after the merger, sale of assets or other transaction, we or the successor entity could incur at least \$1.00 of Debt in accordance with the 2042 Notes Indenture covenants limiting the incurrence of Debt; and
- we have delivered to the Trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with the 2046 Notes Indenture provisions described in this paragraph and that all conditions precedent provided for in the 2046 Notes Indenture relating to such transaction have been complied with.

2046 Notes. Under the 2046 Notes Indenture, we may not consolidate with or merge into any other person or convey, transfer or lease all or substantially all of our properties and assets to any other person (other than one of our direct or indirect wholly owned Subsidiaries), and we may not permit any other person (other than one of our direct or indirect wholly owned Subsidiaries) to consolidate with or merge into us, unless:

- we are the surviving entity or, in case we consolidate with or merge into another person, the person formed by such consolidation or merger is, or in case we convey, transfer or lease all or substantially all of our properties and assets to any person, such acquiring person is, an entity organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and expressly assumes, by a supplemental indenture executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all applicable 2046 Notes issued under the 2046 Notes Indenture and the performance or observance of every covenant of the 2046 Notes Indenture on our part to be performed or observed;
- immediately after giving effect to such transaction, and treating any indebtedness which becomes an obligation of us or any of our Subsidiaries as a result of such transaction as having been incurred by us or such Subsidiary at the time of such transaction, no event of default, and no event which, after notice or lapse of time or both, would become an event of default, in each case under the 2046 Notes Indenture, has happened and is continuing; and
- we have delivered to the Trustee an officer's certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with the 2046 Notes Indenture provisions described in this paragraph and that all conditions precedent provided for in the 2046 Notes Indenture relating to such transaction have been complied with.

Events of Default, Notice and Waiver

The Indentures provide that the term "event of default" for the Notes means any of the following:

- we do not pay the principal of or any premium on the Notes when due and payable;
- we do not pay interest on the Notes within 30 days after the applicable due date; and
- we or one of our Significant Subsidiaries, if any, experiences specified events of bankruptcy, insolvency or reorganization.

In addition, with respect to the 2042 Notes, the term "event of default" also means the following:

- we remain in breach of any other covenant of the 2042 Notes Indenture (other than a covenant added to the 2042 Notes Indenture solely for the benefit of series of debt other than the 2042 Notes) for 60 days after we receive a notice of default stating we are in breach. Either the Trustee or holders of at least a majority in principal amount of the outstanding 2042 Notes may send the notice;
- final judgments or orders aggregating in excess of \$20 million (exclusive of amounts covered by insurance) are entered against us or our Subsidiaries and are not paid, discharged or stayed for a period of 60 days; or

- we default under any of our other indebtedness in an aggregate principal amount exceeding \$20 million after the expiration of any applicable grace period, which default results in the acceleration of the maturity of such indebtedness. Such default is not an event of default if the other indebtedness is discharged, or the acceleration is rescinded or annulled, within a period of 10 days after we receive notice specifying the default and requiring that we discharge the other indebtedness or cause the acceleration to be rescinded or annulled. Either the Trustee or the holders of at least 25% in principal amount of the outstanding 2042 Notes may send the notice.

In addition, with respect to the 2046 Notes, the term “event of default” also means the following:

- we remain in breach of any other covenant of the 2046 Notes Indenture with respect to the 2046 Notes (not including a covenant added to the 2046 Notes Indenture solely for the benefit of a series of debt other than the 2046 Notes) for 60 days after we receive a notice of default stating we are in breach and requiring that it be remedied; only the Trustee or holders of more than 25% in aggregate principal amount of outstanding 2046 Notes may send the notice; or
- we default under any of our other indebtedness in an aggregate principal amount exceeding \$50 million after the expiration of any applicable grace period, which default results in the acceleration of the maturity of such indebtedness; such default is not an event of default if the other indebtedness is discharged, or the acceleration is rescinded or annulled, within a period of 10 days after we receive notice specifying the default and requiring that we discharge the other indebtedness or cause the acceleration to be rescinded or annulled; only the Trustee or holders of more than 25% in aggregate principal amount of the outstanding 2046 Notes may send the notice.

If an event of default has occurred and has not been cured, the Trustee or the holders of not less than a majority in principal amount of the outstanding Notes of the affected series may declare the entire principal amount of all the debt securities of that series to be due and payable immediately. If an event of default occurs because we experience specified events of bankruptcy, insolvency or reorganization, the principal amount of all Notes of that series will be automatically accelerated and become immediately due and payable, without any action by the Trustee or any holder. At any time after the Trustee or the holders have accelerated any series of Notes, but before a judgment or decree for payment of the money due has been obtained, the holders of a majority in principal amount of the outstanding debt securities of the affected series may, under certain circumstances, rescind and annul such acceleration.

Except in cases of default where the Trustee has some special duties, the Trustee is not required to take any action under the applicable Indenture at the request of any holders unless the holders offer the Trustee reasonable protection from expenses and liability. We refer to this as an “indemnity.” If reasonable indemnity is provided, the holders of not less than a majority in principal amount of the outstanding Notes of the relevant series may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the Trustee. These majority holders may also direct the Trustee in performing any other action under the applicable Indenture, subject to certain limitations.

Before holders bypass the Trustee and bring their own lawsuit or other formal legal action or take other steps to enforce their rights or protect their interests relating to the applicable Indenture or Notes issued under such Indenture, the following must occur:

- the holder must give the Trustee written notice that an event of default has occurred and is continuing;
- the holders of at least a majority in principal amount of all outstanding Notes of the relevant series must make a written request that the Trustee take action because of the default and must offer reasonable indemnity to the Trustee against the cost and other liabilities of taking that action; and
- the Trustee must have not taken action for 60 days after receipt of the notice, request and offer of indemnity and must have not received from the holders of a majority in principal amount of all outstanding Notes of the relevant series other conflicting directions within such 60 day period.

However, holders are entitled at any time to bring a lawsuit for the payment of money due on their Notes after their due date.

Every year we will furnish to the Trustee a written statement by certain of our officers certifying that, to their best knowledge, we are in compliance with the applicable indenture and the debt securities, or else specifying any default.

