

UNITED STATES
 SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
 For the fiscal year ended December 31, 2023

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
 For the transition period from to
 COMMISSION FILE NUMBER: 001-40896
 INVENTRUST PROPERTIES CORP.
 (Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

3025 Highland Parkway, Suite 350

Downers Grove, Illinois 60515

(Address of principal executive offices) (Zipcode)



34-2019608

(I.R.S. Employer Identification No.)

(855) 377-0510

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common stock, \$0.001 par value	IVT	New York Stock Exchange

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 the 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 (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

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

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

Indicate by check mark whether the registrant 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 Section 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

As of June 30, 2023, the aggregate market value of the voting and non-voting common stock held by non-affiliates of InvenTrust Properties Corp. was approximately \$ 1.6 billion, based upon the closing price on the New York Stock Exchange for such equity on June 30, 2023.

As of February 1, 2024, there were 67,807,831 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III incorporates by reference certain information that will be contained in InvenTrust Properties Corp.'s Proxy Statement relating to its 2023 Annual Meeting of Stockholders, which InvenTrust Properties Corp. intends to file no later than 120 days after the end of its fiscal year ended December 31, 2023, and thus these items have been omitted in accordance with General Instruction G(3) to Form 10-K.

INVENTRUST PROPERTIES CORP.

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FORWARD-LOOKING STATEMENTS

Certain statements in this Annual Report on Form 10-K ("Annual Report"), other than purely historical information, are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended ("Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended ("Exchange Act"). These statements include statements about InvenTrust Properties Corp.'s (the "Company") plans, objectives, strategies, financial performance and outlook, trends, the amount and timing of future cash distributions, prospects or future events; and they involve known and unknown risks that are difficult to predict.

As a result, our actual financial results, performance, achievements, or prospects may differ materially from those expressed or implied by these forward-looking statements. In some cases, forward-looking statements can be identified by the use of words such as "may," "could," "expect," "intend," "plan," "seek," "anticipate," "believe," "estimate," "guidance," "predict," "potential," "continue," "likely," "will," "would," "illustrative," and "should" and variations of these terms and similar expressions, or the negatives of these terms or similar expressions. Such forward-looking statements are necessarily based upon estimates and assumptions that, while we consider reasonable based on our knowledge and understanding of the business and industry, are inherently uncertain. These statements are expressed in good faith and are not guarantees of future performance or results. Our actual results could differ materially from those expressed in the forward-looking statements and stockholders should not rely on forward-looking statements in making investment decisions.

Our operations are subject to a number of risks and uncertainties including, but not limited to:

- our ability to collect rent from tenants or to rent space on favorable terms or at all;
- declaration of bankruptcy by our retail tenants;
- the economic success and viability of our anchor retail tenants;
- our ability to identify, execute and complete acquisition opportunities and to integrate and successfully operate any retail properties acquired in the future and manage the risks associated with such retail properties;
- our ability to manage the risks of expanding, developing or redeveloping our retail properties;
- loss of members of our senior management team or other key personnel;
- changes in the competitive environment in the leasing market and any other market in which we operate;
- shifts in consumer retail shopping from brick and mortar stores to e-commerce;
- the impact of leasing and capital expenditures to improve our retail properties to retain and attract tenants;
- our ability to refinance or repay maturing debt or to obtain new financing on attractive terms;
- future increases in interest rates;
- rising inflation;
- natural or man-made disasters, severe weather and climate-related events, such as earthquakes, tsunamis, tornadoes, hurricanes, droughts, blizzards, hailstorms, floods, wildfires, mudslides, oil spills, nuclear incidents, and outbreaks of pandemics or contagious diseases, or fear of such outbreaks;
- our status as a real estate investment trust ("REIT") for federal tax purposes;
- changes in federal, state or local tax law, including legislative, administrative, regulatory or other actions affecting REITs; and
- the risks described under *Part I, Item 1A. - Risk Factors* and *Part II, Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations* ("MD&A"), or identified elsewhere in this report.

All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements set forth above. Forward-looking statements are only as of the date they are made; we do not undertake or assume any obligation to update publicly any of these forward-looking statements to reflect actual results, new information, future events, changes in assumptions or changes in other factors affecting forward-looking statements, except to the extent required by applicable law. If we update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

PART I

As used throughout this Annual Report, the terms "Company," "InvenTrust," "we," "us," or "our" mean InvenTrust Properties Corp. and its wholly-owned subsidiaries, and, for periods presented prior to January 1, 2023, its unconsolidated joint venture investment (as further described below). Unless otherwise noted, all dollar amounts and square feet are stated in thousands, except per share and per square foot amounts. Any references to number of properties, square feet, and tenant and occupancy data are unaudited.

Item 1. Business

General

On October 4, 2004, InvenTrust Properties Corp. was incorporated as Inland American Real Estate Trust, Inc., a Maryland corporation, and elected to operate in a manner to be taxed as a REIT for federal tax purposes. The Company changed its name to InvenTrust Properties Corp. in April 2015 and is focused on owning, leasing, redeveloping, acquiring and managing a multi-tenant retail platform. On October 12, 2021, the Company's shares of common stock were listed and began trading on the New York Stock Exchange ("NYSE") under the ticker symbol "IVT."

InvenTrust's wholly-owned and managed retail properties include grocery-anchored community and neighborhood centers and power centers, including those classified as necessity-based. As of December 31, 2023, the Company owned 62 retail properties with a total gross leasable area ("GLA") of approximately 10.3 million square feet.

The following table summarizes our retail portfolio as of December 31, 2023.

	As of December 31, 2023
No. of properties	62
GLA (square feet)	10,324
Economic occupancy (a)	93.3%
Leased occupancy (b)	96.2%
ABR PSF (c)	\$19.48

(a) Economic occupancy is defined as the percentage of occupied GLA divided by total GLA (excluding Specialty Leases) for which a tenant is obligated to pay rent under the terms of its lease agreement as of the rent commencement date, regardless of the actual use or occupancy by that tenant of the area being leased. Actual use may be less than economic occupancy. Specialty Leases represent leases of less than one year in duration for small shop space and include any term length for common area space.

(b) Leased occupancy is defined as economic occupancy plus the percentage of signed but not yet commenced GLA divided by total GLA.

(c) Annualized Base Rent ("ABR") is computed as base rent for the period multiplied by twelve months. Base rent is inclusive of ground rent and any abatement concessions, but excludes Specialty Lease rent. ABR per square foot ("PSF") is computed as ABR divided by the occupied square footage as of the end of the period.

Joint Venture Acquisition

As of December 31, 2022, the Company owned a 55% interest in IAGM Retail Fund I, LLC ("IAGM"), an unconsolidated retail joint venture partnership between the Company and PGGM Private Real Estate Fund ("PGGM"). IAGM was formed on April 17, 2013 for the purpose of acquiring, owning, managing, and disposing of retail properties and sharing in the profits and losses from those retail properties and their activities. As of December 31, 2022, IAGM was the Company's sole joint venture and was unconsolidated. On January 18, 2023, the Company acquired the four remaining retail properties from IAGM. Throughout this Annual Report, where indicated as "Pro Rata," the Company has included the results from its ownership share of its joint venture properties at 55% ("at share") when combined with the Company's wholly owned properties, defined as "Pro Rata," except for property and lease count, as of and for the year ended December 31, 2022.

Business Strategy

InvenTrust Properties Corp. is a premier Sun Belt, multi-tenant essential retail REIT that owns, leases, redevelops, acquires, and manages grocery-anchored neighborhood and community centers, as well as high-quality power centers that often have a grocery component. We pursue our business strategy by:

- Acquiring retail properties in Sun Belt markets;
- Opportunistically disposing of retail properties;

- Maintaining a flexible capital structure; and
- Enhancing our environmental, social and governance practices and standards.

Acquiring retail properties in Sun Belt markets. InvenTrust focuses on Sun Belt markets with favorable demographics, including above average growth in population, employment, income and education levels. We believe these conditions create favorable demand characteristics for grocery-anchored and necessity-based essential retail centers, which will position us to capitalize on potential future rent increases while benefiting from sustained occupancy at our centers. Our strategically located regional field offices are within a two-hour drive of over 95% of our properties which affords us the ability to respond to the needs of our tenants and provides us with in-depth local market knowledge. We believe that our Sun Belt portfolio of high quality grocery-anchored assets is a distinct differentiator for us in the marketplace.

Opportunistically disposing of retail properties. We continue to opportunistically dispose of properties where we believe they no longer meet our investment criteria. These dispositions will allow the Company to re-deploy the proceeds in more attractive opportunities in Sun Belt markets.

Maintaining a flexible capital structure. We believe our current capital structure provides us with the financial flexibility and capacity to fund our current capital needs as well as future growth opportunities. We believe we have the liquidity necessary to continue executing on our strategic and operational objectives while exhibiting focused and disciplined capital allocation. Our flexible capital structure and ample liquidity will allow us to take advantage of future growth opportunities that meet our investment criteria.

Enhancing our environmental, social and governance practices and standards. We continue to focus on environmental, social and governance ("ESG") practices and standards across our platform. We believe we can enhance our communities, conserve resources and foster a best-in-class working environment while growing long term stockholder value. We remain committed to transparency in our investment strategy with a focus on operating efficiency, responding to evolving trends, and addressing the needs of our tenants and communities by continuing to integrate environmental sustainability, social responsibility, and strong governance practices throughout our organization. We believe our concentrated portfolio and focused strategy will allow us to adapt to the evolving needs of stakeholders.

Competition

We compete with numerous companies and individuals engaged in the ownership, development, acquisition, and operation of shopping centers in Sun Belt markets, resulting in competition for attracting and retaining tenants and acquiring and disposing shopping centers.

Our commitment to Sun Belt markets and our strategically curated portfolio of predominantly necessity based grocery-anchored shopping centers provides a number of competitive advantages, including increased concentrations in high growth Sun Belt locations to capitalize on strong demographic trends, exposure to a strong operational footprint, and distinctive levels of Sun Belt real estate experience and expertise. Our local market presence is supported by seven field offices staffed with operational teams within two hours of over 95% of our shopping centers, which allows us to build deep real estate expertise and a strong reputation with market participants and with our anchor and small shop tenants.

Our ample liquidity, and sector-low leverage, provide an additional competitive advantage of flexibility to transact. Our concerted focus on Sun Belt markets provides us greater opportunity to carefully evaluate potential acquisitions.

Human Capital Management

Our employees are our greatest asset and the foundation for our success. Together, we focus on building an inclusive culture where innovative thinking is valued, collaboration is essential, and communicating the "why" is a necessity. We are committed to creating a corporate culture characterized by high levels of employee engagement, growth and development, and health and wellness. We seek to attract and retain diverse and talented professionals who provide a wide range of opinions and experiences to drive our business forward. As of December 31, 2023, we have 104 full-time employees.

We define racial diversity as employees who are African American or Black, Alaskan Native or Native American, Asian, Hispanic or Latinx, and Native Hawaiian or Pacific Islander. We define gender diversity as employees who identify as women. Overall diversity across our workforce is approximately 67%, including gender and racial/ethnic groups. Racial diversity across our workforce is 19%. Women represent approximately 61% of our employees.

Our Human Capital strategy is focused on talent management. The basis for hiring, development, training, compensation and advancement are qualifications, performance, skills and experience. We believe our employees are fairly compensated, without regard to gender, race, and ethnicity. All of our employees are offered a comprehensive benefits package, including, but not limited to, paid time off and parental leave, medical, dental and vision insurance, disability, life insurance, 401(k) matching, tuition reimbursement, flexible Fridays and work from home flexibility.

Employee engagement is critical to our success. We believe in fostering a highly engaged inclusive environment which drives growth and productivity. We believe that our heightened focus on employee development and health and wellness creates a more engaged workforce. In 2023, 87% of our employees were highly engaged and we were named one Chicago's Top Workplaces by The Chicago Tribune for the second year in a row. We believe that the more engaged our employees are the more likely productivity will increase and drive empowerment throughout the organization for our employees to act like owners. Our hybrid work model provides an opportunity for employees to balance work and life whether they are in the office or at home. We also host monthly events focused on employee education, health and wellness, engagement activities, and giving back to our communities. Our events consist of company-wide executive led meetings to stay connected with our employees, wellness competitions, food trucks, game days, happy hours, and charity events serving our communities. We are proud that 100% of our employees participated in charitable events giving back to our communities in 2023. Our Flexible Fridays program enables our employees to balance work and life focusing on mental health as well as giving back to our communities through charitable endeavors.

We celebrate our employees' success through our Circle of Excellence awards. Our monthly, "On The Spot" award recognizes employees who go above and beyond their job. Our annual awards, the "Rising Star" and "Standing Ovation" recognize new employees and tenured employees who exhibit exceptional promise, ability, and our InvenTrust values. We monitor our performance through employee engagement surveys and utilize the results to continually improve our organization.

Environment, Social and Governance

ESG is not new to InvenTrust. Since 2013, we have participated in compiling and reporting on ESG metrics with GRESB (formerly "Global Real Estate Sustainability Benchmark"), an independent organization providing ESG performance data and peer benchmarks for investors and organizations. We believe we can enhance our communities, conserve resources, and foster a best-in-class working environment while growing long-term stockholder value. In 2023, we set energy, water, waste and greenhouse gas reduction targets, continued progress towards our 5-year goals, and increased our GRESB score by five points year over year.

We remain committed to transparency in our investment strategy with a focus on operating efficiency, responding to evolving trends, and addressing the needs of our tenants and communities by continuing to integrate environmental sustainability, social responsibility, and strong governance practices throughout our organization. For the avoidance of doubt, neither our 2022 ESG Report nor any portion thereof is incorporated by reference into this Annual Report.

To date, compliance with federal, state and local environmental laws has not had a material adverse effect on our business, assets, results of operations, financial condition and/or our ability to pay distributions. We do not believe that our existing retail platform will require us to incur material expenditures to comply with these laws and regulations. However, we acknowledge that ESG-related regulation, including environmental-related regulation and legislation, is evolving, and we cannot predict the impact of unforeseen ESG contingencies or new or changed laws or regulations on our properties, operations, and financials.

Tax Status

We have elected and operate in a manner to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"), beginning with the tax year ended December 31, 2005. To qualify as a REIT, we are generally required to distribute at least 90% of our REIT taxable income (subject to certain adjustments) to our stockholders each year. As a REIT, we are entitled to a tax deduction for some or all of the dividends paid to stockholders. Accordingly, we are generally not subject to federal income taxes as long as we currently distribute to stockholders an amount equal to or in excess of our taxable income. If we fail to qualify as a REIT in any taxable year, without the benefit of certain relief provisions, we will be subject to federal and state income tax on our taxable income at regular corporate tax rates. Even if we qualify for taxation as a REIT, we may be subject to certain state and local taxes on our income, property or net worth and federal income and excise taxes on our undistributed income.

Our Website and Availability of SEC Reports and Other Information

The Company maintains a website at the following address: www.inventrustproperties.com. The information on the Company's website is not incorporated by reference in this Annual Report or in any other report or document we file with the U.S. Securities and Exchange Commission ("SEC"), and any references to our website are intended to be inactive textual references only. In addition, we reference certain sources included on our website, including our ESG Report, in this Annual Report, and none of these are incorporated by reference in, or are otherwise to be regarded as part of, this Annual Report.

We make available on or through our website certain reports and amendments to those reports we file with or furnish to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act. These include our annual reports on Form 10-K, our quarterly reports on Form 10-Q, and our current reports on Form 8-K. We make this information available on our website free of charge as soon as reasonably practicable after we electronically file the information with, or furnish it to, the SEC. The SEC also maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of the site is <http://www.sec.gov>.

Investors and others should note that InvenTrust routinely announces material information to investors and the marketplace using SEC filings, press releases, public conference calls, webcasts and the InvenTrust investor relations website. We also intend to use certain social media channels as a means of disclosing information about us and our business to our colleagues, customers, investors and the public (e.g., the InvenTrust X account (twitter.com/inventrustprop); and the InvenTrust LinkedIn account (linkedin.com/company/inventrustproperties)). The information posted on social media channels is not incorporated by reference in this Annual Report or in any other report or document we file with the SEC. While not all of the information that the Company posts to the InvenTrust investor relations website or to social media accounts is of a material nature, some information could be deemed to be material. Accordingly, the Company encourages investors, the media, and others interested in InvenTrust to review the information that it shares on the Company's investor relations website at inventrustproperties.com/investor-relations, and regularly follow the Company's social media accounts.

Item 1A. Risk Factors

You should carefully consider each of the following risks described below and all of the other information in this Annual Report in evaluating us. Our business, financial condition, cash flows, results of operations and/or ability to pay distributions to our stockholders could be materially adversely affected by any of these risks. This Annual Report also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks faced by us described below and elsewhere in this Annual Report.

Risk Factors Related to Our Business and Strategy

Economic, political and market conditions could negatively impact our business, results of operations and financial condition

Our business is affected by economic, political and market challenges experienced by the U.S. or global economies or the real estate industry as a whole; by the regional or local economic conditions in the markets in which our assets are located, including any dislocations in the credit markets; or by competitive business market conditions experienced by us. These conditions may materially affect our value and the performance of our assets and our ability to sell assets, as well as our ability to make principal and interest payments on, or refinance, outstanding debt when due.

An economic downturn could result in defaults by retail tenants, which could have an adverse impact on our business, financial condition, result of operations, and ability to make distributions to our stockholders.

An economic downturn could have an adverse impact on the retail industry generally. Rising inflation could also adversely impact consumer behavior and increase our and our tenant's operating costs. As a result, the retail industry could face further reductions in sales revenues and increased bankruptcies. Adverse economic conditions may result in an increase in distressed or bankrupt retail companies, which in turn would result in an increase in defaults by tenants at our commercial properties. Such conditions may also affect shadow anchor retailers in some of our centers, which we cannot control. Although we do not generate revenue from shadow anchor retailers, their presence drives traffic to some of our centers. Additionally, continued slow or negative economic growth could hinder new entrants into the retail market, which may make it difficult for us to fully lease our real properties. Tenant defaults and decreased demand for retail space would have an adverse impact on the value of our retail properties and our results of operations.

A consumer shift in retail shopping from brick and mortar stores to e-commerce may have an adverse impact on our revenues and cash flow.

The majority of national retailers operating brick and mortar stores have made e-commerce sales an important part of their business model. The shift to e-commerce sales may adversely impact their sales for brick and mortar stores, causing those retailers to adjust the size or number of retail locations in the future. This shift could adversely impact our occupancy and rental rates, which would, in turn, adversely impact our revenues and cash flows.

Our retail portfolio is subject to geographic concentration, which exposes us to changing economic and retail market conditions that may reduce our revenues and cash flows.

As of December 31, 2023, approximately 41.7% of the total annualized base rental income in our retail portfolio was generated by properties located in Texas, with 17.5%, 11.2%, 9.8%, and 3.2% of our total annualized base rental income generated by properties in Austin, Houston, Dallas-Fort Worth-Arlington, and San Antonio metropolitan areas, respectively. An oversupply of retail properties without corresponding increases in demand in any of these markets could have a material adverse effect on our financial condition, our results of operations and our ability to pay distributions.

Our success depends on the success and continued presence of our anchor tenants.

Our properties are largely dependent on the operational success of their anchor tenants (those occupying 10,000 square feet or more). Anchor tenants occupy significant amounts of square footage, pay a significant portion of the total rents at a property and contribute to the success of other tenants by drawing consumers to a property. Our net income could be adversely affected by the loss of revenues in the event a significant tenant becomes bankrupt or insolvent, experiences a downturn in its business, materially defaults on its leases, does not renew its leases as they expire, or renews at a lower rental rate. Any of these events could result in a reduction or cessation in rental payments to us, which would adversely affect our financial condition and results of operations. In addition, if a significant tenant vacates a property or terminates a lease, co-tenancy clauses may allow other tenants to modify or abate their minimum rent, reduce their share or the amount of payments for common area operating expenses and property taxes, or terminate their rent or lease obligations. Co-tenancy clauses have several variants and may allow a tenant to pay reduced levels of rent until a certain number of tenants open their stores within the same property.

If our small shop tenants (tenants occupying less than 10,000 square feet) are not successful and, consequently, terminate their leases, our cash flow, financial condition and results of operations could be adversely affected.

As of December 31, 2023, approximately 58.0% of our total annualized base rental income is generated by our small shop tenants. Our small shop tenants may be more vulnerable to negative economic conditions as they generally have more limited resources than our anchor tenants. If a significant number of our small shop tenants experience financial difficulties or are unable to remain open, our cash flow, financial condition and result of operations could be adversely affected.

Our financial condition may be impacted by our ability to timely re-lease our space.

Our business and financial condition depend on the financial stability of our tenants and our ability to lease our space. Certain economic conditions, or center specific conditions may adversely affect one or more of our tenants. Among the factors that could impact our financial conditions are the following:

- inability to renew, lease vacant space or re-let space as leases expire;
- restrictions related to re-leasing space;
- co-tenancy constraints which limit our ability to lease to certain operators or reduce our revenues at our properties if co-tenancy clauses are exercised and;
- competition for tenancy of our leases

As of December 31, 2023, economic occupancy and leased occupancy of our retail portfolio was 93.3% and 96.2%, respectively. As of December 31, 2023, leases representing approximately 5.0% and 12.1% of our retail portfolio GLA were scheduled to expire in 2024 and 2025, respectively. We cannot assure our stockholders that leases will be renewed or that our properties will be re-leased on terms equal to or better than the current terms, or at all. We also may not be able to lease space which is currently not occupied on acceptable terms and conditions, if at all. In addition, some of our tenants have leases that include early termination provisions that permit the lessee to terminate all or a portion of its lease with us after a specified date or upon the occurrence of certain events with little or no liability to us. We may be required to offer substantial rent abatements, tenant improvements, early termination rights or below-market renewal options to retain these tenants or attract new ones. Portions of our assets may remain vacant for extended periods of time. If the rental rates for our assets decrease, our existing tenants do not renew their leases or we do not re-lease a significant portion of our available space and space for which leases will expire, our financial condition, cash flows and results of operations could be adversely affected.

Many of our costs and expenses associated with operating our properties may remain constant or increase, even if our lease income decreases.

Certain costs and expenses associated with our operating our properties, such as real estate taxes, insurance, utilities and common area expenses, generally do not decrease in the event of reduced occupancy or rental rates, non-payment of rents by tenants, general economic downturns, pandemics or other similar circumstances. In fact, in some cases, such as real estate taxes and insurance, they may actually increase despite such events. As such, we may not be able to lower the operating expenses of our properties sufficiently to fully offset such circumstances and may not be able to fully recoup these costs from our tenants. In such cases, our cash flows, operating results and financial performance may be adversely impacted.

Pandemics, epidemics or other health crises may have a negative effect on our and our tenants' businesses, financial condition, results of operations, cash flows, and liquidity.

Our business, and the businesses of our tenants, could be materially and adversely affected by the risks, or the public perception of the risks, related to a pandemic, epidemic, or other health crisis, especially if there is a negative impact to customers' willingness or ability to frequent our tenants' businesses.

Such crises could cause significant disruptions to the United States and global economy and contribute to significant volatility and negative pressure in financial markets. Government responses, including quarantines, restrictions on travel, mandatory closures of businesses, or other restrictions, as well as changes in consumer behavior, could negatively impact our tenants and their ability to operate their businesses, which could impact our ability to collect on current or past due rent payments or fully recover amounts due under the terms of a lease agreement in the event of a default by a tenant.

The unpredictable nature of pandemics, epidemics, and other health crises precludes any prediction as to one's ultimate adverse impact. A worsening of the economic, political and social environment as a result presents material risks and uncertainties with respect to our and our tenants' business, financial condition, results of operations, cash flows, liquidity, and ability to satisfy debt service obligations.

Risk Factors Related to Real Estate Investments

There are inherent risks with investments in retail real estate

Investments in real estate are subject to varying degrees of risk. Among the factors that could have a negative impact on our assets and the value of an investment in us are the following:

- relative illiquidity of real estate;
- competition amongst other owners of commercial real estate for investments in similar markets;
- expansion into new markets that we are not as familiar with;
- changing market demographics;
- risks associated with the possibility that cost increases will outpace revenue increases and that in the event of an economic slowdown, the high proportion of fixed costs will make it difficult to reduce costs to the extent required to offset declining revenues;
- changes in tax laws and property taxes, or an increase in the assessed valuation of an asset for real estate tax purposes;
- adverse changes in the federal, state or local laws and regulations applicable to us, including those affecting zoning, fuel and energy consumption, water and environmental restrictions, and the related costs of compliance;
- an inability to finance real estate assets on favorable terms, if at all;
- significant capital expenditures may be required to improve our properties to attract tenants;
- the ongoing need for owner-funded capital for improvements and expenditures to maintain or upgrade assets, make tenant improvements and pay leasing commissions;
- fluctuations in real estate values or potential impairments in the value of our assets;
- natural disasters, such as earthquakes, droughts, hurricanes, floods, extreme storms and weather or other under-insured or uninsured losses, which may result from or be exacerbated by climate change, and man-made events, such as terrorist attacks or events of sabotage; and
- changes in interest rates and availability, and cost and terms of financing.

We face risks with the expansion, development, and re-development of properties.

We seek to expand, develop and re-develop some of our existing properties and such activity is subject to various risks. We may not be successful in identifying and pursuing expansion, development and re-development opportunities. In addition, like newly-acquired properties, expanded, developed and re-developed properties may not perform as well as expected. Risks include the following:

- we may be unable to lease developments to full occupancy on a timely basis;
- the occupancy rates and rents of a completed project may not be sufficient to make the project profitable;
- actual costs of a project may exceed original estimates, possibly making the project unprofitable;
- delays in the development or construction process may increase our costs;
- we may not be able to obtain, or may experience delays in obtaining necessary zoning, land use, building, occupancy and other required governmental permits and authorizations;
- we may abandon a development project and lose our investment;
- the size of our development pipeline may strain our labor or capital capacity to complete developments within targeted timelines and may reduce our investment returns;
- a reduction in the demand for new retail space may reduce our future development activities, which in turn may reduce our net operating income; and
- changes in the level of future development activity may adversely impact our results from operations by reducing the amount of certain internal overhead costs that may be capitalized.

Inflationary pressures, rising interest rates, supply chain disruptions, and labor shortages may exacerbate certain of these risks. If we fail to reinvest in our properties or maintain their attractiveness to retailers and consumers, if our capital improvements are not successful, or if retailers or consumers perceive that shopping at other venues (including e-commerce) is more convenient, cost-effective, or otherwise more compelling, our financial condition, cash flows, and results of operations could be adversely affected.

Our ongoing strategy depends, in part, upon completing future acquisitions and dispositions, and we may not be successful in identifying attractive acquisition opportunities and consummating these transactions.

As part of our strategy, we intend to tailor and grow our retail platform. We cannot assure our stockholders that we will be able to identify opportunities or complete transactions on commercially reasonable terms or at all, or that we will actually realize any anticipated benefits from such acquisitions or investments. There may be high barriers to entry in many key markets and scarcity of available acquisition and investment opportunities in desirable locations. We face significant competition for attractive investment opportunities from an indeterminate number of other real estate investors, including investors with significant capital resources such as domestic and foreign corporations and financial institutions, sovereign wealth funds, public and private REITs, private institutional investment funds, domestic and foreign high-net-worth individuals, life insurance companies and pension funds. As a result of competition, we may be unable to acquire additional properties as we desire or the purchase price may be significantly elevated. Similarly, we cannot assure our stockholders that we will be able to obtain financing for acquisitions or investments on attractive terms or at all, or that the ability to obtain financing will not be restricted by the terms of our credit facility or other indebtedness we may incur.

Additionally, we regularly review our business to identify properties or other assets that we believe may not benefit us as much as properties in other markets or with different characteristics. One of our strategies is to selectively dispose of retail properties and use sale proceeds to fund our growth in markets and with properties that will enhance our retail platform. We cannot assure our stockholders that we will be able to consummate any such sales on commercially reasonable terms or at all, or that we will actually realize any anticipated benefits from such sales. Additionally, we may be unable to successfully identify attractive and suitable replacement assets even if we are successful in completing such dispositions. We may face delays in reinvesting net sales proceeds in new assets, which would impact the return we earn on our assets. Dispositions of real estate assets can be particularly difficult in a challenging economic environment when uncertainties exist about the impact of e-commerce on retailers and when financing alternatives are limited for potential buyers. Our inability to sell assets, or to sell such assets at attractive prices, could have an adverse impact on our ability to realize proceeds for reinvestment. In addition, even if we are successful in consummating sales of selected retail properties, such dispositions may result in losses.

Any such acquisitions, investments or dispositions could also demand significant attention from management that would otherwise be available for our regular business operations, which could harm our business.

We may obtain only limited warranties when we purchase a property and would have only limited recourse if our due diligence did not identify issues that could decrease the value of our property after the purchase.

The seller of a property often sells the property to us in its "as is" condition on a "where is" basis and "with all faults," without any warranties of merchantability or fitness for a particular use or purpose. In addition, purchase agreements may contain only limited warranties, representations and indemnifications that will only survive for a limited period after the closing. The purchase of properties with limited warranties increases the risk that we may lose some or all of our invested capital in the property, as well as the loss of rental income from that property, and may also require additional investment to make the property suitable and competitive.

Our assets may be subject to impairment charges that may materially and adversely affect our financial results.

Economic and other conditions may adversely impact the valuation of our assets, resulting in impairment charges that could have a material adverse effect on our results of operations. On a regular basis, we evaluate our assets for impairments based on various factors, including changes in the holding periods, projected cash flows of such assets and market conditions.

If we determine that an impairment has occurred, we would be required to make an adjustment to the net carrying value of the asset, which could have a material adverse effect on our results of operations in the accounting period in which the adjustment is made. Furthermore, changes in estimated future cash flows due to a change in our plans, policies, or views of market and economic conditions could result in the recognition of additional impairment losses for already impaired assets, which, under the applicable accounting guidance, could be substantial and could materially adversely affect our results of operations. We have incurred and we may incur future impairment charges, which could be material.

Risks Factors Related to the Environment Affecting Our Properties

Geographic concentration makes our business more vulnerable to natural disasters, severe weather, and climate change.

Natural disasters and severe weather such as earthquakes, wildfires, mudslides, droughts, tornadoes, hurricanes, blizzards, hailstorms or floods may result in significant damage to our properties, decrease demand for certain properties, disrupt operations at our properties, increase the costs associated with maintaining or insuring our properties, and adversely affect both the value of our properties and the ability of our tenants and operators to make their scheduled rent payments to us. The extent of our casualty losses and loss in operating income in connection with such events is a function of the severity of the event and the total amount of exposure in the affected area. These losses may not be insured or insurable at commercially reasonable rates. When we have a geographic concentration, a single catastrophe or destructive weather event affecting a region may have a significant negative effect on our financial condition, results of operations, and cash flows. As a result, our operating and financial results may vary significantly from one period to the next. We also are exposed to the risk of an increased need for the maintenance and repair of our buildings due to inclement or extreme weather.

Moreover, climate change may adversely impact our properties directly and may lead to additional compliance obligations and costs, including insurance premiums, taxes and fees. Changes in federal, state and local legislation and regulation on climate change could result in increased operating costs (for example, increased utility costs) and/or increased capital expenditures to improve the energy efficiency of our existing properties (for example, increased costs associated with meeting electric vehicle charging mandates) and could also require us to spend more on our new properties without a corresponding increase in revenue and could increase our exposure to new physical risks and liabilities.

Risk Factors Related to Funding Strategies and Capital Structure

Our debt financing may adversely affect our business and financial condition.

Our existing and future debt may subject us to many risks, including the risks that:

- our cash flow from operations will be insufficient to make required payments of principal and interest;
- our debt may increase our vulnerability to adverse economic and industry conditions;
- we may be required to dedicate a substantial portion of our cash flow from operations to payments on our debt, thereby reducing cash available for distribution to our stockholders, funds available for operations and capital expenditures, future business opportunities or other purposes;
- the terms of any refinancing may not be as favorable as the terms of the debt being refinanced; and
- the terms of our debt may limit our ability to make distributions to our stockholders and therefore adversely affect the market price of our stock.

If we do not have sufficient funds to repay our debt at maturity, it may be necessary to refinance this debt through additional debt financing, or private or public offerings of debt or equity securities. Adverse economic conditions could cause the terms on which we borrow or refinance to be unfavorable. If we are unable to refinance our debt on acceptable terms, we may be forced to dispose of assets on disadvantageous terms or at times which may not permit us to receive an attractive return on our investments, potentially resulting in losses adversely affecting cash flow from operating activities.

Covenants in our debt agreements may restrict our operating activities and adversely affect our financial condition.

Our debt agreements contain various financial and operating covenants, including, among other things, certain coverage ratios and limitations on our ability to incur secured and unsecured debt. The breach of any of these covenants, if not cured within any applicable cure period, could result in a default and acceleration of certain of our indebtedness. If any of our indebtedness is accelerated prior to maturity, we may not be able to repay or refinance such indebtedness on favorable terms, or at all, which could adversely affect our financial condition, operating results and cash flows.

Increases in interest rates would cause our borrowing costs to rise and negatively impact our results of operations.

As fixed-rate debt matures, we may not be able to borrow at rates equal to or lower than the rates on the expiring debt. In addition, if rising interest rates cause us to need additional capital to repay indebtedness, we may be forced to sell one or more of our properties or investments in real estate at times that may not permit us to realize the return on the investments we would have otherwise realized.

Increases in interest rates would increase our interest expense on any variable rate debt, as well as any debt that must be refinanced at higher interest rates at the time of maturity. Our future earnings and cash flows could be adversely affected due to the increased requirement to service our debt and could reduce the amount we are able to distribute to our stockholders.

Hedging activity may expose us to risks, including the risks that a counterparty will not perform and that the hedge will not yield the economic benefits we anticipate, which may adversely affect us.

We manage our exposure to interest rate volatility by using interest rate hedging arrangements. These arrangements involve risk, such as the risk that counterparties may fail to honor their obligations under these arrangements, and that these arrangements may not be effective in reducing our exposure to interest rate changes. There can be no assurance that our hedging arrangements will qualify for hedge accounting or that our hedging activities will have the desired beneficial impact on our results of operations. Should we desire to terminate a hedging arrangement, there may be significant costs and cash requirements involved to fulfill our obligations under the hedging arrangement. In addition, failure to effectively hedge against interest rate changes may adversely affect our results of operations.

We may issue additional equity or debt securities in the future in order to raise capital. Additional issuances of equity securities could dilute the investment of our current stockholders.

Issuing additional equity securities to finance future developments and acquisitions instead of incurring additional debt could dilute the interests of our existing stockholders. Our ability to execute our business and growth plan depends on our access to an appropriate blend of capital, which could include a line of credit and other forms of secured and unsecured debt, equity financing, or joint ventures.

Stockholders do not have preemptive rights with respect to any shares issued by us in the future. Our charter authorizes our Board, without stockholder approval, to amend the charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that the Company has authority to issue. Stockholders are not entitled to vote on whether or not we issue additional shares.

Risk Factors Related to the Market Price for Our Securities

Changes in economic and market conditions may adversely affect the market price of our securities.

The market price of our equity securities may fluctuate significantly in response to many factors, many of which are out of our control, including:

- actual or anticipated variations in our operating results, liquidity or financial condition;
- changes in our earnings estimates or failure to meet earnings estimates;
- changes in our funds from operations;
- increases in market interest rates that drive purchasers of our stock to demand a higher dividend yield;

- changes in market valuations of similar companies;
- adverse market reaction to any additional debt we incur in the future;
- additions or departures of key management personnel;
- the general reputations of REITs and the attractiveness of equity securities in comparison to other equity securities including securities issued by other real estate based companies;
- our underlying asset value;
- strategic actions by the Company or our competitors, such as acquisitions, dispositions or restructurings;
- fluctuations in the stock price and operating results of the Company's competitors;
- the passage of legislations or other regulatory developments that may adversely affect the Company or the REIT industry, including but not limited to Section 1031 of the Code;
- investor confidence in the stock and bond markets generally;
- changes in tax laws or accounting principles;
- publication of research reports about us or the real estate industry in general and recommendations by financial analysts or actions taken by rating agencies with respect to our securities or those of other REITs;
- future equity issuances or the perception that such equity issuances may occur;
- failure to maintain our status as a REIT;
- actions by institutional stockholders or by corporate governance rating companies;
- increased investor focus on sustainability-related risks, including climate change;
- changes in our dividend payments; and
- general market and economic conditions, including factors unrelated to the Company's operating performance.

These factors may cause the market price of our securities to decline, regardless of our financial condition, results of operations, business or prospects. It is impossible to ensure that the market price of our securities, including our common stock, will not fall in the future. A decrease in the market price of our common stock may reduce our ability to raise additional equity in the public markets. Selling common stock at a decreased market price would have a dilutive impact on existing stockholders.

There is no assurance that we will continue to pay dividends.

Our ability to continue to pay dividends will depend on a number of factors, including, among others, the following:

- our financial condition and results of future operations;
- the terms of our loan covenants; and
- our ability to acquire, finance, develop or redevelop and lease additional properties at attractive rates.

If we do not maintain the dividend on our common stock, it may have an adverse effect on the market price of our common stock and other securities.

Funding distributions from sources other than cash flow from operating activities may negatively impact our ability to sustain or pay future distributions.

If our cash flow from operating activities is not sufficient to fully fund the payment of distributions, the level of our distributions may not be sustainable.

We may pay distributions from sources other than cash flow from operations or funds from operations, including funding such distributions from external financing sources, which may not be available at commercially attractive terms. Furthermore, in the event that we are unable to fund future distributions from our cash flows from operating activities, the value of our stockholders' shares may be materially adversely affected.

For the year ended December 31, 2023, distributions were paid from cash flow from operations and proceeds from the sales of properties.

Risks Factors Related to Our Organization and Corporate Structure

Our charter permits our Board to issue preferred stock on terms that may subordinate the rights of the holders of our current common stock or discourage a third party from acquiring us.

Our Board may classify or reclassify any unissued shares of common or preferred stock into other classes or series of stock and establish the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms or conditions of redemption of the stock and may amend our charter from time to time to increase or decrease the aggregate number of shares or the number of shares of any class or series that we have authority to issue without stockholder approval. Thus, our Board could authorize us to issue shares of preferred stock with terms and conditions that could subordinate the rights of the holders of our common stock or shares of preferred stock or common stock that could have the effect of delaying, deferring or preventing a change in control of us, including an extraordinary transaction such as a merger, tender offer or sale of all or substantially all of our assets, that might provide a premium price for holders of our common stock.

Our Board or a committee of our Board may change our investment policies without stockholder approval, which could alter the nature of our stockholders' investment.

Our investment policies may change over time. The methods of implementing our investment policies may also vary, as new investment techniques are developed. Our investment policies, the methods for implementing them, and our other objectives, policies and procedures may be altered by our Board or a committee of our Board without the approval of our stockholders. As a result, the nature of our stockholders' investment could change without their consent. A change in our investment strategy may, among other things, increase our exposure to interest rate risk, default risk and real property market fluctuations, all of which could materially and adversely affect our ability to achieve our investment objectives.

Risks Factors Related to Corporate Matters

We are subject to litigation that could negatively impact our cash flow, financial condition and results of operations.

We are a defendant from time to time in lawsuits and regulatory proceedings relating to our business. Due to the inherent uncertainties of litigation and regulatory proceedings, we may not be able to accurately predict the ultimate outcome of any such litigation or proceedings. A significant unfavorable outcome could negatively impact our cash flow, financial condition and results of operations.

Uninsured losses or premiums for insurance coverage may adversely affect a stockholder's returns.

We maintain insurance coverage with third-party carriers who provide a portion of the coverage of potential losses, including wind, flood, named windstorm, earthquake, fire, and other property-related perils. We currently self-insure a portion of our commercial insurance deductible risk through our captive insurance company. To the extent that our captive insurance company is unable to bear that risk, we may be required to fund additional capital to our captive insurance company or we may be required to bear that loss. As a result, our operating results may be adversely affected.

Catastrophic losses, including but not limited to, windstorms, earthquakes, floods, and foreign terrorist activities may not be insurable or may not be economically insurable. Even when insurable, these policies may have high deductibles and/or high premiums. Lenders may require such insurance. Our failure to obtain such insurance could constitute a default under loan agreements, and/or our lenders may force us to obtain such insurance at unfavorable rates, which could materially and adversely affect our profitability.

In the event of a substantial loss, our insurance coverage may not be sufficient to cover the full current market value or replacement cost of our lost investment. Should an uninsured loss or a loss in excess of insured limits occur, we could lose all or a portion of the capital we have invested in an asset, as well as the anticipated future revenue from the asset. In that event, we might nevertheless remain obligated for any mortgage debt or other financial obligations related to the asset. Inflation, changes in building codes and ordinances, environmental considerations and other factors might require us to come out of pocket to replace or renovate an asset after it has been damaged or destroyed. Under those circumstances, the insurance proceeds we receive might be inadequate to restore our economic position on the damaged or destroyed property, which could materially and adversely affect our profitability.

In addition, insurance risks associated with potential terrorist acts could sharply increase the premiums we pay for coverage against property and casualty claims.

We could incur material costs related to government regulation and litigation with respect to environmental matters, which could materially and adversely affect our revenues and profitability.

Under various federal, state, and local laws, an owner or manager of real property may be liable for the costs to assess and remediate the presence of hazardous substances on the property, which in our case generally arise from former dry cleaners, gas stations, asbestos usage, storage tanks, air emissions from emergency generators, storm water and wastewater discharges, lead-based paint, mold and mildew, waste management, and historic land use practices. These laws often impose liability without regard to whether the owner knew of, or was responsible for, the presence of hazardous substances. The presence of, or the failure to properly address the presence of, hazardous substances may adversely affect our ability to sell or lease the property or borrow using the property as collateral. We can provide no assurance that we are aware of all potential environmental liabilities or their ultimate cost to address; that our properties will not be affected by tenants or nearby properties or other unrelated third parties; and that future uses or conditions, or changes in environmental laws and regulations, or their interpretation, will not result in additional material environmental liabilities to us.

The discovery of material environmental liabilities at our assets could subject us to unanticipated significant costs, which could significantly reduce or eliminate our profitability and the cash available for distribution to our stockholders.

Moreover, compliance with ESG-related laws, regulations, expectations or reporting requirements may result in increased compliance costs, as well as additional scrutiny that could heighten all of the risks associated with environmental, social and sustainability matters. For example, the SEC continues to make moves towards issuing rules relating to climate risk disclosures, human capital management and other ESG matters and other regulatory bodies, including state governments and stock exchanges, have issued new laws or regulations relating to board structure, and increased ESG regulations and reporting requirements are likely to continue. If we fail to comply with new laws, regulations, expectations or reporting requirements, or if we are perceived as failing, our reputation and business could be adversely impacted. The occurrence of any of the foregoing could have an adverse effect on the price of the Company's stock and the Company's business, financial condition and results of operations, including increased development costs, capital expenditures and operating expenses.

If we lose or are unable to obtain and retain key personnel, our ability to implement our business strategies could be delayed or hindered .

We believe that our future success depends, in large part, on our ability to retain and hire highly-skilled managerial and operating personnel. Competition for persons with managerial and operational skills is intense, and we cannot assure our stockholders that we will be successful in retaining or attracting skilled personnel. If we lose or are unable to obtain the services of our executive officers and other key personnel, or we are unable to establish or maintain the necessary strategic relationships, our ability to implement our business strategy could be delayed or hindered.

Corporate responsibility related to environmental, social and governance factors, may impose additional costs and expose us to new risks.

We, as well as our investors, are focused on corporate responsibility, specifically related to environmental, social and governance factors. Third-party providers of corporate responsibility ratings and reports on companies have increased to meet growing investor demand for measurement of corporate responsibility and performance. Although the Company makes ESG disclosures and undertakes sustainability and diversity initiatives, there is no assurance as to how we will rate according to the metrics. Additionally, the measurement parameters may change over time. We may face reputational damage in the event our corporate responsibility procedures or standards do not meet the standards set by various constituencies. In addition, our competitors may receive more favorable ratings. The occurrence of any of the foregoing could have an adverse impact on our business, financial condition and results of operations, including increased capital expenditures and operating expenses.

We are increasingly dependent on information technology ("IT"), and potential cyber-attacks, security problems, or other disruptions present risks.

A cyber incident is considered to be any adverse event that threatens the confidentiality, integrity or availability of our information resources. More specifically, a cyber incident is an intentional attack or an unintentional event that can include an intruder gaining unauthorized access to systems to disrupt operations, corrupt data or steal confidential information. As our reliance on technology has increased, so have the risks posed to our systems, both internal and those we have outsourced.

Although we make efforts to maintain the security and integrity of our IT networks and related systems, and we have implemented various measures to manage the risk of a security breach or disruption, there can be no assurance that our security efforts and measures will be effective or that attempted security breaches would not be successful or damaging. While we maintain some of our own critical IT systems, we also depend on third parties to provide important IT services relating to several key business functions. Furthermore, the security measures employed by third-party service providers may prove to be

ineffective at preventing breaches of their systems. Moreover, cyber incidents perpetrated against our tenants, including unauthorized access to customers' credit card data and other confidential information, could diminish consumer confidence and consumer spending and negatively impact our business and reputation.

Cyberattacks are expected to accelerate on a global basis in frequency and magnitude as threat actors are becoming increasingly sophisticated in using techniques and tools – including generative and other artificial intelligence – that circumvent security controls, evade detection and remove forensic evidence. As a result, we, or our tenants, may be unable to detect, investigate, remediate or recover from future attacks or incidents, or to avoid a material adverse impact to our or their IT networks and related systems, confidential information or business. Our and our tenants' primary risks that could directly result from the occurrence of a cyber incident include operational interruption, damage to our relationships with our tenants or damage to our tenants' relationships with their customers, as applicable, and private data exposure. Our and our tenants' financial results and reputation may be negatively impacted by such an incident.

There can be no assurance that our cybersecurity risk management program and processes, including our policies, controls or procedures, will be fully implemented, complied with or effective in protecting our systems and information. Further, we cannot guarantee that any costs and liabilities incurred in relation to an attack or incident will be covered by our existing insurance policies or that applicable insurance will be available to us in the future on economically reasonable terms or at all.

A failure of our IT infrastructure could adversely impact our business and operations.

We rely upon the capacity, reliability and security of our IT infrastructure and our ability to expand and continually update this infrastructure in response to changing needs of our business. We continue to face the challenge of integrating new systems and hardware into our operations. If there are technological impediments, unforeseen complications, errors or breakdowns in the IT infrastructure, the disruptions could have an adverse effect on our business and financial condition.

Risk Factors Relating to Our Qualification as a REIT

Our failure to qualify as a REIT would have serious adverse consequences to our stockholders.

We plan to continue to meet the requirements for taxation as a REIT. Many of these requirements, for which there is limited judicial and administrative interpretation, however, are highly technical and complex. Therefore, we cannot guarantee that we have qualified or will qualify as a REIT in the future. The determination that we are a REIT requires an analysis of various factual matters that may not be totally within our control. To qualify as a REIT, our assets must be substantially comprised of real estate assets as defined in the Code, and related guidance and our gross income must generally come from rental and other real estate or passive related sources that are itemized in the REIT tax laws. We are also required to distribute to security holders at least 90% of our REIT taxable income excluding net capital gains.

If we fail to qualify as a REIT, we would be subject to U.S. federal income tax at regular corporate rates and would have to pay significant income taxes unless the Internal Revenue Service ("IRS") granted us relief under certain statutory provisions. In addition, we would remain disqualified from taxation as a REIT for four years following the year in which we failed to qualify as a REIT. We would therefore have less money available for investments or for distributions to security holders and would no longer be required to make distributions to security holders. This would likely have a significant negative impact on the value of our securities.

We have a share ownership limit for REIT tax purposes.

In order to continue to qualify as a REIT, five or fewer individuals, as defined in the Code, may not own, beneficially or constructively, more than 50% in value of our issued and outstanding stock at any time during the last half of a taxable year. To facilitate maintenance of our REIT qualification, our Charter, prohibits ownership by any single stockholder of more than 9.8% percent of the lesser of the number or value of any outstanding class of common. Our Board may not grant an exemption from these restrictions to any proposed stockholder whose ownership in excess of the 9.8% stock ownership limit that would result in our failing to qualify as a REIT. This ownership limit may delay or prevent a transaction or change in control that could affect our stockholder's ability to realize a premium over the then prevailing market price for their shares, it could also restrict our stockholders' ability to acquire or transfer certain amounts of our common stock.

Item 1B. Unresolved Staff Comments

None.

Item 1C. Cybersecurity

Cybersecurity Risk Management and Strategy

We have developed and implemented a cybersecurity risk management program intended to protect the confidentiality, integrity, and availability of our critical systems and information. Our cybersecurity risk management program includes a cybersecurity incident response plan.

We design and assess our program based on the National Institute of Standards and Technology Cybersecurity Framework ("NIST CSF"). This does not imply that we meet any particular technical standards, specifications, or requirements, only that we use the NIST CSF as a guide to help us identify, assess, and manage cybersecurity risks relevant to our business.

Our cybersecurity risk management program is integrated into our overall enterprise risk management program, and shares common methodologies, reporting channels and governance processes that apply across the enterprise risk management program to other legal, compliance, strategic, operational, and financial risk areas.

Our cybersecurity risk management program includes:

- risk assessments designed to help identify material cybersecurity risks to our critical systems, information, products, services, and our broader enterprise IT environment;
- a team responsible for managing (1) our cybersecurity risk assessment processes, (2) our security controls, and (3) our response to cybersecurity incidents;
- the use of external service providers, where appropriate, to assess, test or otherwise assist with aspects of our security controls;
- cybersecurity awareness training of our employees, incident response personnel, and senior management;
- a cybersecurity incident response plan that includes procedures for responding to cybersecurity incidents; and
- a risk management process for essential third-party service providers, suppliers, and vendors, as identified by management.

We have not identified risks from known cybersecurity threats, including as a result of any prior cybersecurity incidents, that have materially affected us, including our operations, business strategy, results of operations, or financial condition. We face risks from cybersecurity threats that, if realized, are reasonably likely to materially affect us, including our operations, business strategy, results of operations, and/or financial condition.

Cybersecurity Governance

Our Board considers cybersecurity risk as part of its risk oversight function and has delegated to the Audit Committee (the "Committee") oversight of cybersecurity and other information technology risks. The Committee oversees management's implementation of our cybersecurity risk management program.

The Committee receives periodic reports from management on our cybersecurity risks. In addition, management updates the Committee, as necessary, regarding any material cybersecurity incidents, as well as any incidents with lesser impact potential.

The Committee reports to the full Board regarding its activities, including those related to cybersecurity. The full Board also receives briefings from management on our cybersecurity risk management program. Board members receive presentations on cybersecurity topics from our Vice President of Information Technology ("VP IT") or external experts as part of the Board's continuing education on topics that impact public companies.

Our management team, including the VP IT, is responsible for assessing and managing our material risks from cybersecurity threats. The team has primary responsibility for our overall cybersecurity risk management program and supervises our retained external cybersecurity consultants. Our management team has experience with implementing IT organizational policies and procedures, working in multiple platform environments, and overseeing corporate networking and hardware framework.

Our management team supervises efforts to prevent, detect, mitigate, and remediate cybersecurity risks and incidents through various means, which may include briefings from our internal team; threat intelligence and other information obtained from governmental, public or private sources, including external consultants engaged by us; and alerts and reports produced by security tools deployed in our IT environment.

Item 2. Properties

As of December 31, 2023 and 2022, InvenTrust's wholly-owned and managed retail properties include grocery-anchored community and neighborhood centers and power centers, including those classified as necessity-based. For the year ended December 31, 2022, we have included results from the properties previously owned by our 55% ownership interest in IAGM at share when combined with our wholly-owned properties, defined as "Pro Rata Combined Retail Portfolio."

The following table summarizes our retail portfolio, on a wholly-owned, IAGM, and pro-rata combined basis, as of December 31, 2023 and 2022.

	Wholly-Owned Retail Properties		IAGM Retail Properties		Pro Rata Combined Retail Portfolio	
	2023	2022	2023	2022	2023	2022
No. of properties	62	58	—	4	62	62
GLA (square feet)	10,324	9,171	—	1,125	10,324	9,790
Economic occupancy	93.3%	94.2%	—%	90.2%	93.3%	93.9%
Leased occupancy	96.2%	96.2%	—%	93.6%	96.2%	96.1%
ABR PSF	\$19.48	\$19.26	\$—	\$16.22	\$19.48	\$19.08

The following table represents the geographical diversity of our retail portfolio by ABR as of December 31, 2023.

Market	No. of Properties	ABR	ABR PSF	ABR as % of Total	GLA	GLA as % of Total
Austin-Round Rock, TX	8	\$ 32,625	\$16.74	17.5 %	2,056	19.9 %
Houston-Sugar Land-Baytown, TX	6	20,908	16.39	11.2 %	1,409	13.6 %
Miami-Fort Lauderdale-Miami Beach, FL	3	18,895	23.06	10.1 %	859	8.3 %
Dallas-Fort Worth-Arlington, TX	7	18,325	20.02	9.8 %	939	9.1 %
Atlanta Metro Area, GA	9	18,023	20.73	9.7 %	995	9.6 %
Raleigh-Cary-Durham, NC	5	13,318	20.09	7.2 %	688	6.7 %
So. California - Los Angeles, CA	3	11,247	20.94	6.0 %	579	5.6 %
Charlotte-Gastonia-Concord, NC	4	9,492	20.00	5.1 %	515	5.0 %
Orlando-Kissimmee, FL	4	9,026	24.24	4.8 %	378	3.7 %
Tampa-St. Petersburg, FL	3	8,614	13.26	4.6 %	753	7.3 %
Washington D.C/Richmond Metro Area	3	8,494	26.78	4.6 %	358	3.5 %
San Antonio, TX	2	5,993	25.62	3.2 %	261	2.5 %
So. California - San Diego, CA	2	5,752	26.04	3.1 %	225	2.2 %
So. California - Inland Empire, CA	2	5,116	24.21	2.8 %	246	2.4 %
Cape Coral-Fort Myers, FL	1	574	9.68	0.3 %	63	0.6 %
Total	62	\$ 186,402	\$19.48	100 %	10,324	100 %

The following table presents information regarding the top 10 tenants of our retail portfolio by ABR as of December 31, 2023.

Parent Name	Tenant Name/Count	No. of Leases	ABR	% of Total ABR	GLA	% of Total Occ.GLA
Kroger	Kroger 7 / Kroger Gas 1 / Harris Teeter 4 / Ralphs 3	15	\$ 9,676	5.2 %	864	8.4 %
Publix Super Markets, Inc.	Publix 11 / Publix Liquor 3	14	6,204	3.3 %	541	5.2 %
TJX Companies	Marshalls 7 / HomeGoods 5 / TJ Maxx 2	14	4,872	2.6 %	397	3.8 %
Albertson's	Safeway 1 / Tom Thumb 2 / Market Street 2 / Albertsons 1	6	4,303	2.3 %	365	3.5 %
H.E.B.	H.E.B. 4 / H.E.B. Staff Office 1	5	4,220	2.3 %	447	4.3 %
Amazon, Inc.	Whole Foods Market 5	5	2,701	1.4 %	194	1.9 %
BC Partners	Petsmart 7	7	2,436	1.3 %	151	1.5 %
Best Buy		4	2,270	1.2 %	138	1.3 %
Apollo Global Management, Inc.	Michael's 7	7	2,052	1.1 %	161	1.6 %
Ulta Beauty Inc.		8	2,028	1.1 %	83	0.8 %
		85	\$ 40,762	21.8 %	3,341	32.3 %

The following table presents the lease expirations of our retail portfolio as of December 31, 2023. This table does not include expirations of signed but not yet commenced leases, nor does it assume that unexercised contractual lease renewal or extension options contained in our leases will, in fact, be exercised.

Lease Expiration Year	No. of Expiring Leases	GLA of Expiring Leases	Percent of Total GLA of Expiring Leases	ABR of Expiring Leases	Percent of Total ABR	Expiring ABR PSF (a)
2024	108	479	5.0 %	\$ 10,811	5.4 %	\$22.57
2025	170	1,170	12.1 %	20,178	10.1 %	17.25
2026	216	958	9.9 %	22,433	11.2 %	23.42
2027	266	1,887	19.6 %	38,897	19.5 %	20.61
2028	227	1,054	10.9 %	25,602	12.8 %	24.29
2029	153	1,127	11.7 %	22,457	11.2 %	19.93
2030	80	383	4.0 %	9,980	5.0 %	26.06
2031	75	504	5.2 %	10,563	5.3 %	20.96
2032	90	549	5.7 %	12,673	6.3 %	23.08
2033	61	386	4.0 %	9,959	5.0 %	25.80
Thereafter	42	1,100	11.5 %	15,048	7.7 %	13.68
Other (b)	10	34	0.4 %	1,052	0.5 %	30.94
Totals	1,498	9,631	100 %	\$ 199,653	100 %	\$20.73

(a) Expiring ABR PSF reflects ABR PSF at the time of lease expiration.

(b) Other lease expirations include the GLA, ABR and ABR PSF of month-to-month leases.

Our retail business is neither highly dependent on specific retailers nor subject to lease roll-over concentration. We believe this minimizes our risk of significant revenue variances over time.

Certain of our properties are encumbered by mortgages, totaling \$168.5 million as of December 31, 2023. Additional detail about our retail properties can be found on Schedule III – Real Estate and Accumulated Depreciation.

Item 3. Legal Proceedings

We are subject, from time to time, to various legal proceedings and claims that arise in the ordinary course of business. While the resolution of these matters cannot be predicted with certainty, we believe, based on currently available information, that the final outcome of such matters will not have a material adverse effect on our financial condition, results of operations, or liquidity.

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.****Market Information**

Our common stock trades on the NYSE under the ticker symbol "IVT". As of February 1, 2024, there were 21,964 holders of record of shares of our outstanding common stock.

In order to comply with certain requirements related to our qualification as a REIT, our charter, subject to certain exceptions, contains restrictions on the number of shares of our common stock that a person may own. Our charter provides that no person may beneficially or constructively own more than 9.8% in value or in number of shares, whichever is more restrictive, of the outstanding shares of any class or series of our capital stock.

Issuer Purchases of Equity Securities**Share Repurchase Program**

On February 23, 2022, we established a share repurchase program (the "SRP") of up to \$150.0 million of our outstanding shares of common stock. The SRP may be suspended or discontinued at any time, and does not obligate us to repurchase any dollar amount or particular amount of shares. As of December 31, 2023, no common stock has been repurchased under the SRP.

Stock-Based Compensation Plans

During the year ended December 31, 2023, certain of the Company's employees surrendered shares of common stock to satisfy tax withholding obligations associated with the vesting of shares of common stock issued under the InvenTrust Properties Corp. 2015 Incentive Award Plan ("Incentive Award Plan") and the purchase of shares of common stock at a discount under the Employee Stock Purchase Plan (the "ESPP").

The following table summarizes all share repurchases during the fourth quarter of 2023:

Period	Total No. of Shares Purchased (a)	Average Price Paid per Share	Total No. of Shares Purchased as Part of Publicly Announced Plans or Programs	Approx. Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
October 1 - October 31, 2023	—	\$ —	—	\$ 150,000
November 1 - November 30, 2023	—	\$ —	—	\$ 150,000
December 1 - December 31, 2023	39,901	\$ 25.73	—	\$ 150,000

(a) Consists of shares of common stock surrendered to the Company to satisfy tax withholding obligations.