Modification of the Indentures

There are three types of changes we can make to the Indentures and the Notes:

Changes Requiring Approval of Holders of the Notes. First, we cannot make certain changes to the Indentures and our debt securities without the approval of each holder of Notes affected by the change. The following is a list of those types of changes:

- change the stated maturity of the principal of, or interest on, the Notes;
- reduce the principal of, or the rate of interest on, the Notes;
- reduce the amount of any premium due upon redemption;
- reduce the amount of principal of an original issue discount security payable upon acceleration of its maturity;
- change the currency or place of payment on the Notes;
- impair a holder's right to sue for payment on or after the stated maturity of the applicable Notes;
- reduce the percentage of holders of Notes whose consent is needed to modify or amend an Indenture;
- reduce the percentage of holders of Notes whose consent is needed to waive compliance with certain provisions of an Indenture or certain defaults and their consequences;
- waive past defaults in the payment of principal of or premium, if any, or interest on the Notes or in respect of any covenant or provision that cannot be modified or amended without the approval of each holder of the applicable Notes; or
- modify any of the foregoing provisions.

Changes Requiring Majority Approval. Second, certain changes require the approval of holders of not less than a majority in principal amount of the outstanding Notes of the affected series. We require the same majority vote to obtain a waiver of a past default. However, we cannot obtain a waiver of a payment default or any other aspect of an Indenture or Notes listed in the first category described above under “—Changes Requiring Approval of Holders of the Notes” without the consent of each holder of the Notes affected by the waiver.

Changes Not Requiring Approval. Third, certain changes do not require any approval of holders of Notes. These including:

- to evidence the assumption by a successor obligor of our obligations;
- to add to our covenants for the benefit of holders of the Notes of all or any series or to surrender any right or power conferred upon us;
- to add any additional events of default for the benefit of holders of all or any series of Notes;
- to add to or change any provisions necessary to permit or facilitate the issuance of Notes in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Notes in uncertificated form;
- to add to, change or eliminate any of the provisions of an Indenture, provided that such addition, change or elimination neither applies to any Notes entitled to the benefit of such provision nor modifies the rights of the holder of any such Notes with respect to such provision or such addition, change or elimination only becomes effective when there are no such Notes outstanding; or
- to change anything that does not adversely affect the interests of the holders of the Notes in any material respect.

Further, with respect to the 2046 Notes, the following changes do not require any approval of the 2046 Notes:

- to add guarantees of or to secure the 2046 Notes;
- to establish the forms or terms of the 2046 Notes;
- to evidence and provide for the acceptance of appointment of a successor trustee;
- to cure any ambiguity, to correct or supplement any provision in the 2046 Notes Indenture which may be defective or inconsistent with any other provision contained therein or to conform the terms of the 2046 Notes Indenture that are applicable to the 2046 Notes to the description of the terms of the 2046 Notes in the prospectus supplement applicable to the 2046 Notes at the time of initial sale thereof;
- to permit or facilitate the defeasance or satisfaction and discharge of the 2046 Notes; provided that such action does not adversely affect the interests of any holder of the 2046 Notes in any material respect;
- to prohibit the authentication and delivery of additional series of debt securities;
- to add to or change or eliminate any provision as shall be necessary or desirable in accordance with any amendments to the Trust Indenture Act of 1939, as amended; or
- to comply with the rules of any applicable depositary.

Further Details Concerning Approval. Notes are not considered outstanding, and therefore the holders thereof are not eligible to vote or consent or give their approval or take other action under the applicable indenture, if we have deposited or set aside, in trust for the holders, money for their payment or redemption or if we or one of our affiliates own them. Notes are also not considered to be outstanding and therefore eligible to vote or consent or give their approval or take other action under the applicable Indenture if they have been fully defeased or discharged, as described below under “—Discharge, Defeasance and Covenant Defeasance—Discharge” or “—Full Defeasance.”

Discharge, Defeasance and Covenant Defeasance

Discharge. We may discharge our obligations to holders of any series of Notes that have become due and payable or will become due and payable at their stated maturity within one year, or are to be called for redemption within one year, by depositing or causing to be deposited with the Trustee, in trust, funds in the applicable currency in an amount sufficient to pay the Notes of such series, including any premium and interest to the date of such deposit (in the case of debt securities which have become due and payable) or to such stated maturity or redemption date, as applicable.

Full Defeasance. We can, under particular circumstances, effect a full defeasance of any series of the Notes. By this we mean we can legally release ourselves from any payment or other obligations on the debt securities if, among other things, we put in place the arrangements described below to repay those Notes and deliver certain certificates and opinions to the Trustee.

With respect to the 2042 Notes:

- we must deposit in trust for the benefit of all direct holders of the debt securities a combination of money or U.S. government agency notes or bonds (or, in some circumstances, depositary receipts representing these notes or bonds) that will generate enough cash to satisfy all interest, principal and any other payment obligations on the debt securities on their various due dates;
- the current U.S. federal income tax law must be changed or an IRS ruling must be issued permitting us to make the deposit described above, without causing the holders to be taxed on the 2042 Notes any differently than if we did not make the deposit and instead repaid the 2042 Notes ourselves. Under current U.S. federal income tax law, the deposit and our legal release from the 2042 Notes would be treated as though we took back the holders' 2042 Notes and gave the holders a share of the cash and notes or bonds deposited in trust. Under such circumstances, the holders could recognize gain or loss on the 2042 Notes the holders were deemed to have returned to us; and
- we must deliver to the Trustee a legal opinion confirming the U.S. federal income tax law change or IRS ruling described above.

With respect to the 2046 Notes:

- we must irrevocably deposit (or cause to be deposited), in trust, for the benefit of all direct holders of the 2046 Notes money or government obligations (or, in some circumstances, depository receipts representing such government obligations), or a combination thereof, that will provide funds in an amount sufficient to pay the 2046 Notes, including any premium and interest on the 2046 Notes at their stated maturity or applicable redemption date (a “government obligation” for these purposes means securities that are not callable or redeemable at the option of the issuer thereof and are (1) direct obligations of the government that issued the currency in which such series is denominated (or, if such series is denominated in euros, the direct obligations of any government that is a member of the European Monetary Union) for the payment of which its full faith and credit is pledged or (2) obligations of a person controlled or supervised by and acting as an agency or instrumentality of such government the payment of which is unconditionally guaranteed as a full faith and credit obligation by such government); and
- we must deliver to the Trustee a legal opinion stating that the current U.S. federal income tax law has changed or an IRS ruling has been issued, in each case to the effect that holders of the outstanding 2046 Notes will not recognize gain or loss for federal income tax purposes as a result of such full defeasance and will be subject to federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such full defeasance had not occurred.

Notwithstanding the foregoing, the following rights and obligations will survive full defeasance:

- the holders’ right to receive payments from the trust when payments are due;
- our obligations relating to registration and transfer of such Notes and lost or mutilated certificates; and
- our obligations to maintain a payment office and to hold moneys for payment in trust.

Covenant Defeasance. Under current U.S. federal income tax law, we can make the same type of deposit described above with respect to either series of Notes and be released from the obligations imposed by most of the covenants with respect to such series of Notes and the provisions of the applicable Indenture with respect to such series, and we may omit to comply with those covenants and provisions without creating an event of default. This is called “covenant defeasance.”

If we accomplish covenant defeasance, the following provisions of an Indenture and such Notes would no longer apply:

- most of the covenants applicable to such series of Notes and any events of default for failure to comply with those covenants; and
- any subordination provisions.

Sinking Fund

The Notes are not entitled to any sinking fund payments.

The Registrar and Paying Agent

We designated U.S. Bank National Association as the registrar and paying agent for the Notes. Payments of interest and principal are made, and the Notes are transferable, at the office of the paying agent, or at such other place or places as may be designated pursuant to the Indentures. For Notes which we issue in book-entry form evidenced by a global note, payments will be made to a nominee of the depository.

Book-Entry System and Form of Notes

The Notes were initially issued in the form of one or more fully registered global notes without coupons that were deposited with or on behalf of DTC and registered in the name of its nominee, Cede & Co. This means that we will not issue certificates to each holder of Notes. Each global note will be issued to DTC, which will keep a computerized record of its participants (for example, a broker) whose clients have purchased the Notes. The participants keep a record of their clients who purchased the Notes. Unless it is exchanged in whole or in part for a certificated note, each global note may not be transferred, except that DTC, its nominees, and their successors may transfer a global note in whole to one another. Beneficial interests in a

global note will be shown on, and transfers of a global note will be made only through, records maintained by DTC and its participants.

If applicable, investors may elect to hold their interest in the global notes through either DTC, Clearstream Banking, société anonyme, or Clearstream, or Euroclear Bank S.A./N.V., or Euroclear, if they are participants in these systems, or indirectly through organizations which are participants in these systems. Clearstream and Euroclear will hold interests on behalf of their participants through customers' securities accounts in Clearstream and Euroclear's names on the books of their respective depositories, which in turn will hold interests in customers' securities accounts in the depositories' names on the books of DTC.

The laws of some states may require that certain purchasers of securities take physical delivery of the securities in definitive form. These laws may limit the ability of those persons to own, transfer or pledge beneficial interests in registered global securities.

So long as the depository for a registered global security, or its nominee, is the registered owner of the registered global security, the depository or the nominee, as the case may be, will be considered the sole owner or holder of the Notes represented by the registered global security for all purposes under the applicable Indenture. Except as set forth below, owners of beneficial interests in a registered global security:

- will not be entitled to have the applicable Notes represented by a registered global security registered in their names;
- will not receive or be entitled to receive physical delivery of the applicable Notes in the definitive form; and
- will not be considered the owners or holders of the applicable Notes under the applicable Indenture.

Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depository for the registered global security and, if the person is not a participant, on the procedures of a participant through which the person owns its interest, to exercise any rights of a holder under the applicable Indenture.

We understand that under currently existing industry practices, if we request any action of holders or if an owner of a beneficial interest in a registered global security desires to give or take any action that a holder is entitled to give or take under an Indenture, the depository for the registered global security would authorize the participants holding the relevant beneficial interests to give or take the action, and those participants would authorize beneficial owners owning through those participants to give or take the action or would otherwise act upon the instructions of beneficial owners holding through them.

We will make payments of principal of and premium, if any, and interest, if any, on Notes represented by a registered global security registered in the name of a depository or its nominee to the depository or its nominee, as the case may be, as the registered owners of the registered global security. Neither we nor any trustee or any other agent of us or a trustee will be responsible or liable for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

We expect that the depository for any debt securities represented by a registered global security, upon receipt of any payments of principal and premium, if any, and interest, if any, in respect of the registered global security, will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the registered global security as shown on the records of the depository. We also expect that standing customer instructions and customary practices will govern payments by participants to owners of beneficial interests in the registered global security held through the participants, as is now the case with the securities held for the accounts of customers in bearer form or registered in "street name." We also expect that any of these payments will be the responsibility of the participants.

No registered global security may be exchanged in whole or in part Notes registered, and no transfer of a registered global security in whole or in part may be registered, in the name of any person other than the depository for such registered global security, unless (1) such depository notifies us that it is unwilling or unable to continue as depository for such registered global security or has ceased to be a clearing agency registered under the Exchange Act, and we fail to appoint an eligible successor depository within 90 days, or (2) an event of default shall have occurred and be continuing with respect to such Notes. In any such case, the affected registered global security may be exchanged in whole or in part for applicable Notes in definitive form and the applicable trustee will register any such Notes in such name or names as such depository directs.

DTC has advised us that DTC is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds securities that its participants, or direct participants, deposit with DTC. DTC also facilitates the post-trade settlement among direct participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between direct participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation, or DTCC. DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly. The rules applicable to DTC and its direct participants are on file with the SEC. The information in this paragraph concerning DTC and DTC’s book-entry system has been obtained from sources that we believe to be reliable, but we take no responsibility for the accuracy thereof.

Neither we nor the Trustee assumes any responsibility for the performance by DTC or any other depository or its participants of their respective obligations, including obligations that they have under the rules and procedures that govern their operations.

The Trustee for the Notes

U.S. Bank National Association is the trustee under the Indentures. We have commercial deposits and custodial arrangements with U.S. Bank National Association, and its affiliates. We may enter into similar or other banking relationships with U.S. Bank National Association in the future in the normal course of business. In addition, U.S. Bank National Association acts as trustee and as paying agent with respect to other debt securities issued by us, and may do so for future issuances of debt securities by us as well.

Listing

The 2042 Notes are listed on Nasdaq under the symbol “DHCNI.”

The 2046 Notes are listed on Nasdaq under the symbol “DHCNL.”

Glossary

“*Acquired Debt*” means Debt of a Person (1) existing at the time such Person becomes a Subsidiary or (2) assumed in connection with the acquisition of assets from such Person, in each case, other than Debt incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Debt is deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

“*Adjusted Total Assets*” is defined above under “—Certain Covenants—Limitations on Incurrence of Debt.”

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Annual Debt Service*” as of any date means the maximum amount which is expensed in any 12-month period for interest on Debt of the Company and its Subsidiaries excluding amortization of debt discount and deferred financing costs.

“*Business Day*” means any day other than a Saturday or Sunday or a day on which banking institutions in The City of New York or in the city in which the corporate trust office of the Trustee is located is required or authorized to close.

“*Capital Stock*” means, with respect to any Person, any capital stock (including preferred stock), shares, interests, participation or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible into or exchangeable for capital stock), warrants or options to purchase any thereof.