Distributions

We have been paying cash distributions since October 2005. Our quarterly distributions are paid one quarter in arrears. Any future determination to pay distributions will be at the discretion of our Board and will depend on our financial condition, capital requirements, restrictions contained in current or future financing instruments, and such other factors as our Board deems relevant. We currently have capacity and intend to continue to pay a quarterly distribution, subject to Board approval.

During the year ended December 31, 2023 and 2022, we declared and paid cash distributions of \$57.5 million and \$55.3 million respectively. For the distribution of \$0.2155 declared on December 28, 2023 and paid on January 15, 2024, \$0.1030 of the distribution is reported for the tax year 2023 and included in the tax characterization percentages in the table below.

The tax characterization of our distributions declared for the years ended December 31, 2023 and 2022 was as follows:

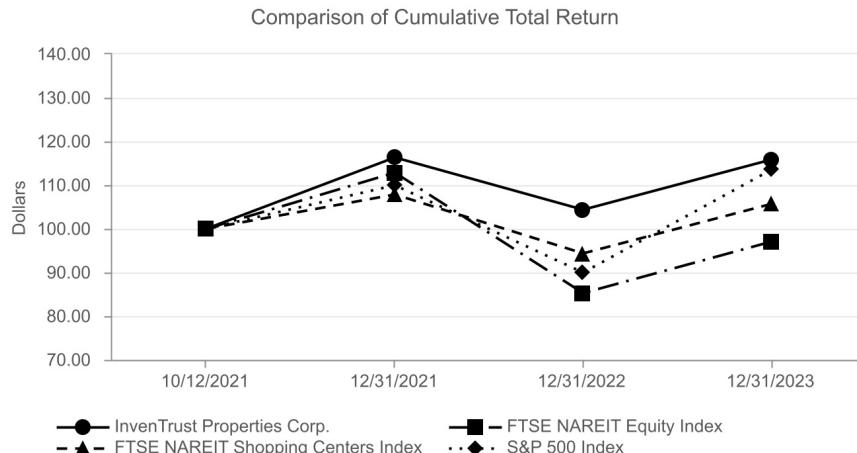
	2023	2022
Common Stock:		
Ordinary distribution	78.50%	93.20%
Other forms of distributions	—%	6.80%
Capital gain distributions (a)	21.50%	—%
Total distributions per share of common stock	100.00%	100.00%

(a) Of the Total Capital Gain Distribution, 0% is excluded under Reg. 1.1061-4(b)(7). The remaining 100% is a Three Year Amount under Reg. 1.1061-6(c).

Stock Performance Graph

The following performance graph and related information shall not be deemed "soliciting material" or to be "filed" with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing, or otherwise subject to the liabilities under the Securities Act or Exchange Act, except to the extent that we specifically incorporate it by reference into such filing.

The following graph depicts the total cumulative stockholder return of the Company's common stock from October 12, 2021, the first day of trading of our common stock on the NYSE, through December 31, 2023, relative to the performance of the FTSE National Association of Real Estate Investment Trusts Equity REITs Index (the "FTSE NAREIT Equity Index"), the FTSE National Association of Real Estate Investment Trusts Equity Shopping Centers Index (the "FTSE NAREIT Shopping Centers Index"), and the Standard and Poor's 500 Stock Index (S&P 500 Index). The graph assumes an initial investment of \$100.00 at the first NYSE trade price of \$23.61 on October 12, 2021 and that all dividends paid by companies included in these indices have been reinvested. The performance shown in the graph below is not intended to forecast or be indicative of future stock price performance.



Ticker / Index	10/12/2021	12/31/2021	12/31/2022	12/31/2023
IVT	\$100.00	\$116.32	\$104.34	\$115.87
FTSE NAREIT Equity Index	100.00	112.75	85.28	96.99
FTSE NAREIT Shopping Centers Index	100.00	107.87	94.34	105.70
S&P 500 Index	100.00	109.88	89.98	113.63

Recent Sales of Unregistered Securities

None.

Item 6. Reserved

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis relates to the operations of the Company for the years ended December 31, 2023 and 2022 and its financial position as of December 31, 2023 and 2022. Discussion of 2021 items and year-to-year comparisons between 2022 and 2021 that are not included in this Annual Report can be found in "Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" of our Annual Report on Form 10-K for the year ended December 31, 2022. The following discussion and analysis should be read in conjunction with our consolidated financial statements and the related notes included in this Annual Report. This discussion contains forward-looking statements about our business. These statements are based on current expectations and assumptions that are subject to risks and uncertainties. Actual results could differ materially because of factors discussed in "Forward-Looking Statements" and "Part I, Item 1A. Risk Factors" contained in this Annual Report and in our other reports that we file from time to time with the SEC.

Executive Summary

InvenTrust Properties Corp. is a premier Sun Belt, multi-tenant essential retail REIT that owns, leases, redevelops, acquires, and manages grocery-anchored neighborhood and community centers, as well as high-quality power centers that often have a grocery component. We pursue our business strategy by acquiring retail properties in Sun Belt markets, opportunistically disposing of retail properties, maintaining a flexible capital structure, and enhancing our environmental, social and governance practices and standards.

Current Strategy and Outlook

InvenTrust focuses on Sun Belt markets with favorable demographics, including above average growth in population, employment, income and education levels. We believe these conditions create favorable demand characteristics for grocery-anchored and necessity-based essential retail centers, which will position us to capitalize on potential future rent increases while benefiting from sustained occupancy at our centers. Our strategically located regional field offices are within a two-hour drive of over 95% of our properties which affords us the ability to respond to the needs of our tenants and provides us with in-depth local market knowledge. We believe that our Sun Belt portfolio of high quality grocery-anchored assets is a distinct differentiator for us in the marketplace.

Evaluation of Financial Condition and Operating Results

In addition to measures of operating performance determined in accordance with U.S generally accepted accounting principles ("GAAP"), management evaluates our financial condition and operating performance by focusing on the following financial and non-financial indicators, discussed in further detail herein:

- Net Operating Income ("NOI") and Same Property NOI, supplemental non-GAAP measures;
- NAREIT Funds From Operations ("NAREIT FFO") Applicable to Common Shares and Dilutive Securities, a supplemental non-GAAP measure;
- Core FFO Applicable to Common Shares and Dilutive Securities, a supplemental non-GAAP measure;
- Economic and leased occupancy and rental rates;
- Leasing activity and lease rollover;
- Operating expense levels and trends;
- General and administrative expense levels and trends;
- Debt maturities and leverage ratios; and
- Liquidity levels.

Recent Developments

Joint Venture Acquisition and IAGM Dispositions

On January 18, 2023, we acquired the four remaining retail properties from IAGM for an aggregate purchase price of \$222.3 million by acquiring 100% of the membership interests in each of IAGM's wholly owned subsidiaries. Subsequent to the transaction, IAGM proportionately distributed substantially all net proceeds from the sale, of which the Company's share was approximately \$71.4 million. On December 15, 2023, IAGM was fully liquidated.

During the year ended December 31, 2023, IAGM disposed of the following properties:

Date	Property	Metropolitan Area	Square Feet	Gross		Gain on Sale
				Disposition Price (a)	\$	
January 18, 2023	Bay Colony	Houston, TX	416	\$ 79,100	\$	22,327
January 18, 2023	Blackhawk Town Center	Houston, TX	127	26,300		12,632
January 18, 2023	Cyfair Town Center	Houston, TX	433	79,200		4,713
January 18, 2023	Stables Town Center	Houston, TX	148	37,000		5,536
Total			1,124	\$ 221,600	\$	45,208

(a) Disposition price and square feet for the joint venture disposition activity are reflected at 100%.

Acquisitions and Mortgage Assumptions

During the year ended December 31, 2023, we acquired the following properties:

Date	Property	Grocer Anchor	Metropolitan Area	Square Feet	Gross		Assumption of Mortgage Debt
					Acquisition Price	\$	
January 18, 2023	Bay Colony (a)	HEB	Houston, TX	416	\$ 79,100	\$	41,969
January 18, 2023	Blackhawk Town Center (a)	HEB	Houston, TX	127	26,300		13,008
January 18, 2023	Cyfair Town Center (a)	Kroger	Houston, TX	433	79,200		30,880
January 18, 2023	Stables Town Center (a)	Kroger	Houston, TX	148	37,000		6,611
June 2, 2023	The Shoppes at Davis Lake	Harris Teeter	Charlotte, NC	91	22,400		—
Total				1,215	\$ 244,000	\$	92,468

(a) We acquired these properties from our joint venture, IAGM.

Dispositions

During the year ended December 31, 2023, we disposed of the following properties:

Date	Property	Metropolitan Area	Square Feet	Gross		Gain on Sale
				Disposition Price	\$	
June 20, 2023	Shops at the Galleria (a)	Austin, TX	N/A	\$ 1,692	\$	984
August 25, 2023	Trowbridge Crossing	Atlanta, GA	63	11,450		1,707
Total			63	\$ 13,142	\$	2,691

(a) This disposition was related to the completion of a partial condemnation at one retail property.

Debt

On February 6, 2023, the Company extinguished the \$13.7 million mortgage payable secured by Renaissance Center with its available liquidity.

On October 17, 2023, the Company extended the maturity of its \$92.5 million cross-collateralized mortgage debt maturing in 2023 by exercising one of its two 12-month extension options. The maturity date of the mortgage debt is now November 2, 2024. On December 22, 2023, the Company partially paid down the mortgage debt by \$20.0 million, resulting in the release of Blackhawk Town Center from collateralization and an outstanding balance of \$72.5 million as of December 31, 2023.

ATM Program

During the quarter ended December 31, 2023, the Company raised \$5.4 million of net proceeds, after \$0.1 million in commissions, under its at-the-market equity offering program (the "ATM Program"), through the issuance of 208,040 shares of common stock at a weighted average price of \$26.13 per share. As of December 31, 2023, \$244.6 million of common stock remains available for issuance under the ATM Program.

Our Retail Portfolio

As of December 31, 2023 and 2022, our wholly-owned and managed retail properties include grocery-anchored community and neighborhood centers and power centers, including those classified as necessity-based. For the year ended December 31, 2022, we have included results from IAGM properties at share when combined with our wholly-owned properties.

The following table summarizes our retail portfolio, on a wholly-owned, IAGM, and pro rata combined basis, as of December 31, 2023 and 2022.

	Wholly-Owned Retail Properties		IAGM Retail Properties		Pro Rata Combined Retail Portfolio	
	2023	2022	2023	2022	2023	2022
No. of properties	62	58	—	4	62	62
GLA (square feet)	10,324	9,171	—	1,125	10,324	9,790
Economic occupancy	93.3%	94.2%	—%	90.2%	93.3%	93.9%
Leased occupancy	96.2%	96.2%	—%	93.6%	96.2%	96.1%
ABR PSF	\$19.48	\$19.26	\$—	\$16.22	\$19.48	\$19.08

Summary by Center Type

Our retail properties consist of community and neighborhood centers and power centers.

- Community and neighborhood centers are generally open-air and designed for tenants that offer a wide array of merchandise and services, including groceries, soft goods and convenience-oriented offerings. Our community centers contain large anchor stores and a significant presence of national retail tenants. Our neighborhood centers are generally smaller open-air centers with a grocery store anchor and/or drugstore and other small service-type retailers.
- Power centers are generally larger and consist of several anchors, such as discount department stores, off-price stores, specialty grocers and warehouse clubs. Typically, the number of specialty tenants is limited and most are national or regional in scope.

The following tables summarize our retail portfolio, by center type, as of December 31, 2023 and 2022.

Community and neighborhood centers

	Wholly-Owned Retail Properties		IAGM Retail Properties		Pro Rata Combined Retail Portfolio	
	2023	2022	2023	2022	2023	2022
No. of properties	50	46	—	4	50	50
GLA (square feet)	6,800	5,647	—	1,125	6,800	6,266
Economic occupancy	94.8%	95.0%	—%	90.2%	94.8%	94.5%
Leased occupancy	97.1%	96.9%	—%	93.6%	97.1%	96.6%
ABR PSF	\$20.22	\$20.36	\$—	\$16.22	\$20.22	\$19.98

Power centers

	Wholly-Owned Retail Properties		IAGM Retail Properties		Pro Rata Combined Retail Portfolio	
	2023	2022	2023	2022	2023	2022
No. of properties	12	12	—	—	12	12
GLA (square feet)	3,524	3,524	—	—	3,524	3,524
Economic occupancy	90.2%	92.9%	—%	—%	90.2%	92.9%
Leased occupancy	94.2%	95.1%	—%	—%	94.2%	95.1%
ABR PSF	\$18.00	\$17.45	\$—	\$—	\$18.00	\$17.45

Same Property Summary

Properties classified as same property were owned for the entirety of both periods presented ("Same Properties"). The following table summarizes the Same Properties of our retail portfolio for the years ended December 31, 2023 and 2022.

	Year ended December 31	
	2023	2022
No. of properties	51	51
GLA (square feet)	8,029	8,029
Economic occupancy	93.4%	94.1%
Leased occupancy	96.3%	96.3%
ABR PSF	\$20.15	\$19.54

Leasing Activity

The following tables summarize the activity for leases that were executed during the year ended December 31, 2023, compared with expiring or expired leases for the same or previous tenant for renewals, and the same unit for new leases at the 62 properties in our retail portfolio. The Company's retail portfolio had GLA totaling 893 thousand square feet expiring during the year ended December 31, 2023, of which 802 thousand square feet was re-leased. This achieved a retention rate of approximately 90.0%.

	No. of Leases Executed	GLA SF (in thousands)	New Contractual Rent (\$PSF)(b)	Prior Contractual Rent (\$PSF)(b)	% Change over (b)	Weighted Average Lease Term (Years)	Tenant Improvement Allowance (\$PSF)	Lease Commissions (\$PSF)
All tenants								
Comparable Renewal Leases (a)	190	827	\$22.94	\$21.39	7.2%	5.2	\$0.49	\$0.03
Comparable New Leases (a)	32	147	\$24.80	\$19.80	25.3%	10.3	\$27.82	\$11.92
Non-Comparable Renewal and New Leases	77	444	\$21.64	N/A	N/A	6.7	\$14.03	\$6.83
Total	299	1,418	\$23.23	\$21.15	9.8%	6.2	\$7.56	\$3.39
Anchor tenants (leases ten thousand square feet and over)								
Comparable Renewal Leases (a)	13	409	\$12.47	\$11.62	7.3%	5.0	\$—	\$—
Comparable New Leases (a)	3	85	\$17.50	\$12.94	35.2%	10.6	\$27.00	\$9.97
Non-Comparable Renewal and New Leases	8	248	\$13.25	N/A	N/A	5.0	\$1.21	\$2.15
Total	24	742	\$13.34	\$11.85	12.6%	5.6	\$3.49	\$1.86
Small shop tenants (leases under ten thousand square feet)								
Comparable Renewal Leases (a)	177	418	\$33.21	\$30.97	7.2%	5.3	\$0.98	\$0.06
Comparable New Leases (a)	29	62	\$34.86	\$29.10	19.8%	9.9	\$28.95	\$14.61
Non-Comparable Renewal and New Leases	69	196	\$32.31	N/A	N/A	9.0	\$30.34	\$12.78
Total	275	676	\$33.43	\$30.73	8.8%	6.8	\$12.04	\$5.08

(a) Comparable leases are leases that meet all of the following criteria: terms greater than or equal to one year, unit was vacant less than one year prior to executed lease, square footage of unit remains unchanged or within 10% of prior unit square footage, and has a rent structure consistent with the previous tenant.

(b) Non-comparable leases are not included in totals.

Results of Operations

Comparison of results for the years ended December 31, 2023 and 2022

We generate substantially all of our earnings from property operations. Since January 1, 2022, we have acquired eleven retail properties and disposed of four retail properties.

The following table presents the changes in our income for the years ended December 31, 2023 and 2022.

	Year ended December 31		
	2023	2022	Increase (Decrease)
Income			
Lease income, net	\$ 257,146	\$ 232,980	\$ 24,166
Other property income	1,450	1,161	289
Other fee income	80	2,566	(2,486)
Total income	\$ 258,676	\$ 236,707	\$ 21,969

Lease income, net increased \$24.2 million as a result of increases from properties acquired of \$31.5 million, decreases from properties disposed of \$9.1 million, and the following activity related to our Same Properties:

- \$5.3 million of increased minimum rent attributable to increased ABR PSF and favorable lease spreads, and
- \$0.3 million of increased common area maintenance and real estate tax recoveries, partially offset by:
- \$2.4 million of decreased amortization of market lease intangibles and straight-line rent adjustments, and
- \$1.4 million of net changes in credit losses and related reversals primarily attributable to lump sum rent collections from our cash basis tenants in 2022 pertaining to prior period rent charges.

Other fee income decreased \$2.5 million as a result of the Company acquiring six retail properties from IAGM since January 1, 2022.

The following table presents the changes in our operating expenses for the years ended December 31, 2023 and 2022.

	Year ended December 31		
	2023	2022	Increase (Decrease)
Operating expenses			
Depreciation and amortization	\$ 113,430	\$ 94,952	\$ 18,478
Property operating	42,832	40,239	2,593
Real estate taxes	34,809	32,925	1,884
General and administrative	31,797	33,342	(1,545)
Total operating expenses	\$ 222,868	\$ 201,458	\$ 21,410

Depreciation and amortization increased \$18.5 million as a result of:

- \$23.1 million of increases from properties acquired, partially offset by:
- \$2.9 million of decreases from properties disposed, and
- \$1.7 million of decreased in-place lease intangible amortization from our Same Properties.

Property operating expenses increased \$2.6 million as a result of:

- \$5.4 million of increases from properties acquired, partially offset by:
- \$1.2 million of decreased pre-leasing costs from our Same Properties, and
- \$1.6 million of decreases from properties disposed.

Real estate taxes increased \$1.9 million as a result of:

- \$4.0 million of increases from properties acquired, partially offset by:
- \$0.4 million of decreases from our Same Properties, and
- \$1.7 million of decreases from properties disposed.

General and administrative expenses decreased \$1.5 million as a result of:

- \$2.1 million of decreased non-compensation costs, and
- \$1.7 million of decreased other compensation costs, partially offset by:
- \$2.3 million of increased stock-based compensation costs.

The following table presents the changes in our other income and expenses for the years ended December 31, 2023 and 2022.

	Year ended December 31		
	2023	2022	Change, net
Other income (expense)			
Interest expense, net	\$ (38,138)	\$ (26,777)	\$ (11,361)
Loss on extinguishment of debt	(15)	(181)	166
Gain on sale of investment properties	2,691	38,249	(35,558)
Equity in (losses) earnings of unconsolidated entities	(557)	3,663	(4,220)
Other income and expense, net	5,480	2,030	3,450
Total other (expense) income, net	\$ (30,539)	\$ 16,984	\$ (47,523)

Interest expense, net

Interest expense, net, increased \$11.4 million primarily as a result of:

- the private placement of our senior notes in August 2022, generating increased interest expense of \$7.8 million,
- increased interest rates on our corporate term loans generating increased interest expense of \$2.6 million,
- aggregate assumption of mortgages of \$172.8 million since January 1, 2022, generating increased interest expense of \$3.0 million, and
- increased amortization of debt issuance costs of \$1.3 million, partially offset by:
- decreased balances on our corporate line of credit resulting in decreased interest expense of \$1.3 million, and
- aggregate reduction of mortgage payable of \$90.3 million since January 1, 2022, generating decreased interest expense of \$2.0 million.

Loss on extinguishment of debt

During the year ended December 31, 2023, we recognized an insignificant loss on the extinguishment of total mortgages payable of \$33.7 million. During the year ended December 31, 2022, we recognized an aggregate loss of \$0.2 million on the extinguishment of total mortgages payable of \$75.6 million.

Gain on sale of investment properties

During the year ended December 31, 2023, we recognized a gain of \$1.0 million on the completion of a partial condemnation at one retail property and a gain of \$1.7 million on the sale of one retail property. During the year ended December 31, 2022, we recognized a gain of \$38.2 million on the sale of three retail properties.

Equity in (losses) earnings of unconsolidated entities

Equity in (losses) earnings of unconsolidated entities decreased \$4.2 million primarily as a result of the Company acquiring six retail properties from IAGM since January 1, 2022.

Other income and expense, net

Other income and expense, net increased \$3.5 million primarily as a result of increased interest income earned on cash and cash equivalents and non-recurring income from non-operating activities.

Net Operating Income

We evaluate the performance of our retail properties based on NOI, which excludes general and administrative expenses, depreciation and amortization, other income and expense, net, gains (losses) from sales of properties, gains (losses) on extinguishment of debt, interest expense, net, equity in earnings (losses) from unconsolidated entities, lease termination income and expense, and GAAP rent adjustments such as amortization of market lease intangibles, amortization of lease incentives, and straight-line rent adjustments ("GAAP Rent Adjustments"). We bifurcate NOI into Same Property NOI and NOI from other investment properties based on whether the retail properties meet our Same Property criteria. NOI from other investment properties includes adjustments for the Company's captive insurance company.

We believe the supplemental non-GAAP financial measures of NOI, same property NOI, and NOI from other investment properties provide added comparability across periods when evaluating our financial condition and operating performance that is not readily apparent from "Operating income" or "Net income" in accordance with GAAP.

Comparison of Same Property results for the years ended December 31, 2023 and 2022

A total of 51 wholly-owned retail properties met our Same Property criteria for the years ended December 31, 2023 and 2022. The following table presents the reconciliation of net income, the most directly comparable GAAP measure, to NOI and Same Property NOI for the years ended December 31, 2023 and 2022:

	Year ended December 31		
	2023	2022	Change, net
Net income	\$ 5,269	\$ 52,233	\$ (46,964)
Adjustments to reconcile to non-GAAP metrics:			
Other income and expense, net	(5,480)	(2,030)	(3,450)
Equity in losses (earnings) of unconsolidated entities	557	(3,663)	4,220
Interest expense, net	38,138	26,777	11,361
Loss on extinguishment of debt	15	181	(166)
Gain on sale of investment properties	(2,691)	(38,249)	35,558
Depreciation and amortization	113,430	94,952	18,478
General and administrative	31,797	33,342	(1,545)
Other fee income	(80)	(2,566)	2,486
Adjustments to NOI (a)	(7,528)	(9,743)	2,215
NOI	173,427	151,234	22,193
NOI from other investment properties	(31,303)	(15,691)	(15,612)
Same Property NOI	\$ 142,124	\$ 135,543	\$ 6,581

(a) Adjustments to NOI include termination fee income and expense and GAAP Rent Adjustments.

Comparison of the components of Same Property NOI for the years ended December 31, 2023 and 2022

	Year ended December 31			Change	Variance
	2023	2022			
Lease income, net	\$ 203,231	\$ 198,963	\$ 4,268	2.1%	
Other property income	1,212	1,127	85	7.5%	
	204,443	200,090	4,353	2.2%	
Property operating expenses	33,841	35,695	(1,854)	(5.2)%	
Real estate taxes	28,478	28,852	(374)	(1.3)%	
	62,319	64,547	(2,228)	(3.5)%	
Same Property NOI	\$ 142,124	\$ 135,543	\$ 6,581	4.9%	

Same Property NOI increased by \$6.6 million, or 4.9%, when comparing the year ended December 31, 2023 to the same period in 2022, and was primarily a result of:

- \$5.3 million of increased minimum rent attributable to increased ABR PSF and favorable lease spreads,
- \$1.7 million of increased recoveries in excess of recoverable operating expenses, primarily attributable to leases with fixed recovery terms, and
- \$1.0 million of decreased non-recoverable pre-leasing costs, partially offset by:
- \$1.4 million of net changes in credit losses and related reversals primarily attributable to lump sum rent collections from our cash basis tenants in 2022 pertaining to prior period rent charges.

Funds From Operations

The National Association of Real Estate Investment Trusts ("NAREIT"), an industry trade group, has promulgated a widely accepted non-GAAP financial measure of operating performance known as Funds From Operations ("NAREIT FFO"). Our NAREIT FFO is net income (or loss) in accordance with GAAP, excluding gains (or losses) resulting from dispositions of properties, plus depreciation and amortization and impairment charges on depreciable real property. Adjustments for IAGM are calculated to reflect our proportionate share of the joint venture's funds from operations on the same basis.

In calculating NAREIT FFO, impairment charges of depreciable real estate assets are added back even though the impairment charge may represent a permanent decline in value due to the decreased operating performance of the applicable property. Furthermore, because gains and losses from sales of property are excluded from NAREIT FFO, it is consistent and appropriate that impairments, which are often early recognition of losses on prospective sales of property, also be excluded.

We believe NAREIT FFO Applicable to Common Shares and Dilutive Securities, when considered with the financial statements determined in accordance with GAAP, is helpful to investors in understanding our performance because the historical accounting convention used for real estate assets requires straight-line depreciation of buildings and improvements, which implies that the value of real estate assets diminishes predictably over time. Since real estate values historically rise and fall with market conditions, presentations of operating results for a REIT, using historical accounting for depreciation, could be less informative.

Core Funds From Operations ("Core FFO") is an additional supplemental non-GAAP financial measure of our operating performance. In particular, Core FFO provides an additional measure to compare the operating performance of different REITs without having to account for certain remaining amortization assumptions within NAREIT FFO and other unique revenue and expense items which some may consider not pertinent to measuring a particular company's on-going operating performance. In that regard, we use Core FFO as an input to our compensation plan to determine cash bonuses and measure the achievement of certain performance-based equity awards.

Our adjustments to NAREIT FFO to arrive at Core FFO include removing the impact of (i) amortization of debt discounts and financing costs, (ii) amortization of market-lease intangibles and inducements, net, (iii) depreciation and amortization of corporate assets, (iv) straight-line rent adjustments, (v) gains (or losses) resulting from debt extinguishments (vi) other non-operating revenue and expense items which, in our judgement, are not pertinent to measuring on-going operating performance, (vii) adjustments for IAGM to reflect our share of the ventures' Core FFO on the same basis. Our calculation of Core FFO Applicable to Common Shares and Dilutive Securities does not consider any capital expenditures.

Other REITs may use alternative methodologies for calculating similarly titled measures, which may not be comparable to our definition and calculation of NAREIT FFO Applicable to Common Shares and Dilutive Securities or Core FFO Applicable to Common Shares and Dilutive Securities. Furthermore, NAREIT FFO and Core FFO are not necessarily indicative of cash flow available to fund cash needs and should not be considered as alternatives to net income as an indication of our performance. NAREIT FFO and Core FFO should not be considered as alternatives to our cash flows from operating, investing, and financing activities. Nor should NAREIT FFO and Core FFO be considered as measures of liquidity, our ability to make cash distributions, or our ability to service our debt.

NAREIT FFO Applicable to Common Shares and Dilutive Securities and Core FFO Applicable to Common Shares and Dilutive Securities is calculated as follows:

	Year ended December 31,	
	2023	2022
Net income	\$ 5,269	\$ 52,233
Depreciation and amortization related to investment properties	112,578	94,142
Gain on sale of investment properties	(2,691)	(38,249)
Unconsolidated joint venture adjustments (a)	342	3,850
NAREIT FFO Applicable to Common Shares and Dilutive Securities	115,498	111,976
Amortization of market-lease intangibles and inducements, net	(3,343)	(5,589)
Straight-line rent adjustments, net	(3,349)	(3,815)
Amortization of debt discounts and financing costs	4,113	2,816
Adjusting items, net (b)	(969)	(18)
Unconsolidated joint venture adjusting items, net (c)	(92)	582
Core FFO Applicable to Common Shares and Dilutive Securities	<u><u>\$ 111,858</u></u>	<u><u>\$ 105,952</u></u>
Weighted average common shares outstanding - basic	67,531,898	67,406,233
Dilutive effect of unvested restricted shares (d)	281,282	119,702
Weighted average common shares outstanding - diluted	<u><u>67,813,180</u></u>	<u><u>67,525,935</u></u>
Net income per diluted share	\$ 0.08	\$ 0.77
Per share adjustments for NAREIT FFO	1.62	0.89
NAREIT FFO per diluted share	\$ 1.70	\$ 1.66
Per share adjustments for Core FFO	(0.05)	(0.09)
Core FFO per diluted share	<u><u>\$ 1.65</u></u>	<u><u>\$ 1.57</u></u>

- (a) Represents our share of depreciation, amortization, and gain on sale related to investment properties held in IAGM.
- (b) Adjusting items, net, are primarily loss on extinguishment of debt, depreciation and amortization of corporate assets, and non-operating income and expenses, net, which includes items which are not pertinent to measuring on-going operating performance, such as basis difference recognition arising from acquiring the four remaining properties of IAGM, and miscellaneous and settlement income.
- (c) Represents our share of amortization of market lease intangibles and inducements, net, straight line rent adjustments, net and adjusting items, net related to IAGM.
- (d) For purposes of calculating non-GAAP per share metrics, the same denominator is used as that which would be used in calculating diluted earnings per share in accordance with GAAP.

Critical Accounting Estimates

General

The accompanying consolidated financial statements have been prepared in accordance with GAAP, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Significant estimates, judgments, and assumptions are required in a number of areas, including, but not limited to, evaluating the collectability of accounts receivable, allocating the purchase price of acquired retail properties, and evaluating the impairment of long-lived assets. We base these estimates, judgments and assumptions on historical experience and various other factors that we believe to be reasonable under the circumstances. Actual results may differ from these estimates.

Acquisition of Real Estate

We evaluate the inputs, processes and outputs of each asset acquired to determine if the transaction is a business combination or asset acquisition. If an acquisition qualifies as a business combination, the related transaction costs are expensed. If an acquisition qualifies as an asset acquisition, the related transaction costs are generally capitalized and amortized over the useful life of the acquired assets. Generally, our acquisitions of real estate qualify as asset acquisitions.

We allocate the purchase price of real estate to land, building, other building improvements, tenant improvements, intangible assets and liabilities (such as the value of above- and below-market leases, in-place leases and origination costs associated with in-place leases). The values of above- and below-market leases are recorded as intangible assets and intangible liabilities, respectively, and are amortized as either a decrease (in the case of above-market leases) or an increase (in the case of below-market leases) to lease income, net over the remaining term of the associated tenant lease. The values, if any, associated with in-place leases are recorded in intangible assets and are amortized to depreciation and amortization expense over the remaining lease term.

The difference between the contractual rental rates and our estimate of market rental rates is measured over a period equal to the remaining non-cancelable term of the leases plus the term of any below-market renewal options. For the amortization period, the remaining term of leases with renewal options at terms below market reflect the assumed exercise of such below-market renewal options, if reasonably assured.

If a tenant vacates its space prior to the contractual expiration of the lease and no rental payments are being made on the lease, any unamortized balance of the related intangible asset or liability is written off. Tenant improvements are depreciated and origination costs are amortized over the remaining term of the lease or charged against earnings if the lease is terminated prior to its contractual expiration date.

With the assistance of a third-party valuation specialist, we perform the following procedures for assets acquired:

- Estimate the value of the property "as if vacant" as of the acquisition date;
- Allocate the value of the property among land, building, and other building improvements and determine the associated useful life for each;
- Calculate the value and associated life of above- and below-market leases on a tenant-by-tenant basis. The difference between the contractual rental rates and our estimate of market rental rates is measured over a period equal to the remaining term of the leases (using a discount rate which reflects the risks associated with the leases acquired, including geographical location, size of leased area, tenant profile and credit risk);
- Estimate the fair value of the tenant improvements, legal costs and leasing commissions incurred to obtain the leases and calculate the associated useful life for each;
- Estimate the fair value of assumed debt, if any; and
- Estimate the intangible value of the in-place leases based on lease execution costs of similar leases as well as lost rent payments during an assumed lease-up period and their associated useful lives on a tenant-by-tenant basis.

Impairment of Long Lived Assets

We assess the carrying values of our long-lived tangible and intangible assets whenever events or changes in circumstances indicate that they may not be fully recoverable. An example of an event or changed circumstance is a reduction in the expected holding period of a property. When such event or circumstances occur, if it is expected that the carrying value is not recoverable, because the expected undiscounted cash flows do not exceed that carrying value, we recognize an impairment loss to the extent that the carrying value exceeds the estimated fair value. The valuation and possible subsequent impairment of investment properties is a significant estimate that can and does change based on our continuous process of analyzing each property's economic condition over time and reviewing and updating assumptions about uncertain inherent factors, including observable inputs such as contractual revenues and unobservable inputs such as forecasted revenues and expenses, estimated net disposition proceeds, discount and capitalization rates. These unobservable inputs are based on market conditions and the property's expected growth rates. Assumptions and estimates about future cash flows and discount and capitalization rates are complex and subjective. Changes in economic and operating conditions and in our ultimate investment intent that occur subsequent to the impairment analyses could impact these assumptions and result in additional impairment.

Our assessment of expected hold period for investment properties evaluated for impairment is of particular significance because of the material impact it has on the evaluation of the property's recoverability. Changes in our disposition strategy or changes in the marketplace may alter the expected hold period of a property which may result in an impairment loss and such loss could be material to the Company's financial condition or operating performance.

Liquidity and Capital Resources

Development, Re-development, Capital Expenditures and Tenant Improvements

The following table summarizes capital resources used for development and re-development, capital expenditures, and tenant improvements at our retail properties during the year ended December 31, 2023. These costs are classified as cash used in capital expenditures and tenant improvements and investment in development and re-development projects on the consolidated statements of cash flows during the year ended December 31, 2023.

	Development and Re-development	Capital Expenditures	Tenant Improvements	Total
Direct costs	\$ 3,788 (a)	\$ 17,284	\$ 8,085 (c)	\$ 29,157
Indirect costs	770 (b)	1,929	—	2,699
Total	\$ 4,558	\$ 19,213	\$ 8,085	\$ 31,856

(a) Direct development and re-development costs relate to construction of buildings at our retail properties.

(b) Indirect development and re-development costs relate to capitalized interest, real estate taxes, insurance, and payroll attributed to improvements at our retail properties.

(c) Direct costs relate to improvements to a tenant space that are either paid directly by us or reimbursed to the tenants.

Short-Term Liquidity and Capital Resources

On a short-term basis, our principal uses for funds are to pay our operating and corporate expenses, interest and principal on our indebtedness, property capital expenditures, and to make distributions to our stockholders.

Our ability to maintain adequate liquidity for our operations in the future is dependent upon a number of factors, including our revenue, macroeconomic conditions, our ability to contain costs, including capital expenditures, and to collect rents and other receivables, and various other factors, many of which are beyond our control. We will continue to monitor our liquidity position and may seek to raise funds through debt or equity financing in the future to fund operations, significant investments or acquisitions that are consistent with our strategy. Our ability to raise these funds may also be diminished by other macroeconomic factors.

Long-Term Liquidity and Capital Resources

Our objectives are to maximize revenue generated by our retail platform, to further enhance the value of our retail properties to produce attractive current yield and long-term returns for our stockholders, and to generate sustainable and predictable cash flow from our operations to distribute to our stockholders.

Any future determination to pay distributions will be at the discretion of our Board and will depend on our financial condition, capital requirements, restrictions contained in current or future financing instruments, and such other factors as our Board deems relevant. In November 2023, our Board approved an increase to our annual distribution rate effective for the quarterly distribution to be paid in April 2024.

Our primary sources and uses of capital are as follows:

<u>Sources</u>	<u>Uses</u>
• Operating cash flows from our real estate investments;	• To invest in properties or fund acquisitions;
• Proceeds from sales of properties;	• To fund development, re-development, maintenance and capital expenditures or leasing incentives;
• Proceeds from mortgage loan borrowings on properties;	• To make distributions to our stockholders;
• Proceeds from corporate borrowings and debt financings;	• To service or pay down our debt;
• Proceeds from any ATM Program activities; and	• To pay our operating expenses;
• Proceeds from our Series A and Series B Notes offering.	• To repurchase shares of our common stock; and
	• To fund other general corporate uses.

We believe our listing on the NYSE will facilitate supplementing these sources by selling equity securities of the Company if and when we believe appropriate to do so. Also, from time to time, we may seek to acquire additional amounts of our outstanding common stock through cash purchases or exchanges for other securities. Such purchases or exchanges, if any, will depend on our liquidity requirements, contractual restrictions, and other factors.

In the first quarter of 2022, we entered into an ATM Program pursuant to which we may sell shares of our common stock up to an aggregate purchase price of \$250.0 million. In the fourth quarter of 2023, we raised \$5.4 million of net proceeds under the ATM Program, after \$0.1 million in commissions, through the issuance of 208,040 shares of common stock at a weighted average price of \$26.13 per share. As of December 31, 2023, \$244.6 million of common stock remains available for issuance under the ATM Program.

In the third quarter of 2023, Fitch Ratings, Inc. ("Fitch") affirmed our Long-Term Issuer Default Rating (IDR) at 'BBB-'. In addition, Fitch affirmed our senior unsecured debt at 'BBB-'. Our investment grade Rating Outlook is Stable.

On August 11, 2022, the Company issued \$250.0 million aggregate principal amount of senior notes in a private placement, of which (i) \$150.0 million are designated as 5.07% Senior Notes, Series A, due August 11, 2029 (the "Series A Notes") and (ii) \$100.0 million are designated as 5.20% Senior Notes, Series B, due August 11, 2032 (the "Series B Notes" and, together with the Series A Notes, the "Notes") pursuant to the Note Purchase Agreement. The Notes were issued at par in accordance with the Note Purchase Agreement and pay interest semiannually on February 11th and August 11th until their respective maturities.

Off Balance Sheet Arrangements

The Company does not have off balance sheet arrangements other than its joint venture, IAGM, as disclosed in " *Part IV. Item 8. Note 6. Investment in Unconsolidated Entities.*"

Summary of Cash Flows

	Year ended December 31,		
	2023	2022	Change
Cash provided by operating activities	\$ 129,621	\$ 125,795	\$ 3,826
Cash used in investing activities	(79,718)	(144,461)	64,743
Cash (used in) provided by financing activities	(87,902)	111,574	(199,476)
Decrease in cash, cash equivalents and restricted cash	(37,999)	92,908	(130,907)
Cash, cash equivalents and restricted cash at beginning of year	137,762	44,854	92,908
Cash, cash equivalents and restricted cash at end of year	<u>\$ 99,763</u>	<u>\$ 137,762</u>	<u>\$ (37,999)</u>

Cash provided by operating activities of \$129.6 million and \$125.8 million for the years ended December 31, 2023 and 2022, respectively, was generated primarily from income from property operations. Cash provided by operating activities increased \$3.8 million when comparing 2023 to 2022, primarily as a result of acquisition activity in excess of disposition activity and general fluctuations in working capital. Since January 1, 2022, we have acquired eleven retail properties and disposed of four retail properties.

Cash used in investing activities of \$79.7 million for the year ended December 31, 2023, was primarily the result of:

- \$152.0 million for acquisitions of investment properties, and
- \$35.8 million for capital investments and leasing costs, which were partially offset by:
- \$95.1 million from distributions from unconsolidated entities,
- \$12.6 million from the sale of investment properties, and
- \$0.4 million from other investing activities.

Cash used in investing activities of \$144.5 million for the year ended December 31, 2022, was primarily the result of:

- \$235.0 million for acquisitions of investment properties,
- \$33.2 million for capital investments and leasing costs, and
- \$1.2 million for other investing cash outflows, which were partially offset by:
- \$77.5 million from the sale of investment properties, and
- \$47.4 million from distributions from unconsolidated entities.

Cash used in financing activities of \$87.9 million for the year ended December 31, 2023, was primarily the result of:

- \$33.8 million for pay-offs of debt, principal payments of mortgage debt, payment of loan fees and other deposits, and other financing activities,
- \$57.5 million to pay distributions, and
- \$1.6 million for the payment of tax withholdings for share-based compensation, which were partially offset by:
- \$5.0 million from net proceeds from the sale of common stock under the ESPP and ATM.

Cash provided by financing activities of \$111.6 million for the year ended December 31, 2022, was primarily the result of:

- \$250.0 million from our issuance of senior notes, and
- \$112.0 million drawn from our line of credit, which were partially offset by:
- \$143.0 million repaid on our line of credit,
- \$50.5 million for pay-offs of debt, debt prepayment penalties, principal payments of mortgage debt, payment of loan fees and other deposits, and other financing activities,
- \$55.3 million to pay distributions, and
- \$1.6 million for the payment of tax withholdings for share-based compensation.

We consider all demand deposits, money market accounts and investments in certificates of deposit and repurchase agreements with a maturity of three months or less, at the date of purchase, to be cash equivalents. We maintain our cash and cash equivalents at major financial institutions. The combined account balances at one or more institutions generally exceed the FDIC insurance coverage. We periodically assess the credit risk associated with these financial institutions. We believe insignificant credit risk exists related to amounts on deposit in excess of FDIC insurance coverage.

Acquisitions and Dispositions of Real Estate Investments

In 2023, we acquired five retail properties for an aggregate gross acquisition price of \$244.0 million. In 2022, we acquired six retail properties and an outparcel adjacent to an existing retail property for an aggregate gross acquisition price of \$319.1 million.

In 2023, we disposed of one retail property and completed a partial condemnation at one retail property for an aggregate gross disposition price of \$13.1 million. In 2022, we disposed of three retail properties for an aggregate gross disposition price of \$110.5 million.

Distributions

During the year ended December 31, 2023, we declared cash distributions to our stockholders totaling \$58.2 million and paid cash distributions of \$57.5 million.

As we execute on our retail strategy, the Board evaluated and expects to continue to evaluate our distribution rate on a periodic basis. See " *Part I. Item 1. Business - Current Strategy and Outlook*" for more information regarding our retail strategy. The following table presents a historical summary of distributions declared, paid and reinvested.

	Year ended December 31,				
	2023	2022	2021	2020	2019
Distributions declared	\$ 58,248	\$ 55,337	\$ 55,721	\$ 54,604	\$ 53,473
Distributions paid	\$ 57,491	\$ 55,302	\$ 55,561	\$ 54,214	\$ 53,250
Distributions reinvested	\$ —	\$ —	\$ —	\$ 185	\$ 50

Borrowings

Mortgages Payable, Maturities

The following table summarizes the scheduled maturities of our mortgages payable as of December 31, 2023.

Scheduled maturities by year:	As of December 31, 2023
2024	\$ 88,168
2025	22,880
2026	—
2027	26,000
2028	—
Thereafter	31,500
Total mortgages payable	\$ 168,548

Credit Agreements, Maturities

The following table summarizes the outstanding borrowings under our unsecured term loans as of December 31, 2023.

	Principal Balance	Interest Rate	Maturity Date
\$200.0 million 5 year - swapped to fixed rate	\$ 100,000	2.81% (a)	September 22, 2026
\$200.0 million 5 year - swapped to fixed rate	100,000	2.81% (a)	September 22, 2026
\$200.0 million 5.5 year - swapped to fixed rate	50,000	2.77% (a)	March 22, 2027
\$200.0 million 5.5 year - swapped to fixed rate	50,000	2.76% (a)	March 22, 2027
\$200.0 million 5.5 year - swapped to fixed rate	100,000	4.99% (a)	March 22, 2027
Total unsecured term loans	\$ 400,000		

(a) Interest rates reflect the fixed rates achieved through the Company's interest rate swaps.

Senior Notes, Maturities

The following table summarizes the outstanding borrowings under our Senior Notes as of December 31, 2023.

	Principal Balance	Fixed Interest Rate	Maturity Date
\$150.0 million Series A	\$ 150,000	5.07%	August 11, 2029
\$100.0 million Series B	100,000	5.20%	August 11, 2032
	\$ 250,000		

Contractual Obligations

We have obligations related to our mortgage loans, senior notes, term loans, and revolving credit facility as described in "Note 8. Debt" in the consolidated financial statements.

The following table presents our obligations to make future payments under debt and lease agreements as of December 31, 2023, exclusive of debt discounts and issuance costs which are not future cash obligations.

	Payments due by year ending December 31,						
	2024	2025	2026	2027	2028	Thereafter	Total
Long term debt:							
Fixed rate debt, principal (a)	\$ 15,700	\$ 22,880	\$ 200,000	\$ 226,000	\$ —	\$ 281,500	\$ 746,080
Variable rate debt, principal	72,468	—	—	—	—	—	72,468
Interest	33,861	29,532	27,141	16,339	14,103	24,629	145,605
Total long term debt	122,029	52,412	227,141	242,339	14,103	306,129	964,153
Operating leases (b)	628	511	517	529	522	786	3,493
Grand total	\$ 122,657	\$ 52,923	\$ 227,658	\$ 242,868	\$ 14,625	\$ 306,915	\$ 967,646

(a) Includes variable rate debt swapped to fixed rates through the Company's interest rate swaps.

(b) Includes leases on corporate office spaces.

Inflation

With respect to current economic conditions and governmental fiscal policy, inflation has become a greater risk. Rising inflation may affect our and our tenants' expenses, including, without limitation, by increasing product prices and costs such as wages, benefits, taxes, property and casualty insurance, borrowing costs and utilities. We rely on the performance of our assets to increase revenues in order to keep pace with inflation. We may not be able to offset high rates of inflation through rent increases due to the long-term nature of some of our leases.

A number of our leases contain provisions designed to partially mitigate adverse impacts of inflation. Our leases typically require the tenant to pay its share of operating expenses, including common area maintenance, real estate taxes and insurance, thereby reducing our exposure to increases in these costs resulting from inflation, although some larger tenants have capped the amount of these operating costs they are responsible for. A portion of our leases also include clauses enabling us to receive percentage rents based on a tenant's gross sales above specified levels or rental escalation clauses which are typically based on increases in the Consumer Price Index or similar inflation indices.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

The Company is subject to market risk associated with changes in interest rates both in terms of variable-rate debt and the price of new fixed-rate debt upon maturity of existing debt. The Company's interest rate risk management objectives are to limit the impact of interest rate changes on earnings and cash flows. As of December 31, 2023, our debt included outstanding variable-rate term loans and mortgages of \$472.5 million, of which \$400.0 million has been swapped to a fixed rate.

With regard to our variable-rate financing, we assess interest rate cash flow risk by continually identifying and monitoring changes in interest rate exposures that may adversely impact expected future cash flows and by evaluating hedging opportunities. We maintain risk management control systems to monitor interest rate cash flow risk attributable to both outstanding or forecasted debt obligations as well as our potential offsetting hedge positions. The risk management control systems involve the use of analytical techniques, including cash flow sensitivity analysis, to estimate the expected impact of changes in interest rates on our future cash flows. We continue to assess retaining cash flows that may assist us in maintaining a flexible low leverage balance sheet and managing the impact of debt maturities.

We monitor interest rate risk using a variety of techniques, including periodically evaluating fixed interest rate quotes on all variable rate debt and the costs associated with converting the debt to fixed rate debt. In addition, existing fixed and variable rate loans that are scheduled to mature within the next two years are evaluated for possible early refinancing and/or extension due to consideration given to current interest rates. Refer to our Borrowings table in Item 7 of this Annual Report for debt principal amounts and expected maturities by year to evaluate the expected cash flows and sensitivity to interest rate changes.

We may use financial instruments to hedge exposures to changes in interest rates on loans. To the extent we do, we are exposed to credit risk and market risk. Credit risk is the risk of failure of the counterparty to perform under the terms of the derivative contract. When the fair value of a derivative contract is positive, the counterparty owes us, which creates credit risk for us. When the fair value of a derivative contract is negative, we owe the counterparty and, therefore, it does not pose credit risk. We seek to minimize the credit risk in derivative instruments by entering into transactions with what we believe are high-quality counterparties. Market risk is the adverse effect on the value of a financial instrument resulting from a change in interest rates.

On March 16, 2023, the Company entered into one interest rate swap agreement with a notional amount of \$100.0 million at 3.69%, achieving a fixed interest rate of 4.99%. As of the effective date of April 3, 2023, the entirety of the Company's variable rate term loans were swapped to fixed rates through the maturity dates of the Amended Term Loan Agreement.

As of December 31, 2023, the Company's interest rate risk was limited to \$72.5 million of variable rate cross-collateralized mortgage debt. If market rates of interest on all variable-rate debt as of December 31, 2023 permanently increased or decreased by 1%, the annual increase or decrease in interest expense on the variable-rate debt and future earnings and cash flows would be approximately \$0.7 million.

The Company is party to five effective interest rate swap agreements and two interest rate forward swap agreements, which address the periods between the maturity dates of the effective swaps and the maturity dates of the Amended Term Loan Agreement. In tandem, the interest rate swaps achieve fixed interest rates for a constant notional amount through the maturity dates of the Amended Term Loan Agreement.

The following table summarizes the Company's five effective and two forward interest rate swaps as of December 31, 2023:

Interest Rate Swap	Effective Date	Termination Date	InvenTrust Receives Variable Rate of	InvenTrust Pays Fixed Rate of	Fixed Rate Achieved	Notional Amount	Fair Value as of December 31, 2023
5.5 Year Term Loan	Dec 2, 2019	Jun 21, 2024	1-Month SOFR	1.47%	2.77%	\$ 50,000	\$ 855
5.5 Year Term Loan	Dec 2, 2019	Jun 21, 2024	1-Month SOFR	1.46%	2.76%	50,000	857
5.5 Year Term Loan	Apr 3, 2023	Mar 22, 2027	1-Month SOFR	3.69%	4.99%	100,000	(122)
5 Year Term Loan	Dec 21, 2023	Sep 22, 2026	1-Month SOFR	1.51%	2.81%	100,000	5,820
5 Year Term Loan	Dec 21, 2023	Sep 22, 2026	1-Month SOFR	1.51%	2.81%	100,000	5,845
						\$ 400,000	\$ 13,255
5.5 year, fixed portion	Jun 21, 2024	Mar 22, 2027	1-Month SOFR	1.48%	2.78%	50,000	\$ 2,451
5.5 year, fixed portion	Jun 21, 2024	Mar 22, 2027	1-Month SOFR	1.54%	2.84%	50,000	2,368
						\$ 100,000	\$ 4,819

The following table summarizes the Company's four effective and four forward interest rate swaps as of December 31, 2022:

Interest Rate Swap	Effective Date	Termination Date	InvenTrust Receives Variable Rate of	InvenTrust Pays Fixed Rate of	Fixed Rate Achieved	Notional Amount	Fair Value as of December 31, 2022
5 year, fixed portion	Dec 2, 2019	Dec 21, 2023	1-Month SOFR	1.41%	2.71%	\$ 100,000	\$ 3,222
5 year, fixed portion	Dec 2, 2019	Dec 21, 2023	1-Month SOFR	1.42%	2.72%	100,000	3,238
5.5 year, fixed portion	Dec 2, 2019	Jun 21, 2024	1-Month SOFR	1.47%	2.77%	50,000	2,275
5.5 year, fixed portion	Dec 2, 2019	Jun 21, 2024	1-Month SOFR	1.46%	2.76%	50,000	2,281
						\$ 300,000	\$ 11,016
5 year, fixed portion	Dec 21, 2023	Sep 22, 2026	1-Month SOFR	1.51%	2.81%	\$ 100,000	\$ 4,924
5 year, fixed portion	Dec 21, 2023	Sep 22, 2026	1-Month SOFR	1.51%	2.81%	100,000	4,949
5.5 year, fixed portion	Jun 21, 2024	Mar 22, 2027	1-Month SOFR	1.48%	2.78%	50,000	2,196
5.5 year, fixed portion	Jun 21, 2024	Mar 22, 2027	1-Month SOFR	1.54%	2.84%	50,000	2,116
						\$ 300,000	\$ 14,185

Gains or losses resulting from marking-to-market the Company's derivatives each reporting period are recognized as an increase or decrease in comprehensive (loss) income on the consolidated statements of operations and comprehensive (loss) income.

The information presented above does not consider all exposures or positions that could arise in the future. Therefore, the information represented herein has limited predictive value. As a result, the ultimate realized gain or loss with respect to interest rate fluctuations will depend on the exposures that arise during the period, the hedging strategies at the time, and the related interest rates.

Item 8. Consolidated Financial Statements and Supplementary Data

See the Index to Consolidated Financial Statements and Financial Statement Schedule commencing on page F-1.

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

Not applicable.

Item 9A. Controls and Procedures

As required by Rule 13a-15(b) and Rule 15d-15(b) under the Exchange Act, our management, including our Principal Executive Officer and our Principal Financial Officer evaluated as of December 31, 2023, the effectiveness of our disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and Rule 15d-15(e). Based on that evaluation, our Principal Executive Officer and our Principal Financial Officer concluded that our disclosure controls and procedures, as of December 31, 2023, were effective for the purpose of ensuring that information required to be disclosed by us in this report is recorded, processed, summarized and reported within the time periods specified by the rules and forms of the Exchange Act and is accumulated and communicated to management, including our Principal Executive Officer and Principal Financial Officer as appropriate to allow timely decisions regarding required disclosures.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f). Our management, including our Principal Executive Officer and Principal Financial Officer, evaluated as of December 31, 2023, the effectiveness of our internal control over financial reporting based on the framework in "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013). Based on its evaluation, our management has concluded that we maintained effective internal control over financial reporting as of December 31, 2023.

Independent Registered Public Accounting Firm's Report on Internal Control Over Financial Reporting

KPMG LLP, an independent registered public accounting firm, has audited the Company's consolidated financial statements included in this Annual Report and, as part of its audit, has issued its report, included herein on page F-4, on the effectiveness of our internal control over financial reporting.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting during the quarter ended December 31, 2023, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

Part III**Item 10. Directors, Executive Officers and Corporate Governance**

The following information with respect to our board of directors and executive officers is presented as of February 13, 2024:

Name	Age	Position at IVT	Principal Employment
Daniel J. Busch	42	President, Chief Executive Officer & Director	Same
Christy L. David	45	Executive Vice President, Chief Operating Officer, General Counsel and Secretary	Same
Michael D. Phillips	42	Executive Vice President, Chief Financial Officer and Treasurer	Same
Stuart Aitken	52	Director	Senior Vice President and Chief Merchant and Marketing Officer at The Kroger Co., a grocery retailer
Amanda Black	48	Director	Managing Director and Global Chief Investment Officer at JLP Asset Management, a real estate investment firm
Thomas F. Glavin	64	Director	Owner of Thomas F. Glavin & Associates, Inc., a certified public accounting firm
Scott A. Nelson	67	Director	Principal of SAN Property Advisors, a retail real estate advisory firm
Paula Saban	70	Director	Development Director of Interim Execs, a placement firm for interim CXO's
Smita N. Shah	50	Director	Chief Executive Officer of SPAAN Tech, Inc., an architecture, engineering, and project management firm
Michael A. Stein	74	Director	Retired
Julian Whitehurst	66	Director	Retired

Other information called for by this Item is incorporated by reference to the information set forth in our definitive Proxy Statement, to be filed with the SEC within 120 days after the end of the Company's fiscal year ended December 31, 2023 in connection with our 2024 Annual Meeting of Stockholders, and is incorporated herein by reference.

Item 11. Executive Compensation

The information called for by this Item is incorporated by reference to the information set forth in our definitive Proxy Statement, to be filed with the SEC within 120 days after the end of the Company's fiscal year ended December 31, 2023 in connection with our 2024 Annual Meeting of Stockholders, and is incorporated herein by reference.

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

The information called for by this Item is incorporated by reference to the information set forth in our definitive Proxy Statement, to be filed with the SEC within 120 days after the end of the Company's fiscal year ended December 31, 2023 in connection with our 2024 Annual Meeting of Stockholders, and is incorporated herein by reference.

Equity Compensation Plan Information

The following table provides information regarding our equity compensation plans as of December 31, 2023.

Plan Category	Plan Description	I	II
		Number of Shares Issuable Upon Vesting (a)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in column I)
Equity compensation plans not approved by stockholders:	Incentive Award Plan (b)	1,172,363	536,429
Equity compensation plans approved by stockholders:	ESPP	N/A	3,288,272
Total		1,172,363	3,824,701

(a) Represents restricted share unit ("RSU") awards outstanding under the Incentive Award Plan as of December 31, 2023.

(b) The weighted average grant date price per share of common stock underlying the unvested restricted stock units based on total outstanding restricted stock units as of December 31, 2023 was \$19.36.

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

The information called for by this Item is incorporated by reference to the information set forth in our definitive Proxy Statement, to be filed with the SEC within 120 days after the end of the Company's fiscal year ended December 31, 2023 in connection with our 2024 Annual Meeting of Stockholders, and is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services

The information called for by this Item is incorporated by reference to the information set forth in our definitive Proxy Statement, to be filed with the SEC within 120 days after the end of the Company's fiscal year ended December 31, 2023 in connection with our 2024 Annual Meeting of Stockholders, and is incorporated herein by reference.

Part IV**Item 15. Exhibits and Financial Statement Schedules**

(a) Documents filed as part of this Annual Report

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All schedules other than those indicated in the index have been omitted as the required information is inapplicable or the information is presented in the consolidated financial statements or related notes.