"Cash Equivalents" means demand deposits, certificates of deposit or repurchase agreements with banks or other financial institutions, marketable obligations issued or directly and fully guaranteed as to timely payment by the United States of America or any of its agencies or instrumentalities, or any commercial paper or other obligation rated, at time of purchase, "P-2" (or its equivalent) or better by Moody's or "A-2" (or its equivalent) or better by Standard & Poor's.

"Consolidated Income Available for Debt Service" for any period means Earnings from Operations of the Company and its Subsidiaries plus amounts which have been deducted, and minus amounts which have been added, for the following (without duplication): (1) interest or distributions on Debt of the Company and its Subsidiaries, (2) provision for taxes of the Company and its Subsidiaries based on income, (3) amortization of debt discount and deferred financing costs, (4) provisions for gains and losses on properties and property depreciation and amortization, (5) the effect of any noncash charge resulting from a change in accounting principles in determining Earnings from Operations for such period and (6) amortization of deferred charges.

"Debt" of the Company or any Subsidiary means, without duplication, any indebtedness of the Company or any Subsidiary, whether or not contingent, in respect of:

For purposes of the 2042 Notes:

- (1) borrowed money or evidenced by bonds, notes, debentures or similar instruments;
- (2) indebtedness for borrowed money secured by any encumbrance existing on property owned by the Company or any Subsidiary, to the extent of the lesser of (x) the amount of indebtedness so secured or (y) the fair market value of the property subject to such encumbrance;
- (3) the reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued (other than letters of credit issued to provide credit enhancement or support with respect to other indebtedness of the Company or any Subsidiary otherwise reflected as Debt hereunder) or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such balance that constitutes an accrued expense, trade payable, conditional sale obligations or obligations under any title retention agreement;
- (4) the principal amount of all obligations of the Company or any Subsidiary with respect to redemption, repayment or other repurchase of any Disqualified Stock; or
- (5) any lease of property by the Company or any Subsidiary as lessee which is reflected on the Company's consolidated balance sheet as a capitalized lease in accordance with GAAP;

to the extent, in the case of items of indebtedness under (1) through (3) above, that any such items (other than letters of credit) would appear as a liability on the Company's consolidated balance sheet in accordance with GAAP. Debt also includes, to the extent not otherwise included, any obligation by the Company or any Subsidiary to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Debt of another Person (other than the Company or any Subsidiary); it being understood that Debt shall be deemed to be incurred by the Company or any Subsidiary whenever the Company or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

For purposes of the 2046 Notes:

- (1) borrowed money or evidenced by bonds, notes, debentures or similar instruments;
- (2) indebtedness for borrowed money secured by any Encumbrance existing on property owned by the Company or any Subsidiary, to the extent of the lesser of (x) the amount of indebtedness so secured or (y) the fair market value of the property subject to such Encumbrance;
- (3) the reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued (other than letters of credit issued to provide credit enhancement or support with respect to other indebtedness of the Company or any Subsidiary otherwise reflected as Debt hereunder) or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such balance that constitutes an accrued expense or trade payable, or all conditional sale obligations or obligations under any title retention agreement;

- (4) the principal amount of all obligations of the Company or any Subsidiary with respect to redemption, repayment or other repurchase of any Disqualified Stock; or
- (5) any lease of property by the Company or any Subsidiary as lessee which is reflected on the Company's consolidated balance sheet as a capitalized lease in accordance with GAAP;

to the extent, in the case of items of indebtedness under (1) through (5) above, that any such items (other than letters of credit) would be properly classified as a liability on the Company's consolidated balance sheet in accordance with GAAP. Debt also (1) excludes any indebtedness (A) with respect to which a defeasance or covenant defeasance or discharge has been effected (or an irrevocable deposit is made with a trustee in an amount at least equal to the outstanding principal amount of such indebtedness, the remaining scheduled payments of interest thereon to, but not including, the applicable maturity date or redemption date, and any premium or otherwise as provided in the terms of such indebtedness) in accordance with the terms thereof or which has been repurchased, retired, repaid, redeemed, irrevocably called for redemption (and an irrevocable deposit is made with a trustee in an amount at least equal to the outstanding principal amount of such indebtedness, the remaining scheduled payments of interest thereon to, but not including, such redemption date, and any premium) or otherwise satisfied or (B) that is secured by cash or Cash Equivalents irrevocably deposited with a trustee in an amount, in the case of this clause (B), at least equal to the outstanding principal amount of such indebtedness and the remaining scheduled payments of interest thereon and (2) includes, to the extent not otherwise included, any obligation by the Company or any Subsidiary to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Debt of another Person (other than the Company or any Subsidiary); it being understood that Debt shall be deemed to be incurred by the Company or any Subsidiary whenever the Company or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which by the terms of such Capital Stock (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or for Subordinated Debt), (2) is convertible into or exchangeable or exercisable for Debt, other than Subordinated Debt or Disqualified Stock or (3) is redeemable at the option of the holder thereof, in whole or in part (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or for Subordinated Debt); in each case on or prior to the stated maturity of the applicable Notes.

"Earnings from Operations" for any period means net earnings excluding (1) for purposes of the 2042 Notes, gains and losses on sales of investments, gains or losses on early extinguishment of debt, extraordinary items, distributions on equity securities and property valuation losses, as reflected in the financial statements of the Company and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP or (2) for purposes of the 2046 Notes, gains and losses on sales of investments, gains or losses on early extinguishment of debt, extraordinary items and property valuation losses, in each case as reflected in the financial statements of the Company and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Encumbrance" means any mortgage, lien, charge, pledge, security interest or other encumbrance of any kind.

"GAAP" means generally accepted accounting principles in the United States, which were in effect on December 20, 2001.

"Joint Venture Interests" means assets of the Company and its Subsidiaries constituting an equity investment in real estate assets or other properties, or in an entity holding real estate assets or other properties, jointly owned by the Company and its Subsidiaries, on the one hand, and one or more other Persons not constituting Affiliates of the Company, on the other, excluding any entity or properties (1) which is a Subsidiary or are properties if the co-ownership thereof (if in a separate entity) would constitute or would have constituted a Subsidiary or (2) to which, at the time of determination, the Company's manager at such time or an Affiliate of the Company's manager at such time provides management services. In no event shall Joint Venture Interests include (1) in the case of the 2042 Notes, equity securities that have readily determinable fair values or any investments in debt securities, mortgages or other Debt or (2) in the case of the 2046 Notes, equity securities that are part of a class of equity securities that are traded on a national or regional securities exchange or a recognized over-the-counter market or any investments in debt securities, mortgages or other Debt.

"Moody's" means Moody's Investors Service, Inc. or any successor.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Secured Debt" means Debt secured by an Encumbrance on the property of the Company or its Subsidiaries.

"Significant Subsidiary" means any Subsidiary which is a "significant subsidiary" (within the meaning of Regulation S-X, promulgated by the SEC under the Securities Act of 1933, as amended) of the Company.

"Standard & Poor's" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, or any successor.

"Subordinated Debt" means Debt which by the terms of such Debt is subordinated in right of payment to the principal of and interest and premium, if any, on the applicable Notes.

"Subsidiary" means any corporation or other Person of which a majority of (1) the voting power of the voting equity securities or (2) the outstanding equity interests of which are owned, directly or indirectly, by the Company or one or more other Subsidiaries of the Company. For the purposes of this definition, "voting equity securities" means equity securities having voting power for the election of directors or persons serving comparable functions as directors, whether at all times or only so long as no senior class of security has such voting power by reason of any contingency.

"Total Assets" as of any date means the sum of (1) the Undepreciated Real Estate Assets and (2) all other assets of the Company and its Subsidiaries determined in accordance with GAAP (but excluding accounts receivable and intangibles).

"Total Unencumbered Assets" as of any date means the sum of (1) the amount of Undepreciated Real Estate Assets of the Company and its Subsidiaries not securing any portion of Secured Debt and (2) the amount of all other assets, including accounts receivable and intangibles, of the Company and its Subsidiaries not securing any portion of Secured Debt, in each case on such date determined on a consolidated basis in accordance with GAAP; provided that, in determining Total Unencumbered Assets as a percentage of the aggregate outstanding principal amount of Unsecured Debt of the Company and its Subsidiaries on a consolidated basis for purposes of the covenant set forth above under "—Maintenance of Total Unencumbered Assets," Joint Venture Interests shall be excluded from Total Unencumbered Assets to the extent such Joint Venture Interests would otherwise be included therein.

"Undepreciated Real Estate Assets" as of any date means the cost (original cost plus capital improvements less adjustments to carrying value in accordance with GAAP made prior to January 1, 2001) of real estate and associated tangible personal property used in connection with the real estate assets of the Company and its Subsidiaries on such date, before depreciation and amortization determined on a consolidated basis in accordance with GAAP.

"Unsecured Debt" means any Debt of the Company or its Subsidiaries which is not Secured Debt.

Exhibit 8.1

February 26, 2024

Diversified Healthcare Trust
Two Newton Place
255 Washington Street, Suite 300
Newton, Massachusetts 02458

Ladies and Gentlemen:

The following opinion is furnished to Diversified Healthcare Trust, a Maryland real estate investment trust (the "Company"), to be filed with the Securities and Exchange Commission (the "SEC") as Exhibit 8.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2023 (the "Form 10-K") under the Securities Exchange Act of 1934, as amended.

We have acted as counsel for the Company in connection with the preparation of the Form 10-K. We have reviewed originals or copies of such corporate records, such certificates and statements of officers of the Company and of public officials, and such other documents as we have considered relevant and necessary in order to furnish the opinion hereinafter set forth. In doing so, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, and the authenticity of the originals of such documents. Specifically, and without limiting the generality of the foregoing, we have reviewed: (i) the Company's amended and restated declaration of trust, as amended and supplemented, and its third amended and restated bylaws; and (ii) the Form 10-K. For purposes of the opinion set forth below, we have assumed that any documents (other than documents which have been executed, delivered, adopted, or filed, as applicable, by the Company prior to the date hereof) that have been provided to us in draft form will be executed, delivered, adopted, and filed, as applicable, without material modification.

The opinion set forth below is based upon the Internal Revenue Code of 1986, as amended, the Treasury regulations issued thereunder, published administrative interpretations thereof, and judicial decisions with respect thereto, all as of the date hereof (collectively, "Tax Laws"), and upon the Employee Retirement Income Security Act of 1974, as amended, the Department of Labor regulations issued thereunder, published administrative interpretations thereof, and judicial decisions with respect thereto, all as of the date hereof (collectively, "ERISA Laws"). No assurance can be given that Tax Laws or ERISA Laws will not change. In the discussions with respect to Tax Laws matters and ERISA Laws matters in the sections of Item 1 of the Form 10-K captioned "Material United States Federal Income Tax Considerations" and "ERISA Plans, Keogh Plans and Individual Retirement Accounts", certain assumptions have been made therein and certain conditions and qualifications have been expressed therein, all of which assumptions, conditions, and qualifications are incorporated herein by reference. With respect to all questions of fact on which our opinion is based, we have assumed the initial and continuing truth, accuracy, and completeness of: (i) the information set forth in the Form 10-K and in the exhibits thereto; and (ii) representations made to us by officers of the Company or contained in the Form 10-K and in the exhibits thereto, in each such instance without regard to

qualifications such as “to the best knowledge of” or “in the belief of”. We have not independently verified such information.

We have relied upon, but not independently verified, the foregoing assumptions. If any of the foregoing assumptions are inaccurate or incomplete for any reason, or if the transactions described in the Form 10-K or in the exhibits thereto have been or are consummated in a manner that is inconsistent with the manner contemplated therein, our opinion as expressed below may be adversely affected and may not be relied upon.

Based upon and subject to the foregoing: (i) we are of the opinion that the discussions with respect to Tax Laws matters and ERISA Laws matters in the sections of Item 1 of the Form 10-K captioned “Material United States Federal Income Tax Considerations” and “ERISA Plans, Keogh Plans and Individual Retirement Accounts” in all material respects are, subject to the limitations set forth therein, the material Tax Laws considerations and the material ERISA Laws considerations relevant to holders of the securities of the Company discussed therein (the “Securities”); and (ii) we hereby confirm that the opinions of counsel referred to in said sections represent our opinions on the subject matters thereof.

Our opinion above is limited to the matters specifically covered hereby, and we have not been asked to address, nor have we addressed, any other matters or any other transactions. Further, we disclaim any undertaking to advise you of any subsequent changes of the matters stated, represented, or assumed herein or any subsequent changes in Tax Laws or ERISA Laws.