3 EXHIBITS

The following documents are filed as exhibits to this report:

EXHIBIT NO.	DESCRIPTION
2.1	Master Modification Agreement, dated as of March 12, 2014, by and among Inland American Real Estate Trust, Inc., Inland American Business Manager & Advisor, Inc., Inland American Lodging Corporation, Inland American Holdco Management LLC, Inland American Retail Management LLC, Inland American Office Management LLC, Inland American Industrial Management LLC and Eagle I Financial Corp. (incorporated by reference to Exhibit 2.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on March 13, 2014)
2.2	Asset Acquisition Agreement, dated as of March 12, 2014, by and among Inland American Real Estate Trust, Inc., Inland American Holdco Management LLC, Inland American Retail Management LLC, Inland American Office Management LLC, Inland American Industrial Management LLC and Eagle I Financial Corp. (incorporated by reference to Exhibit 2.2 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on March 13, 2014)
2.3	Separation and Distribution Agreement by and between Inland American Real Estate Trust, Inc. and Xenia Hotels & Resorts, Inc., dated as of January 20, 2015 (incorporated by reference to Exhibit 2.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on January 23, 2015)
2.4	Separation and Distribution Agreement by and between InvenTrust Properties Corp. and Highlands REIT, Inc., dated as of April 14, 2016 (incorporated by reference to Exhibit 2.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on April 14, 2016)
2.5	Stock Purchase Agreement by and among InvenTrust Properties Corp., University House Communities Group, Inc. and UHC Acquisition Sub LLC, dated as of January 3, 2016 (incorporated by reference to Exhibit 2.1 to the Registrant's Form 10-Q, as filed by the Registrant on May 10, 2016)
2.6	Amendment No. 1 to Stock Purchase Agreement, dated as of May 30, 2016, by and among InvenTrust Properties Corp., University House Communities Group, Inc. and UHC Acquisition Sub LLC (incorporated by reference to Exhibit 2.2 to the Registrant's Form 8-K, as filed by the Registrant on June 27, 2016)
2.7	Amendment No. 2 to Stock Purchase Agreement, dated as of June 20, 2016, by and among InvenTrust Properties Corp., University House Communities Group, Inc. and UHC Acquisition Sub LLC (incorporated by reference to Exhibit 2.3 to the Registrant's Form 8-K, as filed by the Registrant on June 27, 2016)
3.1	Seventh Articles of Amendment and Restatement of InvenTrust Properties Corp., as amended (incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-Q, as filed by the Registrant with the SEC on May 14, 2015)
3.2	Articles of Amendment of InvenTrust Properties Corp. (incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on August 5, 2021)

EXHIBIT NO.	DESCRIPTION
3.3	Articles of Amendment of InvenTrust Properties Corp. (incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on August 5, 2021)
3.4	Articles Supplementary of InvenTrust Properties Corp. (incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on October 12, 2021)
3.5	Articles of Amendment of InvenTrust Properties Corp. (incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on April 28, 2022)
3.6	Articles of Amendment of InvenTrust Properties Corp. (incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on May 8, 2023)
3.7	Fourth Amended and Restated Bylaws of the Company, dated as of May 5, 2023 (incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on May 8, 2023)
4.1	Statement regarding restrictions on transferability of shares of common stock (to appear on stock certificate or to be sent upon request and without charge to stockholders issued shares without certificates) (incorporated by reference to Exhibit 4.4 to the Registrant's Amendment No. 1 to Form S-11 Registration Statement, as filed by the Registrant with the SEC on July 31, 2007 (file number 333-139504))
4.2	Third Amended and Restated Distribution Reinvestment Plan (incorporated by reference to Appendix A to the prospectus dated November 1, 2019 included in Post-Effective Amendment No. 1 to the Registrant's Registration Statement on Form S-3 (No. 333-172862) filed November 1, 2019)
4.3*	Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934
10.1	Indemnity Agreement, dated as of August 8, 2014, by and between Inland American Real Estate Trust, Inc., and Xenia Hotels & Resorts, Inc., and Inland American Lodging Group, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q, as filed by the Registrant with the SEC on August 14, 2014)
10.2^	Employment Offer Letter, dated as of June 20, 2019, by and between InvenTrust Properties Corp. and Daniel J. Busch (incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-Q as filed by the Registrant on August 8, 2019)
10.3.1^	InvenTrust Properties Corp. 2015 Incentive Award Plan (incorporated by reference to Exhibit 99.1 to the Registrant's Form S-8 Registration Statement, as filed by the Registrant with the SEC on June 19, 2015)
10.3.2^	First Amendment to InvenTrust Properties Corp. 2015 Incentive Award Plan, dated May 6, 2016 (incorporated by reference to Exhibit 10.3 to the Registrant's Form 10-Q, as filed by the Registrant with the SEC on August 15, 2016)
10.4^	Form of Time-Based Restricted Stock Unit Agreement (incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-Q, as filed by the Registrant with the SEC on August 10, 2017)
10.5^	Form of Director Restricted Stock Unit Agreement for 2016 Pro Rata Awards (incorporated by reference to Exhibit 10.10.3 to the Registrant's Form 10-K, as filed by the Registrant with the SEC on March 17, 2017)
10.6^	Form of Director Restricted Stock Unit Agreement for 2017 Annual Pro Rata Awards (incorporated by reference to Exhibit 10.3 to the Registrant's Form 10-Q, as filed by the Registrant with the SEC on August 10, 2017)
10.7^	Form of Director Restricted Stock Unit Agreement (incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-Q, as filed by the Registrant with the SEC on August 10, 2017)
10.8^	InvenTrust Properties Corp. Director Compensation Program, effective as of May 5, 2022 (incorporated by reference to Exhibit 10.18 to the Registrant's Form 10-K, as filed by the Registrant with the SEC on February 21, 2023)
10.9^	InvenTrust Properties Corp. Executive Severance and Change of Control Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K, as filed by the Registrant on July 13, 2018)
10.10^	Form of Performance-Based Restricted Stock Unit Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on May 14, 2019)
10.11^	Form of Performance-Based Restricted Stock Unit Award Agreement (2022) (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on February 25, 2022)
10.12	First Amendment to Indemnity Agreement by and among Inland American Real Estate Trust, Inc. and Xenia Hotels & Resorts, Inc., dated as of February 3, 2015 (incorporated by reference to Exhibit 10.3 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on February 9, 2015)
10.13.1	Amended and Restated Term Loan Credit Agreement dated as of December 21, 2018, among InvenTrust Properties Corp., as Borrower, Wells Fargo Bank, National Association, as Administrative Agent, Bank of America, N.A and U.S. Bank National Association, as tranche A-1 Co-Syndication Agents, PNC Bank, National Association and U.S. Bank National Association, as tranche A-2 Co-Syndication Agents, BMO Harris Bank, N.A. and Fifth Third Bank, as tranche A-1 Co-Documentation Agents, KeyBank National Association, as tranche A-2 Documentation Agent, and the other lenders from time to time party thereto (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on December 31, 2018)
10.13.2	First Amendment, dated as of September 22, 2021, to Amended and Restated Term Loan Credit Agreement, among InvenTrust Properties Corp., Wells Fargo Bank, National Association and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on September 22, 2021)
10.13.3*	Second Amendment, dated as of May 11, 2022, to Amended and Restated Term Loan Credit Agreement, among InvenTrust Properties Corp., the lenders party thereto and Wells Fargo Bank, National Association
10.14.1	Second Amended and Restated Credit Agreement dated as of December 21, 2018, among InvenTrust Properties Corp., as borrower, KeyBank National Association, as Administrative Agent, KeyBanc Capital Markets Inc. and Wells Fargo Securities, LLC, as Joint Book Managers, KeyBanc Capital Markets Inc., Wells Fargo Securities, LLC, JPMorgan Chase Bank, N.A., Bank of America, N.A., PNC Bank, National Association, and BMO Harris Bank, N.A., as Joint Lead Arrangers, Wells Fargo Bank, National Association, and JPMorgan Chase Bank, N.A., as Co-Syndication Agents, Bank of America, N.A., PNC Bank, National Association, and BMO Harris Bank, N.A., as Co-Documentation Agents, and the other lenders from time to time party thereto (incorporated by reference to Exhibit 10.3 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on December 31, 2018)

EXHIBIT NO.	DESCRIPTION
<u>10.14.2</u>	First Amendment, dated as of September 22, 2021, to Second Amended and Restated Credit Agreement, among InvenTrust Properties Corp., KeyBank, National Association and the other lenders party thereto (incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on September 22, 2021)
<u>10.14.3*</u>	Second Amendment dated as of May 11, 2022 to Second Amended and Restated Credit Agreement, among InvenTrust Properties Corp., the lenders party thereto and KeyBank National Association
<u>10.15^</u>	Form of Director Restricted Stock Unit Agreement for Annual Awards (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q, as filed by the Registrant with the SEC on August 7, 2020)
<u>10.16^</u>	Separation and Consulting Agreement, by and between InvenTrust Properties Corp. and Thomas McGuinness, dated as of February 18, 2021 (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on February 23, 2021)
<u>10.17</u>	Third Amended and Restated Share Repurchase Program (incorporated by reference to Exhibit 99.2 to the Registrant's Current Report on Form 8-K, as filed by the Registrant with the SEC on April 12, 2021)
<u>10.18^</u>	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q, as filed by the Registrant with the SEC on November 9, 2017)
<u>10.19</u>	Note Purchase Agreement, dated June 3, 2022, by and among InvenTrust Properties Corp. and the purchasers named therein (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K, as filed by the Registrant with the SEC on June 3, 2022)
<u>10.20^</u>	InvenTrust Properties Corp. 2023 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q, as filed by the Company with the SEC on August 1, 2023)
<u>21.1*</u>	Subsidiaries of the Registrant
<u>23.1*</u>	Consent of KPMG LLP
<u>31.1*</u>	Certification by Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
<u>31.2*</u>	Certification by Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
<u>32.1**</u>	Certification by Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
<u>32.2**</u>	Certification by Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
<u>97.1*</u>	InvenTrust Properties Corp. Policy for Recovery of Erroneously Awarded Compensation
101	The following financial information from our Annual Report for the year ended December 31, 2023, filed with the Securities and Exchange Commission on February 14, 2024, is formatted in Extensible Business Reporting Language ("XBRL"): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations and Comprehensive (Loss) Income, (iii) Consolidated Statements of Equity, (iv) Consolidated Statements of Cash Flows (v) Notes to Consolidated Financial Statements (tagged as blocks of text).
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)
*	Filed as part of this Annual Report
**	This certification is deemed furnished, and not filed, with the SEC and is not to be incorporated by reference into any filing of the Registrant under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.
^	Management contract or compensatory plan or arrangement.

Item 16. Form 10-K Summary

None.

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.

INVENTRUST PROPERTIES CORP.

By: /s/ Daniel J. Busch
Name: Daniel J. Busch
President and Chief Executive Officer
Date: February 14, 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.

	<u>Signature</u>	<u>Title</u>	<u>Date</u>
By:	<u>/s/ Daniel J. Busch</u>	President, Chief Executive Officer and Director (Principal Executive Officer)	February 14, 2024
Name:	Daniel J. Busch		
By:	<u>/s/ Michael Phillips</u>	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)	February 14, 2024
Name:	Michael Phillips		
By:	<u>/s/ David Bryson</u>	Senior Vice President, Chief Accounting Officer and Controller (Principal Accounting Officer)	February 14, 2024
Name:	David Bryson		
By:	<u>/s/ Stuart Aitken</u>	Director	February 14, 2024
Name:	Stuart Aitken		
By:	<u>/s/ Amanda Black</u>	Director	February 14, 2024
Name:	Amanda Black		
By:	<u>/s/ Thomas F. Glavin</u>	Director	February 14, 2024
Name:	Thomas F. Glavin		
By:	<u>/s/ Scott A. Nelson</u>	Director	February 14, 2024
Name:	Scott A. Nelson		
By:	<u>/s/ Paula J. Saban</u>	Director	February 14, 2024
Name:	Paula J. Saban		
By:	<u>/s/ Smita N. Shah</u>	Director	February 14, 2024
Name:	Smita N. Shah		
By:	<u>/s/ Michael A. Stein</u>	Director	February 14, 2024
Name:	Michael A. Stein		
By:	<u>/s/ Julian E. Whitehurst</u>	Director	February 14, 2024
Name:	Julian E. Whitehurst		

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AND FINANCIAL STATEMENT SCHEDULE**

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All other schedules have been omitted as the information is inapplicable, not required, or the information is included elsewhere in the consolidated financial statements or related notes thereto.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors

InvenTrust Properties Corp.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of InvenTrust Properties Corp. and subsidiaries (the Company) as of December 31, 2023 and 2022, the related consolidated statements of operations and comprehensive (loss) income, equity, and cash flows for each of the years in the three-year period ended December 31, 2023, and the related notes and financial statement schedule III (collectively, the consolidated financial statements). In our opinion, the consolidated 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 years in the three-year period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 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 14, 2024 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated 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 consolidated 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 consolidated 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 consolidated 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 consolidated 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 consolidated 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 consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which it relates.

Expected hold period of investment properties

As discussed in Note 2 to the consolidated financial statements, the Company assesses the carrying values of its investment properties (including any related intangible assets or liabilities) on an individual basis when events or changes in circumstances, including changes in the expected holding period, indicate their carrying value may not be fully recoverable. If it is determined that the carrying value of the investment property is not recoverable because the expected undiscounted cash flows do not exceed that carrying value of the property, the Company records an impairment loss to the extent that the carrying value exceeds the estimated fair value. Net investment properties as of December 31, 2023 was \$2,195 million, or 88.3% of total assets.

We identified the assessment of the expected hold period for the investment properties evaluated for impairment as a critical audit matter because of the significance of the estimate to the evaluation of the recoverability of the investment properties. Changes in the expected hold period could have a material impact on the projected operating cash flows utilized in the recoverability analysis for the investment property. Subjective and challenging auditor judgment was required to evaluate the reasonableness of management's assessment of expected hold period.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the Company's consideration of individual real estate properties for potential reductions in expected hold period:

- Inquiring of Company officials to evaluate the likelihood that an investment property will be sold before the end of its expected hold period.
- Inspecting meeting minutes of the board of directors and the management investment committee to evaluate the likelihood that an investment property will be sold before the end of its expected hold period.
- Inquiring and obtaining representations from the Company regarding the status and evaluation of any potential disposal of properties. We corroborated that information with others in the organization who are responsible for, and have authority over, disposition activities and compared with the Company's documented investment plans.
- Reading external communications with investors in order to identify information regarding potential sales of the Company's properties, or other indicators of a reduction in an investment property's expected hold period.

/s/ KPMG LLP

We have served as the Company's auditor since 2005.

Chicago, Illinois
February 14, 2024

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors

InvenTrust Properties Corp.:

Opinion on Internal Control Over Financial Reporting

We have audited InvenTrust Properties Corp. and subsidiaries' (the Company) 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. 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 the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2023 and 2022, the related consolidated statements of operations and comprehensive (loss) income, equity, and cash flows for each of the years in the three-year period ended December 31, 2023, and the related notes and financial statement schedule III (collectively, the consolidated financial statements), and our report dated February 14, 2024 expressed an unqualified opinion on those consolidated 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's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included 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/ KPMG LLP

Chicago, Illinois
February 14, 2024

INVENTRUST PROPERTIES CORP.

Consolidated Balance Sheets
(in thousands, except share amounts)

	As of December 31,	
	2023	2022
Assets		
Investment properties		
Land	\$ 694,668	\$ 650,764
Building and other improvements	1,956,117	1,825,893
Construction in progress	5,889	5,005
Total	2,656,674	2,481,662
Less accumulated depreciation	(461,352)	(389,361)
Net investment properties	2,195,322	2,092,301
Cash, cash equivalents and restricted cash	99,763	137,762
Investment in unconsolidated entities	—	56,131
Intangible assets, net	114,485	101,167
Accounts and rents receivable	35,353	34,528
Deferred costs and other assets, net	42,408	51,145
Total assets	<u>\$ 2,487,331</u>	<u>\$ 2,473,034</u>
Liabilities		
Debt, net	\$ 814,568	\$ 754,551
Accounts payable and accrued expenses	44,583	42,792
Distributions payable	14,594	13,837
Intangible liabilities, net	30,344	29,658
Other liabilities	29,198	28,287
Total liabilities	<u>933,287</u>	<u>869,125</u>
Commitments and contingencies		
Stockholders' Equity		
Preferred stock, \$ 0.001 par value, 40,000,000 shares authorized, none outstanding	—	—
Common stock, \$ 0.001 par value, 146,000,000 shares authorized, 67,807,831 shares issued and outstanding as of December 31, 2023 and 67,472,553 shares issued and outstanding as of December 31, 2022	68	67
Additional paid-in capital	5,468,728	5,456,968
Distributions in excess of accumulated net income	(3,932,826)	(3,879,847)
Accumulated comprehensive income	18,074	26,721
Total stockholders' equity	<u>1,554,044</u>	<u>1,603,909</u>
Total liabilities and stockholders' equity	<u>\$ 2,487,331</u>	<u>\$ 2,473,034</u>

See accompanying notes to the consolidated financial statements.

INVENTRUST PROPERTIES CORP.

Consolidated Statements of Operations and Comprehensive (Loss) Income
(in thousands, except share and per share amounts)

	Year Ended December 31		
	2023	2022	2021
Income			
Lease income, net	\$ 257,146	\$ 232,980	\$ 207,350
Other property income	1,450	1,161	1,087
Other fee income	80	2,566	3,542
Total income	258,676	236,707	211,979
Operating expenses			
Depreciation and amortization	113,430	94,952	87,143
Property operating	42,832	40,239	32,788
Real estate taxes	34,809	32,925	31,312
General and administrative	31,797	33,342	38,192
Direct listing costs	—	—	19,769
Total operating expenses	222,868	201,458	209,204
Other (expense) income			
Interest expense, net	(38,138)	(26,777)	(16,261)
Loss on extinguishment of debt	(15)	(181)	(400)
Gain on sale of investment properties, net	2,691	38,249	1,522
Equity in (losses) earnings of unconsolidated entities	(557)	3,663	6,398
Other income and expense, net	5,480	2,030	606
Total other (expense) income, net	(30,539)	16,984	(8,135)
Net income (loss)	\$ 5,269	\$ 52,233	\$ (5,360)
Weighted-average common shares outstanding, basic	67,531,898	67,406,233	71,072,933
Weighted-average common shares outstanding, diluted	67,813,180	67,525,935	71,072,933
Net income (loss) per common share - basic	\$ 0.08	\$ 0.77	\$ (0.08)
Net income (loss) per common share - diluted	\$ 0.08	\$ 0.77	\$ (0.08)
Distributions declared per common share outstanding	\$ 0.86	\$ 0.82	\$ 0.78
Distributions paid per common share outstanding	\$ 0.85	\$ 0.82	\$ 0.78
Comprehensive (loss) income			
Net income (loss)	\$ 5,269	\$ 52,233	\$ (5,360)
Unrealized gain on derivatives	6,228	32,052	3,795
Reclassification (to) from net income (loss)	(14,875)	(1,009)	4,332
Comprehensive (loss) income	\$ (3,378)	\$ 83,276	\$ 2,767

See accompanying notes to the consolidated financial statements.

INVENTRUST PROPERTIES CORP.

Consolidated Statements of Equity
(in thousands, except share amounts)

	Number of Shares	Common Stock	Additional Paid-in Capital	Distributions in Excess of Accumulated Net Income	Accumulated Comprehensive Income (Loss)	Total
Beginning balance, January 1, 2021	71,998,654	\$ 72	\$ 5,566,902	\$ (3,815,662)	\$ (12,449)	\$ 1,738,863
Net loss	—	—	—	(5,360)	—	(5,360)
Unrealized loss on derivatives	—	—	—	—	3,795	3,795
Reclassification to interest expense, net	—	—	—	—	4,198	4,198
Reclassification to equity in losses of unconsolidated entities	—	—	—	—	134	134
Distributions declared	—	—	—	(55,721)	—	(55,721)
Stock-based compensation, net	101,363	6	5,653	—	—	5,659
Repurchase of common stock under share repurchase plan	(755,643)	(7)	(16,678)	—	—	(16,685)
Repurchase of common stock through tender offer	(4,000,000)	(4)	(103,327)	—	—	(103,331)
Ending balance, December 31, 2021	67,344,374	67	5,452,550	(3,876,743)	(4,322)	1,571,552
Net income	—	—	—	52,233	—	52,233
Unrealized gain on derivatives	—	—	—	—	32,052	32,052
Reclassification from interest expense, net	—	—	—	—	(405)	(405)
Reclassification from equity in earnings of unconsolidated entities	—	—	—	—	(604)	(604)
Distributions declared	—	—	—	(55,337)	—	(55,337)
Stock-based compensation, net	128,179	—	4,418	—	—	4,418
Ending balance, December 31, 2022	67,472,553	67	5,456,968	(3,879,847)	26,721	1,603,909
Net income	—	—	—	5,269	—	5,269
Unrealized gain on derivatives	—	—	—	—	6,228	6,228
Reclassification from interest expense, net	—	—	—	—	(14,875)	(14,875)
Distributions declared	—	—	—	(58,248)	—	(58,248)
Stock-based compensation, net	127,238	1	7,427	—	—	7,428
Issuance of common stock, net	208,040	—	4,333	—	—	4,333
Ending balance, December 31, 2023	67,807,831	\$ 68	\$ 5,468,728	\$ (3,932,826)	\$ 18,074	\$ 1,554,044

See accompanying notes to the consolidated financial statements.

INVENTRUST PROPERTIES CORP.

Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,		
	2023	2022	2021
Cash flows from operating activities:			
Net income (loss)	\$ 5,269	\$ 52,233	\$ (5,360)
Adjustments to reconcile to net cash provided by operating activities:			
Depreciation and amortization	113,430	94,952	87,143
Amortization of market-lease intangibles and inducements, net	(3,343)	(5,589)	(4,318)
Amortization of debt discounts and financing costs	4,113	2,816	1,816
Straight-line rent adjustment, net	(3,464)	(2,645)	(3,272)
Provision for (reversal of) estimated credit losses	1,148	(1,437)	2,271
Gain on sale of investment properties, net	(2,691)	(38,249)	(1,522)
Loss on extinguishment of debt	15	181	400
Equity in losses (earnings) of unconsolidated entities	557	(3,663)	(6,398)
Distributions from unconsolidated entities	—	9,350	8,085
Stock-based compensation, net	9,021	6,541	9,116
Changes in operating assets and liabilities:			
Accounts and rents receivable	1,483	(999)	257
Deferred costs and other assets, net	91	317	(1,834)
Accounts payable and accrued expenses	2,054	8,411	1,875
Other liabilities	1,938	3,576	1,697
Net cash provided by operating activities	129,621	125,795	89,956
Cash flows from investing activities:			
Purchase of investment properties	(152,047)	(235,001)	(53,078)
Capital expenditures and tenant improvements	(27,298)	(19,420)	(15,361)
Investment in development and re-development projects	(4,558)	(9,461)	(5,466)
Proceeds from the sale of investment properties, net	12,559	77,538	14,807
Distributions from unconsolidated entities	95,065	47,355	—
Lease commissions and other leasing costs	(3,888)	(4,302)	(4,055)
Other investing activities, net	449	(1,170)	(1,548)
Net cash used in investing activities	(79,718)	(144,461)	(64,701)
Cash flows from financing activities:			
Payment of tax withholdings for share-based compensation	(1,583)	(1,581)	(1,833)
Repurchases of common stock	—	—	(116,397)
Payment of common stock repurchase costs	—	—	(3,619)
Proceeds from sale of common stock under ATM	5,165	—	—
Proceeds from sale of common stock under ESPP	235	—	—
Payment of common stock offering costs	(341)	—	—
Distributions to stockholders	(57,491)	(55,302)	(55,561)
Term loan proceeds	—	—	400,000
Term loan repayments	—	—	(400,000)
Line of credit proceeds	30,000	112,000	31,000
Line of credit repayments	(30,000)	(143,000)	—
Senior notes proceeds	—	250,000	—
Payoffs of debt	(33,700)	(47,052)	(50,000)
Principal payments on mortgage debt	(32)	(842)	(1,306)
Payment of loan fees and deposits	(175)	(2,387)	(6,065)
Other financing activities	20	(262)	(390)
Net cash (used in) provided by financing activities	(87,902)	111,574	(204,171)
Net decrease in cash, cash equivalents and restricted cash	(37,999)	92,908	(178,916)
Cash, cash equivalents and restricted cash at beginning of year	137,762	44,854	223,770
Cash, cash equivalents and restricted cash at end of year	\$ 99,763	\$ 137,762	\$ 44,854

INVENTRUST PROPERTIES CORP.

Consolidated Statements of Cash Flows
(in thousands)

Year Ended December 31,

2023

2022

2021

Supplemental disclosure of cash flow information:

Cash flow disclosure, including non-cash investing and financing activities:

Cash paid for interest, net of capitalized interest	\$ 33,093	\$ 18,705	\$ 14,570
Cash paid (refunded) for income taxes, net of (payments) refunds	209	(386)	276
Previously held equity investments in real estate assets acquired	39,603	—	—
Distributions payable to stockholders	14,594	13,837	13,802
Accrued capital expenditures and tenant improvements	1,680	2,851	3,552
Capitalized costs placed in service	16,402	17,895	7,453
Gross issuance of shares for share-based compensation	4,558	6,224	5,040

Purchase of investment properties:

Net investment properties	\$ 200,085	\$ 280,938	\$ 45,791
Accounts and rents receivable, lease intangibles, and deferred costs and other assets	52,871	47,019	8,734
Accounts payable and accrued expenses, lease intangibles, and other liabilities	(9,133)	(13,075)	(1,447)
Assumption of mortgage debt, at fair value	(91,776)	(79,881)	—
Cash outflow for purchase of investment properties, net	152,047	235,001	53,078
Assumption of mortgage principal	92,468	80,380	—
Capitalized acquisition costs	(150)	(1,079)	(59)
Credits and other changes in cash outflow, net	(365)	4,768	1,691
Gross acquisition price of investment properties	<u>\$ 244,000</u>	<u>\$ 319,070</u>	<u>\$ 54,710</u>

Sale of investment properties:

Net investment properties	\$ 10,086	\$ 66,294	\$ 10,953
Accounts and rents receivable, lease intangibles, and deferred costs and other assets	297	4,200	2,332
Accounts payable and accrued expenses, lease intangibles, and other liabilities	(515)	(2,575)	—
Debt assumed by buyer through disposition of property	—	(28,552)	—
Gain on sale of investment properties, net	2,691	38,249	1,522
Loss on extinguishment of debt		(78)	—
Proceeds from sale of investment properties, net	12,559	77,538	14,807
Assumption of mortgage principal	—	28,630	—
Credits and other changes in cash inflow, net	583	4,282	174
Gross disposition price of investment properties	<u>\$ 13,142</u>	<u>\$ 110,450</u>	<u>\$ 14,981</u>

See accompanying notes to the consolidated financial statements.

INVENTRUST PROPERTIES CORP.
Notes to Consolidated Financial Statements
December 31, 2023, 2022 and 2021

1. Organization

On October 4, 2004, InvenTrust Properties Corp. (the "Company" or "InvenTrust") was incorporated as Inland American Real Estate Trust, Inc., a Maryland corporation, and elected to operate in a manner to be taxed as a real estate investment trust ("REIT") for federal tax purposes. The Company changed its name to InvenTrust Properties Corp. in April of 2015 and is focused on owning, leasing, redeveloping, acquiring and managing a multi-tenant retail platform.

The accompanying consolidated financial statements include the accounts of the Company, as well as all wholly-owned subsidiaries. Subsidiaries generally consist of limited liability companies ("LLCs") and limited partnerships ("LPs"). All significant intercompany balances and transactions have been eliminated. Each retail property is owned by a separate legal entity that maintains its own books and financial records. Each separate legal entity's assets are not available to satisfy the liabilities of other affiliated entities.

The Company has a single reportable segment, multi-tenant retail, for disclosure purposes in accordance with United States ("U.S.") generally accepted accounting principles ("GAAP"). Unless otherwise noted, all square feet and dollar amounts are stated in thousands, except share, per share and per square foot data. Number of properties and square feet are unaudited.

The following table summarizes the Company's retail portfolio as of December 31, 2023 and 2022:

	Wholly-Owned Retail Properties		Unconsolidated Retail Properties at 100%	
	2023	2022	2023	2022
No. of properties	62	58	—	4
Gross Leasable Area (square feet)	10,324	9,171	—	1,125

2. Basis of Presentation and Summary of Significant Accounting Policies

Estimates, Risks, and Uncertainties

The accompanying consolidated financial statements have been prepared in accordance with GAAP, which requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Significant estimates, judgments and assumptions are required in a number of areas, including, but not limited to, evaluating the impairment of long-lived assets, allocating the purchase price of acquired retail properties, determining the fair value of debt and evaluating the collectability of accounts receivable. The Company bases these estimates, judgments and assumptions on historical experience and various other factors that the Company believes to be reasonable under the circumstances. Actual results may differ from these estimates.

Variable Interest Entities

The Company evaluates its investments in LLCs and LPs to determine whether each such entity may be a variable interest entity ("VIE"). The accounting standards related to the consolidation of VIEs require qualitative assessments to determine whether the Company is the primary beneficiary. Determination of the primary beneficiary is based on whether the Company has (i) power to direct significant activities of the VIE and (ii) an obligation to absorb losses or the right to receive benefits that could be potentially significant to the VIE. The Company consolidates a VIE if it is deemed to be the primary beneficiary. The equity method of accounting is applied to entities in which the Company is not the primary beneficiary, or if the entity is not a VIE and the Company does not have control, but can exercise significant influence over the entity with respect to its operations and major decisions. As of December 31, 2023 and 2022, the Company had no VIEs.

Revenue Recognition

Lease Income

The majority of revenue recognized from the Company's retail properties is comprised of fixed and variable consideration received from tenants under long-term operating leases with varying terms. Fixed consideration generally consists of minimum lease payments for the rental of retail space while the variable consideration generally consists of reimbursements of the tenant's pro-rata share of certain operating expenses incurred by the Company, including real estate taxes, special assessments, insurance, utilities, common area maintenance, management fees and certain capital repairs. Certain other tenants are subject to net leases whereby the tenant is responsible for fixed minimum lease payments to the Company, as well as directly paying all costs and expenses associated with occupancy to third party service providers. Such direct payments to third parties are not recorded as revenue and expense by the Company.

In accordance with Accounting Standards Codification ("ASC") 842, *Leases*, ("Topic 842"), the Company has elected to not separate lease and non-lease components for all qualifying leases. In effect, this generally relieves the Company from accounting for certain consideration under ASC 606, *Revenue from Contracts with Customers* ("Topic 606"). As a result of the election, all income arising from leases is presented on a combined basis as lease income, net.

Minimum lease payments are recognized on a straight-line basis over the term of each lease. The cumulative difference between fixed consideration recognized on a straight-line basis and the cash payments due under the provisions of the lease agreements is recorded as deferred rent receivable and is included as a component of accounts and rents receivable.

The Company records lease termination income when all conditions of a signed termination agreement have been met, the tenant is no longer occupying the property, and termination income amounts due are considered collectible. The Company defers recognition of contingent lease income until the specified target that triggers the contingent lease income is achieved.

The Company commences revenue recognition on its leases when the lessee takes possession of, or controls the physical use of, the leased asset, unless the lessee is constructing improvements for which the Company is deemed to be the owner for accounting purposes. If the Company is deemed the owner for accounting purposes, the leased asset is the finished space and revenue recognition commences when the lessee takes possession of it, typically when the improvements are substantially complete. Alternatively, if the lessee is deemed to be the owner of the improvements for accounting purposes, then the leased asset is the unimproved space, and any tenant improvement allowances funded under the lease are treated as lease incentives, which reduce lease income recognized over the lease term, and the Company commences revenue recognition when the lessee takes possession of the unimproved space.

The determination of who owns the tenant improvements, for accounting purposes, is based on contractual rights and subject to judgment. In making that judgment, no one factor is determinative. The Company routinely considers:

- whether the lease stipulates how and on what a tenant improvement allowance may be spent;
- whether the tenant is required to provide evidence supporting the cost of improvements prior to reimbursement;
- whether the tenant or landlord retains legal title to the improvements;
- the uniqueness of the improvements;
- the expected economic life of the tenant improvements relative to the length of the lease; and
- who constructs or directs the construction of the improvements.

Credit Losses

The Company reviews the collectability of amounts due from its tenants on a regular basis. Such reviews consider the tenant's financial condition and payment history and other economic conditions impacting the tenant. Changes in collectability occur when the Company no longer believes it is probable that substantially all the lease payments will be collected over the term of the lease. If collection is not probable, the lease payments will be accounted for on a cash basis and revenue will be recorded as cash is received. If reassessed, and the collection of substantially all of the lease payments from the tenant becomes probable, the accrual basis of revenue recognition is reestablished. The provision for estimated credit losses resulting from changes in the expected collectability of lease payments, including variable payments, is recognized as a direct adjustment to lease income, and a direct write-off of the operating lease receivables, including straight-line rent receivable.

Other Fee Income

The Company recognizes other fee income when it satisfies a performance obligation relating to services provided to its joint venture partnership. The Company generally does not receive prepayments for services or recognize revenue prior to being legally entitled to payment. As a result, the Company does not generally record contract assets or contract liabilities.

Property management and asset management fees are recognized over time as services are rendered to the joint venture partnership. The bundled services of the property management performance obligation and asset management performance obligation each qualify as a series of distinct services satisfied over time. The variability in timing of the property management and asset management fees, which generally relate to the fluctuation in cash receipts from tenants and potential changes in equity capitalization, are resolved on a monthly basis.

Leasing commissions and other fees are recognized at a point in time consistent with the underlying service rendered to the joint venture partnership. Generally, the first and second installments of leasing commissions are paid upon lease execution and rent commencement, respectively.

Sale of Real Estate

The Company derecognizes real estate and recognizes a gain or loss when a contract exists and control of the property has transferred to the buyer. Control of the property, including controlling financial interest, is generally considered to transfer upon closing through transfer of the legal title and possession of the property, at which point the Company recognizes a gain or loss equal to the difference between the transaction price and the carrying amount of the property.

Acquisition of Real Estate

The Company evaluates the inputs, processes and outputs of each asset acquired to determine if the transaction is a business combination or asset acquisition. If an acquisition qualifies as a business combination, the related transaction costs are expensed. If an acquisition qualifies as an asset acquisition, the related transaction costs are capitalized and amortized over the useful life of the acquired assets. Generally, our acquisitions of real estate qualify as asset acquisitions.

The Company allocates the purchase price of real estate to land, building, other building improvements, tenant improvements, intangible assets and liabilities (such as the value of above- and below-market leases, and in-place leases). The values of above- and below-market leases are recorded as intangible assets and intangible liabilities, respectively, and are amortized as either a decrease (in the case of above-market leases) or an increase (in the case of below-market leases) to lease income, net over the remaining term of the associated lease. The values, if any, associated with in-place leases are recorded as intangible assets and amortized to depreciation and amortization expense over the remaining lease term.

The difference between the contractual rental rates and the Company's estimate of market rental rates is measured over a period equal to the remaining non-cancelable term of the leases plus the term of any below-market renewal options. For the amortization period, the remaining term of leases with renewal options at terms below market reflect the assumed exercise of such below-market renewal options, if reasonably assured.

If a tenant vacates its space prior to the contractual expiration of the lease and no rental payments are being made on the lease, any unamortized balance of the related intangible asset or liability is written off. Tenant improvements are depreciated and origination costs are amortized over the remaining term of the lease or charged against earnings if the lease is terminated prior to its contractual expiration date.

With the assistance of a third-party valuation specialist, the Company performs the following procedures for assets acquired:

- Estimate the value of the property "as if vacant" as of the acquisition date;
- Allocate the value of the property among land, building, and other building improvements and determine the associated useful life for each;
- Calculate the value and associated life of above- and below-market leases on a tenant-by-tenant basis. The difference between the contractual rental rates and the Company's estimate of market rental rates is measured over a period equal to the remaining term of the leases (using a discount rate which reflects the risks associated with the leases acquired, including geographical location, size of leased area, tenant profile and credit risk);
- Estimate the fair value of the tenant improvements, legal costs and leasing commissions incurred to obtain the leases and calculate the associated useful life for each;
- Estimate the fair value of assumed debt, if any; and
- Estimate the intangible value of the in-place leases based on lease execution costs of similar leases as well as lost rent payments during an assumed lease-up period and their associated useful lives on a tenant-by-tenant basis.

Properties Held for Sale

In determining whether to classify a property as held for sale, the Company considers whether: (i) management has committed to a plan to sell the property; (ii) the property is available for immediate sale, in its present condition; (iii) the Company has initiated a program to locate a buyer; (iv) the Company believes that the sale of the property is probable; (v) the Company has received a significant non-refundable deposit for the purchase of the property; (vi) the Company is actively marketing the property for sale at a price that is reasonable in relation to its estimated fair value; and (vii) actions required for the Company to complete the plan indicate that it is unlikely that any significant changes will be made to the plan. When all criteria are met, the property is classified as held for sale and carried at the lower of cost or estimated fair value less costs to sell. Additionally, if the sale represents a strategic shift that has (or will have) a major effect on the Company's results and operations, the income and expenses for the period are classified as discontinued operations for all periods presented.

Impairment of Long Lived Assets

The Company assesses the carrying values of long-lived tangible and intangible assets whenever events or changes in circumstances indicate that they may not be fully recoverable, such as a reduction in the expected hold period of a property. When such event or circumstances occur, if it is expected that the carrying value is not recoverable because the expected undiscounted cash flows do not exceed that carrying value, the Company recognizes an impairment loss to the extent that the carrying value exceeds the estimated fair value. The valuation and possible subsequent impairment of investment properties is a significant estimate that can and does change based on the Company's continuous process of analyzing each property's economic condition over time and reviewing and updating assumptions about uncertain inherent factors, including observable inputs such as contractual revenues and unobservable inputs such as forecasted revenues and expenses, estimated net disposition proceeds, and discount rate. These unobservable inputs are based on a property's market conditions and expected growth rates. Assumptions and estimates about future cash flows and capitalization rates are complex and subjective. Changes in economic and operating conditions and the Company's ultimate investment intent that occur subsequent to the impairment analyses could impact these assumptions and result in additional impairment.

The Company's assessment of expected hold period for investment properties evaluated for impairment is of particular significance because of the material impact it has on the evaluation of the property's recoverability. Changes in the Company's disposition strategy or changes in the marketplace may alter the hold period of an asset or asset group which may result in an impairment loss and such loss could be material to the Company's financial condition or operating performance.

Periodically, management assesses whether there are any indicators that the carrying value of the Company's investments in unconsolidated entities may be other-than-temporarily impaired. To the extent other-than-temporary impairment has occurred, the loss is measured as the excess of the carrying value of the investment over the estimated fair value of the investment. The estimated fair value of the investment is generally derived from the cash flows generated from the underlying real property investments of the investee.

Real Estate Capitalization and Depreciation

Real estate is reflected at cost less accumulated depreciation within investment properties on the consolidated balance sheets. Ordinary repairs and maintenance are expensed as incurred.

Depreciation expense is computed using the straight-line method. A range of estimated useful lives of 15 - 30 years is used for buildings and other improvements, and a range of 3 - 20 years is used for furniture, fixtures and equipment.

Tenant improvements are amortized on a straight-line basis over the lesser of the life of the tenant improvement or the lease term. Amortization is included in depreciation and amortization expense.

Deferred leasing costs are recognized as a part of deferred costs and other assets, net and are amortized to depreciation and amortization expense over the remaining term of the associated tenant lease.

Direct and indirect costs that are clearly related to the construction and improvements of investment properties are capitalized. Costs incurred for interest, property taxes and insurance are capitalized during periods in which activities necessary to prepare the property for its intended use are in progress.

Cash, Cash Equivalents and Restricted Cash

The Company considers all demand deposits, money market accounts and investments in certificates of deposit and repurchase agreements with a maturity of three months or less, at the date of purchase, to be cash equivalents. The Company maintains its cash and cash equivalents at financial institutions. The combined account balances at one or more institutions generally exceed the Federal Deposit Insurance Corporation ("FDIC") insurance coverage. The Company periodically assesses the credit risk associated with these financial institutions. The Company believes insignificant credit risk exists related to amounts on deposit in excess of FDIC insurance coverage.

The Company had restricted cash of \$ 3,378 and \$ 142 as of December 31, 2023 and 2022, respectively. Restricted cash often consists of lenders' escrows, operating real estate escrows for taxes, insurance, capital expenditures and payments required under certain lease agreements, and funds restricted through lender or other agreements, including funds held in escrow for future acquisitions.

Fair Value Measurements

In accordance with ASC 820, *Fair Value Measurement and Disclosures* ("Topic 820"), the Company defines fair value based on the price that would be received upon sale of an asset or the exit price that would be paid to transfer or settle a liability in an orderly transaction between market participants at the measurement date. The Company uses a fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair value. The fair value hierarchy consists of the three broad levels described below:

- Level 1 - Quoted prices in active markets for identical assets or liabilities that the entity has the ability to access.
- Level 2 - Observable inputs, other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets and liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

The Company has estimated the fair value of its financial instruments and non-financial assets using available market information and valuation methodologies the Company believes to be appropriate for these purposes. Considerable judgment and a high degree of subjectivity are involved in developing these estimates and, accordingly, they are not necessarily indicative of amounts that would be realized upon disposition.

The carrying amounts of cash, cash equivalents and restricted cash, accounts and rents receivables, other assets, accounts payable, accrued expenses, and other liabilities reasonably approximate fair value, in management's judgment, because of their short-term nature. Fair value information pertaining to derivative financial instruments, investment properties, and debt is provided in "Note 9. Fair Value Measurements".

Stock-Based Compensation Plans

Incentive Award Plan

Effective June 19, 2015, the Company's board of directors (the "Board") adopted the InvenTrust Properties Corp. 2015 Incentive Award Plan (the "Incentive Award Plan"), under which the Company may grant cash and equity incentive awards to eligible employees, directors, and consultants. The Company has awarded time-based restricted stock units ("RSUs"), performance-based RSUs, and market-based RSUs with tandem dividend equivalents. Compensation expense related to these awards, which are generally equity classified, is recognized as a part of general and administrative expense. The tandem dividend equivalent cash payments of awards granted during the years ended December 31, 2023 and 2022 are recognized within equity. The tandem dividend equivalent cash payments of awards granted during the year ended December 31, 2021 are recognized within earnings. Forfeitures of awards are recognized as they occur.

Time-based awards are generally measured at grant date fair value and not subsequently remeasured. Compensation expense related to these awards is recognized on a straight-line basis over the vesting period. Time-based awards granted to employees vest equally on each of the first three anniversaries of the applicable vesting commencement date, subject to the employees' continued service to the Company. The time-based RSU awards granted to directors vest on the earlier of the one-year anniversary of the applicable grant date or the date of the Company's next annual meeting of its shareholders following the grant date, subject to the directors' continued service to the Company.

Performance-based awards are measured at grant date fair value and each grantee is eligible to vest in a number of RSUs ranging from 0 % to 100 % of the total number granted based on specified performance levels. Performance-based awards vest within 45 days of the conclusion of the performance period and are generally subject to the recipients' continued service to the Company. Compensation cost is recognized when the performance condition is considered probable of achievement. If a performance award has more than one potential outcome, recognition of compensation cost is based on the most likely outcome. During the service period, a cumulative catch-up approach is used to account for changes in the assessment of which outcome is most likely to occur.

Market-based awards are valued as of the grant date utilizing a Monte Carlo simulation model that assesses the probability of satisfying certain market performance thresholds over a three year performance period. Market-based awards vest within 45 days of the conclusion of the performance period and are generally subject to the recipients' continued service to the Company. The number of common shares ultimately issued is based on the Company's total shareholder return ("TSR") relative to that of the FTSE NAREIT Shopping Index peer group on a percentile basis. The resulting compensation expense is recorded over the service period regardless of whether the TSR performance measures are achieved.

Employee Stock Purchase Plan

Effective May 4, 2023, the Company's Board established an Employee Stock Purchase Plan (the "ESPP") through which employees may purchase shares of the Company's common stock semi-annually at a price equal to 85% of the lesser of: (a) the closing price per share on the first day of such period, and (b) the closing price per share on the last day of such period. Compensation expense related to the ESPP is recognized as a part of general and administrative expense.

Derivative Instruments

In the normal course of business, the Company is exposed to the effect of interest rate changes. The Company's objective in using interest rate derivatives is to manage its exposure to interest rate movements and add stability to interest expense. To accomplish this objective, the Company uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable rate amounts from a counterparty in exchange for the Company making fixed rate payments over the life of the agreement without exchange of the underlying notional amount.

The Company has a policy of only entering into contracts with established financial institutions based upon their credit ratings and other factors. When viewed in conjunction with the underlying and offsetting exposure that the derivatives are designed to hedge, the Company has not sustained a material loss from those instruments, nor does it anticipate any material adverse effect on its net income or financial position in the future from the use of derivatives.

The Company recognizes all derivatives on the consolidated balance sheets at fair value. Additionally, changes in fair value will affect either equity or earnings depending on whether the derivative instruments qualify as a hedge for accounting purposes and, if so, the nature of the hedging activity. When the underlying transaction is terminated or completed, all changes in the fair value of the instrument are marked-to-market with changes in value included in earnings each period until the instrument matures. Any derivative instrument used for risk management that does not meet the criteria for hedge accounting is marked-to-market each period in earnings. The Company does not use derivatives for trading or speculative purposes.

Income Taxes

The Company has elected and operates in a manner to be taxed as a REIT under the Internal Revenue Code of 1986, as amended (the "Code") for federal income tax purposes commencing with the tax year ended December 31, 2005. To qualify as a REIT, the Company is generally required to distribute at least 90% of its REIT taxable income (subject to certain adjustments) to its stockholders each year (the "90% Distribution Requirement"). As a REIT, the Company is entitled to a tax deduction for some or all of the dividends paid to stockholders. Accordingly, the Company generally will not be subject to federal income taxes as long as it currently distributes to stockholders an amount equal to or in excess of the Company's taxable income. If the Company fails to qualify as a REIT in any taxable year, without the benefit of certain relief provisions, the Company will be subject to federal and state income tax on its taxable income at regular corporate tax rates. Even if the Company qualifies for taxation as a REIT, the Company may be subject to certain state and local taxes on its income, property or net worth and federal income and excise taxes on its undistributed income.

From time to time, the Company may elect to treat certain of its consolidated subsidiaries as taxable REIT subsidiaries ("TRSs") pursuant to the Code. Among other activities, TRSs may participate in non-real estate related activities and/or perform non-customary services for tenants and are subject to federal and state income tax at regular corporate tax rates. Income tax expense or benefit is recognized as a part of other income and expense, net. During the years ended December 31, 2023, 2022, and 2021 the Company did not have any operations within TRSs.

Income tax expense for the years ended December 31, 2023, 2022 and 2021 generally pertains to Texas margin tax. The Company has accrued no material interest or penalties relating to income taxes. As of December 31, 2023, the Company's 2022, 2021, and 2020 tax years remain subject to examination by U.S. and various state tax jurisdictions.

Recently Issued Accounting Pronouncements

Standard	Description	Date of adoption	Effect on the financial statements or other significant matters
ASU No. 2023-07 <i>Improvements to Reportable Segment Disclosures (Topic 280)</i>	ASU No. 2023-07 is intended to improve financial reporting by requiring disclosure of incremental segment information on an annual and interim basis.	December 2024 (anticipated)	The Company is continuing to evaluate this guidance, but expects the standard to impact our disclosures around our single reportable segment and is not anticipated to have an impact on the Company's financial position, results of operations, or cash flows.

Other recently issued accounting standards or pronouncements not disclosed in the foregoing table have been excluded because they are either not relevant to the Company, or are not expected to have, or did not have, a material effect on the consolidated financial statements of the Company.

3. Revenue Recognition

Operating Leases

Minimum lease payments to be received under long-term operating leases and short-term specialty leases, excluding additional percentage rent based on tenants' sales volume and tenant reimbursements of certain operating expenses, and assuming no exercise of renewal options or early termination rights, are as follows:

For the year ending December 31,	As of December 31, 2023
2024	\$ 188,912
2025	178,186
2026	159,268
2027	127,019
2028	100,057
Thereafter	346,370
Total	\$ 1,099,812

The foregoing table includes payments from tenants who have taken possession of their space and tenants who have been moved to the cash basis of accounting for revenue recognition purposes. The remaining lease terms range from less than one year to fifty-seven years.

The following table reflects the disaggregation of lease income, net:

	Year Ended December 31,		
	2023	2022	2021
Minimum base rent	\$ 165,267	\$ 145,467	\$ 128,716
Real estate tax recoveries	31,220	30,107	27,874
Common area maintenance, insurance, and other recoveries	30,731	28,072	23,948
Ground rent income	19,044	14,991	13,167
Amortization of market-lease intangibles and inducements, net	3,343	5,589	4,318
Short-term and other lease income	4,389	4,333	3,378
Termination fee income	836	339	406
Straight-line rent adjustment, net	3,464	2,645	3,272
Reversal of (provision for) uncollectible straight-line rent	(115)	1,170	(468)
Provision for uncollectible billed rent and recoveries	(1,628)	(1,065)	(2,264)
Reversal of uncollectible billed rent and recoveries	595	1,332	5,003
Lease income, net	<u>\$ 257,146</u>	<u>\$ 232,980</u>	<u>\$ 207,350</u>

Other Fee Income

Other fee income was derived from services provided to the Company's unconsolidated real estate joint venture and deemed to be related party transactions. The property management, asset management, leasing and other services were provided over the term of the contract.

The following table reflects the disaggregation of other fee income:

	Timing of Satisfaction of Performance Obligations	Year Ended December 31,		
		2023	2022	2021
Property management fees	Over time	\$ 48	\$ 1,301	\$ 1,952
Asset management fees	Over time	32	882	1,128
Leasing commissions and other fees	Point in time	—	383	462
Other fee income		<u>\$ 80</u>	<u>\$ 2,566</u>	<u>\$ 3,542</u>

4. Acquired Properties

The following table reflects the retail properties acquired, accounted for as asset acquisitions, during the year ended December 31, 2023:

Date	Property	Metropolitan Area	Square Feet	Gross Acquisition Price	Assumption of Mortgage Debt
January 18, 2023	Bay Colony (a)	Houston, TX	416	\$ 79,100	\$ 41,969
January 18, 2023	Blackhawk Town Center (a)	Houston, TX	127	26,300	13,008
January 18, 2023	Cyfair Town Center (a)	Houston, TX	433	79,200	30,880
January 18, 2023	Stables Town Center (a)	Houston, TX	148	37,000	6,611
June 2, 2023	The Shoppes at Davis Lake	Charlotte, NC	91	22,400	—
			1,215	\$ 244,000	\$ 92,468

(a) These retail properties were acquired from the Company's unconsolidated joint venture, IAGM, as disclosed in *"Note 6. Investment in Unconsolidated Entities"*. The Company recognized a fair value adjustment of \$ 692 related to the pooled mortgage debt on these properties.

The following table reflects the retail properties acquired, accounted for as asset acquisitions, during the year ended December 31, 2022:

Date	Property	Metropolitan Area	Square Feet	Gross Acquisition Price	Assumption of Mortgage Debt
February 2, 2022	Shops at Arbor Trails	Austin, TX	357	\$ 112,190	\$ 31,500
February 2, 2022	Escarpment Village	Austin, TX	170	77,150	26,000
April 21, 2022	The Highlands of Flower Mound (a)	Dallas, TX	175	38,000	22,880
May 4, 2022	Bay Landing	Fort Myers, FL	63	10,425	—
June 10, 2022	Kyle Marketplace - Outparcel (b)	Austin, TX	—	705	—
October 28, 2022	Eastfield Village	Charlotte, NC	96	22,500	—
December 16, 2022	Stone Ridge Market (a)	San Antonio, TX	219	58,100	—
			1,080	\$ 319,070	\$ 80,380

(a) These retail properties were acquired from the Company's unconsolidated joint venture. See *"Note 6. Investment in Unconsolidated Entities"*. The Company recognized a fair value adjustment of \$ 499 related to the pooled mortgage debt on these properties.

(b) The Company acquired a parcel of vacant land adjacent to this retail property. The assets, liabilities and operations of the outparcel acquired are combined for presentation purposes with the retail property already owned by the Company.

Transaction costs of \$ 150 and \$ 1,079 were capitalized during the years ended December 31, 2023 and 2022, respectively.

5. Disposed Properties

The following table reflects the real property disposed of during the year ended December 31, 2023:

Date	Property	Metropolitan Area	Square Feet	Gross Disposition Price	Gain on Sale
June 20, 2023	Shops at Galleria (a)	Austin, TX	N/A	\$ 1,692	\$ 984
August 25, 2023	Trowbridge Crossing	Atlanta, GA	63	11,450	1,707
			63	\$ 13,142	\$ 2,691

(a) This disposition was related to the completion of a partial condemnation at one retail property.

The following table reflects the real property disposed of during the year ended December 31, 2022:

Date	Property	Metropolitan Area	Square Feet	Gross Disposition Price	Gain (Loss) on Sale, net
June 30, 2022	Centerplace of Greeley	Denver, CO	152	\$ 37,550	\$ 25,147
June 30, 2022	Cheyenne Meadows	Denver, CO	90	17,900	11,709
December 15, 2022	The Shops at Walnut Creek (a)	Denver, CO	225	55,000	1,393
			467	\$ 110,450	\$ 38,249

(a) The property's buyer assumed a \$ 28,600 mortgage payable secured by the property. We recognized a loss on debt extinguishment of \$ 80 related to the buyer's assumption.

6. Investment in Unconsolidated Entities

Joint Venture Interest in IAGM

As of December 31, 2022, the Company owned a 55 % interest in one unconsolidated entity, IAGM Retail Fund I, LLC ("IAGM"), a joint venture partnership between the Company and PGGM Private Real Estate Fund ("PGGM"). IAGM was formed on April 17, 2013 for the purpose of acquiring, owning, managing, and disposing of retail properties and sharing in the profits and losses from those retail properties and their activities.

On January 18, 2023, the Company acquired the four remaining retail properties from IAGM, for an aggregate purchase price of \$ 222.3 million, by acquiring 100 % of the membership interests in each of IAGM's wholly owned subsidiaries. The Company assumed aggregate mortgage debt of \$ 92.5 million and funded the remaining balance with its available liquidity. IAGM recognized a gain on sale of \$ 45.2 million, of which the Company's share was approximately \$ 24.9 million. Subsequent to the transaction, IAGM proportionately distributed substantially all net proceeds from the sale, of which the Company's share was approximately \$ 71.4 million. In connection with the foregoing, IAGM adopted a liquidation plan on January 11, 2023. On December 15, 2023, IAGM was fully liquidated.

The Company's aggregate deferred gains related to its previously owned equity interest in real estate acquisitions from IAGM of \$ 39.9 million are reflected in the basis of the respective acquired assets. Previously, deferred gains were reflected as a reduction of the Company's investment in IAGM and amortized to equity in earnings of unconsolidated entities.

On January 18, 2023, the Company acquired IAGM's two interest rate swap agreements which achieved fixed interest rates on an aggregate notional amount of \$ 75.0 million of the assumed pooled mortgage priced in a Secured Overnight Financing Rate ("SOFR"), each of which repriced monthly ("1-Month Term SOFR"). IAGM recognized a gain on sale of \$ 2.6 million representing the fair value of the derivatives, of which the Company's share was approximately \$ 1.4 million. The Company deferred its share of IAGM's gain on sale of derivatives, initially reflecting it within accumulated comprehensive income and amortizing it to interest expense, net, through the instruments' maturity date.

The following table reflects the real property disposed by IAGM since January 1, 2022:

Date	Property	Square Feet	Gross Disposition Price	IAGM's Gain (Loss) on Sale	The Company's Gain Deferral
March 3, 2022	Price Plaza (a)	206	\$ 39,100	\$ 3,751	\$ —
April 21, 2022	The Highlands of Flower Mound (b)	175	38,000	1,244	684
December 16, 2022	Stone Ridge Market (b)	219	58,100	12,287	6,758
December 22, 2022	Stables Town Center (c)	43	7,800	(244)	—
January 18, 2023	Bay Colony (b)	416	79,100	22,327	12,280
January 18, 2023	Blackhawk Town Center (b)	127	26,300	12,632	6,948
January 18, 2023	Cyfair Town Center (b)	433	79,200	4,713	2,592
January 18, 2023	Stables Town Center (b)	148	37,000	5,536	3,045

(a) The buyer assumed a \$ 17,800 mortgage payable secured by the property.

(b) The Company purchased these properties at a purchase price determined by a third party real estate valuation specialist.

(c) IAGM disposed of 43 square feet out of a total 191 square feet through a partial sale of the property.

Condensed Financial Information

The following table presents condensed balance sheet information for IAGM as of December 31, 2022:

	As of
	December 31, 2022
Assets:	
Net investment properties	\$ 161,312
Other assets	65,565
Total assets	\$ 226,877
Liabilities and equity:	
Mortgage debt, net	\$ 92,186
Other liabilities	7,392
Equity	127,299
Total liabilities and equity	\$ 226,877
Company's share of equity	\$ 70,869
Outside basis difference, net (a)	(14,738)
Carrying value of investments in unconsolidated entities	\$ 56,131

(a) The outside basis difference relates to the unamortized deferred gains on historical property sales from IAGM to the Company.

The following table presents condensed income statement information of IAGM:

	Year ended December 31,		
	2023	2022	2021
IAGM			
Total income	\$ 952	\$ 27,764	\$ 42,145
Depreciation and amortization	(622)	(10,508)	(14,437)
Property operating	(232)	(5,149)	(7,265)
Real estate taxes	(127)	(4,086)	(7,507)
Asset management fees	(32)	(882)	(1,128)
Interest expense, net	(143)	(4,002)	(5,637)
Other income and expense, net	447	(245)	(422)
Gain (loss) on debt extinguishment	444	(219)	(229)
Gain on sale of real estate, net	45,208	17,038	18,294
Gain on sale of derivatives	2,556	—	—
Net income	<u>\$ 48,451</u>	<u>\$ 19,711</u>	<u>\$ 23,814</u>
Company's share of net income	\$ 26,648	\$ 10,832	\$ 13,089
Outside basis adjustment for investee's sale of real estate, net	(27,175)	(7,169)	(6,691)
Outside basis adjustment for investee's NCI redemption	(30)	—	—
Equity in (losses) earnings of unconsolidated entities	<u>\$ (557)</u>	<u>\$ 3,663</u>	<u>\$ 6,398</u>

7. Intangible Assets, Liabilities, and Deferred Leasing Costs

The following table summarizes the Company's intangible assets, liabilities, and deferred leasing costs as of December 31, 2023 and 2022:

	As of December 31,	
	2023	2022
Intangible assets:		
In-place leases	\$ 183,139	\$ 158,155
Above-market leases	17,967	16,082
Intangible assets	201,106	174,237
Accumulated amortization:		
In-place leases	(78,177)	(66,347)
Above-market leases	(8,444)	(6,723)
Accumulated amortization	(86,621)	(73,070)
Intangible assets, net	<u><u>\$ 114,485</u></u>	<u><u>\$ 101,167</u></u>
Intangible liabilities:		
Below-market leases	\$ 52,412	\$ 55,501
Accumulated amortization	(22,068)	(25,843)
Intangible liabilities, net	<u><u>\$ 30,344</u></u>	<u><u>\$ 29,658</u></u>
Deferred leasing costs:		
Leasing costs	\$ 22,621	\$ 20,949
Accumulated amortization	(7,626)	(7,114)
Deferred leasing costs, net	<u><u>\$ 14,995</u></u>	<u><u>\$ 13,835</u></u>

The following table summarizes the amortization related to intangible assets, liabilities, and deferred leasing costs for the years ended December 31, 2023, 2022 and 2021:

	Year ended December 31,		
	2023	2022	2021
Intangible assets:			
In-place leases	\$ 32,179	\$ 20,993	\$ 18,730
Above-market leases	2,977	2,018	2,036
Amortization of intangible assets	<u><u>\$ 35,156</u></u>	<u><u>\$ 23,011</u></u>	<u><u>\$ 20,766</u></u>
Intangible liabilities:			
Amortization of below-market leases	<u><u>\$ 5,976</u></u>	<u><u>\$ 7,403</u></u>	<u><u>\$ 6,317</u></u>
Deferred leasing costs:			
Amortization of deferred leasing costs	<u><u>\$ 2,691</u></u>	<u><u>\$ 2,533</u></u>	<u><u>\$ 2,138</u></u>

The following table summarizes the amortization during the next five years and thereafter related to intangible assets, liabilities, and deferred leasing costs as of December 31, 2023:

Year ending December 31,	In-place leases	Above market leases	Below market leases	Deferred leasing costs
2024	\$ 24,961	\$ 2,368	\$ 4,312	\$ 3,507
2025	19,611	1,863	3,762	2,290
2026	15,047	1,461	3,237	2,123
2027	10,513	1,002	2,315	1,842
2028	7,764	753	1,840	1,515
Thereafter	27,066	2,076	14,878	3,718
Total	<u><u>\$ 104,962</u></u>	<u><u>\$ 9,523</u></u>	<u><u>\$ 30,344</u></u>	<u><u>\$ 14,995</u></u>

8. Debt

The Company's debt consists of mortgages payable, unsecured term loans, senior notes, and an unsecured revolving line of credit. The Company believes it has the ability to repay, refinance or extend any of its debt, and that it has adequate sources of funds to meet short-term cash needs. It is anticipated that the Company will use proceeds from property sales, cash on hand, and available capacity on credit agreements, if any, to repay, refinance or extend the mortgages payable maturing in the near term.

The Company's credit agreements and mortgage loans require compliance with certain covenants, such as debt service coverage ratios, investment restrictions and distribution limitations. As of December 31, 2023 and 2022, the Company was in compliance with all loan covenants.

On February 6, 2023, the Company extinguished the \$ 13.7 million mortgage payable secured by Renaissance Center with its available liquidity.

On October 17, 2023, the Company extended the maturity of its \$ 92.5 million cross-collateralized mortgage debt maturing in 2023 by exercising one of its two 12-month extension options. The maturity date of the mortgage debt is now November 2, 2024. On December 22, 2023, the Company partially paid down the mortgage debt by \$ 20.0 million, resulting in the release of Blackhawk Town Center from collateralization and an outstanding balance of \$ 72.5 million as of December 31, 2023.

Credit Agreements

On September 22, 2021, the Company entered into an amendment to the Revolving Credit Agreement (the "Amended Revolving Credit Agreement"), which provides for, among other things, an extension of the maturity of the \$ 350.0 million Revolving Credit Agreement to September 22, 2025, with two six-month extension options.

On September 22, 2021, the Company entered into an amendment to its \$ 400.0 million Term Loan Credit Agreement (the "Amended Term Loan Agreement"), which provides for, among other things, an extension of the maturity dates and a reallocation of indebtedness under the two outstanding tranches of term loans thereunder. The Amended Term Loan Agreement consists of a \$ 200.0 million 5-year tranche maturing on September 22, 2026, and a \$ 200.0 million 5.5 -year tranche maturing on March 22, 2027.

On May 11, 2022, the Company transitioned its Amended Revolving Credit Agreement and Amended Term Loan Agreement from 1-Month LIBOR to 1-Month Term SOFR.

On June 3, 2022, in connection with and upon effectiveness of the Note Purchase Agreement (as defined below) and in accordance with the terms of the Amended Term Loan Credit Agreement and Amended Revolving Credit Agreement, each of the administrative agents under such agreements released all of the subsidiary guarantors from their guaranty obligations that were previously made for the benefit of the lenders under such agreements.

Senior Notes

On August 11, 2022, the Company issued \$ 250.0 million aggregate principal amount of senior notes in a private placement, of which (i) \$ 150.0 million are designated as 5.07 % Senior Notes, Series A, due August 11, 2029 (the "Series A Notes") and (ii) \$ 100.0 million are designated as 5.20 % Senior Notes, Series B, due August 11, 2032 (the "Series B Notes" and, together with the Series A Notes, the "Notes") pursuant to a note purchase agreement (the "Note Purchase Agreement"), dated June 3, 2022, between the Company and the various purchasers named therein. The Notes were issued at par in accordance with the Note Purchase Agreement and pay interest semiannually on February 11th and August 11th until their respective maturities.

The Company may prepay at any time all or any part of the Notes, in an amount not less than 5 % of the aggregate principal amount of any series of the Notes then outstanding in the case of a partial prepayment, at 100 % of the principal amount prepaid plus accrued interest and a Make-Whole Amount (as defined in the Note Purchase Agreement). The Notes will be required to be absolutely and unconditionally guaranteed by certain subsidiaries of the Company that guarantee certain material credit facilities of the Company. Currently, there are no subsidiary guarantees of the Notes.

The following table summarizes the Company's debt as of December 31, 2023 and 2022:

	Maturity Date	Interest Rate Type	As of December 31, 2023		As of December 31, 2022	
			Interest Rate	Amount	Interest Rate	Amount
Mortgages Payable						
Fixed rate mortgages payable	Various	Fixed	4.01 % (a)	\$ 96,080	3.95 % (a)	\$ 109,812
Variable rate mortgages payable	11/2/2024	Variable	1M SOFR + 1.65 % (b)	72,468	—	—
Total				168,548		109,812
Term Loans						
\$ 200.0 million 5 years	9/22/2026	Fixed	2.81 % (c)	100,000	2.71 % (c)	100,000
\$ 200.0 million 5 years	9/22/2026	Fixed	2.81 % (c)	100,000	2.72 % (c)	100,000
\$ 200.0 million 5.5 years	3/22/2027	Fixed	2.77 % (c)	50,000	2.77 % (c)	50,000
\$ 200.0 million 5.5 years	3/22/2027	Fixed	2.76 % (c)	50,000	2.76 % (c)	50,000
\$ 200.0 million 5.5 years	3/22/2027	Fixed	4.99 % (d)	100,000	1M SOFR + 1.30 % (b)	100,000
Total				400,000		400,000
Senior Notes						
\$ 150.0 million Series A Notes	8/11/2029	Fixed	5.07 %	150,000	5.07 %	150,000
\$ 100.0 million Series B Notes	8/11/2032	Fixed	5.20 %	100,000	5.20 %	100,000
Total				250,000		250,000
Revolving Line of Credit						
\$ 350.0 million total capacity	9/22/2025	Variable	1M SOFR + 1.14 % (b)(e)	—	1M SOFR + 1.14 % (b)(e)	—
Total debt			4.29 %	818,548	4.08 %	759,812
Debt discounts and issuance costs, net				(3,980)		(5,261)
Debt, net				\$ 814,568		\$ 754,551

(a) Interest rates reflect the weighted average of the Company's mortgages payable.

(b) As of December 31, 2023 and 2022, 1-Month Term SOFR was 5.35% and 4.36%, respectively.

(c) Interest rates reflect the fixed rates achieved through the Company's interest rate swaps.

(d) As of April 3, 2023, the variable portion was swapped to 3.69 %, achieving a fixed rate of 4.99 % through the maturity date.

(e) Interest rate applies to drawn balance only. Additional annual facility fee of 0.15 % applies to entire line of credit capacity.

The following table summarizes the scheduled maturities of the Company's mortgages payable as of December 31, 2023:

Scheduled maturities by year:	As of December 31, 2023
2024	\$ 88,168
2025	22,880
2026	—
2027	26,000
2028	—
Thereafter	31,500
Total	\$ 168,548

Interest Rate Swaps

As of December 31, 2023, the Company is party to five effective interest rate swap agreements and two interest rate forward swap agreements, which address the periods between the maturity dates of the effective swaps and the maturity dates of the Amended Term Loan Agreement. In tandem, the interest rate swaps achieve fixed interest rates for a constant notional amount through the maturity dates of the Amended Term Loan Agreement.

On January 18, 2023, the Company acquired IAGM's two interest rate swap agreements, which achieve fixed interest rates on an aggregate notional amount of \$ 75.0 million of the assumed pooled mortgage, each priced in 1-Month Term SOFR. The two acquired interest rate swap agreements expired at the maturity date of November 2, 2023.

On March 16, 2023, the Company entered into one interest rate swap agreement with a notional amount of \$ 100.0 million at 3.69 %, achieving a fixed interest rate of 4.99 %. As of the effective date of April 3, 2023, the entirety of the Company's variable rate term loans were swapped to fixed rates through the maturity dates of the Amended Term Loan Agreement.

The following table summarizes the Company's five effective and two forward interest rate swaps as of December 31, 2023:

Interest Rate Swaps	Notional Amount	Company Receives Variable Rate of	Company Pays Fixed Rate of	Fixed Rate Achieved	Effective Date	Maturity Date
5.5 Year Term Loan	50,000	1-Month SOFR	1.47 %	2.77 %	Dec 2, 2019	Jun 21, 2024
5.5 Year Term Loan	50,000	1-Month SOFR	1.46 %	2.76 %	Dec 2, 2019	Jun 21, 2024
5.5 Year Term Loan	100,000	1-Month SOFR	3.69 %	4.99 %	Apr 3, 2023	Mar 22, 2027
5 Year Term Loan	100,000	1-Month SOFR	1.51 %	2.81 %	Dec 21, 2023	Sep 22, 2026
5 Year Term Loan	100,000	1-Month SOFR	1.51 %	2.81 %	Dec 21, 2023	Sep 22, 2026
	<u>\$ 400,000</u>					
5.5 Year Term Loan	50,000	1-Month SOFR	1.48 %	2.78 %	Jun 21, 2024	Mar 22, 2027
5.5 Year Term Loan	50,000	1-Month SOFR	1.54 %	2.84 %	Jun 21, 2024	Mar 22, 2027
	<u>\$ 100,000</u>					

The following table summarizes the Company's four effective and four forward interest rate swaps as of December 31, 2022:

Interest Rate Swaps	Notional Amount	Company Receives Variable Rate of	Company Pays Fixed Rate of	Fixed Rate Achieved	Effective Date	Maturity Date
5 Year Term Loan	\$ 100,000	1-Month SOFR	1.41 %	2.71 %	Dec 2, 2019	Dec 21, 2023
5 Year Term Loan	100,000	1-Month SOFR	1.42 %	2.72 %	Dec 2, 2019	Dec 21, 2023
5.5 Year Term Loan	50,000	1-Month SOFR	1.47 %	2.77 %	Dec 2, 2019	Jun 21, 2024
5.5 Year Term Loan	50,000	1-Month SOFR	1.46 %	2.76 %	Dec 2, 2019	Jun 21, 2024
	<u>\$ 300,000</u>					
5 Year Term Loan	100,000	1-Month SOFR	1.51 %	2.81 %	Dec 21, 2023	Sep 22, 2026
5 Year Term Loan	100,000	1-Month SOFR	1.51 %	2.81 %	Dec 21, 2023	Sep 22, 2026
5.5 Year Term Loan	50,000	1-Month SOFR	1.48 %	2.78 %	Jun 21, 2024	Mar 22, 2027
5.5 Year Term Loan	50,000	1-Month SOFR	1.54 %	2.84 %	Jun 21, 2024	Mar 22, 2027
	<u>\$ 300,000</u>					

The following table summarizes the effects of derivative financial instruments on the consolidated financial statements:

Location and amount of gain recognized in accumulated comprehensive income	Location and amount of gain (loss) reclassified from accumulated comprehensive income into net income (loss)						Total interest expense presented in the consolidated statements of operations in which the effects of cash flow hedges are recorded				
	2023			2022							
	2023	2022	2021	2023	2022	2021					
Unrealized gain on derivatives	\$ 6,228	\$ 32,052	\$ 3,795	Interest expense, net	\$ 14,875	\$ 1,009	\$ (4,332)	Interest expense, net	\$ 38,138	\$ 26,777	\$ 16,261

9. Fair Value Measurements

Recurring Measurements

The following financial instruments are remeasured at fair value on a recurring basis:

Cash Flow Hedges: (a) (b)	Fair Value Measurements as of					
	December 31, 2023 (c)			December 31, 2022 (d)		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
Derivative interest rate swaps	—	\$ 18,074	—	—	\$ 26,721	—

- (a) During the twelve months subsequent to December 31, 2023, an estimated \$ 10,275 of derivative interest rate balances recognized in accumulated comprehensive income will be reclassified into earnings.
- (b) As of December 31, 2023 and 2022, the Company determined that the credit valuation adjustments associated with nonperformance risk are not significant to the overall valuation of its derivatives. As a result, the Company's derivative valuations in their entirety are classified as Level 2 of the fair value hierarchy.
- (c) The Company's derivative assets or liabilities are recognized as a part of deferred costs and other assets, net or other liabilities, respectively.
- (d) The Company's derivative assets or liabilities are recognized as a part of deferred costs and other assets, net or other liabilities, respectively. IAGM's derivative assets or liabilities were recognized as a part of investment in unconsolidated entities.

Level 1

At December 31, 2023 and 2022, the Company had no Level 1 recurring fair value measurements.

Level 2

To calculate the fair value of the derivative interest rate instruments, the Company primarily uses quoted prices for similar contracts and inputs based on data that are observed in the forward yield curve that is widely observable in the marketplace. The Company also incorporates credit valuation adjustments to appropriately reflect both its own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements that utilize Level 3 inputs, such as estimates of current credit spreads.

Level 3

At December 31, 2023 and 2022, the Company had no Level 3 recurring fair value measurements.

Non-Recurring Measurements

Investment Properties

During the years ended December 31, 2023 and 2022, the Company had no Level 3 nonrecurring fair value measurements.

Financial Instruments Not Measured at Fair Value

The following table summarizes the estimated fair value of financial instruments presented at carrying values in the Company's consolidated financial statements as of December 31, 2023 and 2022:

	December 31, 2023			December 31, 2022		
	Carrying Value	Estimated Fair Value	Market Interest Rate	Carrying Value	Estimated Fair Value	Market Interest Rate
Mortgages payable	\$ 168,548	\$ 161,320	6.86 %	\$ 109,812	\$ 100,218	6.81 %
Senior notes	250,000	233,635	6.31 %	250,000	235,820	6.05 %
Term loans	400,000	399,539	5.10 %	400,000	401,470	5.11 %
Revolving line of credit	—	—	N/A	—	—	N/A

The market interest rates used to estimate the fair value of the Company's mortgages payable, senior notes, term loans, and revolving line of credit reflect the terms currently available on similar borrowing terms to borrowers with credit profiles similar to that of the Company's. The Company classifies its debt instrument valuations within Level 2 of the fair value hierarchy.

10. Earnings Per Share and Equity Transactions

Basic earnings per share ("EPS") is computed by dividing net income or loss attributed to common shares by the weighted average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that may occur from awards issued pursuant to the stock-based compensation plans.

The following table reconciles the amounts used in calculating basic and diluted EPS:

	Year ended December 31,		
	2023	2022	2021
Numerator:			
Net income (loss) attributed to common shares	\$ 5,269	\$ 52,233	\$ (5,360)
Earnings allocated to unvested restricted shares	—	—	—
Net income (loss) attributed to common shares - basic and diluted	<u><u>\$ 5,269</u></u>	<u><u>\$ 52,233</u></u>	<u><u>\$ (5,360)</u></u>
Denominator:			
Weighted average common shares outstanding - basic	67,531,898	67,406,233	71,072,933
Dilutive effect of unvested restricted shares (a)	281,282	119,702	—
Weighted average common shares outstanding - diluted	<u><u>67,813,180</u></u>	<u><u>67,525,935</u></u>	<u><u>71,072,933</u></u>
Basic and diluted earnings per common share:			
Net income (loss) per common share - basic	\$ 0.08	\$ 0.77	\$ (0.08)
Net income (loss) per common share - diluted	\$ 0.08	\$ 0.77	\$ (0.08)

(a) For the year ended December 31, 2021, unvested restricted shares were anti-dilutive.

ATM Program

On March 7, 2022, the Company established an at-the-market equity offering program (the "ATM Program") through which the Company may sell from time to time up to an aggregate of \$ 250.0 million of its common stock. In connection with the ATM Program, the Company may sell shares of its common stock to or through sales agents, or may enter into separate forward sale agreements with one of the agents, or one of their respective affiliates, as a forward purchaser.

During the quarter ended December 31, 2023, the Company raised \$ 5.4 million of net proceeds under the ATM Program, after \$ 0.1 million in commissions, through the issuance of 208,040 shares of common stock at a weighted average price of \$ 26.13 per share. As of December 31, 2023, \$ 244.6 million of common stock remains available for issuance under the ATM Program.

Share Repurchase Programs

On February 23, 2022, the Company established a share repurchase program (the "SRP") of up to \$ 150.0 million of the Company's outstanding shares of common stock. The SRP may be suspended or discontinued at any time, and does not obligate the Company to repurchase any dollar amount or particular amount of shares. As of December 31, 2023, the Company has not repurchased any common stock under the SRP.

During the year ended December 31, 2021, the Company repurchased 755,643 shares of the Company's outstanding common stock at a price per share of \$ 21.70, reflecting a 25% discount to an estimated Net Asset Value ("NAV") per share of \$ 28.90 as of December 1, 2020 established by the Company's Board.

11. Stock-Based Compensation

Incentive Award Plan

The Company is authorized to issue or transfer up to 3,000,000 shares (the "Share Limit") of the Company's common stock pursuant to awards granted under the Incentive Award Plan. As of December 31, 2023, 536,429 shares were available for future issuance under the Incentive Award Plan. Outstanding restricted stock unit ("RSU") awards are categorized as either time-based awards, performance-based awards, or market-based awards. All awards are granted at fair value, earn dividends throughout the vesting period, and have no voting rights.

Market-based awards are valued as of the grant date utilizing a Monte Carlo simulation model that assesses the probability of satisfying certain market performance thresholds over a three year performance period.

The following table summarizes the Company's significant assumptions used in the Monte Carlo simulation models:

	At Grant Date	
	2023	2022
Volatility	34.00 %	33.89 %
Risk free interest rate	4.45 %	0.79 % - 1.76 %
Dividend Yield	3.20 %	3.24 %

The following table summarizes the Company's RSU activity during the years ended December 31, 2023, 2022, and 2021:

	Unvested Time-Based RSUs	Unvested Performance and Market-Based RSUs	Weighted Average Grant Date Price Per Share
Outstanding as of January 1, 2021	110,382	332,095	\$ 31.40
Shares granted	209,539	218,835	\$ 28.90
Shares vested	(167,806)	—	\$ 30.04
Shares forfeited	(13,880)	(79,562)	\$ 30.73
Outstanding as of December 31, 2021	138,235	471,368	\$ 30.12
Shares granted	127,862	396,338	\$ 18.97
Shares vested	(135,491)	(76,520)	\$ 29.36
Unearned performance shares added back to Share Limit	—	(61,102)	\$ 31.40
Shares forfeited	(7,179)	(18,033)	\$ 23.42
Outstanding as of December 31, 2022	123,427	712,051	\$ 23.35
Shares granted	152,393	445,828	\$ 18.40
Shares vested	(126,885)	(60,042)	\$ 29.50
Unearned performance shares added back to Share Limit	—	(69,803)	\$ 31.40
Shares forfeited	(1,343)	(3,263)	\$ 19.51
Outstanding as of December 31, 2023	147,592	1,024,771	\$ 19.36

Employee Stock Purchase Plan

Employees may purchase up to an aggregate of 3,300,000 shares of the Company's common stock under the ESPP, of which 3,288,272 shares remain available as of December 31, 2023.

The following table summarizes the Company's common stock activity under the ESPP:

	Year ended December 31, 2023
Shares purchased	11,728
Issuance price	\$ 20.07
Issuance proceeds	\$ 235

Stock-Based Compensation Expense

The following table summarizes the Company's stock-based compensation expense:

	Year ended December 31,		
	2023	2022	2021
Incentive Award Plan, net (a)	\$ 8,953	\$ 6,541	\$ 9,116
Employee Stock Purchase Plan (b)	68	—	—
Stock-based compensation expense, net	<u>\$ 9,021</u>	<u>\$ 6,541</u>	<u>\$ 9,116</u>

(a) As of December 31, 2023, there was \$ 9,975 of total estimated unrecognized compensation expense related to the Incentive Award Plan which will be recognized through December 2025.

(b) As of December 31, 2023, there was \$ 205 of total estimated unrecognized compensation expense related to the ESPP which will be recognized through June 2025 .

12. Commitments and Contingencies

Legal Matters

The Company is subject, from time to time, to various types of third-party legal claims or litigation that arise in the ordinary course of business, including, but not limited to, property loss claims, personal injury or other damages resulting from contact with the Company's properties. These claims and lawsuits and any resulting damages are generally covered by the Company's insurance policies. The Company accrues for legal costs associated with loss contingencies when these costs are probable and reasonably estimable. While the resolution of these matters cannot be predicted with certainty, based on currently available information, management does not expect that the final outcome of any pending claims or legal proceedings will have a material adverse effect on the financial condition, results of operations or cash flows of the Company.

Captive Insurance Company

In April 2023, the Company formed a wholly-owned captive insurance company (the "Captive") which provides insurance coverage for all losses below the deductibles of the Company's third party liability insurance policies relating to wind, flood, named windstorm, earthquake, fire, and other property-related perils. The Company formed the Captive as part of its overall risk management program and to stabilize insurance costs, manage exposures, and recoup expenses through the function of the captive program. The Captive is capitalized in accordance with the applicable regulatory requirements. As of December 31, 2023, the Captive had no outstanding or unpaid claims.

Operating Lease Commitments

The Company is the lessee under various operating leases for corporate office space for which the Company recognizes right-of-use ("ROU") assets and related lease liabilities.

The following table summarizes the Company's operating lease arrangements as of December 31, 2023 and 2022:

	Balance Sheet Caption	As of	
		December 31, 2023	December 31, 2022
Operating lease ROU assets	Deferred costs and other assets, net	\$ 3,220	\$ 3,220
Operating lease ROU accumulated amortization	Deferred costs and other assets, net	\$ (967)	\$ (570)
Operating lease liabilities	Other liabilities	\$ 3,023	\$ 3,265
Weighted-average remaining lease term		6.0 years	6.7 years
Weighted-average discount rate		4.47 %	4.35 %

The following table summarizes the Company's operating lease arrangements for the years ended December 31, 2023 and 2022:

	Statement of Operations and Comprehensive Income (Loss) Caption	Year ended December 31,	
		2023	2022
Minimum lease payments	General and administrative	\$ 570	\$ 528
Variable lease payments	General and administrative	298	343
Short-term lease payments	General and administrative	114	97
Total lease cost		<u>\$ 982</u>	<u>\$ 968</u>

The following table summarizes the Company's future minimum operating lease obligations as of December 31, 2023:

Scheduled minimum payments by year:	Future Minimum Lease Payments
2024	\$ 628
2025	511
2026	517
2027	529
2028	522
Thereafter	786
Total expected minimum lease obligation	3,493
Less: Amount representing interest (a)	(470)
Present value of net minimum lease payments	\$ 3,023

(a) Interest includes the amount necessary to reduce the total expected minimum lease obligations to present value calculated at the Company's incremental borrowing rate.

13. Subsequent Events

In preparing its consolidated financial statements, the Company evaluated events and transactions occurring after December 31, 2023 through the date the financial statements were issued for recognition and disclosure purposes.

On February 1, 2024, the Company acquired The Plant, a 57,000 square foot neighborhood center, anchored by Sprouts Farmers Market, in Chandler, Arizona for a gross acquisition price of \$ 29.5 million. The Company used cash on hand and assumed \$ 13.0 million of existing mortgage debt to fund the acquisition.

INVENTRUST PROPERTIES CORP.
Schedule III - Real Estate and Accumulated Depreciation
(amounts stated in thousands)

PROPERTY NAME Location	Encumbrance	Initial Cost (A)				Gross amount at which carried at end of period						Accumulated Depreciation (D,E)	Year Acquired
		Land	Buildings and Improvements	Adjustments to Land Basis (B)	Adjustments to Basis (B)	Land	Buildings and Improvements	Total (C)					
Antoine Town Center Houston, TX	\$ —	\$ 5,327	\$ 14,333	\$ —	\$ (612)	\$ 5,327	\$ 13,721	\$ 19,048	\$ 2,524				2020
Bay Colony Houston, TX	38,276	8,287	41,714	—	—	8,287	41,714	50,001	1,835				2023
Bay Landing Bonita Springs, FL	—	1,687	9,283	—	67	1,687	9,350	11,037	666				2022
Bear Creek Village Center Wildomar, CA	—	3,523	12,384	—	426	3,523	12,810	16,333	6,685				2009
Bent Tree Plaza Raleigh, NC	—	1,983	7,093	—	1,941	1,983	9,034	11,017	4,619				2009
Blackhawk Town Center Houston, TX	—	10,265	6,156	—	—	10,265	6,156	16,421	449				2023
Buckhead Crossing Atlanta, GA	—	7,565	27,104	—	3,527	7,565	30,631	38,196	15,491				2009
Campus Marketplace San Marcos, CA	—	26,928	43,445	55	969	26,983	44,414	71,397	11,125				2017
Cary Park Town Center Cary, NC	—	5,555	17,280	—	22	5,555	17,302	22,857	4,087				2017
Commons at University Place Durham, NC	—	3,198	17,909	—	(8)	3,198	17,901	21,099	3,028				2019
Coweta Crossing Newnan, GA	—	1,143	4,590	—	40	1,143	4,630	5,773	2,637				2009
Custer Creek Village Richardson, TX	—	4,750	12,245	—	1,302	4,750	13,547	18,297	6,839				2007
Cyfair Town Center Houston, TX	28,163	16,184	48,566	—	—	16,184	48,566	64,750	2,036				2023
Eastfield Village Charlotte, NC	—	2,327	14,321	—	119	2,327	14,440	16,767	762				2022
Eldorado Marketplace Frisco, TX	—	15,732	49,311	—	597	15,732	49,908	65,640	7,652				2019
Eldridge Town Center & Windermere Village Houston, TX	—	5,380	22,994	1,977	6,095	7,357	29,089	36,446	13,655				2005
Escarpment Village Austin, TX	26,000	19,641	51,763	—	227	19,641	51,990	71,631	3,939				2022
Garden Village San Pedro, CA	—	3,188	16,522	3,268	1,799	6,456	18,321	24,777	9,103				2009
Gateway Market Center St. Petersburg, FL	—	13,600	4,992	—	5,165	13,600	10,157	23,757	3,692				2010
Kennesaw Marketplace Kennesaw, GA	—	12,587	51,860	—	458	12,587	52,318	64,905	10,272				2018
Kyle Marketplace Kyle, TX	—	6,076	48,220	711	626	6,787	48,846	55,633	10,583				2017

INVENTRUST PROPERTIES CORP.
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(amounts stated in thousands)

PROPERTY NAME Location	Encumbrance	Initial Cost (A)				Gross amount at which carried at end of period						Accumulated Depreciation (D,E)	Year Acquired
		Land	Buildings and Improvements	Adjustments to Land Basis (B)	Adjustments to Basis (B)	Land	Buildings and Improvements	Total (C)					
Lakeside & Lakeside Crossing													
Winter Park, FL	\$ —	\$ 16,594	\$ 41,085	\$ —	\$ (112)	\$ 16,594	\$ 40,973	\$ 57,567	\$ 6,996				2019
Market at Westlake Westlake Hills, TX	—	1,200	6,274	(64)	(42)	1,136	6,232	7,368	3,385				2007
Northcross Commons Charlotte, NC	—	7,591	21,303	—	824	7,591	22,127	29,718	5,584				2016
Old Grove Marketplace Oceanside, CA	—	12,545	8,902	—	502	12,545	9,404	21,949	2,613				2016
Pavilion at La Quinta La Quinta, CA	—	15,200	20,947	—	2,053	15,200	23,000	38,200	11,884				2009
Peachland Promenade Port Charlotte, FL	—	1,742	6,502	4,158	10,368	5,900	16,870	22,770	3,381				2009
PGA Plaza Palm Beach Gardens													
Palm Beach Gardens, FL	—	10,414	75,730	—	1,247	10,414	76,977	87,391	14,505				2018
Plantation Grove Ocoee, FL	7,300	3,705	6,300	—	1,009	3,705	7,309	11,014	2,521				2014
Plaza Midtown Atlanta, GA	—	5,295	23,946	—	770	5,295	24,716	30,011	5,158				2017
Prestonwood Town Center Dallas, TX	—	22,055	22,140	—	(450)	22,055	21,690	43,745	2,468				2021
Renaissance Center Durham, NC	—	26,713	96,141	—	6,424	26,713	102,565	129,278	28,919				2016
Rio Pinar Plaza Orlando, FL	—	5,171	26,903	676	1,918	5,847	28,821	34,668	8,127				2015
River Oaks Santa Clarita, CA	—	24,598	88,418	—	2,613	24,598	91,031	115,629	19,242				2017
Riverview Village Arlington, TX	—	6,000	9,649	—	448	6,000	10,097	16,097	5,575				2007
Riverwalk Market Flower Mound, TX	—	5,931	23,922	—	902	5,931	24,824	30,755	6,420				2016
Rose Creek Woodstock, GA	—	1,443	5,630	—	550	1,443	6,180	7,623	3,208				2009
Sandy Plains Centre Marietta, GA	—	12,364	27,270	652	2,223	13,016	29,493	42,509	5,094				2018
Sarasota Pavilion Sarasota, FL	—	12,000	25,823	—	6,684	12,000	32,507	44,507	13,823				2010
Scofield Crossing Austin, TX	—	8,100	4,992	(576)	2,937	7,524	7,929	15,453	3,229				2007
Shops at Arbor Trails Austin, TX	31,500	28,233	76,769	—	144	28,233	76,913	105,146	6,027				2022

INVENTRUST PROPERTIES CORP.
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(amounts stated in thousands)

PROPERTY NAME Location	Encumbrance	Initial Cost (A)				Gross amount at which carried at end of period						Accumulated Depreciation (D,E)	Year Acquired
		Land	Buildings and Improvements	Adjustments to Land Basis (B)	Adjustments to Basis (B)	Land	Buildings and Improvements	Total (C)					
Shops at Fairview Town Center Fairview, TX	\$ —	\$ 7,299	\$ 25,233	\$ —	\$ 1,117	\$ 7,299	\$ 26,350	\$ 33,649	\$ 4,126			2019	
Shops at the Galleria Bee Cave, TX	—	52,104	75,651	(597)	4,433	51,507	80,084	131,591	21,974			2016	
Sonterra Village San Antonio, TX	—	5,150	15,095	(181)	880	4,969	15,975	20,944	4,456			2015	
Southern Palm Crossing Royal Palm Beach, FL	—	37,735	49,843	(745)	2,120	36,990	51,963	88,953	8,844			2019	
Stables Town Center Houston, TX	6,029	5,899	20,439	—	—	5,899	20,439	26,338	889			2023	
Stevenson Ranch Stevenson Ranch, CA	—	29,519	39,190	—	1,565	29,519	40,755	70,274	10,804			2016	
Stone Ridge Market San Antonio, TX	—	8,935	38,754	—	(6,501)	8,935	32,253	41,188	1,477			2022	
Suncrest Village Orlando, FL	8,400	6,742	6,403	—	11,308	6,742	17,711	24,453	2,443			2014	
Sycamore Commons Matthews, NC	—	12,500	31,265	—	2,277	12,500	33,542	46,042	16,873			2010	
The Centre on Hugh Howell Tucker, GA	—	2,250	11,091	—	1,013	2,250	12,104	14,354	6,390			2007	
The Highlands of Flower Mound Flower Mound, TX	22,880	6,330	24,374	—	(485)	6,330	23,889	30,219	1,852			2022	
The Parke Cedar Park, TX	—	9,271	83,078	—	1,371	9,271	84,449	93,720	19,332			2017	
The Pointe at Creedmoor Raleigh, NC	—	7,507	5,454	—	82	7,507	5,536	13,043	1,670			2016	
The Shoppes at Davis Lake Charlotte, NC	—	6,232	12,903	—	—	6,232	12,903	19,135	341			2023	
The Shops at Town Center Germantown, MD	—	19,998	29,776	—	1,110	19,998	30,886	50,884	7,525			2017	
Thomas Crossroads Newnan, GA	—	1,622	8,322	—	1,944	1,622	10,266	11,888	4,853			2009	
Travilah Square Rockville, MD	—	8,964	39,836	—	607	8,964	40,443	49,407	5,914			2019	
University Oaks Shopping Center Round Rock, TX	—	7,250	25,326	(170)	8,934	7,080	34,260	41,340	17,141			2010	
Westfork Plaza & Paraiso Parc Pembroke Pines, FL	—	28,267	124,019	—	6,129	28,267	130,148	158,415	31,238			2017	

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Schedule III - Real Estate and Accumulated Depreciation
(amounts stated in thousands)

PROPERTY NAME Location	Encumbrance	Initial Cost (A)				Gross amount at which carried at end of period						Accumulated Depreciation (D,E)	Year Acquired
		Land	Buildings and Improvements	Adjustments to Land Basis (B)	Adjustments to Basis (B)	Land	Buildings and Improvements	Total (C)					
Westpark Shopping Center Glen Allen, VA	\$ —	\$ 7,462	\$ 24,164	\$ (4)	\$ 5,215	\$ 7,458	\$ 29,379	\$ 36,837	\$ 7,852				2013
Windward Commons Alpharetta, GA	—	12,823	13,779	(171)	881	12,652	14,660	27,312	4,138				2016
Total corporate assets	—	—	—	—	3,619	—	3,619	3,619	1,382				-
Total	\$ <u>168,548</u>	\$ <u>685,679</u>	\$ <u>1,844,726</u>	\$ <u>8,989</u>	\$ <u>111,391</u>	\$ <u>694,668</u>	\$ <u>1,956,117</u>	\$ <u>2,650,785</u>	\$ <u>461,352</u>				
Construction in progress		—	—	—	5,889	—	5,889	5,889	—				
Total investment properties		\$ <u>685,679</u>	\$ <u>1,844,726</u>	\$ <u>8,989</u>	\$ <u>117,280</u>	\$ <u>694,668</u>	\$ <u>1,962,006</u>	\$ <u>2,656,674</u>	\$ <u>461,352</u>				

INVENTRUST PROPERTIES CORP.

Schedule III - Real Estate and Accumulated Depreciation
(amounts stated in thousands)

Notes to Schedule III

The aggregate cost of real estate owned at December 31, 2023 for federal income tax purposes was approximately \$ 2,996,600 (unaudited).

- (A) The initial cost to the Company represents the original purchase price of the asset, including amounts incurred subsequent to acquisition which were contemplated at the time the property was acquired.
- (B) Cost capitalized subsequent to acquisition includes additional tangible costs associated with investment properties. Amount also includes impairment charges recorded subsequent to acquisition to reduce basis.
- (C) Reconciliation of total investment properties:

	2023	2022	2021
Balance at January 1,	\$ 2,481,662	\$ 2,273,103	\$ 2,221,689
Acquisitions and capital improvements	191,666	307,177	71,324
Disposals and write-offs of assets no longer in service	(16,654)	(98,618)	(19,910)
Balance at December 31,	<u><u>\$ 2,656,674</u></u>	<u><u>\$ 2,481,662</u></u>	<u><u>\$ 2,273,103</u></u>

- (D) Reconciliation of accumulated depreciation:

	2023	2022	2021
Balance at January 1,	\$ 389,361	\$ 350,256	\$ 292,248
Depreciation expense	78,560	71,428	66,275
Disposal and write-offs of assets no longer in service	(6,569)	(32,323)	(8,267)
Balance at December 31,	<u><u>\$ 461,352</u></u>	<u><u>\$ 389,361</u></u>	<u><u>\$ 350,256</u></u>

- (E) Depreciation is computed based upon the following estimated lives:

Buildings and other improvements	15 - 30 years
Tenant improvements	Life of the lease
Furniture, fixtures and equipment	3 - 20 years

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

The following is a brief description of the securities of InvenTrust Properties Corp. ("our company," "we," "us" or "our") registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The following description of our capital stock does not purport to be complete and is subject to, and qualified in its entirety by, our charter (our "charter"), and our fourth amended and restated bylaws (our "bylaws"), each of which is incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit is a part. We encourage you to read our charter, bylaws and the applicable provisions of the Maryland General Corporation Law (the "MGCL") for additional information. As of December 31, 2023 and the date hereof, our common stock, \$0.001 par value per share ("Common Stock"), is the only class of our securities registered under Section 12 of the Exchange Act.

General

Our charter provides that we may issue up to 146,000,000 shares of Common Stock and up to 40,000,000 shares of preferred stock, \$0.001 par value per share ("Preferred Stock"). Our board of directors (the "Board of Directors" or the "Board") has the power, with the approval of a majority of the Board and without stockholder approval, to amend our charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series we are authorized to issue. As of December 31, 2023, we had 67,807,831 shares of our Common Stock issued and outstanding.

Under Maryland law, stockholders generally are not personally liable for our debts or obligations solely as a result of their status as stockholders.

Common Stock

All of the outstanding shares of our Common Stock are duly authorized, fully paid and nonassessable. Subject to the preferential rights of holders of any other class or series of our stock, and to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, our common stockholders are entitled to receive dividends when authorized by our Board and declared by us out of assets legally available for the payment of dividends and to share ratably in our assets legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of, or adequate provision for, all of our known debts and liabilities.

Subject to our charter restrictions on ownership and transfer of our stock and except as may otherwise be provided in our charter, each outstanding share of our Common Stock entitles the holder thereof to one vote on all matters submitted to a vote of stockholders, including the election of directors. Except as provided with respect to any other class or series of stock, our common stockholders possess exclusive voting power. Cumulative voting in the election of directors is not permitted.

Our common stockholders have no preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any of our capital stock. Subject to our charter restrictions on ownership and transfer of our stock, holders of shares of our Common Stock have equal dividend, liquidation and other rights. Our charter provides that our stockholders generally have no appraisal rights.

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, convert into another entity, sell all or substantially all of its assets, engage in a statutory share exchange or engage in similar transactions unless declared advisable by the board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of all of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides for approval of these matters by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on such matters.

Our charter authorizes our Board of Directors to reclassify any unissued shares of our Common Stock into other classes or series of stock, to establish the designation and number of shares of each such class or series and to set, subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of each such class or series.

Preferred Stock

Under the terms of our charter, our Board of Directors is authorized to classify any unissued shares of our Preferred Stock and to reclassify any previously classified but unissued shares of Preferred Stock into other classes or series of stock. Before the issuance of shares of each class or series, our Board of Directors is required by Maryland law and by our charter to set, subject to our charter restrictions on ownership and transfer of stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption for each class or series. As of the date of this filing, we have no outstanding shares of Preferred Stock, and we presently have no plans to issue any shares or classes of Preferred Stock.

Power to Issue Additional Shares of Common Stock and Preferred Stock

We believe that the power to issue additional shares of our Common Stock or Preferred Stock and to classify or reclassify unissued shares of our Common Stock or Preferred Stock and to issue the classified or reclassified shares provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. These actions can be taken without action by our stockholders, unless stockholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which our stock may be listed or traded. Although we have no present intention of doing so, we could issue a class or series of stock that (i) has priority over shares of our Common Stock with respect to dividends or other distributions or rights upon liquidation, exclusive or class voting rights or with other terms and conditions, or (ii) could delay, defer or prevent a transaction or a change in control of our company that might involve a premium price for our Common Stock or that our common stockholders otherwise believe to be in their best interest. In addition, our issuance of

additional shares of stock in the future could dilute the voting and other rights of your shares. See *Certain Provisions of Maryland Law and Our Charter and Bylaws.*"

Restrictions on Ownership and Transfer

In order to maintain our qualification as a REIT under the Internal Revenue Code of 1986, as amended, (the "Code"), our shares of stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

In order to qualify as a REIT and for other purposes, our charter, subject to certain exceptions, contains restrictions on the number of shares of our stock that a person, as defined by the charter, may own. Our charter provides that, subject to the exceptions described below, no person may beneficially or constructively own (i) more than 9.8% in value or in number of shares, whichever is more restrictive, of the outstanding shares of our Common Stock, or (ii) more than 9.8% in value or in number of shares, whichever is more restrictive, of the aggregate of the outstanding shares of all classes and series of our capital stock. We refer to the foregoing restrictions as the "Ownership Limits."

Our charter also prohibits any person from:

- beneficially or constructively owning shares of our capital stock to the extent that such beneficial or constructive ownership would result in our being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of the taxable year);
- transferring shares of our capital stock to the extent that such transfer would result in our shares of capital stock being beneficially owned by fewer than 100 persons (determined under the principles of Section 856(a)(5) of the Code);
- beneficially or constructively owning shares of our capital stock to the extent such beneficial or constructive ownership would cause any income of the company that would otherwise qualify as "rents from real property" for purposes of Section 856(d) of the Code to fail to qualify as such (including, but not limited to, beneficial ownership or constructive ownership that would result in the company actually or constructively owning a 10% or greater interest in a tenant as described in Section 856(d)(2)(B) of the Code); or
- beneficially or constructively owning shares of our capital stock if such beneficial or constructive ownership would otherwise cause us to fail to qualify as a REIT under the Code.

Our Board of Directors, in its sole discretion, may prospectively or retroactively exempt a person from certain of the limits described in the paragraph above and may establish or increase an excepted holder percentage limit for that person. The person seeking an exemption must

provide to our Board of Directors any representations, covenants and undertakings that are reasonably necessary for our Board of Directors to conclude that (i) granting the exemption will not (a) result in our being "closely held," (b) cause any of our income that would otherwise qualify as "rents from real property" to fail to qualify as such or (c) cause us to otherwise lose our status as a REIT and (ii) the person does not actually or constructively own an interest in a tenant of the Company that would cause the Company to actually or constructively own more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant. Such person must also agree that any violation or attempted violation of such covenants (or any other action that is contrary to the transfer and ownership restrictions contained in our charter) will result in such shares of our capital stock being automatically transferred to a trust as described below. Our Board of Directors may not grant an exemption to any person if that exemption would result in our failing to qualify as a REIT. Our Board of Directors may require a ruling from the Internal Revenue Service or an opinion of counsel, in either case in form and substance satisfactory to our Board of Directors, in its sole discretion, in order to determine or ensure our status as a REIT and may impose such conditions or restrictions as it deems appropriate in connection with granting any such exemption.

Our Board of Directors may, in its sole and absolute discretion, increase or decrease any or both of the Ownership Limits for one or more persons, except that a decreased ownership limit will not be effective for any person whose actual, beneficial or constructive ownership of our stock exceeds the decreased ownership limit at the time of the decrease until the person's actual, beneficial or constructive ownership of our stock equals or falls below the decreased ownership limit, although any further acquisition of shares of our stock or beneficial or constructive ownership of our stock will violate the decreased ownership limit. Our Board of Directors may not increase or decrease any Ownership Limit if, among other limitations, the new ownership limit would allow five or fewer persons to actually or beneficially own more than 49.9% in value of our outstanding stock, could cause us to be "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or could otherwise cause us to fail to qualify as a REIT.

Any attempted transfer of shares of our capital stock (or other event or change) which, if effective, would violate any of the restrictions described above will result in the number of shares of our capital stock causing the violation (rounded up to the nearest whole share) to be automatically transferred to a trust or trusts for the exclusive benefit of one or more charitable beneficiaries, except that any transfer that results in the violation of the restriction relating to shares of our capital stock being beneficially owned by fewer than 100 persons will be void ab initio. In either case, the proposed transferee will not acquire any rights in those shares. The automatic transfer will be deemed to be effective as of the close of business on the business day prior to the date of the purported transfer or other event that results in the transfer to the trust. Shares held in the trust will be issued and outstanding shares. The proposed transferee will not benefit economically from ownership of any shares held in the trust, will have no rights to dividends or other distributions and will have no rights to vote or other rights attributable to the shares held in the trust. The trustee of the trust will have all voting rights and rights to dividends or other distributions with respect to shares held in the trust. These rights will be exercised for the exclusive benefit of the charitable beneficiary. Any dividend or other distribution paid prior to our discovery that shares have been transferred to the trust will be paid by the recipient to the trustee upon demand. Any dividend or other distribution authorized but unpaid will be paid when due to the trustee. Any dividend or other distribution paid to the trustee will be held in

trust for the charitable beneficiary. Subject to Maryland law, the trustee will have the authority (i) 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 (ii) 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 corporate action, then the trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from us that shares of our stock have been transferred to the trust, the trustee will sell the shares to a person, designated by the trustee, whose ownership of the shares will not violate the above ownership and transfer limitations. Upon the 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 proposed transferee and to the charitable beneficiary as follows. The proposed transferee will receive the lesser of (i) the price paid by the proposed transferee for the shares or, if the proposed transferee did not give value for the shares in connection with the event causing the shares to be held in the trust (e.g., a gift, devise or other similar transaction), the market price (as defined in our charter) of the shares on the day of the event causing the shares to be held in the trust and (ii) the price per share received by the trustee (net of any commission and other expenses of sale) from the sale or other disposition of the shares. The trustee may reduce the amount payable to the proposed transferee by the amount of dividends or other distributions paid to the proposed transferee and owed by the proposed transferee to the trustee. Any net sale proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the charitable beneficiary. If, prior to our discovery that our shares of our stock have been transferred to the trust, the shares are sold by the proposed transferee, then (i) the shares shall be deemed to have been sold on behalf of the trust and (ii) to the extent that the proposed transferee received an amount for the shares that exceeds the amount he or she was entitled to receive, pursuant to the above, the excess shall be paid to the trustee upon demand.

In addition, shares of our stock held in the trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise, gift or other similar transaction, the market price at the time of the devise, gift or other similar transaction) and (ii) the market price on the date we, or our designee, accept the offer, which we will reduce by the amount of dividends and other distributions paid to the proposed transferee and owed by the proposed transferee to the trustee. We will have the right to accept the offer until the trustee has sold the shares. Upon a sale to us, 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 proposed transferee.

If a transfer to a charitable trust, as described above, would be ineffective for any reason to prevent a violation of a restriction, the transfer that would have resulted in a violation will be void ab initio, and the proposed transferee shall acquire no rights in those shares.

Any certificate representing shares of our capital stock, and any notices delivered in lieu of certificates with respect to the issuance or transfer of uncertificated shares, will bear a legend referring to the restrictions described above.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of our capital stock that will or may violate any of the foregoing restrictions

on transferability and ownership, or any person who would have owned shares of our capital stock that resulted in a transfer of shares to a charitable trust, is required to give written notice immediately to us or, in the case of a proposed or attempted transaction, to give at least 15 days' prior written notice, and provide us with such other information as we may request in order to determine the effect of the transfer on our status as a REIT. The foregoing restrictions on transferability and ownership will not apply if our Board of Directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required in order for us to qualify as a REIT.

Every owner of more than 5% (or any lower percentage as required by the Code or the Treasury regulations promulgated thereunder) in number or value of the outstanding shares of our capital stock, within 30 days after the end of each taxable year, is required to give us written notice, stating his or her name and address, the number of shares of each class and series of shares of our capital stock that he or she beneficially owns and a description of the manner in which the shares are held. Each of these owners must promptly provide us with additional information that we may request in order to determine the effect, if any, of his or her beneficial ownership on our status as a REIT and to ensure compliance with the Ownership Limits. In addition, each stockholder will upon demand be required to provide us with information that we may request in order to determine our status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine our compliance.

These ownership limitations could delay, defer or prevent a transaction or a change in control that might involve a premium price for our shares of Common Stock or otherwise be in the best interest of our stockholders.

Certain Provisions of Maryland Law and Our Charter and Bylaws

The following summary of certain provisions of Maryland law and our charter and bylaws does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law and to our charter and our bylaws.

Our Board of Directors

According to our charter and bylaws, the number of directors of our company may be established, increased or decreased only by a majority of our entire Board of Directors but may not be fewer than the minimum number required under the MGCL (which is currently one) nor, unless our bylaws are amended, more than eleven.

Any vacancy on the Board of Directors for any cause other than an increase in the number of directors may be filled by a majority of the remaining directors, even if such majority is less than a quorum. Any vacancy in the number of directors created by an increase in the number of directors may be filled by a majority of the entire Board of Directors. Any individual so elected as a director shall serve until the next annual meeting of stockholders and until his or her successor is duly elected and qualifies.

Each of our directors will be elected by our common stockholders to serve until the next annual meeting of our stockholders and until his or her successor is duly elected and qualifies under the MGCL. Holders of shares of our Common Stock will have no right to cumulative

voting in the election of directors. Our bylaws provide that each director shall be elected by a plurality of all of the votes cast in the election of directors.

Removal of Directors

Our charter provides that, subject to the rights of holders of one or more classes or series of Preferred Stock to elect or remove one or more directors, a director may be removed at any time, with or without cause and without the necessity for concurrence by the directors, by the affirmative vote of the holders of not less than a majority of the votes outstanding and entitled to be cast generally in the election of directors.

Business Combinations

Under the MGCL, certain "business combinations" (including a merger, consolidation, statutory share exchange or, in certain circumstances specified under the statute, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and any interested stockholder, or an affiliate of such an interested stockholder, are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Maryland law defines an interested stockholder as:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock; or
- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding stock of the corporation.

A person is not an interested stockholder under the MGCL if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. In approving a transaction, the Board of Directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it.

After such five-year period, any such business combination must be recommended by the Board of Directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These supermajority approval requirements do not apply if, among other conditions, the corporation's common stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a corporation's board of directors prior to the time that the interested stockholder becomes an interested stockholder. We have elected, by resolution of our Board, to opt out of the business combination provisions of the MGCL, provided that such business combination has been approved by our Board (including a majority of directors who are not affiliated with the interested stockholder). Our bylaws provide that we may not opt-in to the business combination provisions of the MGCL without the approval of our stockholders by the affirmative vote of at least a majority of the votes cast on the matter by stockholders entitled to vote generally in the election of our directors.

Control Share Acquisitions

The MGCL provides that a holder of "control shares" of a Maryland corporation acquired in a "control share acquisition" has no voting rights with respect to those shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast by stockholders entitled to exercise or direct the exercise of the voting power in the election of directors generally but excluding: (i) the person who has made or proposes to make the control share acquisition; (ii) any officer of the corporation; or (iii) any employee of the corporation who is also a director of the corporation. "Control shares" are voting shares of stock that, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of:

- 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.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval or shares acquired directly from the corporation. A "control share acquisition" means the acquisition, directly or indirectly, of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an "acquiring person statement" as described in the MGCL), may compel the board of directors of a company to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the control shares. If no request for a special meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights of control shares are not approved at the meeting or if the acquiring person does not deliver an "acquiring person statement" as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of any meeting of stockholders at which the voting rights of such shares are considered and not approved or, if

no such meeting is held, as of the date of the last control acquisition by the acquirer. If voting rights for control shares are approved at a stockholder's meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply (i) to shares acquired in a merger, consolidation or statutory share exchange if the corporation is a party to the transaction or (ii) to acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. Our Board of Directors may not amend or eliminate this provision without the approval by the affirmative vote of at least a majority of the votes cast on the matter by our stockholders entitled to vote generally in the election of our directors.

Subtitle 8

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Securities Exchange Act, as amended, and with at least three independent directors to elect to be subject, by provision in its charter or bylaws or by a resolution of its board of directors and notwithstanding any contrary provision in its charter or bylaws, to any or all of five provisions:

- a classified board;
- a requirement that a director may be removed only by the vote of the holders of two-thirds of all votes entitled to be cast generally in the election of directors;
- a requirement that the number of directors be fixed only by vote of the directors;
- a requirement that a vacancy on the board of directors be filled only by the affirmative vote of a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum, for the remainder of the full term of the class of directors in which the vacancy occurred and until a successor is elected and qualified; and
- a requirement that a special meeting of the stockholders be called at the request of stockholders only if requested by stockholders entitled to cast at least a majority of the votes entitled to be cast at the meeting.

Through provision in our charter and bylaws unrelated to Subtitle 8, we already vest in our board the exclusive power to fix the number of directorships, subject to limitations set forth in our charter and bylaws, and provide that a special meeting of stockholders will be called at the request of stockholders entitled to cast a majority of votes entitled to be cast. As a result of the Board's previously adopted resolutions on September 20, 2021, we are prohibited from electing to be subject to the provisions of Subtitle 8 that would permit us to classify the Board without stockholder approval, and such prohibition may not be repealed unless a proposal to repeal such

prohibition is approved by the affirmative vote of at least a majority of the votes cast on the matter by our stockholders entitled to vote generally in the election of our directors.

Amendments to Our Charter and Bylaws

Our charter generally may be amended only if such amendment is declared advisable by our Board of Directors and approved by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on the matter. Our Board of Directors and stockholders have the concurrent power to adopt, alter or repeal any provision of our bylaws and to make new bylaws.

Exclusive Forum for Certain Disputes

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that court does not have jurisdiction, the United States District Court for the District of Maryland, Northern Division, will be the sole and exclusive forum for (a) any Internal Corporate Claim, as such term is defined in the MGCL, other than any action arising under federal securities laws, including, without limitation, (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of any duty owed by any director or officer or other employee of the corporation to the corporation or to the stockholders of the corporation or (iii) any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the MGCL, the charter or bylaws, or (b) any action asserting a claim against the corporation or any director or officer or other employee of the corporation that is governed by the internal affairs doctrine. This choice of forum provision will limit a stockholder's ability to bring a claim in another judicial forum, including in a judicial forum that it believes is favorable for disputes with us or our directors, officers, managers, agents or employees, which may discourage lawsuits against us and our directors, officers, managers, agents or employees.

Meetings of Stockholders

Under our bylaws, annual meetings of stockholders will be held each year at a date and time determined by our Board of Directors. Special meetings of stockholders may be called by our Board of Directors, the chairman of our Board of Directors, our president or our chief executive officer. Additionally, subject to the provisions of our bylaws, special meetings of the stockholders must be called by our secretary to act on any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of the votes entitled to be cast on such matter at such meeting who have requested the special meeting in accordance with the procedures set forth in, and provided the information and certifications required by, our bylaws. Only matters set forth in the notice of the special meeting may be considered and acted upon at such a meeting.

Advance Notice of Director Nominations and New Business

Our bylaws provide that:

- with respect to an annual meeting of stockholders, nominations of individuals for election to our Board of Directors and the proposal of business to be considered by stockholders at the annual meeting may be made only
 - pursuant to our notice of the meeting;
 - by or at the direction of our Board of Directors; or
 - by a stockholder who was a stockholder of record at the record date set by our Board of Directors for the purpose of determining stockholders entitled to vote at the annual meeting, at the time of giving of the notice of the meeting and at the time of the annual meeting, who is entitled to vote at the meeting in the election of each individual nominated or on such other business, and who has complied with the advance notice procedures set forth in, and provided the information and certifications required by, our bylaws; and
- with respect to special meetings of stockholders, only the business specified in our company's notice of meeting may be brought before the special meeting of stockholders, and nominations of individuals for election to our Board of Directors may be made only
 - by or at the direction of our Board of Directors;
 - by a stockholder of the Company present in person at the special meeting that has requested that a special meeting be called for the purpose of electing directors in compliance with our bylaws and that has supplied the information and certifications required by our bylaws with respect to each individual whom the stockholder proposes to nominate for election of directors; or
 - provided that the meeting has been called in accordance with our bylaws for the purpose of electing directors, by a stockholder who is a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the special meeting, at the time of giving of the notice required by our bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice provisions set forth in, and provided the information and certifications required by, our bylaws.

The purpose of requiring stockholders to give advance notice of nominations and other proposals is to afford our Board of Directors and our stockholders the opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposals and, to the extent considered necessary by our Board of Directors, to inform stockholders and make recommendations regarding the nominations or other proposals.

Proxy Access Procedures for Qualifying Stockholders

Our bylaws permit a stockholder, or a group of no more than 20 stockholders, that owns at least 3% or more of the shares of our Common Stock continuously for at least three years to nominate and include in our proxy materials candidates for election as directors of the Company, subject to certain terms and conditions. Such stockholder(s) or group(s) of stockholders may nominate director candidates constituting up to the greater of two individuals or 20% of our Board of Directors, provided that the stockholder(s) and the director nominee(s) satisfy the eligibility, notice and other requirements specified in the bylaws.

Limitation of Liability and Indemnification of Directors and Officers

Maryland law permits a Maryland corporation to include in its charter a provision eliminating the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. Our charter contains such a provision that eliminates such liability to the maximum extent permitted by Maryland law.

The MGCL requires a Maryland corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or are threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and:
 - was committed in bad faith; or
 - was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or in the right of the corporation or if the director or officer was adjudged liable on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received.

In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and
- a written undertaking, which may be unsecured, by the director or officer or on the director's or officer's behalf to repay the amount paid if it shall ultimately be determined that the standard of conduct has not been met.

Our charter and our bylaws obligate us, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding without requiring a preliminary determination of the director's or officer's ultimate entitlement to indemnification to:

- any present or former director or officer who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity; or
- any individual who, while a director or officer of our company and at our request, serves or has served as a director, officer, partner, member, manager or trustee of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity.

Our charter and bylaws also permit us, with the approval of our Board of Directors, to indemnify and advance expenses to any person who served a predecessor of ours in any of the capacities described above and to any employee or agent of our company or a predecessor of our company.

Indemnification Agreements

We have entered into indemnification agreements with each of our directors and executive officers that provide for indemnification to the maximum extent permitted by Maryland law.

REIT Qualification

Our charter provides that our Board of Directors may revoke or otherwise terminate our REIT election, without approval of our stockholders, if it determines that it is no longer in our best interest to attempt to, or to continue to, be qualified as a REIT. Our charter also provides that our Board of Directors may determine that compliance with the restrictions on ownership and transfer of our stock is no longer required for us to qualify as a REIT.

**SECOND AMENDMENT TO AMENDED AND RESTATED TERM LOAN CREDIT
AGREEMENT**

SECOND AMENDMENT, dated as of **May 11, 2022** (this "Agreement"), to the Amended and Restated Term Loan Credit Agreement (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, including by this Agreement, the "Credit Agreement") dated as of December 21, 2018, among **InvenTrust Properties Corp.**, a corporation organized under the laws of the State of Maryland (the "Borrower"), the Lenders party thereto and **Wells Fargo Bank, National Association, as Administrative Agent**. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, the Borrower, the Lenders party hereto and the Administrative Agent desire to modify the Credit Agreement as herein set forth subject to the terms and conditions provided for in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendments to Credit Agreement. Subject to all of the terms and conditions set forth in this Agreement, the Borrower, the Lenders and the Administrative Agent hereby agree that the Credit Agreement (other than the schedules and exhibits thereto) is amended to incorporate the changes marked to delete the stricken text (indicated textually in the same manner as the following example: **stricken text**) and to add the underlined text (indicated textually in the same manner as the following example: **underlined text**) as set forth on the copy of the Credit Agreement attached as Annex I. Exhibit G is hereby revised to (i) replace each reference to "LIBOR Applicable Margin" with "SOFR Applicable Margin" and (ii) in the paragraphs introducing each of the Leverage Based Pricing Schedule and Ratings Based Pricing Schedule, replace each reference to the phrase "Floating Rate or added to LIBOR Base Rate to determine the LIBOR Rate" with "Floating Rate or added to Adjusted Term SOFR to determine the Term SOFR Rate". Except for the foregoing revisions to Exhibit G, none of the Schedules or Exhibits to the Credit Agreement shall be revised pursuant to this Agreement.

SECTION 2. [Reserved].

SECTION 3. Conditions of Effectiveness. This Agreement shall become effective as of the first date (the "Second Amendment Effective Date") that all of the following conditions precedent shall have been satisfied:

3.1 The Administrative Agent's receipt of the following, each of which shall be e-mails (in a .pdf format) or telecopies (in each case, followed promptly by originals to the extent requested by the Administrative Agent) and each in form and substance satisfactory to the Administrative Agent:

- (a) counterparts of this Agreement, duly executed by the parties hereto;
- (b) such certificates of resolutions or other action, incumbency certificates and/or other certificates of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each officer thereof authorized to act in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

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- (c) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that

reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization; and

(d) a certificate of the Borrower to the effect that (i) the conditions specified in Sections 3.2 and 3.3 have been satisfied, and (ii) no event has occurred and is continuing which constitutes an Unmatured Default.

3.2 The representations and warranties contained in Section 4 of this Agreement are true and correct to the extent provided in Section 4 of this Agreement.

3.3 There shall not have occurred since December 31, 2021, any event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

3.4 The Administrative Agent and each Lender shall have received all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S. Patriot Act, and the Beneficial Ownership Regulation, in each case, to the extent requested at least five Business Days prior to the Second Amendment Effective Date.

3.5 Any fees owed to any Lender or Arranger required to be paid on or before the Second Amendment Effective Date shall have been paid.