This opinion is rendered to you in connection with the filing of the Form 10-K. Purchasers and holders of the Securities are urged to consult their own tax advisors or counsel, particularly with respect to their particular tax consequences of acquiring, holding, and disposing of the Securities, which may vary for investors in different tax situations. We hereby consent to the filing of a copy of this opinion as an exhibit to the Form 10-K, which is incorporated by reference in the Company’s Registration Statement on Form S-3, File No. 333-257277, as amended (the “Registration Statement”), under the Securities Act of 1933, as amended (the “Securities Act”), and to the references to our firm in the Form 10-K and the Registration Statement. In giving such consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act or under the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/s/ Sullivan & Worcester LLP

SULLIVAN & WORCESTER LLP

DIVERSIFIED HEALTHCARE TRUST
FORM OF [AMENDED AND RESTATED]¹ 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 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, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities, by contract or otherwise.

(f) **"Declaration of Trust"** means the declaration of trust (as defined in the Maryland REIT Law) of the Company, as it may be in effect from time to time.

(g) **"Disinterested Trustee"** 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.

(h) **"Enterprise"** shall mean 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 of the Company as a trustee, director, manager, officer, partner, employee, agent or fiduciary.

(i) **"Expenses"** 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 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 in Section 18) 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"** means the Maryland General Corporation Law.

(l) **"Maryland REIT Law"** means Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland.

(m) **"Person"** means an individual, a corporation, a general or limited partnership, an association, a limited liability company, a governmental entity, a trust, a joint venture, a joint stock company or another entity or organization.

(n) **"Proceeding"** means any threatened, pending or completed claim, demand, action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative (including on appeal), whether or not by or in the right of the Company, except one initiated by an Indemnitee pursuant to Section 9.

Section 2. Indemnification – General. The Company shall indemnify, and advance Expenses to, Indemnitee (a) as provided in this Agreement and (b) otherwise to the maximum extent permitted by Maryland law in effect on the Effective Date and as amended from time to time; *provided, however*, 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 shall include, without limitation, the rights set forth in the other sections of this Agreement, including any additional indemnification permitted by Section 2-418(g) of the MGCL, as applicable to a Maryland real estate investment trust 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. Indemnitee shall be entitled to the rights of indemnification provided in this Section 3 if, by reason of Indemnitee's Company Status, Indemnitee is, or is threatened to be, made a party to any Proceeding, other than a derivative Proceeding 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 3, 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 a Proceeding by reason of Indemnitee's Company Status unless it is finally determined 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 Indemnitee 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 Indemnitee under this Section 5 for all Expenses incurred by Indemnitee or on Indemnitee'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 Indemnitee's ultimate entitlement to indemnification hereunder, shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding in which Indemnitee may be involved, or is threatened to be involved, including as a party, a witness or otherwise, by reason of Indemnitee's Company Status, within ten (10) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall be preceded or accompanied by a written affirmation by Indemnitee of Indemnitee's good faith belief 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 by or on behalf of Indemnitee, in substantially the form of Exhibit A hereto or in such other form as may be required under applicable law as in effect at the time of the execution thereof, to reimburse the portion of any Expenses advanced to Indemnitee relating to any claims, issues or matters in the Proceeding 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 in Section 5. For the avoidance of doubt, the Company shall advance Expenses incurred by Indemnitee or on Indemnitee's behalf in connection with such a Proceeding pursuant to this Section 6 until it is finally determined that Indemnitee is not entitled to indemnification under the MGCL, the Declaration of Trust or the Bylaws in respect of such Proceeding. To the extent that Expenses advanced to Indemnitee do not relate to a specific claim, issue or matter in the Proceeding, such Expenses shall be allocated on a reasonable and proportionate basis. The undertaking required by this Section 6 shall be an unlimited general obligation by or on behalf of Indemnitee and shall be accepted without reference to Indemnitee's financial ability to repay such advanced Expenses and without any requirement to post security therefor. At Indemnitee's request, advancement of any such Expense shall be made by the Company's direct payment of such Expense instead of reimbursement of Indemnitee's payment of such Expense.

Section 7. Procedure for Determination of Entitlement to Indemnification.

(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 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; 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 arising out of or relating to this Agreement 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 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, including any disputes, claims or controversies brought by or on behalf of a party hereto or any holder of equity interests (which, for purposes of this Section 17, 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 equity interests of a party against a party or any of their respective trustees, directors, members, officers, managers, agents or employees, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of this Agreement, including this Section 17 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 ("**AAA**") then in effect, except as those Rules may be modified in this Section 17. 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 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.

(b) 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 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.

(c) The place of arbitration shall be Boston, Massachusetts unless otherwise agreed by the parties.

(d) 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) 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 this arbitration agreement 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 17(g), 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 Award may provide.

(f) Except to the extent expressly provided by this Agreement or as otherwise agreed by the parties hereto, 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 to its attorneys, a Named Representative or any attorney of a Named Representative. 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) Notwithstanding any language to the contrary in this Agreement, an 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) shall apply to any appeal pursuant to this Section 17 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.

(h) 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), 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 made except for actions relating to enforcement of this agreement to arbitrate 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) This Section 17 is intended to benefit and be enforceable by the parties hereto and their respective holders of equity interests, trustees, directors, officers, managers, agents or employees, and their respective successors and assigns, and shall be binding upon all such parties and their respective holders of equity interests, 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.

Section 18. Venue. Each party hereto agrees that it shall bring any Proceeding in respect of any claim arising out of or related to 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 the Chosen Courts' Business and Technology Case Management Program, or similar program. Nothing in this Agreement will affect 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 of the Company or any controlled affiliate of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after 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; *provided, however*, if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

Section 21. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other party (including via facsimile 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 to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request 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.

Section 23. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both 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.

Section 24. Notices. 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, and shall be given by being delivered at the following addresses to the parties hereto:

(a) If to Indemnitee, to: The address set forth on the signature page hereto.

(b) If to the Company to:

Diversified Healthcare Trust
Two Newton Place
255 Washington Street, Suite 300
Newton, Massachusetts 02458-1634
Attn: Secretary

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

Section 25. Governing Law. The provisions of this Agreement and any Dispute, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Maryland without regard to its conflicts of laws rules.

Section 26. Interpretation.

(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*. The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this 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.

(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 executed or caused to be executed on their behalf this Agreement as of the date first written above.

DIVERSIFIED HEALTHCARE TRUST

By: _____
Name:
Title:

[INDEMNITEE]

Indemnatee's Address:

[]

[Signature Page to [Amended and Restated] Indemnification Agreement]

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

Schedule to Exhibit 10.8

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
Christopher J. Bilotto	January 1, 2024
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

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"), each of the Subsidiaries listed on Schedule 1 attached hereto (each, a "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 each Released Guarantor from any and all obligations and liabilities under the Subsidiary Guarantee, and further hereby confirms the termination and release of each Released Guarantor of all other obligations under the Third Supplemental Indenture, the Indenture or the Notes, each as of December 21, 2023.