SECTION 4. Representations and Warranties. As of the date hereof and after giving effect to this Agreement, the representations and warranties set forth in the Credit Agreement and in the other Loan Documents shall be true and correct in all material respects (except to the extent (i) such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, (ii) any representation or warranty that is already by its terms qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects after giving effect to such qualification and (iii) for purposes of this Section 4, the representations and warranties contained in the first sentence of Section 5.4 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to Section 6.1 of the Credit Agreement). Each of the Loan Parties represents and warrants (which representations and warranties shall survive the execution and delivery hereof) to the Administrative Agent and the Lenders that:

(a) it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the transactions contemplated hereby and has taken or caused to be taken all necessary action to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(b) no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement, except for filings for reporting purposes required under applicable securities laws;

(c) this Agreement has been duly executed and delivered on its behalf by a duly authorized officer, and constitutes its legal, valid and binding obligation enforceable in

accordance with its terms, except as such enforceability may be limited by bankruptcy insolvency, reorganization, receivership, moratorium or other laws affecting creditors' rights generally and by general principles of equity;

(d) no Unmatured Default shall exist or would result from the consummation of the transactions contemplated by this Agreement; and

(e) the execution, delivery and performance by it of this Agreement will not (i) contravene the terms of any of its organization documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (x) any contractual obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (v) any order, injunction,

any of the properties of such Loan Party or any of its Subsidiaries or by any other organization, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any applicable law.

SECTION 5. [Reserved].

SECTION 6. Ratification.

(a) The Credit Agreement, as amended by this Agreement, and the other Loan Documents remain in full force and effect and are hereby ratified and affirmed by the Loan Parties. The amendments contained in Section 1 hereof shall be deemed to have prospective application only. This Agreement is not intended to and shall not constitute a novation. Each of the Loan Parties hereby (i) confirms and agrees that the Borrower is truly and justly indebted to the Administrative Agent and the Lenders in the aggregate amount of the Obligations without defense, counterclaim or offset of any kind whatsoever, other than payment in full, and (ii) reaffirms and admits the validity and enforceability of the Credit Agreement, as amended by this Agreement, and the other Loan Documents.

(b) This Agreement shall be limited precisely as written and, except as expressly provided herein, shall not be deemed (i) to be a consent granted pursuant to, or a waiver, modification or forbearance of, any term or condition of the Credit Agreement, any other Loan Document or any of the instruments or agreements referred to therein or a waiver of any Unmatured Default or Default under the Credit Agreement, whether or not known to the Administrative Agent or any of the Lenders, or (ii) to prejudice any right or remedy which the Administrative Agent or any Lender may now have or have in the future against any Person under or in connection with the Credit Agreement, any other Loan Document or any of the instruments or agreements referred to therein or any of the transactions contemplated thereby.

SECTION 7. Modifications. Neither this Agreement, nor any provision hereof, may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the parties hereto.

SECTION 8. References. The Loan Parties acknowledge and agree that this Agreement constitutes a Loan Document. Each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference in each other Loan Document (and the other documents and instruments delivered pursuant to or in connection therewith) to the "Credit Agreement", "thereunder", "thereof" or words of like import, shall mean and be a reference to the Credit Agreement as modified hereby and as the Credit Agreement may in the future be amended, restated, supplemented or modified from time to time.

SECTION 9. Counterparts. This Agreement may be executed by the parties hereto individually or in combination, in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page by telecopier or electronic mail (in a .pdf format) shall be effective as delivery of a manually executed counterpart. This Agreement may be executed using Electronic Signatures (including, without limitation, facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent of a manually signed paper hereof which has been converted into electronic form (such as scanned into .pdf format), or an electronically signed communication converted into another format, for transmission, delivery and/or retention. For purposes hereof, "Electronic Signature" shall have the meaning assigned to it by 15 USC §7006, as it may be amended from time to time. Upon the reasonable request of the Administrative Agent, any Electronic Signature of any other party hereto shall, as promptly as practicable, be followed by a manually executed counterpart thereof.

SECTION 10. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 11. Severability. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of such provision in any other jurisdiction or the remaining provisions of this Agreement in

enforceability of such provision in any other jurisdiction or the remaining provisions of this Agreement in any jurisdiction.

SECTION 12. Governing Law. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS.

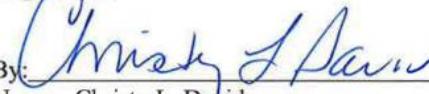
SECTION 13. Headings. Section headings in this Agreement are included for convenience of reference only and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

[The remainder of this page left blank intentionally]

IN WITNESS WHEREOF, Borrower, the Administrative Agent and the undersigned Lenders have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWER:

INVENTRUST PROPERTIES CORP., a Maryland corporation

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer,
General Counsel and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

The undersigned, being all of the Subsidiary Guarantors as of the date hereof, hereby consent to the foregoing Agreement and agree that the Subsidiary Guaranty shall continue in full force and effect with

respect to the Credit Agreement, as amended by the Agreement, and to the other Loan Documents.

SUBSIDIARY GUARANTORS:

**IA COLORADO SPRINGS CHEYENNE, L.L.C.
IA NEWNAN COWETA, L.L.C.
IA NEWNAN THOMAS, L.L.C.
IA PORT CHARLOTTE PEACHLAND, L.L.C.
IA SAN PEDRO GARDEN, L.L.C.
IA SARASOTA TAMiami, L.L.C.
IA ST. PETERSBURG GATEWAY, L.L.C.
IA TUCKER HUGH HOWELL, L.L.C.
IA WILDOMAR BEAR CREEK, L.L.C.
IA WOODSTOCK ROSE CREEK, L.L.C.**

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member



By: Christy L. David

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

**IVT ANTOINE TOWN CENTER HOUSTON, LLC
IVT CAMPUS MARKETPLACE SAN MARCOS, LLC
IVT ELDORADO MARKETPLACE FRISCO, LLC
IVT KENNESAW MARKETPLACE, LLC
IVT KYLE MARKETPLACE, LLC
IVT LAKESIDE CROSSING WINTER PARK, LLC
IVT LAKESIDE WINTER PARK, LLC
IVT OLD GROVE MARKETPLACE OCEANSIDE,
LLC
IVT PARAISO PARC PEMBROKE PINES, LLC
IVT PARKE CEDAR PARK, LLC
IVT PGA PLAZA PALM BEACH GARDENS, LLC**

IVT PLAZA MIDTOWN ATLANTA, LLC
IVT PORT CHARLOTTE PEACHLAND, LLC
IVT RIO PINAR PLAZA ORLANDO, LLC
IVT RIVER OAKS VALENCIA, LLC
IVT RIVERWALK MARKET FLOWER MOUND,
LLC
IVT SANDY PLAINS CENTRE MARIETTA, LLC
IVT SHOPS AT FAIRVIEW, LLC
IVT SHOPS AT GALLERIA BEE CAVE LLC
IVT SHOPS AT TOWN CENTER GERMANTOWN,
LLC
IVT SONTERRA VILLAGE SAN ANTONIO, LLC
IVT SOUTHERN ROYAL PALM BEACH, LLC
IVT STEVENSON RANCH PLAZA, LLC

**IVT TRAVILAH SQUARE ROCKVILLE, LLC
IVT TROWBRIDGE CROSSING SANDY SPRINGS,
LLC
IVT WESTFORK PLAZA PEMBROKE PINES, LLC
IVT WESTPARK GLEN ALLEN, LLC
IVT WINDWARD COMMONS ALPHARETTA, LLC
IVT DALLAS PRESTONWOOD, LLC**

By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InverTrust Properties Corp., its sole member

By: Christy L. David
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

IVT OP GP, LLC

By: Christy L. David
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IVT OP LIMITED PARTNERSHIP
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By Christy L. David
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

IA ARLINGTON RIVERVIEW LIMITED PARTNERSHIP

By: IA Arlington Riverview GP, L.L.C., its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

IA ATLANTA BUCKHEAD, L.L.C.

By: IA Atlanta Buckhead Member, L.L.C., its sole member

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

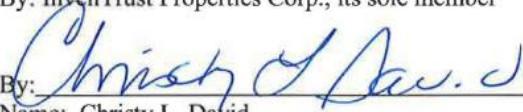
IA AUSTIN SCOFIELD LIMITED PARTNERSHIP

By: IA Austin Scofield GP, L.L.C., its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

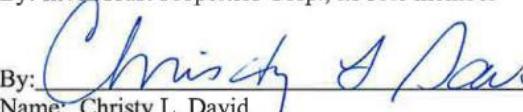
IA MATTHEWS Sycamore, LP

By: IA Matthews Sycamore GP, LLC, its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

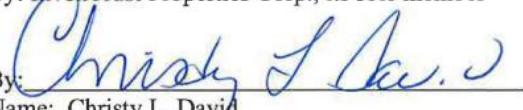
Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

IA RALEIGH BENT TREE, LP

By: IA Raleigh Bent Trust GP, LLC, its general partner

By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

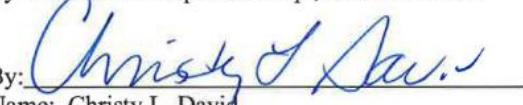
**IA RICHARDSON CUSTER CREEK LIMITED
PARTNERSHIP**

By: IA Richardson Custer Creek GP, L.L.C., its general
partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IA WESTLAKE LIMITED PARTNERSHIP

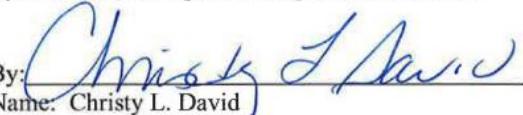
By: IA Westlake GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

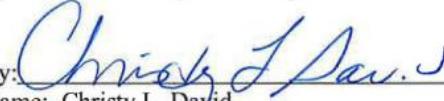
**MB HOUSTON ELDRIDGE LIMITED
PARTNERSHIP**

By: MB Houston Eldridge GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

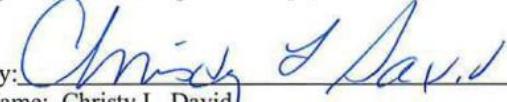
**MB HOUSTON ELDRIDGE TOWN CENTER
LIMITED PARTNERSHIP**

By: MB Houston Eldridge Town Center GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

**MB HOUSTON WINDEMERE LIMITED
PARTNERSHIP**

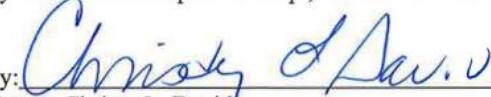
By: MB Houston Windemere GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

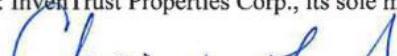
IVT CARY PARK TOWN CENTER, LP

By: IVT Cary Park Town Center GP, LLC, its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

**IVT COMMONS AT UNIVERSITY PLACE DURHAM,
LP**

By: IVT Commons at University Place Durham GP, LLC, its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member



By: Christy L. David

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IVT CREEDMOOR RALEIGH, LP

By: IVT Creedmoor Raleigh GP, LLC , its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: Christy L. David

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

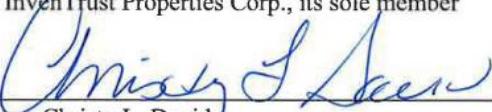
IVT NORTHCROSS CENTER HUNTERSVILLE, LP

By: IVT Northcross Center Huntersville GP, LLC, its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

IVT RENAISSANCE CENTER DURHAM I, LP

By: IVT Renaissance Center Durham I GP, LLC, its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

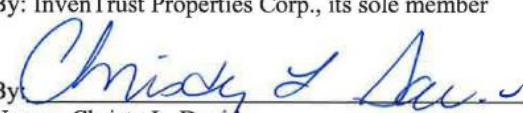
IA GREELEY CENTERPLACE, L.L.C.

By: IA Greeley Centerplace Holding, L.L.C., its sole member

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

Signature Page to Second Amendment to Amended and Restated Credit Agreement

WELLS FARGO BANK, NATIONAL
ASSOCIATION, Individually and as

Administrative Agent

By: Michael J. VanderVelde
Name: Michael VanderVelde
Title: Director

Schedule 2

KEYBANK NATIONAL ASSOCIATION,
Individually and as Tranche A-1 Co-Syndication
Agent and Tranche A-1 Co-Syndication Agent

By: Kristin Centracchio
Name: Kristin Centracchio
Title: Vice President

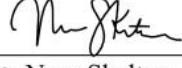
Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

BANK OF AMERICA, N.A.,
Individually and as Tranche A-1 Co-Syndication
Agent

By: 
Name: Evan J. SitarSKI
Title: Senior Vice President

Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

JPMORGAN CHASE BANK, N.A.,
Individually and as Tranche A-2 Co-Documentation
Agent

By: 
Name: Nora Skelton
Title: Vice President

Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

U.S. BANK NATIONAL ASSOCIATION,
Individually and as a Tranche A-1 Co-Syndication

Individually and as a Tranche A-1 Co-Syndication
Agent and as a Tranche A-2 Co-Syndication Agent

By: Curt M. Steiner
Name: Curt M. Steiner
Title: Senior Vice President

Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

**FIFTH THIRD BANK, NATIONAL
ASSOCIATION**, Individually and as Tranche A-1
Documentation Agent and Tranche A-2 Co-
Documentation Agent

By: _____
Name: KLAY SCHMEISSER
Title: SVP

Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

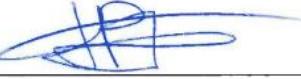
PNC BANK, NATIONAL ASSOCIATION,
Individually and as Tranche A-2 Co-Syndication
Agent

By: 
Name: James A. Harmann
Title: Senior Vice President

Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

FIRST HORIZON BANK

By: Jean M. Brennan
Name: Jean Brennan
Title: Senior Vice President

By: 
Name: J. Patrick Daugherty
Title: Senior Vice President

Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

UNITED BANK

By: 
Name: Frederick H. Denecke
Title: Senior Vice President

Signature Page to Second Amendment to Amended and Restated Term Loan Credit Agreement

ANNEX I TO SECOND AMENDMENT
(marked copy of the Credit Agreement)

(see attached)

Annex I

AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT
DATED AS OF DECEMBER 21, 2018

AMONG
INVENTRUST PROPERTIES CORP.
AS BORROWER

WELLS FARGO BANK, NATIONAL ASSOCIATION
AS ADMINISTRATIVE AGENT

AND

KEYBANK, NATIONAL ASSOCIATION, BANK OF AMERICA, N.A., AND U.S. BANK
NATIONAL ASSOCIATION AS TRANCHE A-1 CO-SYNDICATION AGENTS

AND

KEYBANK, NATIONAL ASSOCIATION, PNC BANK, NATIONAL ASSOCIATION, AND U.S.
BANK NATIONAL ASSOCIATION AS TRANCHE A-2 CO-SYNDICATION AGENTS

AND

FIFTH THIRD BANK, NATIONAL ASSOCIATION, AS DOCUMENTATION AGENT FOR
TRANCHE A-1 AND FIFTH THIRD BANK, NATIONAL ASSOCIATION AND JPMORGAN
CHASE, N.A. AS CO-DOCUMENTATION AGENTS FOR TRANCHE A-2

AND

THE OTHER LENDERS
FROM TIME TO TIME PARTIES HERETO

WELLS FARGO SECURITIES, LLC,
KEYBANC CAPITAL MARKETS, INC.,
U.S. BANK NATIONAL ASSOCIATION
FIFTH THIRD BANK, NATIONAL ASSOCIATION
BOFA SECURITIES, INC. (IN RESPECT OF TRANCHE A-1)
PNC CAPITAL MARKETS LLC (IN RESPECT OF TRANCHE A-2),
JPMORGAN CHASE, N.A. (IN RESPECT OF TRANCHE A-2),
AS JOINT LEAD ARRANGERS

WELLS FARGO SECURITIES, LLC, KEYBANC CAPITAL MARKETS, INC., AND BOFA
SECURITIES, INC. AS JOINT BOOKRUNNERS

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This Amended and Restated Term Loan Credit Agreement (the “Agreement”) dated as of December 21, 2018, is among InvenTrust Properties Corp., a corporation organized under the laws of the State of Maryland (the “Borrower”), Wells Fargo Bank, National Association, a national banking association, Bank of America, N.A., U.S. Bank National Association, Fifth Third Bank, a national banking association, KeyBank National Association, a national banking association, PNC Bank, National Association, a national banking association, JPMorgan Chase Bank, N.A., and the several other banks, financial institutions and entities from time to time parties to this Agreement (collectively, the “Lenders”), Wells Fargo Bank, National Association, not individually, but as “Administrative Agent”, Bank of America, N.A., not individually but as “Tranche A-1 Co-Syndication Agent”, PNC Bank, National Association, not individually but as “Tranche A-2 Co-Syndication Agent”, and KeyBank, National Association and U.S. Bank National Association, not individually but each as “Tranche A-1 Co-Syndication Agent” and as “Tranche A-2 Co-Syndication Agent”.

RECITALS

A. The Borrower is primarily engaged in the business of purchasing, owning, operating, leasing and managing commercial real estate properties.

B. This Agreement amends and restates in its entirety that certain Credit Agreement dated as of November 5, 2015, by and among Borrower, Administrative Agent, Wells Fargo Bank, National Association, a national banking association, Bank of America, N.A., a national banking association, PNC Bank, National Association, a national banking association and the several other banks party thereto (the “Original Credit Agreement”).

C. Borrower desires to amend and restate the Original Credit Agreement to increase the Aggregate Commitment, to extend the Facility Termination Date, to modify the interest rates thereunder and to make certain other changes to the terms and conditions thereof, and the Administrative Agent, the Tranche A-1 Co-Syndication Agents, the Tranche A-2 Co-Syndication Agents and the Lenders are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

As used in this Agreement:

“ABR Applicable Margin” means, as of any date, the Applicable Margin used to determine the Floating Rate as determined from time to time in accordance with the definition of “Applicable Margin”.

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“Acquisition” means any transaction, or any series of related transactions, consummated on or after the Agreement Effective Date, by which the Borrower or any of its Subsidiaries (i) acquires any going business or all or substantially all of the assets of any firm, corporation or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding partnership interests of a partnership or of the outstanding membership interests in a limited liability company.

"Act" is defined in Article XIV.

"Adjusted EBITDA" means, as of any date, the Consolidated NOI for the most recent four (4) fiscal quarters of the Borrower for which financial results have been reported, as adjusted by (i) adding thereto interest income and dividend income on Marketable Securities (but only to the extent dividend income does not constitute more than five percent (5%) of total Adjusted EBITDA), (ii) deducting therefrom any income attributable to Excluded Tenants; (iii) adding or deducting for, as appropriate, any adjustment made under GAAP for straight lining of rents, gains or losses from sales of assets, extraordinary items, impairment and other non-cash charges, depreciation, amortization, interest expenses, taxes; (iv) deducting therefrom the applicable Capital Reserves for such period; (v) adding thereto, without duplication, the Consolidated Group Pro Rata Share of the aggregate Net Operating Income for such four (4) fiscal quarters from Projects owned by Investment Affiliates at the end of such period, adjusted in the manner set forth in clauses (i) through (iv) of this sentence, and (vi) deducting therefrom the Borrower's actual general and administrative expenses and asset management fees (unless such has been subordinated to this Facility).

"Adjusted Term SOFR" means for any Available Tenor and Interest Period with respect to a SOFR Loan, the greater of (1) sum of (a) Term SOFR for such Interest Period and (b) the applicable SOFR Index Adjustment and (2) the Floor.

"Adjusted Unencumbered NOI" means Unencumbered Pool NOI less the applicable Capital Reserves.

"Administrative Agent" means Wells Fargo Bank, National Association in its capacity as agent for the Lenders pursuant to Article X, and not in its individual capacity as a Lender, and any successor Administrative Agent appointed pursuant to Article X.

"Advance" means a borrowing hereunder consisting of the aggregate amount of the several Loans made by one or more of the Lenders to the Borrower of the same Type and under the same Tranche and, in the case of **LIBORSOFR** Rate Advances, for the same Interest Period.

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"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person owns 10% or more of any class of voting securities (or other ownership interests) of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of stock, by contract or otherwise. In no event shall the Administrative Agent be deemed to be an Affiliate of the Borrower.

"Aggregate Commitment" means the Aggregate Tranche A-1 Term Loan Commitment and/or the Aggregate Tranche A-2 Term Loan Commitment, as applicable.

"Aggregate Tranche A-1 Term Loan Commitment" means, as of any date, the aggregate of the then-current Tranche A-1 Term Loan Commitments of all the Lenders, which, as of the First Amendment Effective Date, **equal \$200,000,000**, as such amounts may be increased or decreased hereafter in accordance with Section 2.22 hereof.

"Aggregate Tranche A-2 Term Loan Commitment" means, as of any date, the aggregate

or the then-current ~~France A-Z~~ Term Loan Commitments of all the Lenders, which, as of the First Amendment Effective Date, ~~equal \$200,000,000~~, as such amounts may be increased or decreased hereafter in accordance with Section 2.22 hereof.

"Agreement" is defined in the Recitals hereto.

"Agreement Effective Date" means the date this Agreement has been fully executed and delivered by the Borrower and the Lenders.

"Alternate Base Rate" means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% ~~and~~, (c) the ~~LIBOR Market Index~~Adjusted Term SOFR Rate plus 1%; each change in the Alternate Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the ~~LIBOR Market Index~~Adjusted Term SOFR Rate (provided that clause (c) shall not be applicable during any period in which the ~~LIBOR~~BaseAdjusted Term SOFR Rate is unavailable or unascertainable), ~~and~~ (d) the Floor.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

"Anti-Terrorism Laws" is defined in Section 5.20.

"Applicable Margin" means the applicable margin set forth in the pricing schedule contained in Exhibit G used in calculating the interest rate applicable to the various Types and

Tranches of Advances, subject to the conditions set forth in Exhibit G with respect to the effective date of changes in such applicable margins.

“Approved Bank” means any bank, finance company, insurance company or other financial institution (a) which has (i)(x) a minimum net worth of \$500,000,000 and/or (y) total assets of \$10,000,000,000, and (ii) a minimum long-term debt rating of (x) BBB+ or higher by S&P, and (y) Baa1 or higher by Moody’s, or (b) which is approved by the Administrative Agent, which approval shall not be unreasonably withheld.

“Arrangers” means, collectively, Wells Fargo Securities, LLC, KeyBanc Capital Markets, Inc., U.S. Bank National Association, Fifth Third Bank, National Association, BofA Securities, Inc. (in respect of the Tranche A-1), PNC Capital Markets, LLC (in respect of the Tranche A-2) and JPMorgan Chase, N.A. (in respect of the Tranche A-2) in their capacities as joint lead arrangers.

“Article” means an article of this Agreement unless another document is specifically referenced.

“Authorized Officer” means any of the President and Chief Executive Officer, Executive Vice President and Chief Operating Officer, Vice President and Chief Financial Officer, Vice President, Controller and Chief Accounting Officer or Executive Vice President and General Counsel of Borrower, acting singly.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement, or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.16(b)(iv).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law regulation, rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means the Bankruptcy Code of the United States of America, as amended from time to time.

Benchmark means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.16(b).

Benchmark Replacement means, with respect to any Benchmark Transition Event for the then-current Benchmark, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in U.S. Dollars at such time and (ii) the related Benchmark Replacement Adjustment, if any; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

Benchmark Replacement Adjustment means, with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), if any, that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. Dollar denominated syndicated credit facilities.

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

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or

publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

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

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Start Date" means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is

fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period" means, with respect to any then-current Benchmark, the period (if any) (i) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.16(a) and (ii) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.16(b).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee

benefit plan or "plan".

"Borrower" means InvenTrust Properties Corp., a corporation organized under the laws of the State of Maryland, and its permitted successors and assigns.

"Borrowing Date" means a date on which an Advance is made hereunder.

"Borrowing Notice" is defined in Section 2.8.

"Business Day" means (i) ~~with respect to any borrowing, payment or rate selection of LIBOR Rate Advances, a~~ any day (other than a Saturday or, Sunday) ~~or any other day on which commercial banks generally are open~~ in Cleveland, Ohio ~~and~~ or New York, New York ~~for the conduct of substantially all of their commercial lending activities and on which dealings in United States dollars are carried on in the London interbank market and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in Cleveland, Ohio and New York, New York for the conduct of substantially all of their commercial lending activities~~ are authorized or required by law to close and (ii) with respect to any matters relating to SOFR Loans, a SOFR Business Day.

"Capital Reserves" means for any period of four (4) consecutive fiscal quarters, an amount equal to \$0.15 per square foot of leasable space.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership

interests in a Person which is not a corporation and any and all warrants or options to purchase any of the foregoing.

"Capitalization Rate" means 6.50%.

"Capitalized Lease" of a Person means any lease of Property imposing obligations on such Person, as lessee thereunder, which are required in accordance with GAAP to be capitalized on a balance sheet of such Person.

"Capitalized Lease Obligations" of a Person means the amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

"Cash Equivalents" means, as of any date:

- (i) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality thereof having maturities of not more than one year from such date;
- (ii) mutual funds organized under the United States Investment Company Act rated AAm or AAm-G by S&P and P-1 by Moody's;
- (iii) certificates of deposit or other interest-bearing obligations of a bank or trust company which is a member in good standing of the Federal Reserve System having a short term unsecured debt rating of not less than A-1 by S&P and not less than P-1 by Moody's (or in each case, if no bank or trust company is so rated, the highest comparable rating then given to any bank or trust company, but in such case only for funds invested overnight or over a weekend) provided that such investments shall mature or be redeemable upon the option of the holders thereof on or prior to a date one month from the date of their purchase;
- (iv) certificates of deposit or other interest-bearing obligations of a bank or trust company which is a member in good standing of the Federal Reserve System having a short term unsecured debt rating of not less than A-1 by S&P, and not less than P-1 by Moody's and which has a long term unsecured debt rating of not less than A1 by Moody's (or in each case, if no bank or trust company is so rated, the highest comparable rating then given to any bank or trust company, but in such case only for funds invested overnight or over a weekend) provided that such investments shall mature or be redeemable upon the option of the holders thereof on or prior to a date three months from the date of their purchase;
- (v) bonds or other obligations having a short term unsecured debt rating of not less than A-1 by S&P and P-1+ by Moody's and having a long term debt rating of not less than A1 by Moody's issued by or by authority of any state

subdivision of any of the foregoing;

(vi) repurchase agreements issued by an entity rated not less than A-1 by S&P, and not less than P-1 by Moody's which are secured by U.S. Government securities of the type described in clause (i) of this definition maturing on or prior to a date one month from the date the repurchase agreement is entered into;

(vii) short term promissory notes rated not less than A-1 by S&P, and not less than P-1 by Moody's maturing or to be redeemable upon the option of the holders thereof on or prior to a date one month from the date of their purchase; and

(viii) commercial paper (having original maturities of not more than 365 days) rated at least A-1 by S&P and P-1 by Moody's and issued by a foreign or domestic issuer who, at the time of the investment, has outstanding long-term unsecured debt obligations rated at least A1 by Moody's.

"Change in Control" means (i) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of Borrower's Capital Stock representing more than thirty-five percent (35%) of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Borrower; provided however, that Persons acquiring Capital Stock of Borrower from Borrower in connection with an acquisition or other transaction with Borrower, without any agreement among such Persons to act together to hold, dispose of, or vote such shares following the acquisition of such shares, shall not be considered a "group" for purposes of this clause (i); or (ii) any change in the majority of the Board of Directors or Board of Trustees of Borrower during any twelve (12) month period, excluding any new directors or trustees whose election by such Board or whose nomination for election by the holders of Borrower's Capital Stock was approved by a vote of a majority of the directors or trustees then still in office who were either directors or trustees at the beginning of such period or whose election or nomination for election was previously so approved and excluding any change in directors or trustees resulting from (w) the retirement/resignation of any director or trustee as a result of age, illness or compliance with any written policy of Borrower requiring retirement/resignation from the Board upon reaching the retirement age specified in such policy or in connection with Borrower's majority voting policy, (x) the death or disability of any director or trustee, or (y) satisfaction of any requirement for the majority of the members of the board of directors or trustees of Borrower to qualify under applicable law as independent directors or trustees or (z) the replacement of any director or trustee who is an officer or employee of Borrower or an affiliate of Borrower with any other officer or employee of Borrower or an affiliate of Borrower.

| "CME" means CME Group Benchmark Administration Ltd.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Commitment" means, for each Lender, such Lender's Tranche A-1 Term Loan Commitment and/or the Tranche A-2 Term Loan Commitment, as applicable.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

| "Conforming Changes" means, with respect to either the use or administration of Term

Conforming Changes means, with respect to either the use or administration of term SOFR, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "SOFR Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.4 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

"Consolidated Debt Service" means, for any period, without duplication, (a) Consolidated Interest Expense for such period plus (b) the aggregate amount of scheduled principal payments attributable to Consolidated Outstanding Indebtedness taken into account in calculating Consolidated Interest Expense which were required to be made during such period (excluding optional or balloon payments) plus (c) a percentage of scheduled principal payments by any Investment Affiliate on Indebtedness of such Investment Affiliate taken into account in calculating Consolidated Interest Expense which were required to be made during such period (excluding optional or balloon payments), equal to the greater of (x) the percentage of the principal amount of such Indebtedness for which any member of the Consolidated Group is liable and (y) the Consolidated Group Pro Rata Share of such Investment Affiliate.

"Consolidated Group" means the Borrower and all Subsidiaries which are consolidated with it for financial reporting purposes under GAAP.

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"Consolidated Group Pro Rata Share" means, with respect to any Investment Affiliate, the percentage of the total economic ownership interests held by the Consolidated Group in the aggregate, in such Investment Affiliate determined by calculating the percentage of the total then-current value of such Investment Affiliate that would be received by the Consolidated Group in the aggregate, upon liquidation of such Investment Affiliate, after repayment in full of all Indebtedness of such Investment Affiliate.

"Consolidated Interest Expense" means, for any period without duplication, the sum of (a) the amount of interest expense, determined in accordance with GAAP, of the Consolidated Group for such period attributable to that portion of Consolidated Outstanding Indebtedness during such period incurred by members of the Consolidated Group plus (b) the applicable Consolidated Group Pro Rata Share of any interest expense, determined in accordance with GAAP, of each Investment Affiliate, for such period attributable to Indebtedness of such Investment Affiliate, whether recourse or non-recourse, provided that Consolidated Interest Expense shall exclude (i) interest expense on construction loans during such period to the extent such interest expense was paid from an interest reserve established under such construction loan, (ii) non-cash components of interest expense (including but not limited to, the amortization of financing costs and debt premiums), (iii) nonrecurring prepayment premiums or penalties and (iv) the interest component of any Capitalized Lease Obligations.

"Consolidated NOI" means, as of any date, without duplication, the aggregate Net Operating Income for the most recent four (4) fiscal quarters for which financial results of Borrower has been reported from all Projects owned by the Consolidated Group at the end of such fiscal quarter.

"Consolidated Outstanding Indebtedness" means, as of any date of determination, without duplication, the sum of (a) all Indebtedness of the Consolidated Group outstanding at such date, determined on a consolidated basis in accordance with GAAP (whether recourse or non-recourse), plus, without duplication, (b) the applicable Consolidated Group Pro Rata Share of any Indebtedness of each Investment Affiliate outstanding on such date other than Indebtedness of such Investment Affiliate to a member of the Consolidated Group.

"Controlled Group" means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

"Conversion/Continuation Notice" is defined in Section 2.9.

"Covered Party" is defined in Section 9.17.

"Co-Syndication Agent" shall mean any of the Tranche A-1 Co-Syndication Agents or the Tranche A-2 Co-Syndication Agents, each acting in its capacity as co-syndication agent hereunder and not in its capacity as a Lender.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means an event described in Article VII.

“Defaulting Lender” means, subject to Section 10.14, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become subject to a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 10.14) upon delivery of written notice of such determination to the Borrower and each Lender.

“Default Rate” means the interest rate which may apply during the continuance of a Default pursuant to Section 2.11 which shall mean that (i) each **LIBORSOFR** Rate Advance shall bear interest for the remainder of the applicable Interest Period at the rate otherwise

otherwise applicable to Floating Rate Advances plus 4% per annum.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Designated Persons” means a person or entity (a) listed in the annex to, or otherwise subject to the provisions of, any Executive Order; (b) named as a “Specially Designated National and Blocked Person” (“SDN”) on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list (the “SDN List”) or is otherwise the subject of any Sanctions Laws and Regulations; (c) in which an entity or person on the SDN List has 50% or greater ownership interest or that is otherwise controlled by an SDN.

“Development Projects” means, as of any date, all Projects then under development and all land scheduled to commence development within twelve (12) months, provided that a Project shall no longer be included in Development Projects (and therefore shall be valued based on its Net Operating Income) upon the earlier of (i) the expiration of the third full fiscal quarter after substantial completion (which shall mean the receipt of a temporary certificate of occupancy or a final certificate of occupancy) of such Project and (ii) the last day of the first full fiscal quarter in which the Consolidated NOI attributable to such Project divided by the applicable Capitalization Rate exceeds the book value in accordance with GAAP of such Project at the time it was placed into service.

“Disbursement Instruction Agreement” means an agreement substantially in the form of Exhibit K hereto to be executed and delivered by the Borrower pursuant to Section 2.21, as the same may be amended, restated, supplemented or otherwise modified from time to time with the prior written approval of the Administrative Agent.

“Dividend Payout Ratio” means, for any given period of time for any Person, the ratio of (a) an amount equal to (i) 100% of all dividends or other distributions, direct or indirect, on account of any equity interest of such Person (except for special cash dividends or distributions payable solely in additional equity interests of the same class) during such period, less (ii) any amount of such dividends or distributions constituting Dividend Reinvestment Proceeds, to (b) Funds From Operations of such Person for such period.

“Dividend Reinvestment Proceeds” means all dividends or other distributions, direct or indirect, on account of any equity interest of any Person which any holder(s) of such equity

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interest directs to be used, concurrently with the making of such dividend or distribution, for the purpose of purchasing for the account of such holder(s) additional equity interests in such Person or its subsidiaries.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Ground Lease" means an unsubordinated ground lease as to which no default has occurred and is continuing beyond the expiration of any applicable grace or cure period containing the following terms and conditions: (a) a remaining term (exclusive of any unexercised extension options) of thirty (30) years or more from the date the applicable Project was added to the Unencumbered Pool; (b) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor; (c) the obligation of the lessor to give the holder of any mortgage on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosure, and fails to do so and (d) reasonable transferability of the lessee's interest under such lease, including ability to sublease.

"Eligible Unencumbered Property" means any stabilized commercial property located in the United States which, as of any date of determination, (a) is wholly owned by the Borrower, a Wholly-Owned Subsidiary, or a Joint Venture, in fee simple or pursuant to an Eligible Ground Lease, (b) is a retail project, (c) is not subject to any Liens securing Indebtedness or any other Liens (other than Permitted Liens) or claims (including restrictions on transferability or assignability) of any kind (including any such Lien, claim or restriction imposed by the organizational documents of any such Wholly-Owned Subsidiary), (d) is not subject to any agreement ([other than the Revolving Loan Documents and Other Pari Passu Debt Documents](#)) which prohibits or limits the ability of the Borrower, any such Wholly-Owned Subsidiary or any such Joint Venture to create, incur, assume or suffer to exist any Lien thereon or upon the Capital Stock of any such Wholly-Owned Subsidiary or any such Joint Venture, in any such case, in violation of Section 6.20, (e) is not subject to any agreement ([other than the Revolving Loan Documents and Other Pari Passu Debt Documents](#)) which entitles any Person to the benefit of any Lien (other than Liens in favor of Lenders and other Permitted Liens) thereon or upon the Capital Stock of any such Wholly-Owned Subsidiary or any such Joint Venture or

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would entitle any Person to the benefit of any Lien thereon or on such Capital Stock upon the occurrence of any contingency (including, without limitation, pursuant to an "equal and ratable" clause), and (f) is not the subject of any material environmental, title or structural issue, as evidenced by a certification of the Borrower. No such commercial property owned by a Wholly-Owned Subsidiary or Joint Venture shall be deemed to be an Eligible Unencumbered Property unless: (i) all Capital Stock of each entity in the chain of ownership between such Wholly-Owned Subsidiary or such Joint Venture (as applicable) and Borrower is not subject to any of the matters described in clauses (c), (d) or (e) of the preceding sentence, [except in connection with the Loan Documents, the Revolving Loan Documents and/or the Other Pari Passu Debt Documents](#), (ii) no bankruptcy or insolvency has occurred and is continuing with respect to such Wholly-Owned Subsidiary, Joint Venture, or any entity in the chain of ownership between such Wholly-Owned Subsidiary or such Joint Venture (as applicable) and Borrower, (iii) such Wholly-Owned Subsidiary or such Joint Venture (as applicable) has no Indebtedness (other than [in favor of](#) [pursuant to the Lenders](#) [Loan Documents, the Revolving Loan Documents and/or the Other Pari Passu Debt Documents](#)), and (iv) no such entity in the chain of ownership between such Wholly-Owned Subsidiary or such Joint Venture (as applicable) and Borrower has Indebtedness other than [pursuant to the Loan Documents, the Revolving Loan Documents and/or the Other Pari Passu Debt Documents](#) or Secured Indebtedness or Guarantee Obligations relating solely to Secured Indebtedness of such entity's other direct or indirect Subsidiaries. Notwithstanding the foregoing, the Required Lenders may, in their sole discretion,

Subordinate. Notwithstanding the foregoing, the Required Lenders may, in their sole discretion, elect to approve the addition of any Project which does not meet all of the criteria set forth in the first sentence of this definition as an Eligible Unencumbered Property despite such failure.

“Environmental Laws” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right to Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any rule or regulation issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any Reportable Event; (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section

302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Erroneous Payment Deficiency Assignment" is defined in [Section 9.18\(d\)](#).

"Erroneous Payment Impacted Class" is defined in [Section 9.18\(d\)](#).

"Erroneous Payment Return Deficiency" is defined in [Section 9.18\(d\)](#).

"Erroneous Payment Subrogation Rights" is defined in [Section 9.18\(d\)](#).

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Excluded Subsidiary" means, a Subsidiary which (A) owns Projects subject to Indebtedness and the terms of the loan documents for such Indebtedness preclude such Subsidiary from entering into the Subsidiary Guaranty, or (B) is an entity which (x) owns no Properties or (y) owns only direct or indirect interests in Projects that are not Unencumbered Properties, so long as the assets owned by the entities subject to this clause (B) in the aggregate, constitute less than 5% of Total Asset Value. For the avoidance of doubt, as of the Agreement Effective Date, each of IA Sacramento Development VP, L.L.C., IA Sacramento Rail, L.L.C., IA Sacramento Holdings, L.L.C., Mainline Holdings, Inc. and Downtown Railyard Venture, L.L.C. shall be Excluded Subsidiaries.

"Excluded Swap Obligation" means, with respect to any Subsidiary Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee by such Subsidiary Guarantor of such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Subsidiary Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Subsidiary Guarantor becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation subject to a clearing requirement pursuant to Section 2(h) of the Commodity Exchange Act (or any successor provision thereto), because such Subsidiary Guarantor is a "financial entity," as defined in Section 2(h)(7)(C)(i) the Commodity Exchange Act (or any successor provision thereto), at the time the guarantee of

one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or its Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or its Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.5, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.5(f) and (d) any withholding Taxes imposed under FATCA.

"Excluded Tenants" means, as of any date, any tenant leasing more than 25,000 square feet of gross leasable area at one of the Projects that is subject to a voluntary or involuntary petition for relief under any federal or state bankruptcy codes or insolvency law unless such tenant's lease obligations are guaranteed by an entity whose then current long-term, unsecured debt obligations are rated BBB- or above by S&P or Baa3 or above by Moody's.

"Executive Order" is defined in Section 5.20.

"Facility" is defined in Section 2.1.

"Facility Amount" means the Tranche A-1 Facility Amount and/or the Tranche A-2 Facility Amount, as applicable.

"Facility Termination Date" means (x) with respect to the Tranche A-1 Term Loans, September 22, 2026, and (y) with respect to the Tranche A-2 Term Loans, March 22, 2027.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Agreement Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement treaty or convention among Governmental Authorities and implementing such sections of the Code.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent; provided, that, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement for any applicable Loan or portion thereof that has not been identified by the Borrower to the Administrative Agent in writing as being subject to a Swap Contract that

provides a hedge against interest rate risk.

"Fee Letter" is defined in Section 2.6.

"First Amendment" shall mean that certain First Amendment, dated as of September 22, 2021, to this Agreement, by and among the Borrower, the Lenders party thereto and the Administrative Agent.

"First Amendment Effective Date" has the meaning assigned to such term in the First Amendment, which date is September 22, 2021.

"Fixed Charge Coverage Ratio" means, (i) Adjusted EBITDA divided by (ii) the sum of (A) Consolidated Debt Service for the most recent four (4) fiscal quarters for which financial results have been reported, plus (B) all Preferred Dividends, if any, payable with respect to such four (4) fiscal quarters.

"Floating Rate" means, for any day, a rate per annum equal to (i) the Alternate Base Rate for such day plus (ii) ABR Applicable Margin for such day, in each case changing when and as the Alternate Base Rate or ABR Applicable Margin changes.

"Floating Rate Advance" means an Advance which bears interest at the Floating Rate.

"Floating Rate Loan" means a Loan which bears interest at the Floating Rate.

"Floor" means a rate of interest equal to 0% per annum.

"Foreign Lender" means a Lender that is not a U.S. Person.

"Funds From Operations" means, for a given period, an amount equal to the net income (or loss) of Borrower for such period, computed in accordance with GAAP, excluding gains (or losses) from extraordinary items and sales of assets, impairment and other non-cash charges, plus acquisition fees, prepayment or defeasance costs and real estate depreciation and amortization, and after adjustments for unconsolidated affiliates.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements referred to in Section 6.1.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law, and including any supra-national bodies such as the European Union or the European Central Bank.

"Guarantee Obligation" means, any obligation of (a) the guaranteee person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of which the guaranteee person has issued a reimbursement, counter-indemnity or similar obligation, in either case guaranteee or in effect guaranteee any Indebtedness, leases, dividends or other obligations (exclusive of contractual indemnities and guarantees of non-monetary obligations (other than guarantees of completion) which have not yet been called on or quantified) (the "primary obligations") of any other third Person (the "primary obligor") in

any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business or guarantees by the Borrower of liabilities under any interest rate lock agreement utilized to facilitate Indebtedness of another member of the Consolidated Group or an Investment Affiliate. The amount of any Guarantee Obligation shall be an amount equal to the stated or determinable amount of the primary obligation in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonable anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent financial statements of Borrower. Notwithstanding anything contained herein to the contrary, guarantees of completion shall not be deemed to be Guarantee Obligations unless and until a claim for payment or performance has been made thereunder, at which time any such guaranty of completion shall be deemed to be a Guarantee Obligation in an amount equal to any such claim. Subject to the preceding sentence, (i) in the case of a joint and several guaranty given by such Person and another Person, the amount of the guaranty shall be deemed to be 100% thereof except in circumstances where such other Person has pledged cash or Cash Equivalents to secure all or any part of such other Person's guaranteed obligations, in which case the amount of such

guaranty shall be reduced by the amount of such cash or Cash Equivalents, and (ii) in the case of a guaranty by a Person (whether or not joint and several) of an obligation which also constitutes Indebtedness of such Person, the amount of such guaranty shall be deemed to be only the guaranteed amount in excess of such Indebtedness of such Person. Notwithstanding anything contained herein to the contrary, Guarantee Obligations shall be deemed not to include guarantees of unused commitments or of the repayment of construction loans to the extent that the proceeds thereunder have not yet been drawn. All matters constituting "Guarantee Obligations" shall be calculated without duplication.

"Incremental Term Loan" is defined in Section 2.22(b).

"Indebtedness" means, of any Person at any date means without duplication, (a) all indebtedness of such Person for borrowed money including without limitation any repurchase obligation or liability of such Person with respect to securities, accounts or notes receivable sold by such Person (excluding in any calculation of Indebtedness of the Consolidated Group, any Indebtedness of one member of the Consolidated Group owing to another member of the Consolidated Group, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade liabilities and accounts payable incurred in the ordinary course of business and payable in accordance with customary practices), to the extent such obligations constitute indebtedness for the purposes of GAAP (excluding premiums or discounts on debt), (c) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (d) all Capitalized Lease Obligations, (e) all obligations of such Person, contingent or otherwise, in respect of bankers' acceptances, (f) all Guarantee Obligations of such Person (excluding in any calculation of consolidated Indebtedness of the Consolidated Group, Guarantee Obligations of one member of the Consolidated Group in respect of primary obligations of any other member of the Consolidated Group), (g) all reimbursement obligations of such Person for letters of credit, (h) Swap Termination Value, to the extent the obligations under the associated Swap Contract constitutes indebtedness for purposes of GAAP, and (i) all liabilities secured by any lien (other than liens for taxes not yet due and payable) on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof. Notwithstanding the foregoing, Indebtedness shall not include prepaid rents or security deposits, tax liabilities not yet payable, or dividends or distributions declared but not yet paid.

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

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or a direct or indirect parent company of a Defaulting Lender, (c) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof or (d) the Borrower or any of its Affiliates.

or in the case of the continuation of a LIBOR Rate Loan or Advance the last day of the preceding six months as selected by the Borrower; provided, however, that (i) the initial Interest Period for such any Advance of a SOFR Loan shall commence on the date of such Advance, and ending on the numerically corresponding day in the first, third or sixth calendar month thereafter, as the Borrower may select, except that (the date of an Advance resulting from a Conversion or Continuation shall be the date of such Conversion or Continuation) and each Interest Period that commences occurring thereafter in respect of such Advance shall commence on the first day after the last Business Day of a calendar month (or the next preceding Interest Period; (ii) if any Interest Period begins on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) at the end of such Interest Period, such Interest Period shall end on the last Business Day of the appropriate subsequent such calendar month. Notwithstanding the foregoing: (i); (iii) if any Interest Period would otherwise end after the Facility Termination Date for the applicable Loan expire on a day that is not a Business Day, such Interest Period shall end expire on such Facility Termination Date and (ii) each the next succeeding Business Day; provided, however, that if any Interest Period that would otherwise end expire on a day which that is not a Business Day shall end on the immediately following but is a day of the month after which no further Business Day (or, if occurs in such immediately following Business Day falls in the next calendar month, such Interest Period shall expire on the immediately next preceding Business Day); (iv) no Interest Period for any SOFR Loan may be selected that would end after the Facility Termination Date; and (v) if, upon the expiration of any Interest Period, the Borrower has failed to (or may not) elect a new Interest Period to be applicable to the respective Advance of SOFR Loans as provided above, the Borrower shall be deemed to have elected to convert such Borrowing to Floating Rate Loans effective as of the expiration date of such current Interest Period.

“Investment” of a Person means any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable arising in the ordinary course of business on terms customary in the trade), deposit account or contribution of capital by such Person to any other Person or any investment in, or purchase or other acquisition of, the stock, partnership interests, notes, debentures or other securities of any other Person made by such Person.

“Investment Affiliate” means any subsidiary or joint venture of any member of the Consolidated Group, in which the Consolidated Group, directly or indirectly, has a ten percent (10%) or greater ownership interest and whose financial results are not consolidated under GAAP with the financial results of the Consolidated Group.

“Investment Grade Rating” means a rating of BBB- or better from S&P and Baa3 from Moody’s.

“Joint Venture” means, with respect to Borrower, any Person in whom Borrower or its Subsidiary holds an investment regardless of the percentage or ownership, which such investment is accounted for in the financial statements of Borrower on an equity basis of

accounting and whose financial results would not be consolidated under GAAP with the financial results of Borrower on the consolidated financial statements of Borrower.

“Joint Venture Property” means an Eligible Unencumbered Property owned by a Joint Venture.

“Lenders” means the lending institutions listed on the signature pages of the Agreement, their respective successors and assigns, any other lending institutions that subsequently become parties to the Agreement.

“Lending Installation” means, with respect to a Lender, any office, branch, subsidiary or

affiliate or such Lender.

"Leverage Based Pricing Schedule" is defined in Exhibit G.

"Leverage Ratio" means the percentage obtained by dividing Consolidated Outstanding Indebtedness by Total Asset Value.

~~"LIBOR Applicable Margin"~~ means, as of any date, the Applicable Margin used to determine the LIBOR Rate as determined from time to time in accordance with the definition of "Applicable Margin".

~~"LIBOR Base Rate"~~ means, with respect to any LIBOR Rate Loan or Advance for any Interest Period, the rate of interest obtained by dividing (i) the rate of interest per annum determined on the basis of the rate for deposits in U.S. dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period by (ii) a percentage equal to 1 minus the stated maximum rate (stated as a decimal) of all reserves, if any, required to be maintained with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities") as specified in Regulation D of the Board of Governors of the Federal Reserve System (or against any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Rate Loans or Advances is determined or any applicable category of extensions of credit or other assets which includes loans by an office of any Lender outside of the United States of America); provided that if as so determined the LIBOR Base Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement for any applicable Loan or Advance or portion thereof that has not been identified by the Borrower to the Administrative Agent in writing as being subject to a Swap Contract that provides a hedge against interest rate risk. If, for any reason, the rate referred to in the preceding clause (i) does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page), then the LIBOR Base Rate shall be determined in accordance with Section 3.3. Any change in the maximum rate or reserves described in the preceding clause (ii) shall result in a change in the LIBOR Base Rate on the date on which such change in such maximum rate becomes effective.

~~"LIBOR Market Index Rate"~~ means, for any day, the LIBOR Base Rate as of that day that would be applicable for a LIBOR Loan or Advance having a one-month Interest Period

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~~determined at approximately 10:00 a.m. Central time for such day (rather than 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period as otherwise provided in the definition of "LIBOR Base Rate"), or if such day is not a Business Day, the immediately preceding Business Day. The LIBOR Market Index Rate shall be determined on a daily basis.~~

~~"LIBOR Rate"~~ means, for any Interest Period, the sum of (A) the LIBOR Base Rate applicable thereto and (B) the LIBOR Applicable Margin in effect from time to time during such Interest Period, changing when and as the LIBOR Applicable Margin changes.

~~"LIBOR Rate Advance"~~ means an Advance which bears interest at a LIBOR Rate.

~~"LIBOR Rate Loan"~~ means a Loan which bears interest at a LIBOR Rate.

~~"Lien"~~ means any lien (statutory or other), mortgage, pledge, ~~negative pledge~~, hypothecation, assignment, deposit arrangement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement).

~~"I can"~~ means, with respect to a Lender, such Lender's portion of any Advance.

"Loan Documents" means the Agreement, the Notes, the Subsidiary Guaranty and any other document from time to time evidencing or securing indebtedness incurred by the Borrower under this Agreement, as any of the foregoing may be amended or modified from time to time.

"Loan Parties" means the Borrower and the Subsidiary Guarantors.

"Majority in Interest" means, when used in reference to Lenders of any Tranche as of any date, (a) in the case of Lenders holding Tranche A-1 Term Loan Commitments, Lenders holding Tranche A-1 Term Loan Commitments representing more than 50% of all Tranche A-1 Term Loan Commitments outstanding at such time (or, if the applicable Tranche A-1 Term Loan Commitments have been terminated or reduced to zero, Lenders holding Tranche A-1 Term Loans representing more than 50% of all Tranche A-1 Term Loans outstanding at such time), and (ii) in the case of Lenders holding Tranche A-2 Term Loan Commitments, Lenders holding Tranche A-2 Term Loan Commitments representing more than 50% of all Tranche A-2 Term Loan Commitments outstanding at such time (or, if the applicable Tranche A-2 Term Loan Commitments have been terminated or reduced to zero, Lenders holding Tranche A-2 Term Loans representing more than 50% of all Tranche A-2 Term Loans outstanding at such time).

"Management Fees" means, with respect to each Project for any period, an amount equal to the greater of (a) actual management fees payable with respect thereto or (b) three

percent (3%) (or in the case of triple net leased Projects, two percent (2.0%)) per annum on the aggregate base rent and percentage rent due and payable under leases at such Project.

“Marketable Securities” means investments in Capital Stock or debt securities issued by any Person (other than an Investment Affiliate) which are publicly traded on a national exchange, excluding Cash Equivalents. The value of any such assets, for purposes hereof and as of any date, shall be the market value of such Marketable Securities.

“Material Acquisition” means any transaction, or series of related transactions consummated in the same fiscal quarter, for the purpose of or resulting, directly or indirectly, in the acquisition (including, without limitation, a merger or consolidation or any other combination with another Person) by one or more of the Borrower or any Subsidiary in which the gross purchase price of the assets acquired is equal to or in excess of 15% of the Total Asset Value (without giving effect to such acquisition) of the Borrower as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are publicly available.

“Material Adverse Effect” means a material adverse effect on (i) the financial condition or business of the Borrower and the Consolidated Group taken as a whole, (ii) the ability of the Borrower to perform its obligations under the Loan Documents in all material respects, or (iii) the validity or enforceability of any of the Loan Documents.

“Materials of Environmental Concern” means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation, but excluding substances of kinds and amounts ordinarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations or as inventory of tenants and otherwise in compliance with all Environmental Laws.

“Maximum Legal Rate” means the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or in the Note or other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions hereof.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Mortgage Note Receivable” means any Indebtedness owing to a member of the Consolidated Group which is secured by a first-priority mortgage or deed of trust on commercial real estate having a value in excess of the amount of such Indebtedness and which has been designated by the Borrower as a “Mortgage Note Receivable” in its most recent compliance certificate.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that such term shall not include any covenant, condition or restriction contained in any ground lease from a Governmental Authority (provided that the foregoing limitation shall not in any way waive or modify any of the conditions for qualification of a ground lease as an "Eligible Ground Lease" under the definition of such term).

"Net Operating Income" means, with respect to any Project for any period, "property rental and other income" (as determined by GAAP) attributable to such Project accruing for such period; minus the amount of all expenses (as determined in accordance with GAAP) incurred in connection with and directly attributable to the ownership and operation of such Project for such period, including, without limitation, Management Fees and amounts accrued for the payment of ground rent, real estate taxes and insurance premiums, but excluding any general and administrative expenses related to the operation of the Project, any interest expense or other debt service charges, any amortization related to above and below market leases, any straight-lining of rents under GAAP, impairment charges and any non-cash charges such as depreciation or amortization of financing costs.

"Non-Consenting Lender" is defined in Section 2.19(b).

"Non-Core Properties" means properties that are not retail.

"Non-Recourse Indebtedness" means, with respect to any Person, (a) Indebtedness for which the liability of such Person (except for liability for fraud, misrepresentation, misapplication of cash, waste, environmental claims and liabilities and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financing of real estate, including, without limitation, provisions converting such Indebtedness to recourse in connection with certain bankruptcy filings, transfer violations or other defaults (any such liability being referred to as "Non-Recourse Carveouts")) either is contractually limited to collateral securing such Indebtedness or is so limited by operation of law and (b) if such Person is a Single Asset Entity, any Indebtedness for borrowed money of such Person.

"Note" means a promissory note, in substantially the form of Exhibit I hereto duly executed by the Borrower and payable to the order of a Lender in the amount of its applicable Commitment, including any amendment, modification, renewal or replacement of such promissory note.

"Notice of Assignment" is defined in Section 12.3(b).

"Obligations" means the Advances and all accrued and unpaid fees and all other obligations of Borrower to the Administrative Agent or the Lenders arising under this Agreement or any of the other Loan Documents, provided, however, that the definition of 'Obligations' shall not create any guarantee by any Subsidiary Guarantor of any Excluded Swap Obligations of

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such Subsidiary Guarantor for purposes of determining any obligations of any Subsidiary Guarantor.

"OFAC" means the U.S. Department of the Treasury Office of Foreign Assets Control.

"Original Credit Agreement" is defined in the Recitals hereto.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or

perfected a security interest under, engaged in any other transaction pursuant to or entailed any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Pari Passu Debt" means (a) the Private Placement Facility and (b) after the Subsidiary Guarantors' Release Date, any other Indebtedness incurred by Borrower; provided, however, that, in the case of (a) or (b), (i) such Indebtedness shall be pari passu with the Indebtedness evidenced by the Loan Documents and, to the extent outstanding, the Revolving Loan Documents, both in right of payment and with respect to security and (ii) no Guarantee Obligations shall exist under such Indebtedness unless Guarantee Obligations on a pari passu basis in right of payment and with respect to security shall exist (or Borrower shall cause to exist) in favor of the Lenders hereunder and, to the extent outstanding, the lenders under the Revolving Credit Agreement, with such Guarantee Obligations in favor of Lenders to be documented in a manner reasonably satisfactory to Administrative Agent.

"Other Pari Passu Debt Documents" all documents and other instruments now or hereafter evidencing any Other Pari Passu Debt, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Outstanding Facility Amount" means, at any time, the sum of all then outstanding Advances under the applicable Tranche.

"Participant Register" is defined in Section 12.2.3.

"Participants" is defined in Section 12.2.1.

"Payment Date" means, with respect to the payment of interest accrued on any Advance, the first day of each calendar month.

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"Percentage" means, as of any date for each Lender, the percentage of the applicable Aggregate Commitment which is represented by such Lender's applicable Commitment, or if all of the applicable Commitments have been terminated, the percentage of the total applicable Outstanding Facility Amount which is represented by such Lender's outstanding Loans.

"Permitted Investments" are defined in Section 6.19.

"Permitted Liens" means (a) Liens for taxes, assessments or governmental charges or levies on a Project if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves shall have been set aside on its books; (b) Liens imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than sixty (60) days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on its books and there is no risk of loss, forfeiture, or sale of any interest in a Project during the pending of such proceeding; (c) Liens arising out of pledges or deposits under workers' compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation; (d) Easements, restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any

material and adverse way affect the marketability of the same or materially and adversely interfere with the use thereof in the business of the Borrower or its Subsidiaries; (e) the rights of tenants under leases or subleases at a Project not interfering with the ordinary conduct of business of the owner of such Project; (f) Liens securing judgments that do not otherwise give rise to a Default or Unmatured Default; (g) utility deposits and other deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, purchase contracts, construction contracts, governmental contracts, statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (h) Liens for purchase money obligations for equipment (or Liens to secure Indebtedness incurred within 90 days after the purchase of any equipment to pay all or a portion of the purchase price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition of any such equipment, or extensions, renewals, or replacements of any of the foregoing for the same or lesser amount), provided that (I) the Indebtedness secured by any such Lien does not exceed the purchase price of such equipment, (II) any such Lien encumbers only the asset so purchased and the proceeds upon sale, disposition, loss or destruction thereof, and (III) such Lien, after giving effect to the Indebtedness secured thereby, does not give rise to a Default or Unmatured Default, and (i) Liens, if any, securing the Indebtedness and other obligations incurred by Borrower pursuant to this Agreement or pursuant to the Revolving Credit Agreement or pursuant to the Other Pari Passu Debt Documents.

“Person” means any natural person, corporation, limited liability company, joint venture, partnership, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Assets” means the assets of an employee benefit plan within the meaning of 29 C.F.R. 2510.3-101.

“Preferred Dividends” means, with respect to any entity, dividends or other distributions which are payable to holders of any ownership interests in such entity which entitle the holders of such ownership interests to be paid on a preferred basis prior to dividends or other distributions to the holders of other types of ownership interests in such entity.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Private Placement Facility” that certain Note Purchase Agreement, which may be hereafter entered into by the Borrower and certain of its Subsidiaries with certain note purchasers, together with the notes and other note documents issued or delivered thereunder, in each case, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Prohibited Person” is defined in Section 5.20(b).

“Project” means any real estate asset located in the United States owned by the Borrower or any of its Subsidiaries or any Investment Affiliate, and operated or intended to be operated as a retail property or another commercial property allowable under the Permitted Investments definition.

“Property” of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"QFC Credit Support" is defined in Section 9.17.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant guarantee becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as such an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Ratings Based Pricing Schedule" is defined in Exhibit G.

"Recourse Indebtedness" means any Indebtedness of the Borrower or any other member of the Consolidated Group for borrowed money with respect to which the liability of the obligor for payment is not limited to the obligor's interest in specified assets securing such Indebtedness (either contractually or by virtue of the fact that such obligor owns no material assets other than those securing such Indebtedness), provided, however, that the existence of personal recourse of such obligor or others for any such Indebtedness on account of Non-Recourse Carveouts shall not, by itself, cause such Indebtedness to be characterized as Recourse Indebtedness. For purposes of the foregoing and for the avoidance of doubt, (a) if the Indebtedness is partially guaranteed then the portion of such Indebtedness that is not so guaranteed shall still not constitute Recourse Indebtedness if it otherwise satisfies the requirements in this definition, (b) if the liability of a guarantor under any such guaranty is itself limited solely to specific assets of such guarantor then such Indebtedness shall only constitute Recourse Indebtedness by virtue of such guaranty to the extent of then-current value of such specified assets of such guarantor and (c) if such obligor is acting as a guarantor of Indebtedness for purposes of minimizing taxes on the creation of the deed of trust or mortgage securing such Indebtedness and such obligor's liability does not exceed the value of the assets securing such Indebtedness then such obligor's guarantee obligations shall not constitute Recourse Indebtedness.

"Recipient" means the Administrative Agent and any Lender.

"Register" is defined in Section 12.3(c).

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

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"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

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

"Reportable Event" means a reportable event as defined in Section 4043 of ERISA and

the regulations issued under such section, with respect to a Plan, excluding, however, such events as to which the PBGC by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, provided, however, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

“Required Lenders” means Lenders in the aggregate having more than 50% of the Aggregate Commitment or, if the Aggregate Commitment has been terminated, Lenders in the aggregate holding more than 50% of the aggregate unpaid principal amount of the outstanding Advances, provided that, (i) the Commitments and Advances held by any then-current Defaulting Lender shall be subtracted from the Aggregate Commitment and the outstanding Advances solely for the purpose of calculating the Required Lenders at such time and (ii) at all times when two or more Lenders (excluding Defaulting Lenders) are party to this Agreement, the term “Required Lenders” shall in no event mean fewer than two Lenders.

~~“Reserve Requirement” means, with respect to a LIBOR Rate Loan and Interest Period, that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Federal Reserve Board or other governmental authority or agency having jurisdiction with respect thereto for determining the maximum reserves (including, without limitation, basic, supplemental, marginal and emergency reserves) for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D) maintained by a member bank of the Federal Reserve System.~~

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Revolving Credit Agreement” means that certain Second Amended and Restated Credit Agreement, dated as of December 21, 2018, by and among Borrower, KeyBank National Association, as administrative agent, and the other financial institutions from time to time party thereto as lenders, as amended as of the First Amendment Effective Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, provided that the terms and conditions applicable to the Borrower under the Revolving Credit Agreement, as so amended, restated, supplemented, replaced or otherwise modified from time to time,

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shall be no more onerous as to the Borrower in any material respect than the corresponding terms and conditions then applicable to the Borrower under this Agreement.

“Revolving Loan Documents” means the Revolving Credit Agreement and the other loan documents defined as “Loan Documents” therein, as such Revolving Loan Documents may be further amended, restated, supplemented, replaced or otherwise modified from time to time, provided that the terms and conditions applicable to the Borrower under such Revolving Loan Documents, as so amended, restated, supplemented, replaced or otherwise modified from time to time, shall be no more onerous as to the Borrower in any material respect than the corresponding terms and conditions then applicable to the Borrower under the Loan Documents.

“Sacramento Project” means the Project known as The Railyards, located in the City of Sacramento, County of Sacramento, State of California which originally consisted of approximately 205 acres.

“Sanctions Laws and Regulations” means any applicable sanctions, prohibitions or requirements imposed by any applicable executive order or by any applicable sanctions program administered by OFAC, the United Nations Security Council, the European Union or Her Majesty’s Treasury.

"Second Amendment" shall mean that certain Second Amendment, dated as of May 11, 2022, to this Agreement, by and among the Borrower, the Lenders party thereto and the Administrative Agent.

"Secured Indebtedness" means any Indebtedness of the Borrower or any other member of the Consolidated Group which is secured by a Lien on a Project, any ownership interests in any Person or any other assets which had, in the aggregate, a value in excess of the amount of such Indebtedness at the time such Indebtedness was incurred.

"Section" means a numbered section of this Agreement, unless another document is specifically referenced.

"Single Asset Entity" means a Person (other than an individual) that (a) only owns a single Property; (b) is engaged only in the business of owning, developing and/or leasing such Property; and (c) receives substantially all of its gross revenues from such Property. In addition, if the assets of a Person consist solely of (i) Capital Stock in one or more other Single Asset Entities that collectively own a single Property and (ii) cash and other assets of nominal value incidental to such Person's ownership of the other Single Asset Entities, such Person shall also be deemed to be a Single Asset Entity for purposes hereof.

"Single Employer Plan" means a Plan maintained by the Borrower or any member of the Controlled Group for employees of the Borrower or any member of the Controlled Group.

"S&P" means Standard & Poor's Ratings Group and its successors.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Advance" means an Advance comprised of Term SOFR Loans.

"SOFR Applicable Margin" means, as of any date, the Applicable Margin used to determine the Term SOFR Rate, as applicable, as determined from time to time in accordance with the definition of "Applicable Margin."

"SOFR Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"SOFR Index Adjustment" means 0.10%.

"SOFR Loan" means each Loan bearing interest at a rate based upon Adjusted Term SOFR (other than pursuant to clause (iii) of the definition of "Alternate Base Rate").

"Subsidiary" of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries; provided, however, that, with respect to the Borrower, "Subsidiary" shall include all Persons which are required to be consolidated with the Borrower in accordance with GAAP. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Borrower.

"Subsidiary Guarantor" means, as of any date, each Subsidiary of the Borrower which is then a party to the Subsidiary Guaranty pursuant to Section 6.21.

"Subsidiary Guarantors' Release Date" means the date, if any, on which each Subsidiary Guarantor is released from the Subsidiary Guaranty pursuant to Section 6.21 or other unanimous Lender consent.

"Subsidiary Guaranty" means the guaranty to be executed and delivered by those Subsidiaries of the Borrower which are required to be Subsidiary Guarantors as of the

Agreement Effective Date, substantially in the form of Exhibit D attached to this Agreement, as the same may be amended, supplemented or otherwise modified from time to time pursuant to Section 6.21, including any joinders executed by additional Subsidiaries required to become Subsidiary Guarantors from time to time hereunder.

“Substantial Portion” means, with respect to any Property of the Borrower or its Subsidiaries, Property which represents more than 10% of then-current Total Asset Value.

“Supported QFC” is defined in Section 9.17.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any Subsidiary Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark to market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” means for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Lookback Day”) that is two SOFR Business Days prior to the first day of such Interest Period (and rounded in accordance with the Administrative Agent’s customary practice), as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Lookback Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding SOFR Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such

first preceding SOFR Business Day is not more than three SOFR Business Days prior to such Lookback Day, and for any calculation with respect to a Floating Rate Loan, the Term SOFR Reference Rate for a tenor of one month on the day that is two SOFR Business Days prior to the date the Alternate Base Rate is determined, subject to the proviso provided above.

"Term SOFR Administrator" means CME (or a successor administrator of the Term SOFR Reference Rate, as selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Loan" means each Loan bearing interest at a rate based upon a Term SOFR Rate.

"Term SOFR Rate" means the relevant Adjusted Term SOFR for such Term SOFR Loan Interest Period plus the SOFR Applicable Margin in effect from time to time.

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Total Asset Value" means, as of any date of determination, (i) the Consolidated NOI attributable to Projects then owned by the Borrower or a member of the Consolidated Group (excluding 100% of the Consolidated NOI attributable to Projects not so owned for the prior four fiscal quarters for which Consolidated NOI is calculated) divided by the Capitalization Rate for each property type applied to the portion of such Consolidated NOI attributable to such property type, plus (ii) 100% of the sum of (x) the price paid for any Projects then owned by the Borrower or a member of the Consolidated Group and first acquired by the Borrower or a member of the Consolidated Group on or after the first day of the most recent four prior fiscal quarters of the Borrower for which financial results have been reported and (y) the cost of capital expenditures actually incurred in connection with such Projects, plus (iii) cash, Cash Equivalents (including cash or Cash Equivalents held in restricted Section 1031 accounts under the sole control of any member of the Consolidated Group) and Marketable Securities owned by the Consolidated Group as of the end of the most recent fiscal quarter of the Borrower for which financial results have been reported, plus (iv) Unimproved Land, Development Projects and Mortgage Note Receivables in each case, to the extent owned by the Consolidated Group as of the end of the most recent fiscal quarter of the Borrower for which financial results have been reported (with each such asset valued at undepreciated GAAP book value, after taking into account any impairments), plus (v) the applicable Consolidated Group Pro Rata Share of (A) Net Operating

Income for the most recent four fiscal quarters of the Borrower for which financial results have been reported attributable to any Projects then owned by an Investment Affiliate (excluding Net Operating Income attributable to Projects not so owned for such entire prior four fiscal quarters) divided by (B) the applicable Capitalization Rate, plus (vi) the Consolidated Group Pro Rata Share of the price paid for any Projects then owned by an Investment Affiliate and first acquired by an Investment Affiliate on or after the first day of such period of four prior fiscal quarters plus (vii) the Consolidated Group Pro Rata Share of cash, Cash Equivalents and Marketable Securities owned by Investment Affiliates as of the end of such most recent fiscal quarter plus (viii) the applicable Consolidated Group Pro Rata Shares of Unimproved Land, Development Projects and Mortgage Note Receivables owned by Investment Affiliates as of the end of such most recent fiscal quarter (with each such asset valued at undepreciated GAAP book value, after taking into account any impairments).

"Tranche" means the Tranche A-1 or the Tranche A-2, as the case may be, and "Tranches" means both collectively. "Tranche A-1" has the meaning specified in Section 2.1.

"Tranche A-1 Facility Amount" means, at any time, the sum of all then outstanding Tranche A-1 Term Loans.

"Tranche A-1 Co-Syndication Agent" has the meaning specified in the recitals.

"Tranche A-1 Term Loan" has the meaning specified in Section 2.1.

"Tranche A-1 Term Loan Commitment" means, with respect to each Lender, the obligation to make a Tranche A-1 Term Loan in the principal amount set forth on Schedule 1, or as set forth in any Notice of Assignment relating to any assignment that has become effective pursuant to Section 12.3(b), as such amount may be modified from time to time pursuant to the terms hereof.

"Tranche A-2" has the meaning specified in Section 2.1.

"Tranche A-2 Facility Amount" means, at any time, the sum of all then outstanding Tranche A-2 Term Loans.

"Tranche A-2 Co-Syndication Agent" has the meaning specified in the recitals.

"Tranche A-2 Term Loan" has the meaning specified in Section 2.1.

"Tranche A-2 Term Loan Commitment" means, with respect to each Lender, the obligation to make a Tranche A-2 Term Loan in the principal amount set forth on Schedule 2, or as set forth in any Notice of Assignment relating to any assignment that has become effective pursuant to Section 12.3(b), as such amount may be modified from time to time pursuant to the terms hereof.

"Transferee" is defined in Section 12.4.

“Type” means, with respect to any Advance, its nature as either a Floating Rate Advance or LIBOR RateSOFR Advance.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unencumbered Pool” means the Unencumbered Properties.

“Unencumbered Pool NOI” means, as of any date of determination, the sum of (a) the aggregate Net Operating Income for the most recent four (4) full fiscal quarters for which financial results of Borrower have been reported attributable to Unencumbered Properties owned by (i) the Borrower or (ii) a Subsidiary Guarantor, or after the Subsidiary Guarantors' Release Date, the Wholly-Owned Subsidiary or Joint Venture that owns an Unencumbered Property, for the entirety of such period, as adjusted by deducting therefrom any income attributable to Excluded Tenants plus, (b) in the case of any Unencumbered Property that was owned by (i) the Borrower or (ii) a Subsidiary Guarantor, or after the Subsidiary Guarantors' Release Date, the Wholly-Owned Subsidiary or Joint Venture that owns an Unencumbered Property, as of the last day of such most recent period of four (4) fiscal quarters, but not so owned for the full period, the amount of Net Operating Income that would have been earned if such Unencumbered Property had been so owned for such period of four (4) full fiscal quarters, as established by Borrower and reasonably approved by the Administrative Agent on behalf of the Lenders, plus (c) in the case of any Unencumbered Property owned by (i) the Borrower or (ii) a Subsidiary Guarantor, or after the Subsidiary Guarantors' Release Date, the Wholly-Owned Subsidiary or Joint Venture that owns an Unencumbered Property, as of such date of determination, but not so owned as of the last day of such most recent period of four (4) fiscal quarters, the amount of Net Operating Income that would have been earned if such Unencumbered Property had been so owned for such period of four (4) full fiscal quarters, as established by Borrower and reasonably approved by the Administrative Agent on behalf of the Lenders. Net Operating Income of a Joint Venture Property shall be limited to the aggregate ownership percentage of Borrower and its Subsidiaries in such Joint Venture.

“Unencumbered Pool Value” means, as of any date of determination, (a) the aggregate Adjusted Unencumbered NOI attributable to Unencumbered Properties included in the Unencumbered Pool as of such determination date and also owned for the entirety of the most recent four (4) consecutive fiscal quarters for which financial results of Borrower have been reported (provided that the contribution to Adjusted Unencumbered Pool NOI on account of any

included in the Unencumbered Pool as of such determination date but not so owned for such period of four (4) consecutive entire fiscal quarters. For purposes of this definition, to the extent that the aggregate amount included in Unencumbered Pool Value on account of any of the following categories: a) a single Project, b) Projects leased to any single tenant, c) Projects leased to a single tenant with a remaining lease term of less than five (5) years, or d) properties subject to a ground lease; would exceed twenty percent (20%) of Unencumbered Pool Value, the amount in excess of twenty percent (20%) of Unencumbered Pool Value attributable to such category shall be disregarded in the calculation of Unencumbered Pool Value. In addition, to the extent that the aggregate amount included in the Unencumbered Pool Value on account of Joint Venture Properties would exceed five percent (5%), the amount in excess of five percent (5%) of Unencumbered Pool Value attributable to such category shall be disregarded in the calculation of Unencumbered Pool Value.

“Unencumbered Property” or “Unencumbered Properties” means any Eligible Unencumbered Property, as of the Agreement Effective Date, or any Eligible Unencumbered Property subsequently added to the Unencumbered Pool.

“Unencumbered Property Due Diligence” means such information regarding a proposed Unencumbered Property as the Administrative Agent may reasonably request to confirm that it meets the requirements of an Eligible Unencumbered Property, including, but not limited to, if applicable; rent roll, operating statements, and leases.

“Unfunded Liabilities” means the amount (if any) by which the present value of all vested nonforfeitable benefits under all Single Employer Plans exceeds the fair market value of all such Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plans.

“Unimproved Land” means as of any date, land on which no development (other than improvements that are not material and are temporary in nature) has occurred and for which no development is scheduled in the twelve (12) months after such date.

“Unmatured Default” means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default.

“Unsecured Indebtedness” means, with respect to any Person, all Indebtedness of such Person for borrowed money that does not constitute Secured Indebtedness or Guarantee Obligations. Notwithstanding the foregoing, Unsecured Indebtedness shall include Recourse Indebtedness that is secured solely by ownership interests in another Person that owns a Project which is encumbered by a mortgage securing Indebtedness.

“Unsecured Interest Coverage Ratio” means, (i) Adjusted Unencumbered NOI divided by (ii) Unsecured Interest Expense.

“Unsecured Interest Expense” means, as of any date of determination, ~~the greater of (i)~~ that portion of Consolidated Interest Expense attributable to Unsecured Indebtedness for the most recent two (2) fiscal quarters of the Consolidated Group for which financial results have been reported, annualized, ~~and (ii) an amount equal to five and one-half percent (5.5%) of the aggregate Unsecured Indebtedness of the Consolidated Group outstanding as of such date.~~

“Unsecured Leverage Ratio” means, as of any date of determination, the percentage obtained by dividing (i) Unsecured Indebtedness of the Consolidated Group outstanding as of such date by (ii) Unencumbered Pool Value.

“U.S. Person” means any Person that is a “United States person” as defined in Section

7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" shall have the meaning given to such term in Section 3.5(e)(ii)(B)(III).

"Wholly-Owned Subsidiary" of a Person means, as of any date, any Subsidiary of such Person 100% of the equity securities or other equity ownership interests of which (other than in the case of a corporation, directors' qualifying shares, or, in the case of any entity qualifying or desiring to qualify as a real estate investment trust, so-called "accommodation" shareholders) are at such time directly or indirectly owned by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means the Borrower and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

Notice Regarding Rates: The interest rate on Loans denominated in Dollars may be determined by reference to a benchmark rate that is, or may in the future become, the subject of regulatory reform or cessation. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Alternate Base Rate the Term SOFR Reference Rate Adjusted Term SOFR or Term SOFR or any other

Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. The Administrative Agent will, in keeping with industry practice, continue using its current rounding practices in connection with the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

ARTICLE II.

THE CREDIT

2.1. Generally. Subject to the terms and conditions of this Agreement, (A) each Lender identified on Schedule 1 severally agrees to make Advances through the Administrative Agent to Borrower on or prior to the First Amendment Effective Date in an aggregate amount not to exceed its Tranche A-1 Term Loan Commitment (such Advances, the “Tranche A-1 Term Loans” and the portion of the Facility relating thereto being the “Tranche A-1”), and (B) each

Lender identified on Schedule 2 severally agrees to make Advances through the Administrative Agent to Borrower on or prior to the First Amendment Effective Date in an aggregate amount not to exceed its Tranche A-2 Term Loan Commitment (such Advances, the "Tranche A-2 Term Loans" and the portion of the Facility relating thereto being the "Tranche A-2"). Amounts repaid or prepaid in respect of the Advances may not be reborrowed.

| The Advances may be ratable Floating Rate Advances or ratable **LIBORSOFR** Rate Advances. This facility ("Facility") is a term loan credit facility. Each Lender shall fund its applicable Percentage of each Advance and no Lender will be required to fund any amounts which would exceed such Lender's then-current unused Commitment for the applicable Tranche.

| **2.2. Ratable Advances.** Each Advance hereunder shall consist of Loans made from the several Lenders ratably based on each Lender's applicable Percentage and Advances shall be made ratably between Tranches unless otherwise directed by the Borrower pursuant to the applicable Borrowing Notice. The ratable Advances may be Floating Rate Advances, **LIBORSOFR** Rate Advances or a combination thereof, selected by the Borrower in accordance with Sections 2.8 and 2.9. Upon a Lender funding all or any portion of its applicable Commitment, such Commitment of such Lender shall terminate by the amount so funded.

2.3. Periodic Principal Payments.

| (a) **Optional Prepayments.** The Borrower may, upon at least one (1) Business Day's notice to the Administrative Agent, prepay the Advances, which notice shall specify the date and amount of prepayment and whether the prepayment is of **LIBORSOFR** Rate Advances, Floating Rate Advances or a combination thereof, and if a combination thereof, the amount allocable to each; provided, however, that (i) any partial prepayment under this Subsection shall be in an amount not less than \$1,000,000 or a whole multiple of \$100,000 in excess thereof; and (ii) any **LIBORSOFR** Rate Advance prepaid on any day other than the last day of the applicable Interest Period must be accompanied by any amounts payable pursuant to Section 3.4. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with any amounts payable pursuant to Section 3.4.

| (b) **Mandatory Prepayments.** Mandatory partial principal payments shall be due from time to time if, due to any reduction in the Unencumbered Pool Value or in the Adjusted Unencumbered NOI, whether by an Unencumbered Property failing to continue to satisfy the requirement for qualification as an Eligible Unencumbered Property or by a reduction in the Unencumbered Pool Value or the Adjusted Unencumbered NOI attributable to any Unencumbered Property, the applicable Outstanding Facility Amount shall be in excess of the maximum amount permitted under clauses (e) or (f) of Section 6.17. Such principal payments shall be in the amount needed to restore Borrower to compliance with such covenants. Such mandatory principal payments shall be due and payable (i) in the case of any such reduction arising

statement and compliance certificate under Section 6.1 evidencing such reduction or (ii) in all other cases, ten (10) Business Days after Borrower's receipt of notice from the Administrative Agent of any such failure to continue to qualify as an Unencumbered Property or any such reduction in the amount contributed to the Adjusted Unencumbered NOI or Unencumbered Pool Value.

2.4. Final Principal Payment. Any outstanding Advances and all other unpaid Obligations with respect to the Commitments and the Advances not required to be repaid earlier pursuant to the terms hereof shall be paid in full by the Borrower on the applicable Facility Termination Date.

2.5. [Reserved].

2.6. Other Fees. The Borrower agrees to pay all fees payable to the Administrative Agent and Arrangers, as applicable, pursuant to the Borrower's letter agreements with the Administrative Agent and the Arrangers (collectively, the "Fee Letters").

2.7. [Intentionally Deleted].

2.8. Method of Selecting Types and Interest Periods for New Advances. The Borrower shall select the Type of Advance and, in the case of each LIBORSOFR Rate Advance, the Interest Period applicable to each Advance from time to time. The Borrower shall give the Administrative Agent irrevocable notice (a "Borrowing Notice") in the form attached as Exhibit F hereto (i) not later than 1:00 p.m. New York time on the Business Day immediately preceding the Borrowing Date of each Floating Rate Advance, and (ii) not later than noon New York time, at least three (3) Business Days before the Borrowing Date for each LIBORSOFR Rate Advance of:

- (i) the Borrowing Date, which shall be a Business Day, of such Advance,
- (ii) the aggregate amount of such Advance,
- (iii) the Type of Advance selected (and in the absence of any selection it shall be assumed that the Borrower has selected a LIBORFloating Rate Advance), and
- (iv) the Tranche in respect of which such Advance is requested,
- (v) in the case of each LIBORSOFR Rate Advance, the Interest Period applicable thereto (and in the absence of any selection it shall be assumed that the Borrower has selected an Interest Period of one month).

Each applicable Lender shall make available its Loan or Loans, in funds immediately available in New York to the Administrative Agent at its address specified pursuant to Article XIII on each Borrowing Date not later than (i) 11:00 a.m. (New York time), in the case of Floating Rate Advances which have been requested by a Borrowing Notice given to the Administrative Agent not later than 1:00 p.m. (New York time) on the Business Day immediately preceding such Borrowing Date, or (iii) noon (New York time) in the case of all other Advances. The Administrative Agent will make the funds so received from the Lenders available to the Borrower at the account specified by the Borrower in the Borrowing Notice. Any Advances of Incremental Term Loans hereunder shall be made in accordance with Section 2.22(b).

the Lenders otherwise agree in writing, in no event may there be more than six (6) different Interest Periods for LIBORSOFR Rate Advances outstanding at any one time.

2.9. Conversion and Continuation of Outstanding Advances. Floating Rate Advances shall continue as Floating Rate Advances unless and until such Floating Rate Advances are converted into LIBORSOFR Rate Advances. Each LIBORSOFR Rate Advance shall continue as a LIBORSOFR Rate Advance until the end of the then applicable Interest Period therefor, at which time such LIBORSOFR Rate Advance shall be automatically converted as a LIBORSOFR Rate Advance, but with an Interest Period of one month unless the Borrower shall have given the Administrative Agent an irrevocable notice (a "Conversion/Continuation Notice") requesting that, at the end of such Interest Period, such LIBORSOFR Rate Advance either continue as a LIBORSOFR Rate Advance for the same or another Interest Period or be converted to an Advance of another Type. Notwithstanding the provision for automatic conversion in the foregoing sentence, if the effective date of any such automatic conversion is less than one month prior to the then-current Facility Termination Date, such LIBORSOFR Rate Advance shall be automatically converted into a Floating Rate Advance. Subject to the terms of Section 2.7, the Borrower may elect from time to time to convert all or any part of an Advance of any Type into any other Type or Types of Advances; provided that, if any conversion of any LIBORSOFR Rate Advance shall be made on any day other than the last day of the Interest Period applicable thereto, the Borrower shall be obligated to pay the amounts, if any, payable pursuant to Section 3.4. The Borrower shall give the Administrative Agent a Conversion/Continuation Notice regarding each conversion of an Advance to a LIBORSOFR Rate Advance or continuation of a LIBORSOFR Rate Advance not later than 11:00 a.m. (New York time), at least three (3) Business Days, in the case of a conversion into or continuation of a LIBORSOFR Rate Advance, prior to the date of the requested conversion or continuation, specifying:

- (i) the requested date which shall be a Business Day, of such conversion or continuation;
- (ii) the aggregate amount, Tranche and Type of the Advance which is to be converted or continued; and

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- (iii) the amount and Type(s) of Advance(s) into which such Advance is to be converted or continued and, in the case of a conversion into or continuation of a LIBORSOFR Rate Advance, the duration of the Interest Period applicable thereto.

2.10. Changes in Interest Rate, Etc. Each Floating Rate Advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made or is converted from a LIBORSOFR Rate Advance into a Floating Rate Advance pursuant to Section 2.9 to but excluding the date it becomes due or is converted into a LIBORSOFR Rate Advance pursuant to Section 2.9 hereof, at a rate per annum equal to the Floating Rate for such day. Changes in the rate of interest on that portion of any Advance maintained as a Floating Rate Advance will take effect simultaneously with each change in the Alternate Base Rate. Each LIBORSOFR Rate Advance shall bear interest from and including the first day of the Interest Period applicable thereto to (but not including) the last day of such Interest Period at the LIBORSOFR Rate as applicable to such LIBORSOFR Rate Advance.

2.11. Rates Applicable After Default. Notwithstanding anything to the contrary contained in Section 2.8 or 2.9, during the continuance of a Default or Unmatured Default the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2 requiring

unanimous consent of the Lenders to changes in interest rates), declare that no Advance may be made as, converted into or continued as a **LIBORSOFR** Rate Advance. During the continuance of a Default the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2 requiring unanimous consent of the Lenders to changes in interest rates), declare that the Default Rate shall apply; provided, however, that the Default Rate shall become applicable automatically if a Default occurs under Section 7.1 or 7.2, unless waived by the Required Lenders.

2.12. Method of Payment. All payments of the Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Administrative Agent at the Administrative Agent's address specified pursuant to Article XIII, or at any other Lending Installation of the Administrative Agent located in the continental United States specified in writing at least three (3) Business Days in advance by the Administrative Agent to the Borrower, by noon (New York time) on the date when due and shall be applied ratably by the Administrative Agent among the applicable Lenders. As provided elsewhere herein, all Lenders' interests in the Advances and the Loan Documents shall be ratable undivided interests and none of such Lenders' interests shall have priority over the others. Each payment delivered to the Administrative Agent for the account of any Lender or amount to be applied or paid by the Administrative Agent to any Lender shall be paid promptly (on the same day as received by the Administrative Agent if received prior to noon (New York time) on such day and otherwise on the next Business Day) by the Administrative Agent to such Lender in the same type of funds that the Administrative Agent received at its address specified pursuant to Article XIII or at any Lending Installation specified in a notice received by the Administrative Agent from such Lender. Payments received by the Administrative Agent but not timely funded to the Lenders

shall bear interest payable by the Administrative Agent at the Federal Funds Rate from the date due until the date paid. None of the funds or assets of the Borrower that are used to pay any amount due pursuant to this Agreement shall constitute funds obtained from transactions with or relating to Designated Persons or countries which are the subject of sanctions under any Sanctions Laws and Regulations. Notwithstanding the foregoing, amounts received from any Loan Party that is not a Qualified ECP Guarantor shall not be applied to Obligations that are Excluded Swap Obligations.

2.13. Notes; Notices. Any Lender may request that Loans made by it be evidenced by a Note, and each Lender is hereby authorized to record the principal amount of each of its Loans and each repayment on the schedule attached to its Note, provided, however, that the failure to so record shall not affect the Borrower's obligations under such Note. The Borrower hereby authorizes the Lenders and the Administrative Agent to extend, convert or continue Advances, effect selections of Types of Advances and to transfer funds based on written notices made by any Authorized Officer and Borrower agrees to deliver promptly to the Administrative Agent such written notice. The Administrative Agent will at the request of the Borrower, from time to time, but not more often than monthly, provide notice of the amount of the outstanding Aggregate Commitment, the Type of Advance, and the applicable interest rate, if for a **LIBORSOFR** Rate Advance. Upon a Lender's furnishing to Borrower an affidavit and indemnity in form and substance reasonably acceptable to the Borrower, if a Note is mutilated, destroyed, lost or stolen, Borrower shall deliver to such Lender, in substitution therefore, a new note containing the same terms and conditions as such Note being replaced.

2.14. Interest Payment Dates; Interest and Fee Basis. Interest accrued on each Advance shall be payable on each Payment Date, at maturity, whether by acceleration or otherwise, and upon any termination of the Aggregate Commitment in its entirety. **Interest and all other fees shall be calculated for actual days elapsed on the basis of a 360-day year, except for interest calculated utilizing the Alternate Base Rate, which shall be based on the actual number of days elapsed over a year of 365 or 366 days, as applicable.** Interest shall be payable for the day an Advance is made but not for the day of any payment on the amount paid if payment is received prior to noon (New York time) at the place of payment. **If any payment of principal of or interest on an Advance shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest in connection with such payment.** Interest and other amounts payable at the Default Rate shall be payable on demand.

2.15. Notification of Advances, Interest Rates and Prepayments. The Administrative Agent will notify each Lender of the contents of each Borrowing Notice, Conversion/Continuation Notice, and repayment notice received by it hereunder not later than the close of business on the Business Day such notice is received by the Administrative Agent. The Administrative Agent will notify each Lender of the interest rate applicable to each **LIBORSOFR** Rate Advance promptly upon determination of such interest rate and will give each Lender prompt notice of each change in the Alternate Base Rate.

(a) Temporary Inability to Determine Rates. If (A) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR cannot be determined pursuant to the definition thereof or (B) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, in each case of (A) and (B), on or prior to the first day of any Interest Period, the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, (i) any obligation of the Lenders to make or continue the applicable SOFR Loans or to convert Floating Rate Loans to SOFR Loans shall be suspended (to the extent of the affected Interest Periods) until the Administrative Agent revokes such notice and (ii) if such determination affects the calculation of the Base Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate without reference to clause (iii) of the definition of "Base Rate" until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of any applicable SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Floating Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Floating Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 3.4. If the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on Floating Rate Loans shall be determined by the Administrative Agent without reference to clause (iii) of the definition of "Base Rate" until the Administrative Agent revokes such determination.

(b) Permanent Inability to Determine Rate; Benchmark Replacement.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the

Required Lenders. No replacement of the then-current Benchmark with a Benchmark Replacement pursuant to this Section 2.16(b) will occur prior to the applicable Benchmark Transition Start Date. Unless and until a Benchmark Replacement is effective in accordance with this clause (i), all Loans shall be converted into Floating Rate Loans in accordance with the provisions of Section (a) above.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein

or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of the implementation of any Benchmark Replacement and the effectiveness of any Conforming Changes. The Administrative Agent will notify the Borrower and the removal or reinstatement of any tenor of a Benchmark. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.16(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.16(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if any then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for

a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or incompliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for the applicable SOFR Advance of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Floating Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon Adjusted Term SOFR (or then-current Benchmark) will not be used in any determination of Base Rate.

2.17. Lending Installations. Each Lender may book its Loans at any Lending Installation selected by such Lender and may change its Lending Installation from time to time; provided that such change does not increase the amounts payable by the Borrower under Article III. All terms of this Agreement shall apply to any such Lending Installation and the Notes shall be deemed held by each Lender for the benefit of such Lending Installation. Each Lender may, by written or telex notice at least three (3) Business Days in advance to the Administrative Agent and the Borrower, designate a Lending Installation through which Loans will be made by it and for whose account Loan payments are to be made.

2.18. Non-Receipt of Funds by the Administrative Agent. Unless the Borrower or a Lender, as the case may be, notifies the Administrative Agent prior to the time at which it is scheduled to make payment to the Administrative Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of the Borrower, a payment of principal, interest or fees to the Administrative Agent for the account of the Lenders, that it does not intend to make such payment, the Administrative Agent may assume that such payment has been made. The Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Borrower, as the case may be, has not in fact made such payment to the Administrative Agent, the recipient of such payment shall, on demand by the Administrative Agent, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount at a rate per annum equal to (i) in the case of payment by a Lender, the Federal Funds Rate for such day or (ii) in the case of payment by the Borrower, the interest rate applicable to the relevant Loan. If such Lender so repays such amount and interest thereon to the Administrative Agent

within one (1) Business Day after such demand, all interest accruing on the Loan not funded by such Lender during such period shall be payable to such Lender when received from the Borrower.

2.19. Replacement of Lenders under Certain Circumstances.

(a) The Borrower shall be permitted to replace any Lender which (a) shall be owed amounts pursuant to Sections 3.1, 3.2 or 3.5, (b) is not capable of receiving payments without any deduction or withholding of United States federal income tax pursuant to Section 3.5, (c) cannot maintain its LIBORSOFR Rate Loans at a suitable Lending Installation pursuant to Section 3.3, or (d) is a Defaulting Lender, with a replacement bank or other financial institution; provided that (i) such replacement does not conflict with any applicable legal or regulatory requirements affecting the Lenders, (ii) no Default shall have occurred and be continuing at the time of such replacement, (iii) the Borrower shall repay (or the replacement bank or institution shall purchase, at par) all Loans and other amounts owing to such replaced Lender prior to the date of replacement, (iv) the Borrower shall be liable to such replaced Lender under Section 3.4 if any LIBORSOFR Rate Loan owing to such replaced Lender shall be prepaid (or purchased) other than on the last day of the Interest Period relating thereto, (v) the replacement bank or institution, if not already a Lender or an Approved Bank, and the terms and conditions of such replacement, shall be reasonably satisfactory to the Administrative Agent (and no such replacement bank or financial institution shall be an Ineligible Institution), (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 12.3 (provided that the Borrower shall be obligated to pay the processing fee referred to therein), (vii) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 3.5 and (viii) any such replacement shall not be deemed to be a waiver of any rights which the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

(b) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment or waiver that, pursuant to the terms of Section 8.2, requires the consent of such Lender and with respect to which the Required Lenders or a Majority in Interest, as applicable, have granted their consent, then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement; provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower and, if not already a Lender or an Approved Bank, the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an assignment substantially in the form of Exhibit B and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of Section 12.3, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the

2.20. Usury. This Agreement and each Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject any Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If by the terms of this Agreement or the Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the interest rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.21. Funds Transfer Disbursements. The Borrower hereby authorizes Administrative Agent to disburse the proceeds of any Advance made by the Lenders or any of their Affiliates pursuant to the Loan Documents as requested by an authorized representative of the Borrower to any of the accounts designated in the Disbursement Instruction Agreement.

2.22. Termination or Increase in Commitments.

(a) Borrower shall have the right, upon at least three (3) Business Days' notice, to terminate or cancel, in whole or in part, any unused portion of the Aggregate Commitments, provided that each partial reduction shall be in a minimum amount of \$1,000,000 or any whole multiple of \$100,000 in excess thereof. Any partial termination of the Aggregate Commitment shall be applied to reduce each Lender's applicable Commitment on a pro rata basis and shall be allocated ratably between Tranches (unless otherwise directed by the Borrower in writing to the Administrative Agent). Once terminated or reduced, the Aggregate Commitment may not be reinstated or increased thereafter.

(b) Provided Borrower has not exercised any right to terminate or reduce the Aggregate Commitment and provided no Default or Unmatured Default has occurred and is then continuing, the Borrower shall also have the right from time to time to increase the Aggregate Commitment and to incur additional term loan Advances (collectively, "Incremental Term Loans") in an aggregate amount not to exceed \$400,000,000 by either adding new Approved Banks as Lenders to provide new Commitments or obtaining the agreement of one or more existing Lenders to increase their Commitments. Any such increase by existing Lenders shall be at the sole discretion of such Lenders and no Lender shall have any obligation to increase any of its

Commitments. The Administrative Agent's approval of any such new Lenders shall not be unreasonably withheld or delayed; provided, that no new Lender shall be an Ineligible Institution. On the effective date of any such increase, the Borrower shall pay to the Administrative Agent, and the Arrangers any amounts due to them under the Fee Letters (if any) on account of such increase in the Aggregate Commitment and shall pay to each new lender or then-existing Lender providing such additional Commitment the up-front fee agreed to by the Borrower in its commitment letter with such party. Such increases in the Aggregate Commitments shall be evidenced by the execution and delivery of an Amendment Regarding Increase in the form of Exhibit J attached hereto by the Borrower, the Administrative Agent and the new Lender or existing Lender providing such additional Commitment and related Incremental Term Loans, a copy of

which shall be forwarded to each Lender by the Administrative Agent promptly after execution thereof. In addition, on or before the effective date of any such increase in the Aggregate Commitments, the Subsidiary Guarantors shall execute a consent to such increase ratifying and continuing their obligations under the Subsidiary Guaranty. Upon each such increase in the Aggregate Commitments, the related Incremental Term Loans shall be advanced in full on the effective date of such increase in the Aggregate Commitment. In no event shall the Aggregate Commitments exceed \$800,000,000 without the approval of all of the Lenders. Any increase in the Aggregate Commitment made pursuant to this Section 2.22(b) shall be allocated between Tranches as mutually agreed to by the Borrower and the Administrative Agent. In connection with such increase in the Aggregate Commitments pursuant to this Section 2.22(b), any Lender becoming a party hereto shall (1) execute such documents and agreements as the Administrative Agent may reasonably request and (2) in the case of any Lender that is organized under the laws of a jurisdiction outside of the United States of America, provide to the Administrative Agent, its name, address, tax identification number and/or such other information as shall be necessary for the Administrative Agent to comply with "know your customer" and anti-money laundering rules and regulations, including without limitation, the Act.

2.23. Applications of Moneys Received. All moneys collected or received by the Administrative Agent on account of the Facility directly or indirectly shall be applied in the following order of priority:

- (i) to the payment of all reasonable costs incurred in the collection of such moneys;
- (ii) to the reimbursement of any amounts due to the Lenders in accordance with Article III;
- (iii) to the payment of any fees to the Administrative Agent then due;
- (iv) to the payment of accrued and unpaid interest then due to the Lenders (other than Defaulting Lenders) under any Loan Documents to and

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including the date of such application (ratably, and without duplication, according to the accrued and unpaid interest due under each of the Loan Documents);

- (v) (a) in case the entire unpaid principal of the Loans shall not have become due and payable, (i) the whole amount received as interest then due to the Lenders (other than Defaulting Lenders) as their respective Percentages appear, and (ii) the whole amount, if any, received as principal (x) unless a Default has occurred and is then continuing, first to Floating Rate Advances in accordance with the Lenders' respective Percentages, and second to LIBORSOFR Rate Advances in accordance with the Lenders' respective Percentages (in each case, ratably between Tranches (unless otherwise directed by the Borrower in writing to the Administrative Agent)) or (y) if a Default has occurred and is then continuing, on a pro rata basis to the Lenders as their respective Percentages appear, or (b) in case the entire unpaid principal of the Loans shall have become due and payable, as a result of a Default or otherwise, to the payment of the whole amount then due and payable on the Loans for principal, together with interest thereon at the Default Rate or the interest rate, as applicable, to the Lenders (other than Defaulting Lenders) as their respective Percentages appear (in each case, ratably between Tranches) until all Loans held by such Lenders and all interest thereon has been paid in full;

(vi) To the payment of any other fees, reimbursement or indemnification obligations of Borrower then due to the Lenders (other than the Defaulting Lenders) under any Loan Documents, on a pro rata basis in accordance with the respective amounts due to such Lenders; and

(vii) to the payment of any sums due to the Defaulting Lenders in accordance with their respective Percentages of such aggregate unpaid sums (provided that Administrative Agent shall have the right to set-off against such sums any amounts due from such Defaulting Lender).

ARTICLE III.

CHANGE IN CIRCUMSTANCES

3.1. Yield Protection. Subject to the provisions of Section 3.6, if, on or after the date of this Agreement, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or applicable Lending Installation with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(a) subjects any Lender or any applicable Lending Installation party hereto to any Taxes, or changes the basis of taxation of payments (other than for Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes,

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and Connection Income Taxes) to any Lender in respect of its LIBORSOFR Rate Loans, or

(b) imposes or increases or makes applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation (other than the Reserve Requirement and any other reserves and assessments taken into account in determining the interest rate applicable to LIBORSOFR Rate Advances), or

(c) imposes any other condition the direct result of which is to increase the cost to any Lender or any applicable Lending Installation of making, funding or maintaining its LIBORSOFR Rate Loans, or reduces any amount receivable by any Lender or any applicable Lending Installation in connection with its LIBORSOFR Rate Loans, or requires any Lender or any applicable Lending Installation to make any payment calculated by reference to the amount of LIBORSOFR Rate Loans, by a material amount,

and the result of any of the foregoing is to increase the cost to such Lender or applicable Lending Installation, as the case may be, of making or maintaining its LIBORSOFR Rate Loans or Commitment or to reduce the return received by such Lender or applicable Lending Installation in connection with such LIBORSOFR Rate Loans or Commitment, then, subject to the provisions of Section 3.6, Borrower shall pay such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction in amount received.

3.2. Changes in Capital Adequacy Regulations. If a Lender in good faith determines the amount of capital or liquidity required or expected to be maintained by such Lender, any Lending Installation of such Lender or any corporation controlling such Lender is increased as a result of a Change (as hereinafter defined), then, within 15 days of demand by such Lender, Borrower shall pay such Lender the amount necessary to compensate for any shortfall in the rate of return on the portion of such Lender's capital which such Lender in good faith determines is attributable to this Agreement, its outstanding credit exposure hereunder or its obligation to make Loans hereunder (after taking into account such Lender's policies as to capital adequacy). "Change" means (i) any change after the date of this Agreement in the Risk-Based Capital Guidelines (as hereinafter defined) or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of this Agreement which affects the amount of capital or liquidity required or expected to be maintained by any Lender or any Lending Installation or any corporation controlling any Lender. Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives promulgated thereunder and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change", regardless of the date enacted, adopted or issued. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) all requests, rules, guidelines or

regulatory authorities, in each case pursuant to Basel III, regardless of the date enacted, adopted or issued.

3.3. Benchmark Replacement Setting. Notwithstanding anything to the contrary herein or in any other Loan Document:

(a) Replacing USD LIBOR. On March 5, 2021, the Financial Conduct Authority ("FCA"), the regulatory supervisor of USD LIBOR's administrator ("IBA") announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month and 3-month USD LIBOR tenor settings. On the earliest of (i) July 1, 2023, (ii) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (iii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to or further action by or consent of any other party to, this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) Replacing Future Benchmarks. If any Benchmark Transition Event occurs after the date hereof (other than as described above with respect to USD LIBOR), the then-current Benchmark will be replaced with the Benchmark Replacement for all purposes hereunder and under any Loan Document in respect of any Benchmark setting on the later of (i) as of 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders and the Borrower or (ii) such other date as may be determined by the Administrative Agent, in each case, without any further action or consent of any other party to this Agreement or any other Loan Document, so long as the Administrative Agent has not received by such time (or, in the case of clause (ii) above, such time as may be specified by the Administrative Agent as a deadline to receive objections, but in any case, no less than five (5) Business Days after the date such notice is provided to the Lenders and the Borrower), written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke Borrowing Notice or Conversion/Continuation Notice that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such

request into a request for a Borrowing Notice or Conversion/Continuation Notice to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Alternate Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement (whether in connection with the replacement of USD LIBOR or any future Benchmark), the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time, and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming

Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section including, without limitation, any determination with respect to a tenor rate or adjustment, or implementation of any Benchmark Replacement Conforming Changes, the timing of implementation of any Benchmark Replacement or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding on all parties hereto absent manifest error and may be made in its sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section, and shall not be a basis of any claim of liability of any kind or nature by any party hereto, all such claims being hereby waived individually by each party hereto.

(e) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for such Benchmark (including any Benchmark Replacement) settings and (ii) if such tenor becomes available or representative, the Administrative Agent may reinstate any previously removed tenor for such Benchmark (including any Benchmark Replacement) settings.

(f) Certain Defined Terms. As used in this Section:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

"Benchmark" means, initially, USD LIBOR, provided that if a replacement for the Benchmark has occurred pursuant to this Section, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means for any Available Tenor:

(1) for purposes of clause (a) of this Section, the first alternative set forth below that can be determined by the Administrative Agent.

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one month's duration, and 0.26161% (26.161 basis points) for an Available Tenor of three months' duration; or

(b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment for an Available Tenor of one month's duration (0.11448% (11.448 basis points)); and

(2) for purposes of clause (b) of this Section, the sum of: (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero) in each case that has been selected pursuant to this clause (2).

~~value, or zero), in each case, that has been selected pursuant to this clause (2) by the Administrative Agent and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;~~

~~provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for all purposes of this Agreement and the other Loan Documents; and provided further, that, if the Borrower has provided a notification to the Administrative Agent in writing on or prior to the date on which the Benchmark Replacement will become effective that the Borrower has a Swap Contract in place with respect to any of the Loans as of the date of such notice (which such notification the Administrative Agent shall be entitled to rely upon and shall have no duty or obligation to ascertain the correctness or completeness of), then the Administrative Agent, in its sole discretion, may decide not to determine the Benchmark Replacement pursuant to clause (1)(a) above for such Benchmark Transition Event or Early Opt-in Election, as applicable.~~

~~Benchmark Replacement Conforming Changes~~ means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to

permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

Benchmark Transition Event means, with respect to any then-current Benchmark (other than USD LIBOR), the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

Daily Simple SOFR means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

Early Opt-in Effective Date means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

Early Opt-in Election means the occurrence of:

(i) a notification by the Administrative Agent to each of the other parties hereto that at least five (5) currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any

(ii) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

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

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

"Term SOFR" means, for the applicable corresponding tenor, the forward-looking term, rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"USD LIBOR" means the London interbank offered rate for U.S. dollars.

The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to USD LIBOR or with respect to any alternative or successor benchmark thereto, or replacement rate therefor or thereof, including, without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 3.3, will be similar to, or produce the same value or economic equivalence of, USD LIBOR or any other benchmark or have the same volume or liquidity as did USD LIBOR or any other benchmark rate prior to its discontinuance or unavailability.

3.25. [Reserved].

3.26. Funding Indemnification. If any payment of a LIBOR Rate Advance occurs on a date which is not the last day of the applicable LIBOR Interest Period, whether because of acceleration, prepayment or otherwise, or a ratable LIBOR Rate Advance is not made on the date specified by Borrower for any reason other than default by the Lenders or as a result of unavailability pursuant to Section 3.3, Borrower will indemnify each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost (incurred or expected to be incurred) in liquidating or employing deposits acquired to fund or maintain the

LIBOR Rate Advance and shall pay all such losses or costs within fifteen (15) days after written demand therefor. The Borrower shall compensate each Lender upon its written request (which request shall set forth the detailed basis for requesting and the method of calculating such compensation), for all reasonable losses, costs, expenses and liabilities (including, without limitation, any loss, cost, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its SOFR Loans) which such Lender may sustain in connection with any of the following: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of SOFR Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Continuation or Conversion (whether or not withdrawn by the Borrower or deemed withdrawn); (ii) if any repayment, prepayment, Conversion or Continuation of any SOFR Loan occurs on a date that is not the last day of an Interest Period applicable thereto; (iii) if any prepayment of any of its SOFR Loans is not made on a date specified in a Notice of Prepayment.

SOFR Loans is not made on any date specified in a notice or prepayment given by the Borrower; (iv) as a result of an assignment by a Lender of any SOFR Loan other than on the last day of the Interest Period applicable thereto pursuant to a request by the Borrower pursuant to Section 2.9 or (v) as a consequence of (y) any other default by the Borrower to repay or prepay any SOFR Loans when required by the terms of this Agreement or (z) an election made pursuant to Section 2.9. The written request of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such request within 10 days after receipt thereof.

3.27. Taxes.

(a) All payments by the Borrower and the Subsidiary Guarantors hereunder and under any of the other Loan Documents shall be made without setoff or counterclaim, and free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower or applicable Subsidiary Guarantor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.5) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower and the Subsidiary Guarantors shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Borrower and the Subsidiary Guarantors shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.5) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising

therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error; provided that the determinations in such statement are made on a reasonable basis and in good faith.

(d) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower or a Subsidiary Guarantor has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower and each Subsidiary Guarantor to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.2 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan

Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection.

(e) As soon as practicable after any payment of Taxes by the Borrower or any Subsidiary Guarantor to a Governmental Authority pursuant to this Section 3.5, Borrower or such Guarantor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in the immediately following clauses (ii)(A), (ii)(B) and (ii)(D)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject

such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN, or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN, or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN, or W-8BEN-E, as applicable; or

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and

the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.5 (including by the payment of additional amounts pursuant to this Section 3.5), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.5 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection the

payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund has not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it reasonably deems confidential) to the indemnifying party or any other Person.

(g) Each party's obligations under this Section 3.5 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or

discharge of all obligations under any Loan Document.

3.6. Lender Statements; Survival of Indemnity. If any Lender becomes entitled to claim any additional amounts pursuant to Sections 3.1, 3.2 or 3.5, Borrower shall not be required to pay the same unless they are the result of requirements imposed generally on lenders similar to such Lender and not the result of some specific reserve or similar requirement imposed on such Lender as a result of such Lender's special circumstances. If any Lender becomes entitled to claim any additional amounts pursuant to Sections 3.1, 3.2 or 3.5, such Lender shall provide Borrower with not less than thirty (30) days written notice (with a copy to the Administrative Agent) specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount; *provided* that Borrower is not required to compensate Lender pursuant to Sections 3.1, 3.2 or 3.5 for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender notifies Borrower of the events giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore. To the extent reasonably possible, each Lender shall designate an alternate Lending Installation with respect to its **LIBORSOFR** Rate Loans to reduce any liability of Borrower to such Lender under Sections 3.1, 3.2 and 3.5 or to avoid the unavailability of **LIBORSOFR** Rate Advances under Section 3.32.16, so long as such designation is not, in the reasonable judgment of such Lender, disadvantageous to such Lender. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a **LIBORSOFR** Rate Loan shall be calculated as though each Lender funded its **LIBORSOFR** Rate Loan through the purchase of a deposit of the type and maturity corresponding to the deposit used as a reference in determining the **LIBORSOFR** Base Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall be payable thirty (30) days after receipt by Borrower of such written statement. The obligations of Borrower under Sections 3.1, 3.2, 3.4, and 3.5 shall survive payment of the Obligations and termination of this Agreement.

ARTICLE IV.

CONDITIONS PRECEDENT

4.1. Initial Advance. This Agreement shall not be effective (and the Lenders shall not be required to make the initial Advance hereunder unless and until this Agreement is effective) unless and until (a) the Borrower shall, prior to or concurrently therewith, have paid all fees due

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and payable to the Lenders and the Administrative Agent hereunder, and (b) the Borrower shall have furnished to the Administrative Agent the following:

(a) Duly executed counterparts of this Agreement, the Notes payable to each of the Lenders (to the extent requested by the Lenders), the Subsidiary Guaranty and any other additional Loan Documents, signed by each applicable party thereto;

(b) (A) Certificates of good standing for each Loan Party from its state of organization, certified by the appropriate governmental officer and dated as of a recent date, and (B) foreign qualification certificates for each Loan Party certified by the appropriate governmental officer and dated as of a recent date, for each jurisdiction in which an Unencumbered Property owned by such Loan Party is located;

(c) Copies of the formation documents (including code of regulations, if appropriate) of the Loan Parties, certified by the appropriate governmental officer, and further certified as of a recent date by an officer of the Borrower or such other Loan Party, as appropriate, together with all amendments thereto;

(d) Incumbency certificates, executed by officers of the Loan Parties, which shall identify by name and title and bear the signature of the Persons authorized to sign

this Agreement and the additional Loan Documents and to make borrowings hereunder on behalf of such parties, upon which certificate the Administrative Agent and the Lenders shall be entitled to rely until informed of any change in writing by the applicable Loan Party;

(e) Copies, certified by a Secretary or an Assistant Secretary of the applicable Loan Party, of the Board of Directors' resolutions (and resolutions of other bodies, if any are reasonably deemed necessary by counsel for the Administrative Agent) authorizing the Advances provided for herein, with respect to the Borrower, and the execution, delivery and performance of this Agreement and the additional Loan Documents to be executed and delivered by the applicable Loan Party;

(f) Written opinions of the Loan Parties' counsel, addressed to the Lenders in form and substance reasonably acceptable to the Administrative Agent;

(g) A certificate, signed by an Authorized Officer of the Borrower, stating that on the Agreement Effective Date no Default or Unmatured Default has occurred and is continuing, and there has been no change in the financial condition or business of the Borrower and the Consolidated Group taken as a whole since the date of the most recent financial statements delivered to the Administrative Agent which would have a Material Adverse Effect, and that all representations and warranties of the Borrower are true and correct in all material respects as of the Agreement Effective Date;

(h) The most recent financial statements of the Borrower;

- (i) The Disbursement Instruction Agreement;
- (j) A pro forma compliance certificate in the form of Exhibit A, utilizing the covenants established herein and executed by the Borrower's chief financial officer or chief accounting officer;
- (k) Evidence that all fees due to each of the Lenders with respect to this Agreement have been paid;
- (l) The Unencumbered Property Due Diligence;
- (m) A certificate, signed by an Authorized Officer of the Borrower, stating that on the Agreement Effective Date there are no actions, suits, investigations or proceedings, pending or threatened, in any court or before any arbitrator or Governmental Authority that is reasonably expected to have a material adverse effect on the Borrower and the Consolidated Group, taken as a whole, or that is reasonably expected to have a material adverse effect on any transaction contemplated hereby or on the ability of the Borrower or the Subsidiary Guarantors, taken as a whole, to perform their respective obligations under the Loan Documents;
- (n) Evidence satisfactory to the Administrative Agent of payment in full of all amounts due to any lender under the Original Credit Agreement which is not continuing as a Lender hereunder;
- (o) A Beneficial Ownership Certification, if Borrower qualifies as a legal entity customer under the Beneficial Ownership Regulation, which such Beneficial Ownership Certification shall also be delivered to any Lender that so requests in addition with any other "know your customer" information that such Lender requests;
- (p) Evidence satisfactory to the Administrative Agent that the modified Revolving Credit Agreement has become, or is becoming, effective on such date; and
- (q) Such other documents as the Administrative Agent or its counsel may have reasonably requested, the form and substance of which documents shall be reasonably acceptable to the parties and their respective counsel.

For purposes of determining compliance with the conditions specified in this Section 4.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a lender upon delivery of its executed signature page to the Administrative Agent without conditions for release or, if a Lender delivers its signature page with conditions for release, notice from that Lender to the Administrative Agent (or its counsel) that such conditions for release have been met.

(a) Prior to, and after giving effect to such Advance or issuance, there shall not exist any Default or Unmatured Default; and

(b) The representations and warranties contained in Article V are true and correct as of such Borrowing Date with respect to the Loan Parties in existence on such Borrowing Date, except (i) to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall be true and correct on and as of such earlier date or (ii) for changes in factual circumstances which are permitted by this Agreement.

Each Borrowing Notice with respect to each such Advance shall constitute a representation and warranty by the Borrower that the conditions contained in Sections 4.2(a) (in the case of the initial Borrowing Notice) and (b) have been satisfied.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

5.1. Existence. Borrower is a corporation duly organized and validly existing under the laws of the State of Maryland, with its principal place of business in Downers Grove, Illinois and is duly qualified as a foreign corporation, properly licensed (if required), in good standing and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except where the failure to be so qualified, licensed and in good standing and to have the requisite authority would not have a Material Adverse Effect. Each of the Borrower's Subsidiaries are duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and have all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except where the failure to be so qualified, licensed and in good standing and to have the requisite authority would not have a Material Adverse Effect.

5.2. Authorization and Validity. The Borrower has the corporate power and authority and legal right to execute and deliver the Loan Documents and to perform its obligations thereunder. The execution and delivery by the Borrower of the Loan Documents and the performance of its obligations thereunder have been duly authorized by proper corporate proceedings, and the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity, or by the discretion of any court in awarding equitable remedies, regardless of whether such enforcement is considered in a proceeding of equity or at law.

5.3. No Conflict; Government Consent. Neither the execution and delivery by the Borrower or the other Loan Parties of the Loan Documents, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrower, or any of Borrower's Subsidiaries or the Borrower's or any Subsidiary's articles of incorporation, operating agreements, partnership agreement, or by-laws, or the provisions of any indenture, instrument or agreement to which the Borrower or any of Borrower's Subsidiaries is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, except where such violation, conflict or default would not have a Material Adverse Effect, or result in the creation or imposition of any Lien in, of or on the Property of the Borrower or a Subsidiary pursuant to the terms of any such indenture, instrument or agreement. No

order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required as a condition to the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, any of the Loan Documents other than the filing of a copy of this Agreement.

5.4. Financial Statements; Material Adverse Effect. All consolidated financial statements of the Loan Parties heretofore or hereafter delivered to the Lenders were prepared in accordance with GAAP in effect on the preparation date of such statements and fairly present in all material respects the consolidated financial condition and operations of the Loan Parties at such date and the consolidated results of their operations for the period then ended and include all material contingent obligations, subject, in the case of interim financial statements, to normal and customary year-end adjustments. From the preparation date of the most recent financial statements delivered to the Lenders through the Agreement Effective Date, there was no change in the business, properties, or condition (financial or otherwise) of the Borrower and its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

5.5. Taxes. The Loan Parties have filed all United States federal tax returns and all other tax returns which are required to be filed and have paid all taxes due pursuant to said returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided or such taxes, the failure to make payment of which when due and payable will not have, in the aggregate, a Material Adverse Effect. No tax liens have been filed and no claims are being asserted with respect to such taxes. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of any taxes or other governmental charges are adequate.

5.6. Litigation. Except as set forth on Schedule 5.6 hereto or as set forth in written notice to the Administrative Agent from time to time, there is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting the Loan Parties which could reasonably be expected to have a Material Adverse Effect.

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5.7. Subsidiaries. Schedule 5.7 hereto contains, an accurate list of all Subsidiaries of the Borrower, setting forth their respective jurisdictions of incorporation or formation and the percentage of their respective capital stock or partnership or membership interest owned by the Borrower or other Subsidiaries as of the date hereof. All of the issued and outstanding shares of capital stock of such Subsidiaries that are corporations have been duly authorized and issued and are fully paid and non-assessable.

5.8. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$40,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$40,000,000 the fair market value of the assets of all such underfunded Plans.

5.9. Accuracy of Information. No information, exhibit or report furnished by the Loan

Parties to the Administrative Agent or to any Lender in connection with the negotiation of, or compliance with, the Loan Documents contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

5.10. Regulations of the Board. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

5.11. Material Agreements. Neither the Borrower nor any Subsidiary is a party to any agreement or instrument or subject to any charter or other corporate restriction which could reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any agreement to which it is a party, which default could have a Material Adverse Effect, or (ii) any agreement or instrument evidencing or governing Indebtedness, which default would constitute a Default hereunder.