Dated as of December 21, 2023.

U.S. Bank Trust Company, National Association, as Trustee

By: /s/ David W. Doucette

Name: David W. Doucette

Title: Vice President

SCHEDULE 1

RELEASED GUARANTORS

1. Armada Drive Carlsbad LLC, a Delaware limited liability company
2. SNH ALT Leased Properties Trust, a Maryland real estate investment trust
3. SNH LTF Properties LLC, a Maryland limited liability company
4. SNH Well Properties GA-MD LLC, a Delaware limited liability company
5. SNH Well Properties Trust, a Maryland real estate investment trust
6. SPTMISC Properties Trust, a Maryland real estate investment trust
7. SPTSUN II Properties Trust, a Maryland real estate investment trust

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"), each of the Subsidiaries listed on Schedule 1 attached hereto (each, a "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 each Released Guarantor from any and all obligations and liabilities under the Subsidiary Guarantee, and further hereby confirms the termination and release of each Released Guarantor of all other obligations under the Fourth Supplemental Indenture, the Indenture or the Notes, each as of December 21, 2023.

Dated as of December 21, 2023.

U.S. Bank Trust Company, National Association, as Trustee

By: /s/ David W. Doucette

Name: David W. Doucette

Title: Vice President

SCHEDULE 1

RELEASED GUARANTORS

1. Armada Drive Carlsbad LLC, a Delaware limited liability company
2. SNH ALT Leased Properties Trust, a Maryland real estate investment trust
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5. SNH Well Properties Trust, a Maryland real estate investment trust
6. SPTMISC Properties Trust, a Maryland real estate investment trust
7. SPTSUN II Properties Trust, a Maryland real estate investment trust

STOCKHOLDERS AGREEMENT

by and among

ALERISLIFE INC.

a Maryland corporation,

DIVERSIFIED HEALTHCARE TRUST

a Maryland real estate investment trust,

DHC 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

- Exhibit A – Notice Addresses
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-

STOCKHOLDERS AGREEMENT

This Stockholders Agreement (this “**Agreement**”), dated as of February 16, 2024, is entered into by and among AlerisLife Inc., a Maryland corporation (the “**Company**”), Diversified Healthcare Trust, 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**”).

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 8,691,790¹ 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 covenants and 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:

ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined shall have the meanings set forth in this Article I.

“**AAA**” has the meaning set forth in Section 8.13(a).

“**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 meaning set forth in Section 4.04(a).

“**Affiliate**” means with respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control,” when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms “controlling” and “controlled” shall have correlative meanings.

“**Agreement**” has the meaning set forth in the preamble.

“**Appellate Rules**” has the meaning set forth in Section 8.13(g).

¹ This represents an allocation of approximately 23.53% to DHC and 76.47% to DHC TRS, which is consistent with the allocation of ownership at the time of the tender offer. The total 11,366,274 AlerisLife common shares being acquired represents approximately 34% of the 33,430,219 AlerisLife common shares currently outstanding.

"Applicable Law" means all applicable provisions of (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 bylaws of the Company as 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, 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 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.

"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 mutually acceptable Third Party Valuation Firm.

"Management Agreement" means that certain Amended and Restated Master Management Agreement, dated as of June 9, 2021, among the Company and certain of its subsidiaries, and DHC and certain of its subsidiaries, as amended from time to time.

"Non-Exercising Pre-emptive Stockholder" has the meaning set forth in [Section 4.03\(d\)](#).

"Offered Shares" has the meaning set forth in [Section 3.02\(c\)](#).

"Organizational Documents" means the Charter, Bylaws and any written agreement between or among any Stockholders.

"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 any of the following:

(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 pledged Company Shares to the pledgee shall not be a "Permitted Transfer" within the meaning of this paragraph (b) of this definition unless the pledgee is a Permitted Transferee.

"Permitted Transferee" means any of the following:

(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, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"Pre-emptive Acceptance Notice" has the meaning set forth in Section 4.03(c).

"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 suit, action, proceeding, arbitration, mediation, audit, hearing, inquiry or, to the knowledge of the Person in question, investigation (in each case, whether civil, criminal, administrative, investigative, formal or informal) commenced, brought, conducted or 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 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).

"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, 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.

"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 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).

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 8.10), 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 Related Party Redemptions. The Company shall 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 any other material terms related to such proposed redemption, as 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 accordance with the procedures described in Section 3.02, Section 3.03, 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 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 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, whether or not such Permitted Transferee has executed and delivered a Joinder Agreement.

(d) Notwithstanding any other provision of this Agreement, but subject to Section 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 Securities Act or other applicable federal or state securities laws (it being understood that, upon request by the Company, there must be delivered to the Company an opinion of counsel in form and substance satisfactory to the Company to the effect that such Transfer may be effected without registration under the Securities Act), (ii) if it would cause the Company or 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 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), 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 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, 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 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 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,

(or an affidavit of loss with respect to such certificate(s)) accompanied by stock powers and all 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 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 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;

(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 Drag-along Sale and for the benefit of all Drag-along Participating Stockholders (it being understood that costs incurred by or on behalf of 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.

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 other stockholders of the Company participating in such Tag-along Sale, collectively, the “**Tag-along Participating Stockholders**”) shall be 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 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 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 Tag-along Sale materially change from those provided in the Sale Notice or if the percentage of the Company Shares owned by 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) Business Days, to elect to participate in, change its participation in or withdraw its participation in such Tag-along Sale.

(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 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 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 similar agreements in connection with such Tag-along Sale and (z) in no event shall any Tag-along Stockholder be liable for any fraud or intentional misrepresentation by any other stockholder of the Company.

(f) **Expenses.** The fees and expenses of the Selling Stockholders incurred in connection with a Tag-along Sale and for the benefit of all Tag-along Participating Stockholders (it being understood that costs incurred by or on behalf of the 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 *pro rata* 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 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 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 provisions of Section 3.03 or Section 3.04 in connection with a Drag-along

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**”), 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

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 Electing DHC Parties for the costs of the DHC Valuation Firm and Joint Valuation Firm incurred by them in connection with any ROFO Process that was terminated as provided in Section 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 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.

(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 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 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 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 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.

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 shall take all such other actions as may be reasonably necessary to consummate the purchase and sale including, without limitation, entering into such additional agreements as may be necessary or appropriate. Notwithstanding anything to the contrary contained in this Agreement, the Directors in their discretion may at any time prior to the closing of the 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 Additional Company Shares in their entirety, in which event the Company shall not thereafter issue any 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.

(g) **Delay.** Notwithstanding anything to 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 Additional Company Shares to only certain Stockholders so long as promptly, but in any event, within five (5) Business Days thereafter, the 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 Pre-emptive Stockholders their share of such Additional Company Shares (as otherwise determined pursuant to Section 4.03(a)) prior to any sales and 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 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 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

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 relieved and have no further liability arising hereunder in its capacity as a Stockholder for events

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 modify this Agreement so as to 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 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

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 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 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 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 effective if notice is given in accordance with Section 8.03. 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 arbitration of a Dispute is made pursuant to 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) **Disputes.** Any disputes, claims or controversies arising out of or relating to this Agreement, the Organizational Documents or the transactions contemplated 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 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 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 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 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 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.

(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 a demand for arbitration. Such arbitrators may be affiliated or interested persons of 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 a demand for arbitration. 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 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 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) **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 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 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 such Award may provide.

(f) **Costs.** Except to the extent expressly provided by this Agreement or as otherwise agreed by the parties thereto, to the maximum extent permitted by Applicable Law of the State of Maryland, 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 a party’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.

(g) **Appeals.** Notwithstanding any language to the contrary in this Agreement, 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

8.13(g) shall apply to any appeal pursuant to this Section 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.

(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 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 made, except for actions relating to enforcement of the agreements set forth in this 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 8.13 is intended to benefit and be enforceable by the parties hereto and their respective 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 on the parties, and such Persons and be in addition to, and not in substitution for, any other rights to indemnification or contribution that such Persons may have by contract or otherwise.

Section 8.14 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Stockholder, the Company and each transferee of Company Shares agrees, at the request of the Company or any 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 provisions hereof and give effect to the transactions contemplated hereby.

Section 8.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 8.16 No Liability. 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]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by, as applicable, their respective officers thereunto duly authorized.

THE COMPANY:

AlerisLife Inc.

By: /s/ Jeffrey C. Leer
Jeffrey C. Leer
President and Chief Executive Officer

DHC:

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 02458-1632
Attention: Chief Financial Officer and Treasurer and Secretary
Email: mbrown@rmrgroup.com
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

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 good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the New Stockholder hereby agrees as 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 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 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 New Stockholder shall be directed to the respective United States address set forth next to the New Stockholder's name on the signature page hereto.
5. *Governing Law*. This Joinder Agreement shall be governed by and construed in accordance with the law (other than the law governing conflict of law questions) of the State of Maryland.
6. *Descriptive Headings*. The descriptive headings of this Joinder Agreement are for convenience of reference only and do not constitute a part of this Joinder Agreement.

IN WITNESS WHEREOF, the New Stockholder has executed this Joinder Agreement as of the date first above written.

[_____]

[By: _____]

[Name]

[Title]

Address:

Accepted and agreed to:

THE COMPANY:

AlerisLife Inc.

By: _____

Name:

Title:

**DIVERSIFIED HEALTHCARE TRUST
SUBSIDIARIES OF THE REGISTRANT**

Name	State of Formation, Organization or Incorporation
DHC ZB Properties LLC	Maryland
SNH Proj Lincoln TRS LLC	Maryland
SNH SE Properties Trust	Maryland
SNH TRS Inc.	Maryland
SNH TRS Licensee Holdco LLC	Maryland
SNH/LTA Properties Trust	Maryland

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
Bayside Pkwy Fremont LLC	Delaware
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 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 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 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 Durham LLC	Delaware
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 Granite Gate Inc.	Maryland
SNH Granite Gate Lands Tenant LLC	Maryland
SNH Granite Gate Lands Trust	Maryland
SNH Granite Gate Tenant LLC	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 Maryland Heights LLC	Delaware
SNH MASS Tenant LLC	Maryland
SNH MD Tenant LLC	Maryland
SNH Medical Office Properties Trust	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 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	Maryland

SPTMNR Properties Trust
SPTMRT Properties Trust

Maryland
Maryland

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in Registration Statement No. 333-257277 on Form S-3 and Registration Statement Nos. 333-191081 and 333-265360 each on Form S-8 of our reports dated February 26, 2024, relating to the financial statements of Diversified Healthcare Trust and the effectiveness of Diversified Healthcare Trust's internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2023.

/s/ Deloitte & Touche LLP

Boston, Massachusetts

February 26, 2024

CERTIFICATION PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)

I, Christopher J. Bilotto, certify that:

1. I have reviewed this Annual Report on Form 10-K 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: February 26, 2024

/s/ Christopher J. Bilotto

Christopher J. Bilotto

President and Chief Executive Officer

CERTIFICATION PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)

I, Matthew C. Brown, certify that:

1. I have reviewed this Annual Report on Form 10-K 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: February 26, 2024

/s/ Matthew C. Brown

Matthew C. Brown

Chief Financial Officer and Treasurer

CERTIFICATION PURSUANT TO 18 U.S.C. SEC. 1350

In connection with the filing by Diversified Healthcare Trust (the "Company") of the Annual Report on Form 10-K for the period ended December 31, 2023 (the "Report"), each of the undersigned hereby certifies, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Christopher J. Bilotto

Christopher J. Bilotto

President and Chief Executive Officer

/s/ Matthew C. Brown

Matthew C. Brown

Chief Financial Officer and Treasurer

Date: February 26, 2024

**DIVERSIFIED HEALTHCARE TRUST
CLAWBACK POLICY**

We do not currently pay incentive-based compensation. However, as required by the applicable rules of The Nasdaq Stock Market LLC, we are adopting this policy whereby we will recover in accordance with such rules, the amount of erroneously awarded incentive-based compensation received by our current or former executive officers in the event we are required to prepare a restatement.

For purposes of this Policy, a restatement is any restatement of our financial statements due to the material noncompliance with any financial reporting requirement under applicable securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

Changes to our financial statements that do not represent error corrections under the then current relevant accounting standards will not constitute restatements. Recovery of any erroneously awarded compensation under this Policy is not dependent on fraud or misconduct by any person in connection with the restatement.

This Policy is intended to satisfy Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as it may be amended from time to time, and any related rules or regulations promulgated by the United States Securities and Exchange Commission or The Nasdaq Stock Market LLC, including any requirements that become effective after the adoption of this Policy.

Our rights under this Policy to seek forfeiture or repayment are in addition to any other remedies or rights that may be available to us pursuant to any law, regulation or stock exchange listing requirement or any other policy, code of conduct, employee handbook, employment agreement, equity award agreement, or other plan or agreement applicable to us.

Determinations by us under this Policy will be final, conclusive and binding on all parties. We may terminate, suspend or amend this Policy at any time, in accordance with applicable law.