5.12. Compliance With Laws. The Borrower has complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof, having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property, except for any non-compliance which would not have a Material Adverse Effect. The Loan Parties have not received any notice to the effect that its operations are not in material compliance with any of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations or the subject of any federal or state investigation evaluating whether any remedial action is

needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a Material Adverse Effect.

5.13. Ownership of Properties. On the date of this Agreement, the Borrower and its Subsidiaries will have good and marketable title, free of all Liens other than those permitted by Section 6.14, to all of the Unencumbered Properties.

5.14. Investment Company Act. Neither the Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

5.15. Solvency.

(a) Immediately after the Agreement Effective Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of such Loans, (i) the fair value of the assets of the Borrower and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, subordinated, contingent or otherwise, of the Borrower and its Subsidiaries on a consolidated basis; (ii) the present fair saleable value of the Property of the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries on a consolidated basis on their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted after the date hereof.

(b) The Borrower and its Subsidiaries on a consolidated basis have not incurred debts beyond their ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

5.16. Insurance. The Loan Parties carry, or cause to be carried, insurance on their Projects, including each Unencumbered Property, with financially sound and reputable insurance companies, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar Projects in localities where the Borrower and its Subsidiaries operate, including, without limitation:

(a) Property and casualty insurance (including coverage for flood and other water damage for any Project located within a 100-year flood plain) in the amount of the replacement cost of the improvements at the Projects (to the extent replacement cost

- (b) Builder's risk insurance for any Project under construction in the amount of the construction cost of such Project;
- (c) Loss of rental income insurance in the amount not less than one year's gross revenues from the Projects; and
- (d) Comprehensive general liability insurance in the amount of \$20,000,000 per occurrence.

5.17. REIT Status. Borrower is qualified as a real estate investment trust under Section 856 of the Code and currently is in compliance in all material respects with all provisions of the Code applicable to the qualification of the Borrower as a real estate investment trust.

5.18. Environmental Matters. Each of the following representations and warranties is true and correct on and as of the Agreement Effective Date except as disclosed on the environmental assessments delivered to the Administrative Agent pursuant to this Agreement or on Schedule 5.18 attached hereto or to the extent that the facts and circumstances giving rise to any the failure of such representations and warranties to be true and correct, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

- (i) To the best knowledge of the Borrower, with respect to all Projects owned by the Borrower and/or its Subsidiaries (x) for at least two (2) years, have in the last two years, or (y) for less than two (2) years, have for such period of ownership, been in compliance in all material respects with all applicable Environmental Laws.
- (ii) Neither the Borrower nor any of its Subsidiaries has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Projects, nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened.
- (iii) To the best knowledge of the Borrower, Materials of Environmental Concern have not been transported or disposed of to or from the Projects of the Borrower and its Subsidiaries in violation of, or in a manner or to a location which could reasonably give rise to liability of the Borrower or any Subsidiary under, Environmental Laws, nor have any Materials of Environmental Concern migrated or been generated, treated, stored or disposed of at, on or under any of the Projects of the Borrower and its Subsidiaries in violation of, or in a manner that could give rise to liability of the Borrower or any Subsidiary under, any applicable Environmental Laws.

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(iv) No judicial proceedings or governmental or administrative action is pending, or, to the knowledge of the Borrower, threatened, under any Environmental Law to which the Borrower or any of its Subsidiaries is or, to the Borrower's knowledge, will be named as a party with respect to the Projects of the Borrower and its Subsidiaries, nor are there any consent decrees or other decrees, consent orders, administrative order or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Projects of the Borrower and its Subsidiaries.

(v) To the best knowledge of the Borrower, there has been no release or threat of release of Materials of Environmental Concern at or from the

Projects of the Borrower and its Subsidiaries, or arising from or related to the operations of the Borrower and its Subsidiaries in connection with the Projects in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

5.19. Unencumbered Properties. As of the Agreement Effective Date, Exhibit H is a correct and complete list of all Unencumbered Properties. Each of the Unencumbered Properties included by Borrower in calculations of the Unencumbered Pool Value satisfies all of the requirements contained in this Agreement for the same to be included therein.

5.20. Anti-Terrorism Laws.

(a) None of Borrower and Borrower's Subsidiaries is in violation of any Sanctions Laws and Regulations or any other laws or regulations relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) None of Borrower and Borrower's Subsidiaries, or, to the best of Borrower's knowledge any of their respective directors, officers, brokers or other agents acting with respect to or benefiting from this Agreement is a Prohibited Person. A "Prohibited Person" is any of the following:

(1) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

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

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(3) a person or entity with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(4) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(5) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.

(c) None of Borrower and Borrower's Subsidiaries (1) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (2) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (3) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

Borrower does not intend to use, shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan or (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (ii) in any manner that would result in the violation of any applicable Sanctions Laws and Regulations

5.21. Beneficial Ownership Certification. As of the Agreement Effective Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

ARTICLE VI.

COVENANTS

During the term of this Agreement, unless the Required Lenders shall otherwise consent in writing:

6.1. Financial Reporting. The Borrower will maintain for the Consolidated Group a system of accounting established and administered in accordance with GAAP, and furnish to the Administrative Agent and the Lenders:

(a) As soon as available, but in any event not later than sixty (60) days after the close of each of the first three fiscal quarters of any fiscal year, for the Consolidated Group, an unaudited consolidated balance sheet as of the close of each such period

and the related unaudited consolidated statements of income and retained earnings and of cash flows of the Consolidated Group for such period and the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous year, all certified by the Borrower's chief financial officer or chief executive officer;

(b) Together with the quarterly and annual financial statements required hereunder, the following reports, all certified by an Authorized Officer of the Borrower:

(1) a schedule listing all Projects of the Borrower and its Subsidiaries and summary information for each such Project, including location, square footage, occupancy, Net Operating Income and debt,

(2) a statement of the Adjusted Unencumbered NOI and occupancy percentage of the Unencumbered Pool as of the end of the prior fiscal quarter, and

(3) a list of all Subsidiary Guarantors as of the end of the most recently ended quarterly or annual fiscal period.

(c) As soon as available, but in any event not later than ninety (90) days after the close of each fiscal year, for the Consolidated Group, audited financial statements, including a consolidated balance sheet as at the end of such year and the related consolidated statements of income and retained earnings and of cash flows for such year, setting forth in each case in comparative form the figures for the previous year, without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, prepared by the Borrower's existing certified public accountant or another independent certified public accountants of nationally recognized standing reasonably acceptable to the Administrative Agent;

(d) Together with the quarterly and annual financial statements required hereunder, a compliance certificate in substantially the form of Exhibit A hereto signed by the Borrower's chief financial officer, chief accounting officer or chief operating officer showing the calculations and computations necessary to determine compliance with this Agreement as of the last day of the period covered by such quarterly or annual financial statement, including without limitation such information as is reasonably requested by the Administrative Agent to determine compliance as of such date with the covenants contained in Sections 6.16 and 6.17 of this Agreement, and stating that, to such officer's knowledge, no Default or Unmatured Default exists, or if, to such officer's knowledge, any Default or Unmatured Default exists, stating the nature and status thereof;

(e) As soon as possible and in any event within ten (10) days after a responsible officer of the Borrower knows thereof, the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Default under Section 7.10 of this Agreement;

(f) As soon as possible and in any event within ten (10) days after receipt by a responsible officer of the Borrower, a copy of (i) any notice or claim to the effect that

the Borrower or any of its Subsidiaries is or may be liable to any Person as a result of the release by the Borrower, any of its Subsidiaries, or any other Person of any Material of Environmental Concern into the environment, and (ii) any notice alleging any violation of any federal, state or local environmental, health or safety law or regulation by the Borrower or any of its Subsidiaries, which, in the case of either (i) or (ii) could have a Material Adverse Effect;

(g) Promptly following the execution thereof, notice and copies thereof of all amendments, modifications, supplements, consents and waivers under the Revolving Credit Agreement; provided that, unless otherwise requested by the Administrative Agent, such notice shall not be required while the Administrative Agent is a party to the Revolving Credit Agreement (it being understood and agreed that any such notice shall be provided in accordance with Section 13.1 of this Agreement and, for the avoidance of doubt, may be transmitted by email).

(h) Promptly upon the furnishing thereof to the shareholders of the Borrower, copies of all financial statements, reports and proxy statements so furnished, including without limitation all form 10-K and 10-Q reports filed with the SEC; and

(i) Such other information (including, without limitation, financial statements for the Borrower, statements detailing the contributions to Consolidated NOI from individual Projects and non-financial information) as the Administrative Agent may from time to time reasonably request.

At the Borrower's option, the Borrower may deliver information required to be delivered pursuant to this Section 6.1 by posting any such information to an internet website maintained by the Borrower or to the website of the Securities and Exchange Commission (www.sec.gov). Any such information provided in such manner shall only be deemed to have been delivered to the Administrative Agent or a Lender (i) on the date on which the Administrative Agent or such Lender, as applicable, receives notice from the Borrower that such information has been posted and (ii) only if such information is publicly available without charge on such website. If for any reason, the Administrative Agent or a Lender either did not receive such notice or after reasonable efforts was unable to access such website, then the Administrative Agent or such Lender, as applicable, shall not be deemed to have received such information. In addition to any manner permitted by Article XIII, the Borrower may notify the Administrative Agent or a Lender that information has been posted to such a website by causing an e-mail notification to be sent to an e-mail address specified from time to time by the Administrative Agent or such Lender, as applicable. Notwithstanding the foregoing, (i) the Administrative Agent and each Lender is responsible for signing up, and agrees to signup, for e-mail notifications, if any, permitted by the Borrower's internet website and by submitting the e-mail address to which the Administrative Agent or such Lender, as the case may be, desires to have e-mail notifications delivered to the Administrative Agent or such Lender and the Administrative Agent and each Lender hereby agree that such e-mail notifications to such e-mail addresses will satisfy the

notification requirements of this Section 6.1, and (ii) failure of the Administrative Agent or any Lender to sign up for such e-mail notifications or to keep such e-mail addresses current shall relieve the Borrower from any obligation to provide e-mail notifications to the Administrative Agent or such Lender in order to for the Borrower to be entitled to deliver information required to be delivered pursuant to this Section 6.1 by posting such information to the Borrower's internet website.

6.2. Use of Proceeds. The Borrower will use, and will cause each of its Subsidiaries to use, the proceeds of the Advances for its own account for general corporate purposes of the Borrower and its Subsidiaries in the ordinary course of its business, including without limitation the repayment of Indebtedness, Property acquisitions, capital expenditures, development,

redevelopment, capital reserves, working capital and any other transaction not prohibited hereunder. The Borrower will not, nor will it permit any Subsidiary to, use any of the proceeds of the Advances (i) to purchase or carry any "margin stock" (as defined in Regulation U) if such usage could constitute a violation of Regulation U by any Lender, or (ii) to fund any purchase of, or offer for, a controlling portion of the Capital Stock of any Person, unless the board of directors or other manager of such Person has consented to such offer. The Borrower shall not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity (i) to fund any activities or business of or with any Designated Person, or in any country or territory, that at the time of such funding is the subject of any sanctions under any Sanctions Laws and Regulations, or (ii) in any other manner that would result in a violation of any Sanctions Laws and Regulations by any party to this Agreement. No Loan, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions Law or Regulation.

6.3. Notice of Default. The Borrower will give notice in writing to the Administrative Agent and the Lenders of the occurrence of any Default or Unmatured Default and of any other development, financial or otherwise, which could reasonably be expected to have a Material Adverse Effect promptly after obtaining knowledge thereof.

6.4. Conduct of Business. The Borrower will do, and will cause each Loan Party to do, all things necessary to remain duly incorporated or duly qualified, validly existing and in good standing as a trust, corporation, limited liability company, general partnership or limited partnership, as the case may be, in its jurisdiction of incorporation/formation (except with respect to mergers not prohibited hereunder and Permitted Investments) and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted and to carry on and conduct their businesses in substantially the same manner as they are presently conducted where the failure to do so could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor its Subsidiaries may undertake any business other than the acquisition of commercial properties, providing mortgage note receivables, engaging in construction activities and any business activities and investments incidental thereto (including investments in Marketable Securities) and certain additional activities permitted within the limitations imposed on such additional activities pursuant to Section 6.19 below.

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6.5. Taxes. The Borrower will pay, and will cause each of its Subsidiaries to pay, when due all taxes, assessments and governmental charges and levies upon them or their income, profits or Projects, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside.

6.6. Insurance. The Borrower will, and will cause each of its Subsidiaries to, maintain insurance which is consistent with the representation contained in Section 5.16 on all their Projects and the Borrower will furnish to the Administrative Agent upon reasonable request full information as to the insurance carried.

6.7. Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which they may be subject, the violation of which could reasonably be expected to have a Material Adverse Effect.

6.8. Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, do all things necessary to maintain, preserve, protect and keep their respective Projects, in good condition and repair, working order and condition, ordinary wear and tear excepted, in each case where the failure to so maintain, preserve, protect and keep in good condition and repair will have a Material Adverse Effect.

6.9. Inspection. The Borrower will, and will cause each of its Subsidiaries to, permit the Administrative Agent upon reasonable notice and during normal business hours and subject to rights of tenants, by its representatives and agents, to inspect any of the Projects, corporate books and financial records of the Borrower and each of its Subsidiaries, to examine and make copies of the books of accounts and other financial records of the Borrower and each of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and each of its Subsidiaries with officers thereof, and to be advised as to the same by, their respective officers at such reasonable times and intervals as the Administrative Agent may designate.

6.10. Maintenance of Status. The Borrower shall at all times maintain its status as a real estate investment trust in compliance with all applicable provisions of the Code relating to such status.

6.11. Dividends; Distributions; Redemptions. The Borrower and its Subsidiaries shall be permitted to declare and pay dividends on their Capital Stock, to make distributions with respect thereto from time to time and to honor requests to redeem their Capital Stock, provided, however, that in no event shall the Borrower: (i) pay any such dividends or make any such distributions or honor any redemption requests on any Capital Stock (including without limitation the declaration and payment of Preferred Dividends or the making of distributions to holders of shares in the Borrower), if such dividends and distributions paid and redemption requests honored on account of the then-current fiscal quarter and the three immediately preceding fiscal quarters, in the aggregate for such period, would cause the Dividend Payout Ratio to exceed 95% for such period or (ii) without the consent of the Administrative Agent and the Required Lenders, pay any such dividends or make any such distributions or make any such redemptions if (A) any Default has occurred and is then continuing or (B) any Unmatured Default arising

under Section 7.1 or Section 7.2 hereof has occurred and is then continuing; provided however that notwithstanding the foregoing, (x) Borrower and its Subsidiaries shall in all cases be permitted to distribute whatever amount of dividends and distributions is necessary to maintain the Borrower's tax status as a real estate investment trust, which dividends and distributions may be made in cash or in Capital Stock at the Borrower's option and (y) Borrower shall be permitted to purchase shares of its Capital Stock pursuant to a tender offer in an aggregate amount of up to \$100,000,000.

6.12. [Intentionally Deleted].

6.13. Plan Assets. The Borrower hereby covenants and agrees that (i) Borrower shall not use any Plan Assets to repay or secure the Obligations, (ii) no assets of the Borrower or any Subsidiary Guarantor are or will be Plan Assets, (iii) each Plan will be in compliance with all applicable requirements of ERISA and the Code except to the extent any defects can be remedied without material liability to the Borrower under Revenue Procedure 2008-50 or any similar procedure and except to the extent that such non-compliance would not have a Material Adverse Effect, and (iv) the Borrower will not have any liability under Title IV of ERISA or Section 412 of the Code with respect to any Plan which would have a Material Adverse Effect.

6.14. Liens. The Borrower will not, nor will it permit any of its Subsidiaries to, create, incur, or suffer to exist any Lien in, of or on the Property of the Borrower or any of its Subsidiaries, except for ~~(i)~~ Permitted Liens and Liens on Properties which are not then included in the Unencumbered Pool, but only to the extent such Liens will not result in a Default in any of Borrower's covenants herein ~~and (ii) Negative Pledges which are permitted to exist under Section 6.20.~~

6.15. Affiliates. The Borrower will not, nor will it permit any of its Subsidiaries to, enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate which is not a member of the Consolidated Group except upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than the Borrower or such Subsidiary would obtain in a comparable arms-length transaction, but excluding in all events any such transactions, payments or transfers which are either disclosed in filings made by the Borrower with the Securities and Exchange Commission or related to any internalization of the business management services currently provided to the Borrower by the Advisor or any similar transactions.

6.16. [Reserved].

6.17. Indebtedness and Cash Flow Covenants. The Borrower shall not permit:

(a) The Leverage Ratio to be more than sixty percent (60%) at any time provided that on no more than two (2) occasions prior to the final Facility Termination Date (as it may have been extended), such maximum Leverage Ratio from the date on which a Material Acquisition has occurred through the remainder of the fiscal quarter in which such Material Acquisition has occurred, together with the Leverage Ratio for the

(b) The Fixed Charge Coverage Ratio, as of the last day of any fiscal quarter based upon Borrower's compliance certificate required by Section 6.1(d) hereof to be less than 1.50 to 1.00;

(c) The aggregate amount of Secured Indebtedness of the Consolidated Group which is also Recourse Indebtedness to be greater than ten percent (10%) of Total Asset Value at any time;

(d) Intentionally Omitted;

(e) The Unsecured Interest Coverage Ratio, as of the last day of any fiscal quarter based upon Borrower's compliance certificate required by Section 6.1(d) hereof to be less than 1.75 to 1.00; provided that no breach of this Section 6.17(e) shall occur unless and until Borrower has failed to make the principal payments required to restore compliance with this covenant as provided in Section 2.3(b);

(f) The Unsecured Leverage Ratio to be more than sixty percent (60%) at any time, provided that (A) on no more than two (2) occasions prior to the final Facility Termination Date (as it may have been extended), such maximum Unsecured Leverage Ratio from the date on which a Material Acquisition has occurred through the remainder of the fiscal quarter in which such Material Acquisition has occurred, together with the Unsecured Leverage Ratio for the two (2) full consecutive fiscal quarters immediately following the fiscal quarter in which such Material Acquisition has occurred, shall be increased to sixty-five percent (65%) and (B) no breach of this Section 6.17(f) shall occur unless and until Borrower has failed to make the principal payments required to restore compliance with this covenant as provided in Section 2.3(b); or

(g) The Unencumbered Pool Value to be less than \$350,000,000, or there to be fewer than fifteen (15) Unencumbered Properties, at any time.

6.18. Environmental Matters. Borrower and its Subsidiaries shall:

(i) Comply with, and use all reasonable efforts to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws and obtain and comply with and maintain, and use all reasonable efforts to ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except to the extent that failure to do so could not be reasonably expected to have a Material Adverse Effect, provided that in no event shall the Borrower or its Subsidiaries be required to modify the terms of leases, or renewals thereof, with existing tenants (i) at Projects owned by the Borrower or its Subsidiaries as of the Agreement Effective Date or (ii) at Projects

subsequently acquired by the Borrower or its Subsidiaries as of the date of such acquisition, to add provisions to such effect.

(ii) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, except to the extent that (i) the same are being contested in good faith by appropriate proceedings and the pendency of such proceedings could not be reasonably expected to have a Material Adverse Effect, or (ii) the Borrower has determined in good faith that contesting the same is not in the best interests of

the Borrower and its Subsidiaries and the failure to contest the same could not be reasonably expected to have a Material Adverse Effect, or (iii) the failure to so comply could not reasonably be expected to have a Material Adverse Effect .

(iii) Defend, indemnify and hold harmless Administrative Agent and each Lender, and their respective officers and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of the Borrower, its Subsidiaries or the, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing arise out of the gross negligence or willful misconduct of any indemnified party, as determined by a final, non-appealable judgment of a court of competent jurisdiction. This indemnity shall continue in full force and effect regardless of the termination of this Agreement.

6.19. Permitted Investments. The Consolidated Group's activities shall be limited to acquiring commercial properties, holding the Consolidated Group's interests in National Union Fire Insurance Company of Vermont and any other future insurance captive, providing Mortgage Notes Receivable, engaging in construction activities and any business activities and investments incidental thereto (including Investments in Marketable Securities) except that the following additional Investments ("Permitted Investments") shall also be permitted so long as the aggregate value of the Permitted Investments under each of the following clauses (i) through (v), tested as of the last day of any fiscal quarter based on Borrower's compliance certificate for such quarter, shall not exceed the individual percentage of Total Asset Value limits stated in such clause and the aggregate value of the Permitted Investments under all such clauses on a combined basis shall not at any time exceed twenty-five percent (25%) of Total Asset Value:

(i) Unimproved Land (other than land included in the definition of Development Projects) -- (valued at undepreciated GAAP book value, after taking into account any impairments) -- five percent (5%) of Total Asset Value;

(ii) Investments in Investment Affiliates (valued at the portion of Total Asset Value attributable to such entity or its assets as the case may be) -- fifteen percent (15%) of Total Asset Value;

(iii) Development Projects (valued at undepreciated GAAP book value, after taking into account any impairments) -- fifteen percent (15%) of Total Asset Value;

(iv) Mortgage Note Receivables (valued at undepreciated GAAP book value, after taking into account any impairments) -- five percent (5%) of Total Asset Value; and

(v) Non-Core Properties, not including properties, or interests in properties included in subsection (i), (iii) or (iv) above (valued at undepreciated GAAP book value, after taking into account any impairments) -- five percent (5%) of Total Asset Value.

Notwithstanding anything to the contrary contained herein, the Sacramento Project shall not be subject to the limitations set forth in this Section 6.19, or be included in, the calculation of the Permitted Investments limitations.

6.20. Negative Pledges. The Borrower agrees that neither the Borrower nor any other members of the Consolidated Group shall enter into or be subject to any agreement governing Indebtedness which contains a Negative Pledge other than (i) restrictions on further subordinate Liens on Projects encumbered by a mortgage, deed to secure debt or deed of trust securing such Indebtedness, or on the direct or indirect ownership interests in the owners of such encumbered Projects, (ii) covenants in any Unsecured Indebtedness requiring (A) that the Consolidated Group maintain a pool of unencumbered properties of a size determined by reference to the total amount of Unsecured Indebtedness of the Consolidated Group on substantially similar terms to those provisions contained herein regarding the Unencumbered Pool (including without limitation clauses (e) and (f) of Section 6.17 above) or (B) that the Consolidated Group not incur Secured Indebtedness which is also Recourse Indebtedness in excess of the maximum percentage of Total Asset Value contained in clause (c) of Section 6.17 above, but that do not generally prohibit the encumbrance of the Borrower's or the Consolidated Group's assets, or the encumbrance of any specific assets—~~or~~, (iii) any Negative Pledge contained in the Revolving ~~Credit Agreement~~ Loan Documents, or (iv) any provision of any Other Pari Passu Debt Document that either (x) conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios or financial tests (including any financial ratio such as a maximum ratio of unsecured debt to unencumbered assets) that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets or (y) requires the grant of an equal and

ratable Lien to secure Unsecured Indebtedness, if a Lien is granted to secure any other Unsecured Indebtedness of such Person.

6.21. Subsidiary Guaranty. Borrower shall cause each of its existing Subsidiaries listed on Exhibit C, which includes the owners of each Unencumbered Property, along with all other current subsidiaries of the Borrower, excluding only the Excluded Subsidiaries, to execute and deliver to the Administrative Agent the Subsidiary Guaranty. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (i) concurrently with the delivery of each compliance certificate required to be delivered pursuant to Section 6.1(d), with respect to each Subsidiary which (x) is acquired or formed (other than Excluded Subsidiaries) during the most recent fiscal quarter period covered by such compliance certificate or (y) was not required to join in the Subsidiary Guaranty because it was an Excluded Subsidiary but shall subsequently not be precluded from doing so during such most recent fiscal quarter and (ii) within five (5) Business Days after the date any Subsidiary has any Recourse Indebtedness or Guarantee Obligations with respect to the Revolving Credit Agreement, the Borrower shall cause each such Subsidiary to execute and deliver to the Administrative Agent a joinder in the Subsidiary Guaranty in the form of Exhibit A attached to the form of Subsidiary Guaranty; it being understood and agreed, for purposes of clarity, that nothing in this sentence shall permit the treatment of any Eligible Unencumbered Property as an Unencumbered Property, or the inclusion of the value attributable to such Eligible Unencumbered Property in Unencumbered Pool Value, until such a joinder to the Subsidiary Guaranty has been so executed and delivered to the Administrative Agent by the Subsidiary owning such Eligible Unencumbered Property. Borrower covenants and agrees that each Subsidiary which it shall cause to execute the Subsidiary Guaranty shall be fully authorized to do so by its supporting organizational and authority documents and shall be in good standing in its state of organization and in the case of any Subsidiary which is the owner of an Unencumbered Property, shall be in good standing in the state in which such Property is located. The delivery by Borrower to the Administrative Agent of any such joinder shall be deemed a representation and warranty by Borrower that each Subsidiary which Borrower caused to execute the Subsidiary Guaranty has been fully authorized to do so by its supporting organizational and authority documents and is in good standing in its state of organization and in the case of a Subsidiary which is the owner of an Unencumbered Property, is in good standing in the state in which such Property is located. From time to time Borrower may request, upon not less than five (5) Business Days prior written notice to the Administrative Agent (or such shorter time as may be agreed by the Administrative Agent), that a Subsidiary Guarantor be released from the Subsidiary Guaranty, which release (the "Release") shall be effected by the Administrative Agent if all of the following conditions are satisfied as of the date of such Release:

(a) Borrower shall have delivered a compliance certificate showing pro forma compliance with the covenants set forth in herein after giving effect to such Release; and

(b) Substantially concurrently with the Release, such Subsidiary Guarantor shall have no outstanding Recourse Indebtedness or Guarantee Obligations in respect

of the Revolving Credit Agreement; and

(c) If after giving effect to such Release the resulting reduction in the Unencumbered Pool Value and Unencumbered Pool NOI would cause a breach of either Section 6.17(e) or Section 6.17(f), Borrower shall have repaid such Advances, if any, as may be required to reduce the outstanding Advances to the maximum amount of Advances that can be outstanding without creating such a breach of Section 6.17(e) or Section 6.17(f).

In connection with a Release, Borrower shall deliver to the Administrative Agent a certificate from Borrower's chief executive officer or chief financial officer regarding the matters referred to in the immediately preceding clauses (a), (b) and (c). Notwithstanding the foregoing, the Administrative Agent shall not be obligated to release any such Subsidiary from the Subsidiary Guaranty if (i) such Subsidiary owns any Unencumbered Properties that are not being so released from such status or (ii) a Default or Unmatured Default has occurred and is then continuing. In addition, ~~effective as upon on the earlier of~~ (i) the date on which Borrower receives an Investment Grade Rating or any date thereafter on which Borrower maintains such an Investment Grade Rating, or (ii) the date on which Borrower shall consummate a Private Placement Facility in the amount of not less than One Hundred Million Dollars (\$100,000,000.00), Borrower may request, upon not less than five (5) Business Days prior written notice to the Administrative Agent, the release of all Subsidiary Guarantors from the Subsidiary Guaranty other than those which have outstanding Recourse Indebtedness or Guarantee Obligations (other than the Subsidiary Guaranty), which release shall be effected by the Administrative Agent so long as no Default or Unmatured Default shall have occurred and be then continuing and in the case of a release requested in connection with a Private Placement Facility, such release shall be effective simultaneous with the closing of such Private Placement Facility. Administrative Agent is authorized by the Lenders and hereby agrees to execute any reasonable documentation requested by Borrower to evidence such release.

6.22. [Intentionally Omitted].

6.23. Mergers, Consolidations and Sales of Assets. The Borrower will not, and will not permit any Subsidiary which is an owner of an Unencumbered Property (unless such Subsidiary is released or being released as a Subsidiary Guarantor at such time) to, merge into, including pursuant to a Delaware LLC Division, or consolidate with any other Person, or permit any other Person to merge into or consolidate with it. In addition, the Borrower will not permit the Consolidated Group, in the aggregate, to sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions), including, in each case, pursuant to a Delaware LLC Division, during any period of four (4) consecutive fiscal quarters assets of the Consolidated Group representing an aggregate value of more than twenty-five percent (25%) of the Total Asset Value in effect on the first day of such period, unless, in each case, (1) the Borrower shall have given the Administrative Agent and the Lenders at least 30 days' prior written notice of such transaction, (2) immediately prior thereto, and immediately thereafter and after giving

effect thereto, no Default or Unmatured Default is or would be in existence, including, without limitation, a Default or Unmatured Default resulting from a breach of Sections 6.16 and 6.17; and (3) at the time the Borrower gives notice pursuant to clause (1) of this sentence, the Borrower shall have delivered to the Administrative Agent for distribution to each of the Lenders a compliance certificate in the form attached as Exhibit A hereto, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties with the terms and conditions of this Agreement and the other Loan Documents, including without limitation, the financial covenants contained in Sections 6.16 and 6.17, after giving effect to such transaction. Notwithstanding the foregoing, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing: (i) any Subsidiary may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, provided that

following such transaction Borrower remains an entity organized under the laws of the United State of America, (ii) any Subsidiary may merge into any other member of the Consolidated Group in a transaction in which the surviving entity is a member of the Consolidated Group and remains an entity organized under the laws of the United State of America, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another member of the Consolidated Group, (iv) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (v) any Subsidiary that is a Delaware LLC may consummate a Delaware LLC Division if, immediately upon the consummation of the Delaware LLC Division, the assets of the applicable Delaware Divided LLC are held by one or more Subsidiaries at such time or, with respect to assets not so held by one or more Subsidiaries, such Delaware LLC Division, in the aggregate, would otherwise result in a sale, transfer or other disposition permitted by this Section 6.23.

ARTICLE VII.

DEFUALTS

The occurrence of any one or more of the following events shall constitute a Default:

7.1. Nonpayment of any principal payment due hereunder or under any Note when due.

7.2. Nonpayment of interest upon any Note or of any fee or other payment Obligations under any of the Loan Documents within five (5) Business Days after the same becomes due.

7.3. The breach of any of the terms or provisions of Sections 6.2, 6.4, 6.10, 6.11, 6.13, 6.16, 6.17, 6.19, 6.20, 6.21, or 6.23.

7.4. Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries to the Lenders or the Administrative Agent under or in connection with this Agreement, or any material certificate or information delivered in connection with this Agreement or any other Loan Document shall be materially false on the date as of which made, provided that the facts or conditions giving rise to such falsity are not

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corrected by the Borrower within thirty (30) days after written notice of such falsity from the Administrative Agent.

7.5. The breach by the Borrower (other than a breach which constitutes a Default under Section 7.1, 7.2, 7.3 or 7.4) of any of the terms or provisions of this Agreement which is not remedied within thirty (30) days after written notice from the Administrative Agent.

7.6. The default by the Borrower or any other member of the Consolidated Group or any Investment Affiliate beyond any applicable notice and cure period in the payment of any amount due under, or the performance of any term, provision or condition contained in, the Revolving Credit Agreement or any agreement with respect to (A) Recourse Indebtedness of the Borrower or of any other member of the Consolidated Group if the aggregate amount of Recourse Indebtedness so in default exceeds \$50,000,000 (provided that if the total underlying Indebtedness so in default exceeds the portion which constitutes Recourse Indebtedness, only the portion that constitutes Recourse Indebtedness shall be taken into account in determining such \$50,000,000 threshold), or (B) any Non-Recourse Indebtedness of the Borrower or any other member of the Consolidated Group or any Investment Affiliate in excess of \$150,000,000 in the aggregate, (any such Indebtedness causing the applicable threshold in clause (A) or clause (B) to be exceeded, together with the Indebtedness under the Revolving Credit Agreement being referred to herein as "Material Indebtedness") or any other event shall occur

or condition exist, which causes or permits any such Material Indebtedness to be due and payable or required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity thereof.

7.7. The Borrower or any Subsidiary Guarantor shall (i) have an order for relief entered with respect to it under the Federal bankruptcy laws as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any Substantial Portion of its Property, (iv) institute any proceeding seeking an order for relief under the Federal bankruptcy laws as now or hereafter in effect or seeking to adjudicate it as a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) fail to contest in good faith any appointment or proceeding described in Section 7.8 or (vi) admit in writing its inability to pay its debts generally as they become due.

7.8. A receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any Subsidiary Guarantor or for any Substantial Portion of the Property of the Borrower or any Subsidiary Guarantor or a proceeding described in Section 7.7(iv) shall be instituted against the Borrower or any Subsidiary Guarantor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of ninety (90) consecutive days.

7.9. The Borrower or any Subsidiary Guarantor shall fail within ninety (90) days to pay, bond or otherwise discharge any judgments or orders for the payment of money (to the extent not covered by insurance as to which the insurer has been notified of such judgment or order and has not issued a notice denying coverage thereof) in an amount which, when added to all other judgments or orders outstanding against the Borrower or any Subsidiary Guarantor would exceed \$50,000,000 in the aggregate, which have not been stayed on appeal or otherwise appropriately contested in good faith.

7.10. An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding (i) \$10,000,000 in any year or (ii) \$40,000,000 for all periods.

7.11. Any Change in Control shall occur.

7.12. Failure to complete any direct remediation obligation within the time period permitted by law or governmental order (or within a reasonable time in light of the nature of the problem if no specific time period is so established) with respect to material environmental problems at Projects owned by the Borrower or any of its Subsidiaries whose aggregate book values are in excess of \$100,000,000 after all administrative hearings and appeals have been concluded, and if litigation is applicable to such obligation, after a final non-appealable judgment of a court of competent jurisdiction has been entered. Notwithstanding the foregoing, the Sacramento Project shall not be subject to this Section 7.12 and the value thereof shall be excluded in any calculation of the \$100,000,000 amount described in this Section 7.12.

7.13. The occurrence of any "Default" as defined in any Loan Document or the breach of any of the terms or provisions of any Loan Document, which default or breach continues beyond any period of grace therein provided.

7.14. Any Governmental Authority shall issue any order or other directive requiring the Borrower to make any payment in excess of \$50,000,000 after all administrative hearings and appeals have been concluded, and if litigation is applicable to such obligation, after a final non-appealable judgment of a court of competent jurisdiction has been entered .

7.15 The attempted disavowal, revocation or termination by the Borrower or any Loan Party of any of the Loan Documents.

ARTICLE VIII.

ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES

8.1. Acceleration. If any Default described in Section 7.7 or 7.8 occurs with respect to the Borrower, the obligations of the Lenders to make Loans hereunder shall automatically terminate and the Obligations shall immediately become due and payable without any election or action on the part of the Administrative Agent or any Lender. If any other Default occurs, so long as a Default exists Lenders shall have no obligation to make any Loans and the Required

has been fully cured, may (x) permanently terminate the obligations of the Lenders to make Loans hereunder and (y) declare the Obligations to be due and payable, or both, whereupon if the Required Lenders elected to accelerate (i) the Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrower hereby expressly waives and (ii) if any automatic or optional acceleration has occurred, the Administrative Agent, as directed by the Required Lenders (or if no such direction is given within thirty (30) days after a request for direction, as the Administrative Agent deems in the best interests of the Lenders, in its sole discretion), shall use its good faith efforts to collect all amounts owed by the Borrower and any Guarantor under the Loan Documents by exercising all rights and remedies provided for under this Agreement or otherwise available at law or in equity, including without limitation by filing and diligently pursuing judicial action.

If, within ten (10) days after acceleration of the maturity of the Obligations or termination of the obligations of the Lenders to make Loans hereunder as a result of any Default (other than any Default as described in Section 7.7 or 7.8 with respect to the Borrower) and before any judgment or decree for the payment of the Obligations due shall have been obtained or entered, all of the Lenders (in their sole discretion) shall so direct, the Administrative Agent shall, by notice to the Borrower, rescind and annul such acceleration and/or termination.

8.2. Amendments. Subject to the provisions of this Article VIII and excluding any Amendment Regarding Increase in substantially the form of Exhibit J entered into pursuant to Section 2.22(b), the Required Lenders (or the Administrative Agent with the consent in writing of the Required Lenders) and the Borrower may enter into agreements supplemental hereto for the purpose of adding or modifying any provisions to the Loan Documents or changing in any manner the rights of the Lenders or the Borrower hereunder or waiving any Default hereunder; provided, however, that no such supplemental agreement or waiver shall, without the consent of each Lender directly affected thereby:

- (a) Extend the Facility Termination Date, or forgive all or any portion of the principal amount of any Loan or accrued interest thereon, reduce the Applicable Margins or modify the underlying interest rate options (or modify any definition herein used in calculating such options which would have the effect of modifying such options) or extend the time of payment of any such principal, interest, fees or other payment Obligations.
- (b) Release any Subsidiary Guarantor from the Subsidiary Guaranty, except as expressly provided for herein;
- (c) Reduce the percentage specified in the definition of Required Lenders or Majority in Interest.
- (d) Increase the Aggregate Commitment beyond \$800,000,000 provided that no Lender's Commitment can be increased without the consent of such Lender;

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- (e) Amend the definitions of Tranche A-1 Term Loan Commitment, Tranche A-2 Term Loan Commitment or Percentage;
- (f) Permit the Borrower to assign its rights under this Agreement; or
- (g) Amend Sections 8.2 or 11.2;
- (h) Waive any Default under Section 7.1; or
- (i) Change any provisions of any Loan Document in a manner that by its terms adversely affects the rights or obligations in respect of any Lenders holding Loans of any Tranche differently than the Lenders holding Loans of any other Tranche without

or any Tranche differently than the Lenders holding Loans or any other Tranche without the written consent of the Lenders representing a Majority in Interest of each affected Tranche.

No amendment of any provision of this Agreement relating to the Administrative Agent shall be effective without the written consent of the Administrative Agent.

8.3. Preservation of Rights. No delay or omission of the Lenders or the Administrative Agent to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Loan notwithstanding the existence of a Default or the inability of the Borrower to satisfy the conditions precedent to such Loan shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by the Lenders required pursuant to Section 8.2, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to the Administrative Agent and the Lenders until the Obligations have been paid in full.

ARTICLE IX.

GENERAL PROVISIONS

9.1. Survival of Representations. All representations and warranties of the Borrower contained in this Agreement shall survive delivery of the Notes and the making of the Loans herein contemplated.

9.2. Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, no Lender shall be obligated to extend credit to the Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

9.3. [Intentionally Deleted].

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9.4. Headings. Section headings in the Loan Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Loan Documents.

9.5. Entire Agreement. The Loan Documents embody the entire agreement and understanding among the Borrower, the Administrative Agent and the Lenders and supersede all prior commitments, agreements and understandings among the Borrower, the Administrative Agent and the Lenders relating to the subject matter thereof.

9.6. Several Obligations; Benefits of the Agreement. The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which the Administrative Agent is authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. The Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to the Agreement and their respective successors and assigns.

9.7. Expenses; Indemnification. The Borrower shall reimburse the Administrative Agent for any reasonable out-of-pocket costs and expenses (including, without limitation, all reasonable attorneys' fees of a single firm of counsel) paid or incurred by the Administrative

Agent in connection with the amendment or modification of the Loan Documents. The Borrower also agrees to reimburse the Administrative Agent for any reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees of a single firm of counsel) paid or incurred by the Administrative Agent in connection with the collection and enforcement of the Loan Documents (including, without limitation, any workout). The Borrower further agrees to indemnify the Administrative Agent, each Lender and their Affiliates, and their respective directors, officers and employees (the "Indemnified Persons") against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all reasonable fees and reasonable expenses of a single firm of counsel to the Indemnified Parties (or in the case of a conflict of interest where an affected Indemnified Party notifies the Borrower of such conflict, an additional firm of counsel for such affected Indemnified Party or Indemnified Parties), in each case arising out of or in connection with or by reason of any investigation, litigation or proceeding (each, a "Proceeding") related to or arising out of this Agreement, the other Loan Documents, the Projects, the transactions contemplated hereby or the direct or indirect application or proposed application of the proceeds of any Loan hereunder, except to the extent that any of the foregoing arise (a) out of the fraud, gross negligence or willful misconduct of the party seeking indemnification therefor as finally determined by a final, non-appealable judgment of a court of competent jurisdiction, (b) from claims of an Indemnified Person against any Affiliate or related Indemnified Person of such Indemnified Person or (c) as a result of any obligation owed by such Indemnified Party to any third party based upon contractual obligations of such Indemnified Party owing to such third party which are not expressly referenced in this Agreement. To the extent permitted by applicable law, (x) the Borrower shall not assert, and hereby waives, any claim against any of the foregoing Indemnified Parties, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a

result of, this Agreement or any agreement or instrument contemplated hereby, any Loan or Facility Letter of Credit or the use of the proceeds thereof and (y) the Administrative Agent, the Co-Syndication Agents, the Arrangers and the Lenders shall not assert, and hereby waive, any claim against any of the Borrower and any other Loan Party, or any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof, provided that nothing in clause (a) above shall relieve Borrower or any other Loan Party of any obligation it may have to indemnify an Indemnified Person against special, indirect, consequential or punitive damages asserted against such Indemnified Person by a third party. The obligations of the Borrower under this Section shall survive the termination of this Agreement. This Section 9.7 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

9.8. Numbers of Documents. All statements, notices, closing documents, and requests hereunder shall be furnished to the Administrative Agent with sufficient counterparts so that the Administrative Agent may furnish one to each of the Lenders.

9.9. Accounting. Except as provided to the contrary herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP as in effect from time to time; provided that, if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided further that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made in a manner such that any obligations relating to a lease that was accounted for by a Person as an operating lease under GAAP as of the Agreement Effective Date and any similar lease entered into after the Agreement Effective Date by such Person shall be accounted for as obligations relating to an operating lease and not as Capital Lease Obligations.

9.10. Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

9.11. No Advisory or Fiduciary Responsibility. The relationship between the Borrower, on the one hand, and the Lenders, the Administrative Agent and the Co-Syndication Agents on

the other, shall be solely that of borrower and lender. Neither the Administrative Agent nor the Co-Syndication Agents nor any Lender shall have any fiduciary responsibilities to the Borrower. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Co-Syndication Agents and the Arrangers are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Co-Syndication Agents and the Arrangers, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Co-Syndication Agents and the Arrangers each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Co-Syndication Agents nor any Arranger has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Co-Syndication Agents, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor the Co-Syndication Agents nor any Arranger has any obligation to disclose any of such interests to the Borrower, any other Loan Party, or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Co-Syndication Agents and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty to the Borrower or any other Loan Party in connection with any aspect of any transaction contemplated hereby. Neither the Administrative Agent nor the Co-Syndication Agents nor any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations.

9.12. Choice of Law. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF ILLINOIS, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

9.13. Consent to Jurisdiction. THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES DISTRICT COURT FOR

NORTHERN DISTRICT OF ILLINOIS OR STATE COURT LOCATED IN CHICAGO, ILLINOIS, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE BORROWER AGAINST THE ADMINISTRATIVE AGENT OR ANY

LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN CHICAGO, ILLINOIS.

9.14. Waiver of Jury Trial. THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

9.15. Other Agents. The Co-Syndication Agents shall not have any additional rights or obligations under the Loan Documents, except for those rights, if any, as a Lender.

9.16. Acknowledgement and Consent to Bail In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an Affected Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise

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conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

9.17. Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States).

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.17, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

9.18. Erroneous Payments.

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

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment,

a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case;

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.19(b).

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender or Issuing Lender at any time, (i) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class (i.e., Revolving Loan or Term Loan) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and

Assumption with respect to such Erroneous Payment Deficiency Assignment and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans

subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from any Loan Party for the purpose of making such Erroneous Payment.

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

(g) Each party's obligations, agreements and waivers under this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the

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Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Documents.

ARTICLE X.

THE ADMINISTRATIVE AGENT

10.1. Appointment. Wells Fargo Bank, National Association, is hereby appointed Administrative Agent hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Administrative Agent to act as the agent of such Lender. The Administrative Agent agrees to act as such upon the express conditions contained in this Article X. Notwithstanding the use of the defined term "Administrative Agent," it is expressly understood and agreed that the Administrative Agent shall not have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that the Administrative Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders' contractual representative, the Administrative Agent (i) does not hereby assume any fiduciary duties to any of the Lenders, and (ii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders hereby agrees to assert

no claim against the Administrative Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Lender hereby waives.

10.2. Powers. The Administrative Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Administrative Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall have no implied duties to the Lenders, or any obligation to the Lenders to take any action thereunder except any action specifically provided for in this Agreement and/or the other Loan Documents to be taken by the Administrative Agent.

10.3. General Immunity. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Borrower, the Lenders or any Lender for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith except for its or their own gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

10.4. No Responsibility for Loans, Recitals, etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (i) any statement, warranty or representation made by anyone other than the Administrative Agent or one of its Affiliates in connection with any Loan Document or any borrowing hereunder; (ii) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (iii) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered to the

Administrative Agent; (iv) the validity, effectiveness or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith with respect to anyone other than the Administrative Agent or one of its Affiliates; (v) the value, sufficiency, creation, perfection, or priority of any interest in any collateral security; or (vi) the financial condition of the Borrower or any Guarantor. Except as otherwise specifically provided herein, the Administrative Agent shall have no duty to disclose to the Lenders information that is not required to be furnished by Borrower to the Administrative Agent at such time, but is voluntarily furnished by Borrower to the Administrative Agent (either in its capacity as Administrative Agent or in its individual capacity).

10.5. Action on Instructions of Lenders. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the required percentage of the Lenders needed to take such action or refrain from taking such action, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Administrative Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders. The Administrative Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action, other than liability, cost or expense that arises from the Administrative Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

10.6. Employment of Agents and Counsel. The Administrative Agent may execute any of its duties as Administrative Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Lenders, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent shall be entitled to advice of counsel concerning all matters pertaining to the agency hereby created and its duties hereunder and under any other Loan Document.

10.7. Reliance on Documents; Counsel. The Administrative Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by the Administrative Agent, which counsel may be employees of the Administrative Agent.

10.8. Administrative Agent's Reimbursement and Indemnification. The Lenders agree to reimburse and indemnify the Administrative Agent ratably in proportion to their respective Commitments (i) for those amounts which are specifically reimbursable by Borrower under this Agreement and the other Loan Documents, to the extent not so reimbursed by Borrower, (ii) for any other expenses incurred by the Administrative Agent on behalf of the Lenders in connection with the preparation, execution, delivery, administration and enforcement of the Loan

the extent not actually reimbursed by Borrower, and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby (including without limitation, for any such amounts incurred by or asserted against the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders), or the enforcement of any of the terms thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct or a breach of the Administrative Agent's express obligations and undertakings to the Lenders, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The obligations of the Lenders and the Administrative Agent under this Section 10.8 shall survive payment of the Obligations and termination of this Agreement.

10.9. Rights as a Lender. In the event the Administrative Agent is a Lender, the Administrative Agent shall have the same rights and powers hereunder and under any other Loan Document as any Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, at any time when the Administrative Agent is a Lender, unless the context otherwise indicates, include the Administrative Agent in its individual capacity. The Administrative Agent may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Subsidiaries in which the Borrower or such Subsidiary is not restricted hereby from engaging with any other Person.

10.10. Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on the financial statements prepared by the Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into the Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Agreement and the other Loan Documents.

10.11. Successor Administrative Agent. Except as otherwise provided below, Wells Fargo Bank, National Association shall at all times serve as the Administrative Agent during the term of this Facility so long as Wells Fargo continues to be a Lender. The Administrative Agent may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to the Borrower's approval,

which approval shall not be unreasonably withheld or delayed (except that the Borrower shall, in all events, be deemed to have approved each Lender and any of its Affiliates that are Qualified Institutions as a successor Administrative Agent). Administrative Agent may be removed as administrative agent by all of the Lenders (other than the Lender then acting as Administrative Agent) and the Borrower upon thirty (30) days' prior written notice if the Administrative Agent (i) is found by a court of competent jurisdiction in a final, non-appealable judgment to have committed gross negligence or willful misconduct in the course of performing its duties hereunder or (ii) has become or is insolvent or has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment. Upon any such removal, such other

Lenders shall appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent which appointment shall, provided no Default or Unmatured Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed (except that the Borrower shall, in all events, be deemed to have approved each Lender and its Affiliates that are Qualified Institutions as a successor Agent) If no successor Administrative Agent shall have been so appointed by such other Lenders within thirty days after the resigning Administrative Agent's giving notice of its intention to resign, then the resigning Administrative Agent shall appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent. Notwithstanding the previous sentence, the Administrative Agent may at any time without the consent of the Borrower or any Lender, appoint any of its Affiliates which is a commercial bank as a successor Administrative Agent hereunder. No successor Administrative Agent shall be deemed to be appointed hereunder until such successor Administrative Agent has accepted the appointment. Any such successor Administrative Agent shall be a commercial bank having capital and retained earnings of at least \$500,000,000 (a "Qualified Institution"). Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Administrative Agent. Upon the effectiveness of the resignation or removal of the Administrative Agent, the resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation or removal of an Administrative Agent, the provisions of this Article X shall continue in effect for the benefit of such Administrative Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent hereunder and under the other Loan Documents.

10.12. Notice of Defaults. If a Lender becomes aware of a Default or Unmatured Default, such Lender shall notify the Administrative Agent of such fact provided that the failure to give such notice shall not create liability on the part of a Lender. Upon receipt of such notice that a Default or Unmatured Default has occurred, the Administrative Agent shall promptly notify each of the Lenders of such fact.

10.13. Requests for Approval. If the Administrative Agent requests in writing the consent or approval of a Lender, such Lender shall respond and either approve or disapprove definitively in writing to the Administrative Agent within ten (10) Business Days (or by such

earlier date as is conspicuously noted in such request if the Administrative Agent has made a reasonable determination that the Borrower has a legitimate business reason for seeking such consent or approval on an expedited basis) after such written request from the Administrative Agent. If the Lender does not so respond to a request with a ten (10) Business Day response time, that Lender shall be deemed to have approved the request. If the Lender does not so respond to request with less than a ten (10) Business Day response time, that Lender shall be deemed to have denied the request.

10.14. Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(b) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) shall be applied at such time or times as may be determined by the

Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Unmatured Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third (so long as no Default or Unmatured Default exists), to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Unmatured Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction.

(c) [Reserved].

10.15. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party

hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as, PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts, PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the

entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE XI.

SETOFF; RATABLE PAYMENTS

11.1. Setoff. In addition to, and without limitation of, any rights of the Lenders under applicable law, if the Borrower or any of the Subsidiary Guarantors becomes insolvent, however evidenced, or any Default occurs, any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other Indebtedness at any time held or owing by any Lender to or for the credit or account of the Borrower or such Subsidiary Guarantor, as the case may be, may be offset and applied toward the payment of the Obligations owing to such Lender at any time prior to the date that such Default has been fully cured, whether or not the Obligations, or any part hereof, shall then be due, provided however that any such offset and application shall only be made after such Lender has obtained the prior written approval of the Administrative Agent, which approval shall not be unreasonably withheld.

11.2. Ratable Payments. If any Lender, whether by setoff or otherwise, has payment made to it upon its Loans (other than payments received pursuant to Sections 3.1, 3.2, 3.4 or 3.5) in a greater proportion than that received by any other Lender entitled to ratable payment hereunder, such Lender agrees, promptly upon demand, to purchase a portion of the Loans held by such other Lenders so that after such purchase each Lender will hold its ratable proportion of Loans. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all applicable Lenders share in the benefits of such collateral ratably in proportion to their Loans. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

ARTICLE XII.

BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

12.1. Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrower and the Lenders and their respective successors and assigns, except that (i) the Borrower shall not have the right to assign its rights or obligations under the Loan Documents and (ii) any assignment by any Lender must be made in compliance with Section 12.3. The parties to the Agreement acknowledge that clause (ii) of this Section 12.1 relates only to absolute assignments and does

not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under the Agreement and any Note to a Federal Reserve Bank or (y) in the case of a Lender which is a fund, any pledge or assignment of all or any portion of its rights under the Agreement and any Note to its trustee in support of its obligations to its trustee, *provided, however,* that no such pledge or assignment creating a security interest shall release the transferor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 12.3. The Administrative Agent and Borrower may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 12.3; *provided, however,* that the Administrative Agent and Borrower may in its discretion (but shall not be required to) follow instructions from the Person which made any

Loan or which holds any Note to direct payments relating to such Loan or Note to another Person. Any assignee of the rights to any Loan or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Loan.

12.2. Participations.

(a) **Permitted Participants; Effect.** Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more banks, financial institutions, pension funds, or any other funds or entities (other than an Ineligible Institution) ("Participants") participating interests in any Loan owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the holder of any such Note for all purposes under the Loan Documents, all amounts payable by the Borrower under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents.

(b) **Voting Rights.** Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than those amendments, modifications or waivers with respect to any Loan or Commitment in which such Participant has an interest which would require consent of all the Lenders pursuant to the terms of clauses (a), (b) or (e) of Section 8.2 hereof.

(c) **Participant Register.** Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on

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which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The Participant Register shall be available for inspection by Borrower and Administrative Agent, at any reasonable time and upon reasonable prior notice. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) **Benefit of Setoff.** Each Lender shall retain the right of setoff provided in Section 11.1 and shall not be permitted to share such right with any Participant.

12.3. Assignments.

(a) **Permitted Assignments.** Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time assign to any other Lender or to any Affiliate of such Lender or of any other Lender without the prior approval of the Borrower, or to one or more other entities, with the prior approval of the Borrower, which approval of the Borrower (i) shall not be unreasonably withheld or delayed and shall be deemed given if not withheld within five (5) Business Days after written request for such approval from the Administrative Agent and (ii) shall not be required if a Default or Unmatured Default has occurred and is then continuing (such permitted assignees hereinafter referred to as "Purchasers"), all or any portion of its rights and obligations under the Loan Documents provided that any assignment of only a portion of such rights and obligations shall be in an amount not less than \$5,000,000 (it being understood and agreed that no Lender may hold an unparticipated interest of less than \$5,000,000 unless such Lender's interest has been reduced to zero). Notwithstanding the foregoing, no such assignment may be made to an Ineligible Institution. Such assignment shall be substantially in the form of Exhibit B hereto or in such other form as may be agreed to by the parties thereto. The consent of the Administrative Agent shall be required prior to an assignment becoming effective with respect to a Purchaser which is not a Lender or an Affiliate thereof or an entity that manages a Lender. Such consent shall not be unreasonably withheld or delayed.

(b) **Effect; Effective Date.** Upon (i) delivery to the Administrative Agent and Borrower of a notice of assignment, substantially in the form attached as Exhibit "I" to Exhibit B hereto (a "Notice of Assignment"), together with any consents required by

Section 12.3(a), and (ii) payment of a \$3,500 fee by the assignor or assignee to the Administrative Agent for processing such assignment, such assignment shall become effective on the effective date specified in such Notice of Assignment. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by the Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party hereto, and no further consent or action by the Borrower, the Lenders or the Administrative Agent shall be required to release the transferor Lender, and the transferor Lender (other than a transferor Lender transferring to an Affiliate of such Lender unless such Affiliate is a Qualified Institution) shall automatically be released on the effective date of such assignment, with respect to the percentage of the Aggregate Commitment and Loans assigned to such Purchaser. Upon the consummation of any assignment to a Purchaser pursuant to this Section 12.3(b), the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that replacement Notes are issued to such transferor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their Commitment, as adjusted pursuant to such assignment.

(c) Register. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its U.S. offices a copy of each Notice of Assignment delivered to it and shall record in its records the names and addresses of the Lenders hereunder and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof (the "Register"). The Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and Lenders shall treat each Person whose name is so recorded as a Lender hereunder for all purposes of this Agreement. This Section 12.3(c) shall be construed so that the Obligations are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or the regulations promulgated thereunder). The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and upon reasonable prior notice.

12.4. Dissemination of Information. The Borrower authorizes each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a "Transferee") and any prospective Transferee any and all information in such Lender's possession concerning the creditworthiness of the Borrower and its Subsidiaries, subject in each case to the confidentiality provisions of Section 12.6.

12.5. Tax Treatment. If any interest in any Loan Document is transferred to any Transferee which is organized under the laws of any jurisdiction other than the United States or any State thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Section 3.5.

disclosed (a) to its and its Affiliates' directors, officers, employees, consultants, service providers, and advisors, including accountants and legal counsel (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, provided that the Administrative Agent or Lender requested to make such disclosure promptly informs the Borrower of such request if lawfully permitted to do so, so that the Borrower may have an opportunity to object and/or seek an appropriate protective order at the Borrower's sole cost and expense, and provided further that the Borrower agrees that in no event shall any such notification be required in respect of any disclosure to bank regulatory authorities having jurisdiction over any Lender, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or the enforcement of rights under the Loan Documents, (f) subject to receipt of a written agreement from such Person containing provisions substantially the same as those of this Section, to any Transferee or prospective Transferee of any of its rights or obligations under this Agreement, (g) with the written consent of Borrower, (h) to any member of the Consolidated Group, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower, which source is not bound by a contractual or other obligation of confidentiality to any Person. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

ARTICLE XIII.

NOTICES

13.1. Giving Notice. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing or by facsimile (if confirmed in writing as provided below), or by email (if confirmed in writing as provided below) and addressed or delivered to such party at its address set forth below its signature hereto or at such other address (or to counsel for such party) as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid, shall be deemed given when received and any notice, if transmitted by email or facsimile, shall be deemed given when transmitted (provided a copy of such notice is also sent by overnight delivery service which is scheduled for delivery no later than the first Business Day after the date of such email or facsimile).

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13.2. Change of Address. The Borrower, the Administrative Agent and any Lender may each change the address for service of notice upon it by a notice in writing to the other parties hereto.

ARTICLE XIV.

PATRIOT ACT

Each Lender hereby notifies the Borrower and the Subsidiary Guarantors that pursuant to the requirements of the USA Act (Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "Act"), it is required to obtain, verify and record information that identifies the

Borrower and the Subsidiary Guarantors, which information includes the name and address of the Borrower and the Subsidiary Guarantors and other information that will allow such Lender to identify the Borrower and the Subsidiary Guarantors in accordance with the Act. The Borrower agrees to cooperate for itself and on behalf of the Subsidiary Guarantors with each Lender and provide true, accurate and complete information to such Lender in response to any such request.

ARTICLE XV.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Borrower, the Administrative Agent and the Lenders and each party has notified the Administrative Agent by email or telephone, that it has taken such action.

(Remainder of page intentionally left blank.)

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| [SIGNATURE PAGES, SCHEDULES AND EXHIBITS ARE INTENTIONALLY OMITTED AND
BEING AMENDED, IF AT ALL, AS SET FORTH IN THE FIRSTSECOND AMENDMENT]

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Document comparison by Workshare 10.0 on Wednesday, May 11, 2022
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Split/Merged cell	
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Moved to	36
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Formal changes	u
Total changes	485

SECOND AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT

SECOND AMENDMENT, dated as of **May 11, 2022** (this "Agreement"), to the Second Amended and Restated Credit Agreement (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, including by this Agreement, the "Credit Agreement") dated as of December 21, 2018, among **InvenTrust Properties Corp.**, a corporation organized under the laws of the State of Maryland (the "Borrower"), the Lenders party thereto and KeyBank National Association, as Administrative Agent. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, the Borrower, the Lenders party hereto and the Administrative Agent desire to modify the Credit Agreement as herein set forth subject to the terms and conditions provided for in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendments to Credit Agreement. Subject to **all** of the terms and conditions set forth in this Agreement, the Borrower, the Lenders and the Administrative Agent hereby agree that the Credit Agreement (other than the schedules and exhibits thereto) is amended to incorporate the changes marked to delete the stricken text (indicated textually in the same manner as the following example: **stricken text**) and to add the underlined text (indicated textually in the same manner as the following example: **underlined text**) as set forth on the copy of the Credit Agreement attached as Annex I. Exhibit G is hereby revised to (i) replace each reference to "LIBOR Applicable Margin" with "SOFR Applicable Margin" and (ii) in the paragraphs introducing each of the Leverage Based Pricing Schedule and Ratings Based Pricing Schedule, replace each reference to the phrase "Floating Rate or added to LIBOR Base Rate (as adjusted for any Reserve Requirement) to determine the LIBOR Rate" with "Floating Rate, or added to Adjusted Daily Simple SOFR to determine the Daily Simple SOFR Rate, or added to Adjusted Term SOFR to determine the Term SOFR Rate". Except for the foregoing revisions to Exhibit G, none of the Schedules or Exhibits to the Credit Agreement shall be revised pursuant to this Agreement.

SECTION 2. [Reserved].

SECTION 3. Conditions of Effectiveness. This Agreement shall become effective as of the first date (the "Second Amendment Effective Date") that all of the following conditions precedent shall have been satisfied:

3.1 The Administrative Agent's receipt of the following, each of which shall be e-mails (in a .pdf format) or telecopies (in each case, followed promptly by originals to the extent requested by the Administrative Agent) and each in form and substance satisfactory to the Administrative Agent:

- (a) counterparts of this Agreement, duly executed by the parties hereto;
- (b) such certificates of resolutions or other action, incumbency certificates and/or other certificates of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each officer thereof authorized to act in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;
- (c) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that

its jurisdiction or organization; and

(d) a certificate of the Borrower to the effect that (i) the conditions specified in Sections 3.2 and 3.3 have been satisfied, and (ii) no event has occurred and is continuing which constitutes an Unmatured Default.

3.2 The representations and warranties contained in Section 4 of this Agreement are true and correct to the extent provided in Section 4 of this Agreement.

3.3 There shall not have occurred since December 31, 2021, any event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

3.4 The Administrative Agent and each Lender shall have received all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S. Patriot Act, and the Beneficial Ownership Regulation, in each case, to the extent requested at least five Business Days prior to the Second Amendment Effective Date.

3.5 Any fees owed to any Lender or Arranger required to be paid on or before the Second Amendment Effective Date shall have been paid.

SECTION 4. Representations and Warranties. As of the date hereof and after giving effect to this Agreement, the representations and warranties set forth in the Credit Agreement and in the other Loan Documents shall be true and correct in all material respects (except to the extent (i) such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, (ii) any representation or warranty that is already by its terms qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects after giving effect to such qualification and (iii) for purposes of this Section 4, the representations and warranties contained in the first sentence of Section 5.4 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to Section 6.1 of the Credit Agreement). Each of the Loan Parties represents and warrants (which representations and warranties shall survive the execution and delivery hereof) to the Administrative Agent and the Lenders that:

(a) it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the transactions contemplated hereby and has taken or caused to be taken all necessary action to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby;

(b) no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement, except for filings for reporting purposes required under applicable securities laws;

(c) this Agreement has been duly executed and delivered on its behalf by a duly authorized officer, and constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy insolvency, reorganization, receivership, moratorium or other laws affecting creditors' rights generally and by general principles of equity;

(d) no Unmatured Default shall exist or would result from the consummation of the transactions contemplated by this Agreement; and

(e) the execution, delivery and performance by it of this Agreement will not (i) contravene the terms of any of its organization documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (x) any contractual obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (y) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any applicable law.

SECTION 6. Ratification.

(a) The Credit Agreement, as amended by this Agreement, and the other Loan Documents remain in full force and effect and are hereby ratified and affirmed by the Loan Parties. The amendments contained in Section 1 hereof shall be deemed to have prospective application only. This Agreement is not intended to and shall not constitute a novation. Each of the Loan Parties hereby (i) confirms and agrees that the Borrower is truly and justly indebted to the Administrative Agent and the Lenders in the aggregate amount of the Obligations without defense, counterclaim or offset of any kind whatsoever, other than payment in full, and (ii) reaffirms and admits the validity and enforceability of the Credit Agreement, as amended by this Agreement, and the other Loan Documents.

(b) This Agreement shall be limited precisely as written and, except as expressly provided herein, shall not be deemed (i) to be a consent granted pursuant to, or a waiver, modification or forbearance of, any term or condition of the Credit Agreement, any other Loan Document or any of the instruments or agreements referred to therein or a waiver of any Unmatured Default or Default under the Credit Agreement, whether or not known to the Administrative Agent or any of the Lenders, or (ii) to prejudice any right or remedy which the Administrative Agent or any Lender may now have or have in the future against any Person under or in connection with the Credit Agreement, any other Loan Document or any of the instruments or agreements referred to therein or any of the transactions contemplated thereby.

SECTION 7. Modifications. Neither this Agreement, nor any provision hereof, may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the parties hereto.

SECTION 8. References. The Loan Parties acknowledge and agree that this Agreement constitutes a Loan Document. Each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference in each other Loan Document (and the other documents and instruments delivered pursuant to or in connection therewith) to the "Credit Agreement", "thereunder", "thereof" or words of like import, shall mean and be a reference to the Credit Agreement as modified hereby and as the Credit Agreement may in the future be amended, restated, supplemented or modified from time to time.

SECTION 9. Counterparts. This Agreement may be executed by the parties hereto individually or in combination, in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page by telecopier or electronic mail (in a .pdf format) shall be effective as delivery of a manually executed counterpart. This Agreement may be executed using Electronic Signatures (including, without limitation,

facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent of a manually signed paper hereof which has been converted into electronic form (such as scanned into .pdf format), or an electronically signed communication converted into another format, for transmission, delivery and/or retention. For purposes hereof, "Electronic Signature" shall have the meaning assigned to it by 15 USC §7006, as it may be amended from time to time. Upon the reasonable request of the Administrative Agent, any Electronic Signature of any other party hereto shall, as promptly as practicable, be followed by a manually executed counterpart thereof.

SECTION 10. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 11. Severability. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of such provision in any other jurisdiction or the remaining provisions of this Agreement in any jurisdiction.

SECTION 12. Governing Law. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE

TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS.

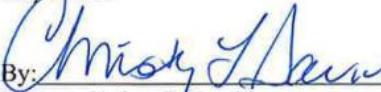
SECTION 13. Headings. Section headings in this Agreement are included for convenience of reference only and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

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IN WITNESS WHEREOF, Borrower, the Administrative Agent and the undersigned Lenders have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWER:

INVENTRUST PROPERTIES CORP., a Maryland corporation


By: _____

Name: Christy L. David
Title: E.V.P., Chief Operating Officer,
General Counsel and Secretary

Signature Page to Second Amendment to Second Amended and Restated Credit Agreement

The undersigned, being all of the Subsidiary Guarantors as of the date hereof, hereby consent to the foregoing Agreement and agree that the Subsidiary Guaranty shall continue in full force and effect with

respect to the Credit Agreement, as amended by the Agreement, and to the other Loan Documents.

SUBSIDIARY GUARANTORS:

**IA COLORADO SPRINGS CHEYENNE, L.L.C.
IA NEWNAN COWETA, L.L.C.
IA NEWNAN THOMAS, L.L.C.
IA PORT CHARLOTTE PEACHLAND, L.L.C.
IA SAN PEDRO GARDEN, L.L.C.
IA SARASOTA TAMiami, L.L.C.
IA ST. PETERSBURG GATEWAY, L.L.C.
IA TUCKER HUGH HOWELL, L.L.C.
IA WILDOMAR BEAR CREEK, L.L.C.
IA WOODSTOCK ROSE CREEK, L.L.C.**

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: Christy L. David

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

Signature Page to Second Amendment to Second Amended and Restated Credit Agreement

**IVT ANTOINE TOWN CENTER HOUSTON, LLC
IVT CAMPUS MARKETPLACE SAN MARCOS, LLC
IVT ELDORADO MARKETPLACE FRISCO, LLC
IVT KENNESAW MARKETPLACE, LLC
IVT KYLE MARKETPLACE, LLC
IVT LAKESIDE CROSSING WINTER PARK, LLC
IVT LAKESIDE WINTER PARK, LLC
IVT OLD GROVE MARKETPLACE OCEANSIDE,
LLC
IVT PARAISO PARC PEMBROKE PINES, LLC
IVT PARKE CEDAR PARK, LLC
IVT PGA PLAZA PALM BEACH GARDENS, LLC**

IVT PLAZA MIDTOWN ATLANTA, LLC
IVT PORT CHARLOTTE PEACHLAND, LLC
IVT RIO PINAR PLAZA ORLANDO, LLC
IVT RIVER OAKS VALENCIA, LLC
IVT RIVERWALK MARKET FLOWER MOUND,
LLC
IVT SANDY PLAINS CENTRE MARIETTA, LLC
IVT SHOPS AT FAIRVIEW, LLC
IVT SHOPS AT GALLERIA BEE CAVE LLC
IVT SHOPS AT TOWN CENTER GERMANTOWN,
LLC
IVT SONTERRA VILLAGE SAN ANTONIO, LLC
IVT SOUTHERN ROYAL PALM BEACH, LLC
IVT STEVENSON RANCH PLAZA, LLC

IVT TRAVILAH SQUARE ROCKVILLE, LLC
IVT TROWBRIDGE CROSSING SANDY SPRINGS,
LLC
IVT WESTFORK PLAZA PEMBROKE PINES, LLC
IVT WESTPARK GLEN ALLEN, LLC
IVT WINDWARD COMMONS ALPHARETTA, LLC
IVT DALLAS PRESTONWOOD, LLC

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By:

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

Signature Page to Second Amendment to Second Amended and Restated Credit Agreement

IVT OP GP, LLC

By: InvenTrust Properties Corp., its sole member

By:

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IVT OP LIMITED PARTNERSHIP

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By:

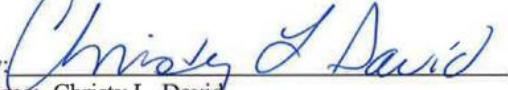
Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

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IA ARLINGTON RIVERVIEW LIMITED PARTNERSHIP

By: IA Arlington Riverview GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InveTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IA ATLANTA BUCKHEAD, L.L.C.

By: IA Atlanta Buckhead Member, L.L.C., its sole member
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InveTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

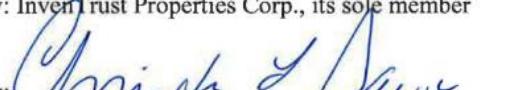
IA AUSTIN SCOFIELD LIMITED PARTNERSHIP

By: IA Austin Scofield GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InveTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IA MATTHEWS Sycamore, LP

By: IA Matthews Sycamore GP, LLC, its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InveTrust Properties Corp., its sole member

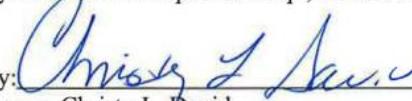
By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

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IA RALEIGH BENT TREE, LP

By: IA Raleigh Bent Trust GP, LLC, its general partner

By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

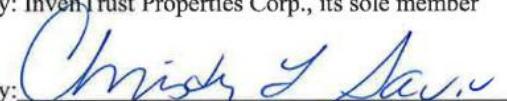
**IA RICHARDSON CUSTER CREEK LIMITED
PARTNERSHIP**

By: IA Richardson Custer Creek GP, L.L.C., its general
partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IA WESTLAKE LIMITED PARTNERSHIP

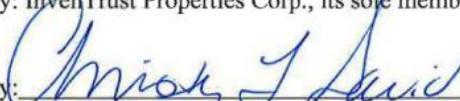
By: IA Westlake GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

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**MB HOUSTON ELDRIDGE LIMITED
PARTNERSHIP**

By: MB Houston Eldridge GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: 
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

**MB HOUSTON ELDRIDGE TOWN CENTER
LIMITED PARTNERSHIP**

By: MB Houston Eldridge Town Center GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: Christy L. David
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

**MB HOUSTON WINDEMERE LIMITED
PARTNERSHIP**

By: MB Houston Windemere GP, L.L.C., its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: Christy L. David
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

Signature Page to Second Amendment to Second Amended and Restated Credit Agreement

IVT CARY PARK TOWN CENTER, LP

By: IVT Cary Park Town Center GP, LLC, its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

By: Christy L. David
Name: Christy L. David
Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

**IVT COMMONS AT UNIVERSITY PLACE DURHAM,
LP**

By: IVT Commons at University Place Durham GP, LLC, its general partner
By: IVT OP Limited Partnership, its sole member
By: IVT OP GP, LLC, its general partner
By: InvenTrust Properties Corp., its sole member

11 11

By: Christy L. David

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

IVT CREEDMOOR RALEIGH, LP

By: IVT Creedmoor Raleigh GP, LLC , its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: Christy L. David

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel
and Secretary

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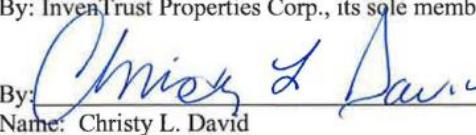
IVT NORTHCROSS CENTER HUNTERSVILLE, LP

By: IVT Northcross Center Huntersville GP, LLC, its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

IVT RENAISSANCE CENTER DURHAM I, LP

By: IVT Renaissance Center Durham I GP, LLC, its general partner

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

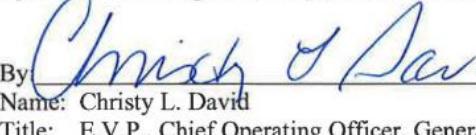
IA GREELEY CENTERPLACE, L.L.C.

By: IA Greeley Centerplace Holding, L.L.C., its sole member

By: IVT OP Limited Partnership, its sole member

By: IVT OP GP, LLC, its general partner

By: InvenTrust Properties Corp., its sole member

By: 

Name: Christy L. David

Title: E.V.P., Chief Operating Officer, General Counsel and Secretary

Signature Page to Second Amendment to Second Amended and Restated Credit Agreement

**KEYBANK NATIONAL ASSOCIATION, as
Administrative Agent and a Lender**

By: Kristin Centracchio
Name: Kristin Centracchio
Title: Vice President

WELLS FARGO BANK, NATIONAL
ASSOCIATION, Individually and as Co-
Syndication Agent

By: Michael J. VanderVelde
Name: Michael VanderVelde
Title: Director

JPMORGAN CHASE BANK, N.A.,
Individually and as Co-Syndication Agent

By: 
Name: Nora Skelton
Title: Vice President

BANK OF AMERICA, N.A.,
individually and as a Co-Documentation Agent

By: Evan J. Sitarski
Name: Evan J. Sitarski
Title: Senior Vice President

By: Jean M Brennan
Name: Jean Brennan
Title: Senior Vice President

PINNACLE BANK

By: 
Name: J. Patrick Daugherty
Title: Senior Vice President

UNITED BANK

By: Fred H. Denecke
Name: Frederick H. Denecke
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
individually and as a Co-Documentation Agent

By: James A. Harmann
Name: James A. Harmann
Title: Senior Vice President

**FIFTH THIRD BANK, NATIONAL
ASSOCIATION**

By: 
Name: KLAY SCHMEISER
Title: SVP

U.S. BANK NATIONAL ASSOCIATION

By: 
Name: Curt M. Steiner
Title: Senior Vice President

ANNEX I TO SECOND AMENDMENT

(marked copy of the Credit Agreement)

(see attached)

SECOND AMENDED AND RESTATED CREDIT AGREEMENT
DATED AS OF DECEMBER 21, 2018

AMONG

INVENTRUST PROPERTIES CORP.
AS BORROWER

KEYBANK NATIONAL ASSOCIATION
AS ADMINISTRATIVE AGENT

KEYBANC CAPITAL MARKETS INC.
AS JOINT LEAD ARRANGER AND JOINT BOOK MANAGER

AND

WELLS FARGO BANK, NATIONAL ASSOCIATION AS CO-SYNDICATION AGENT

WELLS FARGO SECURITIES, LLC
AS JOINT LEAD ARRANGER AND JOINT BOOK MANAGER

AND

JPMORGAN CHASE BANK, N.A.
AS CO-SYNDICATION AGENT AND
AS JOINT LEAD ARRANGER

AND

BofA SECURITIES, INC. AND
PNC CAPITAL MARKETS LLC, NATIONAL ASSOCIATION
AS JOINT LEAD ARRANGERS

BANK OF AMERICA, N.A. AND PNC BANK, NATIONAL ASSOCIATION
AS CO-DOCUMENTATION AGENTS AND JOINT LEAD ARRANGERS

AND

THE OTHER LENDERS
FROM TIME TO TIME PARTIES HERETO

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT

This Second Amended and Restated Credit Agreement (the “Agreement”) dated as of December 21, 2018, is among InvenTrust Properties Corp., a corporation organized under the laws of the State of Maryland (the “Borrower”), KeyBank National Association, a national banking association, Wells Fargo Bank, National Association, a national banking association, Bank of America, N.A., JPMorgan Chase Bank, N. A. and the several other banks, financial institutions and entities from time to time parties to this Agreement (collectively, the “Lenders”), KeyBank National Association, not individually, but as “Administrative Agent”, JPMorgan Chase Bank, N. A., not individually but as a “Co-Syndication Agent”, Wells Fargo Bank, National Association, not individually but as a “Co-Syndication Agent”, ~~BofA Securities~~Bank of America,

IncN.A., not individually but as a "Co-Documentation Agent", and PNC Capital Markets, LLC
Bank, National Association, not individually but as a "Co-Documentation Agent".

RECITALS

A. The Borrower is primarily engaged in the business of purchasing, owning, operating, leasing and managing commercial real estate properties.

B. This Agreement amends and restates in its entirety that certain Amended and Restated Credit Agreement dated as of February 3, 2015, as amended by a First Amendment to Amended and Restated Credit Agreement dated as of November 5, 2015, by and among the Borrower, the Administrative Agent, KeyBank National Association, a national banking association, Wells Fargo Bank, National Association, a national banking association, JPMorgan Chase Bank, N. A. and certain other banks (as so amended, the "Original Credit Agreement").

C. Borrower desires to amend and restate the Original Credit Agreement to increase the Aggregate Commitment, to extend the Facility Termination Date, to modify the interest rates thereunder and to make certain other changes to the terms and conditions thereof and the Administrative Agent, the Co-Syndication Agents and the Lenders are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

As used in this Agreement:

"ABR Applicable Margin" means, as of any date, the Applicable Margin used to determine the Floating Rate as determined from time to time in accordance with the definition of "Applicable Margin".

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"Acquisition" means any transaction, or any series of related transactions, consummated on or after the Agreement Effective Date, by which the Borrower or any of its Subsidiaries (i) acquires any going business or all or substantially all of the assets of any firm, corporation or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding partnership interests of a partnership or of the outstanding membership interests in a limited liability company.

"Act" is defined in Article 14.

"Adjusted Daily Simple SOFR" means the greater of (1) the sum of (a) Daily Simple SOFR and (b) the applicable SOFR Index Adjustment and (2) the Floor.

"Adjusted EBITDA" means, as of any date, the Consolidated NOI for the most recent four (4) fiscal quarters of the Borrower for which financial results have been reported, as adjusted by (i) adding thereto interest income and dividend income on Marketable Securities (but only to the extent dividend income does not constitute more than five percent (5%) of total

Adjusted EBITDA), (ii) deducting therefrom any income attributable to Excluded Tenants; (iii) adding or deducting for, as appropriate, any adjustment made under GAAP for straight lining of rents, gains or losses from sales of assets, extraordinary items, impairment and other non-cash charges, depreciation, amortization, interest expenses, taxes; (iv) deducting therefrom the applicable Capital Reserves for such period; (v) adding thereto, without duplication, the Consolidated Group Pro Rata Share of the aggregate Net Operating Income for such four (4) fiscal quarters from Projects owned by Investment Affiliates at the end of such period, adjusted in the manner set forth in clauses (i) through (iv) of this sentence, and (vi) deducting therefrom the Borrower's actual general and administrative expenses and asset management fees (unless such has been subordinated to this Facility).

"Adjusted Term SOFR " means for any Available Tenor and Interest Period with respect to a SOFR Loan, the greater of (1) sum of (a) Term SOFR for such Interest Period and (b) the applicable SOFR Index Adjustment and (2) the Floor.

"Adjusted Unencumbered NOI" means Unencumbered Pool NOI less the applicable Capital Reserves.

"Administrative Agent" means KeyBank National Association in its capacity as agent for the Lenders pursuant to Article X, and not in its individual capacity as a Lender, and any successor Administrative Agent appointed pursuant to Article X.

"Advance" means a borrowing hereunder consisting of the aggregate amount of the several Loans made by one or more of the Lenders to the Borrower of the same Type and, in the case of LIBOR Term SOFR Rate Advances, for the same Interest Period.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person owns 10% or more of any class of voting securities (or other ownership interests) of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of stock, by contract or otherwise. In no event shall the Administrative Agent be deemed to be an Affiliate of the Borrower.

"Aggregate Commitment" means, as of any date, the aggregate of the then-current Commitments of all the Lenders, which, as of the First Amendment Effective Date, equal \$350,000,000, as such amounts may be increased or decreased hereafter in accordance with Section 2.22 hereof.

"Agreement" is defined in the Recitals hereto.

"Agreement Effective Date" means the date this Agreement has been fully executed and delivered by the Borrower and the Lenders and the initial Advance hereunder has been made.

"Alternate Base Rate" means, for any day, a rate of interest per annum equal to the highest of (i) the Prime Rate for such day, (ii) the sum of Federal Funds Effective Rate for such day plus 0.5% per annum, and (iii) the sum of the LIBOR BaseAdjusted Term SOFR Rate that would apply to a one month Interest Period beginning on such day, plus 1.00% per annum, and (iv) the Floor. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, respectively.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

"Anti-Terrorism Laws" is defined in Section 5.20.

"Applicable Margin" means the applicable margin set forth in the pricing schedule contained in Exhibit G used in calculating the interest rate applicable to the various Types of Advances, subject to the conditions set forth in Exhibit G with respect to the effective date of changes in such applicable margins.

"Applicable Sustainability Adjustment" means, for any Sustainability Adjustment Period (beginning with the Sustainability Adjustment Period commencing with the calendar year 2022), determined by reference to the Sustainability Rating reported in the certificate delivered by the Borrower pursuant to Section 6.1(i) for the immediately preceding calendar year (a "Reference Year"):

(a) if the Sustainability Rating for such Reference Year shall be equal to or greater than 61, the Applicable Sustainability Adjustment for such Sustainability Adjustment Period shall

be a one basis point reduction in the Applicable Margins; and

(b) if (i) the Sustainability Rating for such Reference Year is less than 61, or (ii) the Borrower shall have elected in its sole discretion to not report a Sustainability Rating Adjustment for the applicable Reference Year, the Applicable Sustainability Adjustment for such Sustainability Adjustment Period shall be zero and there shall be no Applicable Sustainability Adjustment to the Applicable Margins; provided that this clause (b) shall not apply if the Sustainability Rating for such Reference Year cannot be determined due to the occurrence of any event described in clause (A), (B) or (C) of clause (i) of the following proviso;

provided, that, notwithstanding the foregoing,

(i) if (A) GRESB fails or is no longer able to issue a Sustainability Rating, or otherwise delays the issuance of a Sustainability Rating without the consent of the Borrower, (B) GRESB notifies the Borrower, or makes an announcement to the effect, that it will no longer issue a Sustainability Rating, or (C) the scoring methodologies or other basis upon which the Sustainability Rating is determined shall materially change from the methodologies and basis for the determination of the Sustainability Rating in effect for the Reference Year 2020, then in any such case,

(x) the Borrower or the Administrative Agent (acting on the instructions of the Required Lenders) may request that negotiations be entered into between the Borrower and the Administrative Agent (for a period of no more than 30 consecutive days, or such longer period as may be mutually agreed by the Borrower and the Administrative Agent (with the consent of the Required Lenders)) with a view to agreeing on a substitute basis for determining a Sustainability Rating;

(y) during any such negotiation period, the Applicable Sustainability Adjustment with respect to the applicable Sustainability Adjustment Period shall be determined pursuant to clause (a) or (b) of this definition above, based on the Sustainability Rating that was in effect and applied immediately prior to the date on which such negotiation period commenced;

(z) if no agreement can be reached between the Borrower and the Administrative Agent during such negotiation period, unless otherwise agreed by the Borrower and the Required Lenders, the Applicable Sustainability Adjustment shall be determined pursuant to clause (b) of this definition above and shall apply to the Applicable Margin from and after the last day of such negotiation period;

(ii) until the delivery of the certificate delivered in respect of the Reference Year 2021 pursuant to Section 6.1(i), the Applicable Sustainability Adjustment shall be zero and there shall be no Applicable Sustainability Adjustment to the Applicable Margins;

(iii) the Borrower may elect to deliver to the Administrative Agent a revised certificate for any Reference Year reflecting a revised Sustainability Rating, and commencing on the first

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day of the calendar quarter immediately following the date of delivery of such revised certificate through the end of such Sustainability Adjustment Period, such revised Sustainability Rating shall apply; and

(iv) any Applicable Sustainability Adjustment to the Applicable Margins shall take effect on the applicable Sustainability Adjustment Date.

"Approved Bank" means any bank, finance company, insurance company or other financial institution (a) which has (i) (x) a minimum net worth of \$500,000,000 and/or (y) total assets of \$10,000,000,000, and (ii) a minimum long-term debt rating of (x) BBB+ or higher by S&P, and (y) Baa1 or higher by Moody's, or (b) which is approved by the Administrative Agent,

which approval shall not be unreasonably withheld.

“Arrangers” means, collectively, Keybanc Capital Markets Inc., Wells Fargo Securities, LLC, J.P. Morgan Bank, N.A., BofA Securities, Inc. and PNC Capital Markets, LLC in their capacities as joint lead arrangers.

“Article” means an article of this Agreement unless another document is specifically referenced.

“Authorized Officer” means any of the President and Chief Executive Officer, Executive Vice President and Chief Operating Officer, Vice President and Chief Financial Officer, Vice President, Controller and Chief Accounting Officer or Executive Vice President and General Counsel of Borrower, acting singly.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement, or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.16(b)(iv).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial

institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means the Bankruptcy Code of the United States of America, as amended from time to time.

“Benchmark” means, initially, with respect to (a) any Daily Simple SOFR Loan, Daily Simple SOFR, and (b) any Term SOFR Loan, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.16(b).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for the then-current Benchmark, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in U.S. Dollars at such time and (ii) the related Benchmark Replacement Adjustment, if any; provided that, if such

Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), if any, that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. Dollar denominated syndicated credit facilities.

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

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means, with respect to the then-current Benchmark, the occurrence of one or more of the following events with respect to such Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

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

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period" means, with respect to any then-current Benchmark, the period (if any) (i) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.16(a) and (ii) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.16(b).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"Borrower" means InvenTrust Properties Corp., a corporation organized under the laws of the State of Maryland, and its permitted successors and assigns.

"Borrowing Date" means a date on which an Advance is made hereunder.

"Borrowing Notice" is defined in Section 2.8.

"Business Day" means (i) ~~with respect to any borrowing, payment or rate selection of LIBOR Rate Advances, a~~ any day (other than a Saturday or, Sunday) or any other day on which ~~commercial~~ banks generally are open in Cleveland, Ohio and/or New York, New York for the conduct of substantially all of their commercial lending activities and on which dealings in United States dollars are carried on in the London interbank market and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in Cleveland, Ohio, and New York, New York for the conduct of substantially all of their commercial lending activities are authorized or required by law to close and (ii) with respect to any matters relating to SOFR Loans, a SOFR Business Day.

"Capital Reserves" means for any period of four (4) consecutive fiscal quarters, an amount equal to \$0.15 per square foot of leasable space.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person which is not a corporation and any and all warrants or options to purchase any of the foregoing.

"Capitalization Rate" means 6.50%.

"Capitalized Lease" of a Person means any lease of Property imposing obligations on

such Person, as lessee thereunder, which are required in accordance with GAAP to be capitalized on a balance sheet of such Person.

"Capitalized Lease Obligations" of a Person means the amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

"Cash Equivalents" means, as of any date:

(i) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality thereof having maturities of not more than one year from such date;

(ii) mutual funds organized under the United States Investment Company Act rated AAm or AAm-G by S&P and P-1 by Moody's;

(iii) certificates of deposit or other interest-bearing obligations of a bank or trust company which is a member in good standing of the Federal Reserve System having a short term unsecured debt rating of not less than A-1 by S&P and not less than P-1 by Moody's (or in each case, if no bank or trust company is so rated, the highest comparable rating then given to any bank or trust company, but in such case only for funds invested overnight or over a weekend) provided that such investments shall mature or be redeemable upon the option of the holders thereof on or prior to a date one month from the date of their purchase;

(iv) certificates of deposit or other interest-bearing obligations of a bank or trust company which is a member in good standing of the Federal Reserve System having a short term unsecured debt rating of not less than A-1 by S&P, and not less than P-1 by Moody's and which has a long term unsecured debt rating of not less than A1 by Moody's (or in each case, if no bank or trust company is so rated, the highest comparable rating then given to any bank or trust company, but in such case only for funds invested overnight or over a weekend) provided that such investments shall mature or be redeemable upon

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the option of the holders thereof on or prior to a date three months from the date of their purchase;

(v) bonds or other obligations having a short term unsecured debt rating of not less than A-1 by S&P and P-1+ by Moody's and having a long term debt rating of not less than A1 by Moody's issued by or by authority of any state of the United States, any territory or possession of the United States, including the Commonwealth of Puerto Rico and agencies thereof, or any political subdivision of any of the foregoing;

(vi) repurchase agreements issued by an entity rated not less than A-1 by S&P, and not less than P-1 by Moody's which are secured by U.S. Government securities of the type described in clause (i) of this definition maturing on or prior to a date one month from the date the repurchase agreement is entered into;

(vii) short term promissory notes rated not less than A-1 by S&P, and not less than P-1 by Moody's maturing or to be redeemable upon the option of the holders thereof on or prior to a date one month from the date of their purchase; and

(viii) commercial paper (having original maturities of not more than 365 days) rated at least A-1 by S&P and P-1 by Moody's and issued by a foreign or domestic issuer who, at the time of the investment, has outstanding long-term unsecured debt obligations rated at least A1 by Moody's.

"Change in Control" means (i) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of Borrower's Capital Stock representing more than thirty-five percent (35%) of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Borrower; provided however, that Persons acquiring Capital Stock of Borrower from Borrower in connection with an acquisition or other transaction with Borrower, without any agreement among such Persons to act together to hold, dispose of, or vote such shares following the acquisition of such shares, shall not be considered a "group" for purposes of this clause (i); or (ii) any change in the majority of the Board of Directors or Board of Trustees of Borrower during any twelve (12) month period, excluding any new directors or trustees whose election by such Board or whose nomination for election by the holders of Borrower's Capital Stock was approved by a vote of a majority of the directors or trustees then still in office who were either directors or trustees at the beginning of such period or whose election or nomination for election was previously so approved and excluding any change in directors or trustees resulting from (w) the retirement/resignation of any director or trustee as a result of age, illness or compliance with any written policy of Borrower requiring retirement/resignation from the Board upon reaching the retirement age specified in such policy or in connection with Borrower's majority voting policy, (x) the death or disability of any director or trustee, or (y) satisfaction of any requirement for the majority of the members of the board of

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directors or trustees of Borrower to qualify under applicable law as independent directors or trustees or (z) the replacement of any director or trustee who is an officer or employee of Borrower or an affiliate of Borrower with any other officer or employee of Borrower or an affiliate of Borrower.

"CME" means CME Group Benchmark Administration Ltd.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Commitment" means, for each Lender, the obligation of such Lender to make Loans on the terms and conditions set forth herein not exceeding the amount set forth opposite its signature page to the First Amendment or as set forth in any Notice of Assignment relating to any assignment that has become effective pursuant to Section 12.3(b), as such amount may be modified from time to time pursuant to the terms hereof.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Conforming Changes" means, with respect to either the use or administration of Daily Simple SOFR or Term SOFR, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "SOFR Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.4 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

"Consolidated Debt Service" means, for any period, without duplication, (a) Consolidated Interest Expense for such period plus (b) the aggregate amount of scheduled principal payments attributable to Consolidated Outstanding Indebtedness taken into account in calculating Consolidated Interest Expense which were required to be made during such period (excluding optional or balloon payments) plus (c) a percentage of scheduled principal payments

(excluding optional or balloon payments), equal to the greater of (x) the percentage of the principal amount of such Indebtedness for which any member of the Consolidated Group is liable and (y) the Consolidated Group Pro Rata Share of such Investment Affiliate.

“Consolidated Group” means the Borrower and all Subsidiaries which are consolidated with it for financial reporting purposes under GAAP.

“Consolidated Group Pro Rata Share” means, with respect to any Investment Affiliate, the percentage of the total economic ownership interests held by the Consolidated Group in the aggregate, in such Investment Affiliate determined by calculating the percentage of the total then-current value of such Investment Affiliate that would be received by the Consolidated Group in the aggregate, upon liquidation of such Investment Affiliate, after repayment in full of all Indebtedness of such Investment Affiliate.

“Consolidated Interest Expense” means, for any period without duplication, the sum of (a) the amount of interest expense, determined in accordance with GAAP, of the Consolidated Group for such period attributable to that portion of Consolidated Outstanding Indebtedness during such period incurred by members of the Consolidated Group plus (b) the applicable Consolidated Group Pro Rata Share of any interest expense, determined in accordance with GAAP, of each Investment Affiliate, for such period attributable to Indebtedness of such Investment Affiliate, whether recourse or non-recourse, provided that Consolidated Interest Expense shall exclude (i) interest expense on construction loans during such period to the extent such interest expense was paid from an interest reserve established under such construction loan, (ii) non-cash components of interest expense (including but not limited to, the amortization of financing costs and debt premiums), (iii) nonrecurring prepayment premiums or penalties and (iv) the interest component of any Capitalized Lease Obligations.

“Consolidated NOI” means, as of any date, without duplication, the aggregate Net Operating Income for the most recent four (4) fiscal quarters for which financial results of Borrower has been reported from all Projects owned by the Consolidated Group at the end of such fiscal quarter.

“Consolidated Outstanding Indebtedness” means, as of any date of determination, without duplication, the sum of (a) all Indebtedness of the Consolidated Group outstanding at such date, determined on a consolidated basis in accordance with GAAP (whether recourse or non-recourse), plus, without duplication, (b) the applicable Consolidated Group Pro Rata Share of any Indebtedness of each Investment Affiliate outstanding on such date other than Indebtedness of such Investment Affiliate to a member of the Consolidated Group.

“Controlled Group” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

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“Conversion/Continuation Notice” is defined in Section 2.9.

“Covered Party” is defined in Section 9.17.

“Co-Syndication Agent” shall mean either of Wells Fargo Bank, National Association or JPMorgan Chase Bank, N.A., acting in its capacity as co-syndication agent hereunder and not in its capacity as a Lender.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum (rounded in accordance with the Administrative Agent’s customary practice) equal to SOFR for the day (such day, the “SOFR Determination Day”) that is five (5) SOFR Business Days (or

such other period as determined by the Administrative Agent based on then prevailing market conventions) prior to (i) if such SOFR Rate Day is a SOFR Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a SOFR Business Day, the SOFR Business Day immediately preceding such SOFR Rate Day, in each case, as and when SOFR for such SOFR Rate Day is published by the Daily Simple SOFR Administrator on the SOFR Administrator's Website. If by 5:00 pm (New York City time) on the second (2nd) SOFR Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding SOFR Business Day for which such SOFR was published on the SOFR Administrator's Website; provided, that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"Daily Simple SOFR Advance" means a Borrowing comprised of Daily Simple SOFR Loans.

"Daily Simple SOFR Loan" means each Loan bearing interest at a rate based upon Daily Simple SOFR Rate.

"Daily Simple SOFR Rate" means Adjusted Daily Simple SOFR plus the SOFR Applicable Margin in effect from time to time.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means an event described in Article VII.

"Defaulting Lender" means, subject to Section 10.14, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the

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Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Bank, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Facility Letters of Credit) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or the Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the

| ~~or been charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become subject to a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 10.14) upon delivery of written notice of such determination to the Borrower, the Issuing Bank, and each Lender.~~

| "Default Rate" means the interest rate which may apply during the continuance of a Default pursuant to Section 2.11 which shall mean that (i) each ~~LIBOR~~SOFR Rate Advance shall bear interest for the remainder of the applicable Interest Period at the rate otherwise applicable to such Interest Period plus 4% per annum and (ii) each Floating Rate Advance shall bear interest at a rate per annum equal to the Floating Rate otherwise applicable to the Floating Rate Advance plus 4% per annum.

| "Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Designated Persons” means a person or entity (a) listed in the annex to, or otherwise subject to the provisions of, any Executive Order; (b) named as a “Specially Designated National and Blocked Person” (“SDN”) on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list (the “SDN List”) or is otherwise the subject of any Sanctions Laws and Regulations; (c) in which an entity or person on the SDN List has 50% or greater ownership interest or that is otherwise controlled by an SDN.

“Development Projects” means, as of any date, all Projects then under development and all land scheduled to commence development within twelve (12) months, provided that a Project shall no longer be included in Development Projects (and therefore shall be valued based on its Net Operating Income) upon the earlier of (i) the expiration of the third full fiscal quarter after substantial completion (which shall mean the receipt of a temporary certificate of occupancy or a final certificate of occupancy) of such Project and (ii) the last day of the first full fiscal quarter in which the Consolidated NOI attributable to such Project divided by the applicable Capitalization Rate exceeds the book value in accordance with GAAP of such Project at the time it was placed into service.

“Dividend Payout Ratio” means, for any given period of time for any Person, the ratio of (a) an amount equal to (i) 100% of all dividends or other distributions, direct or indirect, on account of any equity interest of such Person (except for special cash dividends or distributions payable solely in additional equity interests of the same class) during such period, less (ii) any amount of such dividends or distributions constituting Dividend Reinvestment Proceeds, to (b) Funds From Operations of such Person for such period.

“Dividend Reinvestment Proceeds” means all dividends or other distributions, direct or indirect, on account of any equity interest of any Person which any holder(s) of such equity interest directs to be used, concurrently with the making of such dividend or distribution, for the purpose of purchasing for the account of such holder(s) additional equity interests in such Person or its subsidiaries.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Ground Lease" means an unsubordinated ground lease as to which no default has occurred and is continuing beyond the expiration of any applicable grace or cure period containing the following terms and conditions: (a) a remaining term (exclusive of any unexercised extension options) of thirty (30) years or more from the date the applicable Project was added to the Unencumbered Pool; (b) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor; (c) the obligation of the lessor to give the holder of any mortgage on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosure, and fails to do so and (d) reasonable transferability of the lessee's interest under such lease, including ability to sublease.

"Eligible Unencumbered Property" means any stabilized commercial property located in the United States which, as of any date of determination, (a) is wholly owned by the Borrower, a Wholly-Owned Subsidiary, or a Joint Venture, in fee simple or pursuant to an Eligible Ground Lease, (b) is a retail project, (c) is not subject to any Liens securing Indebtedness or any other Liens (other than Permitted Liens) or claims (including restrictions on transferability or assignability) of any kind (including any such Lien, claim or restriction imposed by the organizational documents of any such Wholly-Owned Subsidiary), (d) is not subject to any agreement (other than the Term Loan Documents and Other Pari Passu Debt Documents) which prohibits or limits the ability of the Borrower, any such Wholly-Owned Subsidiary or any such Joint Venture to create, incur, assume or suffer to exist any Lien thereon or upon the Capital Stock of any such Wholly-Owned Subsidiary or any such Joint Venture, in any such case, in violation of Section 6.20, (e) is not subject to any agreement (other than the Term Loan Documents and Other Pari Passu Debt Documents) which entitles any Person to the benefit of any Lien (other than Liens in favor of Lenders and other Permitted Liens) thereon or upon the Capital Stock of any such Wholly-Owned Subsidiary or any such Joint Venture or would entitle any Person to the benefit of any Lien thereon or on such Capital Stock upon the occurrence of any contingency (including, without limitation, pursuant to an "equal and ratable" clause), and (f) is not the subject of any material environmental, title or structural issue, as evidenced by a certification of the Borrower. No such commercial property owned by a Wholly-Owned Subsidiary or Joint Venture shall be deemed to be an Eligible Unencumbered Property unless: (i) all Capital Stock of each entity in the chain of ownership between such Wholly-Owned Subsidiary or such Joint Venture (as applicable) and Borrower is not subject to any of the matters described in clauses (c), (d) or (e) of the preceding sentence, except in connection with the Loan Documents, the Term Loan Documents and/or the Other Pari Passu Debt Documents, (ii) no bankruptcy or insolvency has occurred and is continuing with respect to such Wholly-Owned Subsidiary, Joint Venture, or any entity in the chain of ownership between such

Wholly-Owned Subsidiary or such Joint Venture (as applicable) and Borrower, (iii) such Wholly-Owned Subsidiary or such Joint Venture (as applicable) has no Indebtedness (other than in favor of pursuant to the Lenders Loan Documents, the Term Loan Documents and/or the Other Pari Passu Debt Documents), and (iv) no such entity in the chain of ownership between such Wholly-Owned Subsidiary or such Joint Venture (as applicable) and Borrower has Indebtedness other than pursuant to the Loan Documents, the Term Loan Documents and/or the Other Pari Passu Debt Documents or Secured Indebtedness or Guarantee Obligations relating solely to Secured Indebtedness of such entity's other direct or indirect Subsidiaries. Notwithstanding the foregoing, the Required Lenders may, in their sole discretion, elect to approve the addition of any Project which does not meet all of the criteria set forth in the first sentence of this definition as an Eligible Unencumbered Property despite such failure.

"Environmental Laws" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right to Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any rule or regulation issued thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any Reportable Event; (b) the existence with respect to any Plan of an accumulated funding deficiency (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability

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or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Erroneous Payment Deficiency Assignment" is defined in Section 9.18(d).

"Erroneous Payment Impacted Class" is defined in Section 9.18(d).

"Erroneous Payment Return Deficiency" is defined in Section 9.18(d).

"Erroneous Payment Subrogation Rights" is defined in Section 9.18(d).

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Excluded Subsidiary" means, a Subsidiary which (A) owns Projects subject to Indebtedness and the terms of the loan documents for such Indebtedness preclude such Subsidiary from entering into the Subsidiary Guaranty, or (B) is an entity which (x) owns no Properties or (y) owns only direct or indirect interests in Projects that are not Unencumbered Properties, so long as the assets owned by the entities subject to this clause (B), in the aggregate, constitute less than 5% of Total Asset Value. For the avoidance of doubt, as of the Agreement Effective Date, each of IA Sacramento Development VP, L.L.C., IA Sacramento

Rail, L.L.C., IA Sacramento Holdings, L.L.C., Mainline Holdings, Inc. and Downtown Railyard Venture, L.L.C. shall be Excluded Subsidiaries.

“Excluded Swap Obligation” means, with respect to any Subsidiary Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee by such Subsidiary Guarantor of such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Subsidiary Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Subsidiary Guarantor becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation subject to a clearing requirement pursuant to Section 2(h) of the Commodity Exchange Act (or any successor provision thereto), because such Subsidiary Guarantor is a “financial entity,” as defined in Section 2(h)(7)(C)(i) the Commodity Exchange Act (or any successor provision thereto), at the time the guarantee of such Subsidiary Guarantor becomes or would become effective with respect to such related Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office

located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or its Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or its Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.5, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.5(f) and (d) any withholding Taxes imposed under FATCA.

"Excluded Tenants" means, as of any date, any tenant leasing more than 25,000 square feet of gross leasable area at one of the Projects that is subject to a voluntary or involuntary petition for relief under any federal or state bankruptcy codes or insolvency law unless such tenant's lease obligations are guaranteed by an entity whose then current long-term, unsecured debt obligations are rated BBB- or above by S&P or Baa3 or above by Moody's.

"Executive Order" is defined in Section 5.20.

"Facility" is defined in Section 2.1.

"Facility Fee" is defined in Section 2.5(b).

"Facility Fee Percentage" means, as of any date, the percentage set forth in the column headed "Facility Fee Percentage" on Exhibit G that is in effect on such date.

"Facility Letter of Credit" means a Letter of Credit issued pursuant to Article IIA of this Agreement, including those Letters of Credit, if any, which were issued under the Original Credit Agreement and remain outstanding on the Agreement Effective Date.

"Facility Letter of Credit Fee" is defined in Section 2A.8.

"Facility Letter of Credit Obligations" means, as at the time of determination thereof, all liabilities, whether actual or contingent, of the Borrower with respect to Facility Letters of Credit, including the sum of (a) the Reimbursement Obligations and (b) the aggregate undrawn face amount of the then outstanding Facility Letters of Credit.

"Facility Letter of Credit Sublimit" means \$50,000,000.

"Facility Termination Date" means September 22, 2025, as such date may be extended pursuant to Section 2.21 hereof.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Agreement Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any

"Federal Funds Effective Rate" shall mean, for any day, the rate per annum (rounded upward to the nearest one one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of New York on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate."

"Fee Letter" is defined in Section 2.6.

"First Amendment" shall mean that certain First Amendment, dated as of September 22, 2021, to this Agreement, by and among the Borrower, the Lenders party thereto and the Administrative Agent.

"First Amendment Effective Date" has the meaning assigned to such term in the First Amendment, which date is September 22, 2021.

"Fixed Charge Coverage Ratio" means, (i) Adjusted EBITDA divided by (ii) the sum of (A) Consolidated Debt Service for the most recent four (4) fiscal quarters for which financial results have been reported, plus (B) all Preferred Dividends, if any, payable with respect to such four (4) fiscal quarters.

"Floating Rate" means, for any day, a rate per annum equal to (i) the Alternate Base Rate for such day plus (ii) ABR Applicable Margin for such day, in each case changing when and as the Alternate Base Rate or ABR Applicable Margin changes.

"Floating Rate Advance" means an Advance which bears interest at the Floating Rate.

"Floating Rate Loan" means a Loan which bears interest at the Floating Rate.

"Floor" means a rate of interest equal to 0% per annum.

"Foreign Lender" means a Lender that is not a U.S. Person.

"Fronting Exposure" means at any time there is a Defaulting Lender, with respect to the Issuing Bank, such Defaulting Lender's Percentage of the outstanding Facility Letter of Credit Obligations other than Facility Letter of Credit Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or cash collateral or other credit support acceptable to the Issuing Lender shall have been provided in accordance with the terms hereof.

"Funds From Operations" means, for a given period, an amount equal to the net income (or loss) of Borrower for such period, computed in accordance with GAAP, excluding gains (or losses) from extraordinary items and sales of assets, impairment and other non-cash charges,

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plus acquisition fees, prepayment or defeasance costs and real estate depreciation and amortization, and after adjustments for unconsolidated affiliates.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements referred to in Section 6.1.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity (including, without limitation, the Federal

Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law, and including any supra-national bodies such as the European Union or the European Central Bank.

"GRESB" means GRESB B.V., a wholly owned subsidiary of the GRESB Foundation, a non-profit foundation.

"Guarantee Obligation" means, any obligation of (a) the guaranteee person or (b) another Person (including, without limitation, any bank under any Letter of Credit) to induce the creation of which the guaranteee person has issued a reimbursement, counter-indemnity or similar obligation, in either case guaranteee or in effect guaranteee any Indebtedness, leases, dividends or other obligations (exclusive of contractual indemnities and guarantees of non-monetary obligations (other than guarantees of completion) which have not yet been called on or quantified) (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteee person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business or guarantees by the Borrower of liabilities under any interest rate lock agreement utilized to facilitate Indebtedness of another member of the Consolidated Group or an Investment Affiliate. The amount of any Guarantee Obligation shall be an amount equal to the stated or determinable amount of the primary obligation in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonable anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent financial statements of Borrower. Notwithstanding anything contained herein to the contrary, guarantees of completion shall not be deemed to be Guarantee Obligations unless and until a claim for payment or performance has been made thereunder, at which time any such guaranty of completion shall be deemed to

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be a Guarantee Obligation in an amount equal to any such claim. Subject to the preceding sentence, (i) in the case of a joint and several guaranty given by such Person and another Person, the amount of the guaranty shall be deemed to be 100% thereof except in circumstances where such other Person has pledged cash or Cash Equivalents to secure all or any part of such other Person's guaranteed obligations, in which case the amount of such guaranty shall be reduced by the amount of such cash or Cash Equivalents, and (ii) in the case of a guaranty by a Person (whether or not joint and several) of an obligation which also constitutes Indebtedness of such Person, the amount of such guaranty shall be deemed to be only the guaranteed amount in excess of such Indebtedness of such Person. Notwithstanding anything contained herein to the contrary, Guarantee Obligations shall be deemed not to include guarantees of unused commitments or of the repayment of construction loans to the extent that the proceeds thereunder have not yet been drawn. All matters constituting "Guarantee Obligations" shall be calculated without duplication.

| ~~"Impacted Interest Period" is defined in the definition of "LIBOR Base Rate".~~

"Indebtedness" means, of any Person at any date means without duplication, (a) all indebtedness of such Person for borrowed money including without limitation any repurchase obligation or liability of such Person with respect to securities, accounts or notes receivable sold by such Person (excluding in any calculation of Indebtedness of the Consolidated Group, any

Indebtedness of one member of the Consolidated Group owing to another member of the Consolidated Group, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade liabilities and accounts payable incurred in the ordinary course of business and payable in accordance with customary practices), to the extent such obligations constitute indebtedness for the purposes of GAAP (excluding premiums or discounts on debt), (c) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (d) all Capitalized Lease Obligations, (e) all obligations of such Person, contingent or otherwise, in respect of bankers' acceptances, (f) all Guarantee Obligations of such Person (excluding in any calculation of consolidated Indebtedness of the Consolidated Group, Guarantee Obligations of one member of the Consolidated Group in respect of primary obligations of any other member of the Consolidated Group), (g) all reimbursement obligations of such Person for letters of credit, (h) Swap Termination Value, to the extent the obligations under the associated Swap Contract constitutes indebtedness for purposes of GAAP, and (i) all liabilities secured by any lien (other than liens for taxes not yet due and payable) on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof. Notwithstanding the foregoing, Indebtedness shall not include prepaid rents or security deposits, tax liabilities not yet payable, or dividends or distributions declared but not yet paid.

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

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or a direct or indirect parent company of a Defaulting Lender, (c) a holding company, investment vehicle or

trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof or (d) the Borrower or any of its Affiliates.

"Interest Period" means, with respect to each ~~amount bearing interest at a daily LIBOR based rate or a LIBOR based rate with Term SOFR Advance~~, a period of one, three or six months ~~commencing on a Business Day~~, as selected by ~~the~~ Borrower; provided, however, that (ai) ~~any~~ the initial Interest Period ~~which would otherwise end on a day which is not a Business Day~~ for any Advance of a SOFR Loan shall commence on the date of such Advance ~~(the date of an Advance resulting from a Conversion or Continuation shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such date of such Conversion or Continuation) and each~~ Interest Period occurring thereafter in respect of such Advance shall ~~end~~ commence on the first day after the last day of the next preceding Business Day, Interest Period; (bii) if any Interest Period ~~which~~ begins on a day for which there is no numerically corresponding ~~date~~ day in the calendar month ~~in which~~ at the end of such Interest Period ~~would otherwise end~~, such Interest Period shall ~~instead~~ end on the last Business Day of such calendar month.

"Interpolated Rate" means, at any time, for: (iii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided, however, that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iv) no Interest Period for any SOFR Loan may be selected that would end after the Facility Termination Date; and (v) if, upon the expiration of any Interest Period, the ~~rate per annum (rounded to the same number of decimal places as the LIBOR Screen Rate)~~ determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) ~~Borrower has failed to (or may not) elect a new Interest Period to be equal~~ applicable to the ~~rate that results from interpolating on a linear basis between:~~ (a) the LIBOR Screen ~~respective~~ Advance of SOFR Loans as provided above, the Borrower shall be deemed to have elected to convert such Borrowing to Floating Rate ~~for~~ Loans effective as of the longest period (for which the LIBOR Screen Rate is available) that is shorter than the Impacted Interest Period; and (b) the LIBOR Screen Rate for the shortest period (for which that LIBOR Screen Rate is available) that exceeds the Impacted ~~expiration date of such current~~ Interest Period, ~~in each case, at such time.~~

"Investment" of a Person means any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable arising in the ordinary course of business on terms customary in the trade), deposit account or contribution of capital by such Person to any other Person or any investment in, or purchase or other acquisition of, the stock, partnership interests, notes, debentures or other securities of any other Person made by such Person.

"Investment Affiliate" means any subsidiary or joint venture of any member of the Consolidated Group, in which the Consolidated Group, directly or indirectly, has a ten percent

"Investment Grade Rating" means a rating of BBB- or better from S&P and Baa3 from Moody's.

"Issuance Date" is defined in Section 2A.4(a)(2).

"Issuance Notice" is defined in Section 2A.4(c).

"Issuing Bank" means, with respect to each Facility Letter of Credit, the Lender which issues such Facility Letter of Credit. KeyBank shall be the sole Issuing Bank.

"Joint Venture" means, with respect to Borrower, any Person in whom Borrower or its Subsidiary holds an investment regardless of the percentage or ownership, which such investment is accounted for in the financial statements of Borrower on an equity basis of accounting and whose financial results would not be consolidated under GAAP with the financial results of Borrower on the consolidated financial statements of Borrower.

"Joint Venture Property" means an Eligible Unencumbered Property owned by a Joint Venture.

"Lenders" means the lending institutions listed on the signature pages of the Agreement, their respective successors and assigns, any other lending institutions that subsequently become parties to the Agreement.

"Lending Installation" means, with respect to a Lender, any office, branch, subsidiary or affiliate of such Lender.

"Letter of Credit" of a Person means a letter of credit or similar instrument which is issued upon the application of such Person or upon which such Person is an account party or for which such Person is in any way liable.

"Letter of Credit Collateral Account" is defined in Section 2A.9.

"Letter of Credit Request" is defined in Section 2A.4(a).

"Leverage Based Pricing Schedule" is defined in Exhibit G.

"Leverage Ratio" means the percentage obtained by dividing Consolidated Outstanding Indebtedness by Total Asset Value.

~~"LIBOR Applicable Margin" means, as of any date, the Applicable Margin used to determine the LIBOR Rate as determined from time to time in accordance with the definition of "Applicable Margin".~~

~~"LIBOR Base Rate" means, with respect to any LIBOR Rate Advance for (i) any Interest Period other than a daily Interest Period, the London interbank offered rate as administered by~~

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~~ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a period equal in length to such Interest Period and (ii) in the case of a daily Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a period equal in length to one month (but adjusted daily), in each case, as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the "LIBOR Screen Rate") at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such~~

~~Interest Period; provided that if as so determined the LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement for any applicable Loan or Advance or portion thereof that has not been identified by the Borrower to the Administrative Agent in writing as being subject to a Swap Contract that provides a hedge against interest rate risk (if, for any reason, the rate referred to in the preceding clause (i) or (ii) does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page), then the LIBOR Base Rate shall be determined in accordance with Section 3.3); provided further that if the LIBOR Screen Rate shall not be available at such time for such Interest Period (an "Impacted Interest Period") then the LIBOR Base Rate shall be the Interpolated Rate; provided that if as so determined any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement for any applicable Loan or Advance or portion thereof that has not been identified by the Borrower to the Administrative Agent in writing as being subject to a Swap Contract that provides a hedge against interest rate risk.~~

~~"LIBOR Rate" means, for any Interest Period, the sum of (A) the LIBOR Base Rate applicable thereto divided by one minus the then-current Reserve Requirement and (B) the LIBOR Applicable Margin in effect from time to time during such Interest Period, changing when and as the LIBOR Applicable Margin changes.~~

~~"LIBOR Rate Advance" means an Advance which bears interest at a LIBOR Rate.~~

~~"LIBOR Rate Loan" means a Loan which bears interest at a LIBOR Rate.~~

~~"LIBOR Screen Rate" has the meaning assigned to it in the definition of "LIBOR Base Rate".~~

~~"Lien" means any lien (statutory or other), mortgage, pledge, ~~negative pledge~~, hypothecation, assignment, deposit arrangement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement).~~

~~"Loan" means, with respect to a Lender, such Lender's portion of any Advance.~~

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"Loan Documents" means the Agreement, the Notes, the Subsidiary Guaranty and any other document from time to time evidencing or securing indebtedness incurred by the Borrower under this Agreement, as any of the foregoing may be amended or modified from time to time.

"Loan Parties" means the Borrower and the Subsidiary Guarantors.

"Management Fees" means, with respect to each Project for any period, an amount equal to the greater of (a) actual management fees payable with respect thereto or (b) three percent (3%) (or in the case of triple net leased Projects, two percent (2.0%)) per annum on the aggregate base rent and percentage rent due and payable under leases at such Project.

"Marketable Securities" means investments in Capital Stock or debt securities issued by any Person (other than an Investment Affiliate) which are publicly traded on a national exchange, excluding Cash Equivalents. The value of any such assets, for purposes hereof and as of any date, shall be the market value of such Marketable Securities.

"Material Acquisition" means any transaction, or series of related transactions consummated in the same fiscal quarter, for the purpose of or resulting, directly or indirectly, in the acquisition (including, without limitation, a merger or consolidation or any other combination

with another Person) by one or more of the Borrower or any Subsidiary in which the gross purchase price of the assets acquired is equal to or in excess of 15% of the Total Asset Value (without giving effect to such acquisition) of the Borrower as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are publicly available.

“Material Adverse Effect” means a material adverse effect on (i) the financial condition or business of the Borrower and the Consolidated Group taken as a whole, (ii) the ability of the Borrower to perform its obligations under the Loan Documents in all material respects, or (iii) the validity or enforceability of any of the Loan Documents.

“Materials of Environmental Concern” means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation, but excluding substances of kinds and amounts ordinarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations or as inventory of tenants and otherwise in compliance with all Environmental Laws.

“Maximum Legal Rate” means the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or in the Note or other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions hereof.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Mortgage Note Receivable” means any Indebtedness owing to a member of the Consolidated Group which is secured by a first-priority mortgage or deed of trust on commercial real estate having a value in excess of the amount of such Indebtedness and which has been designated by the Borrower as a “Mortgage Note Receivable” in its most recent compliance certificate.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Negative Pledge” means, with respect to a given asset, any provision of a document, instrument or agreement (other than any Loan Document) which prohibits or purports to prohibit the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that such term shall not include any covenant, condition or restriction contained in any ground lease from a Governmental Authority (provided that the foregoing limitation shall not in any way waive or modify any of the conditions for qualification of a ground lease as an “Eligible Ground Lease” under the definition of such term).

“Net Operating Income” means, with respect to any Project for any period, “property rental and other income” (as determined by GAAP) attributable to such Project accruing for such period; minus the amount of all expenses (as determined in accordance with GAAP) incurred in connection with and directly attributable to the ownership and operation of such Project for such period, including, without limitation, Management Fees and amounts accrued for the payment of ground rent, real estate taxes and insurance premiums, but excluding any general and administrative expenses related to the operation of the Project, any interest expense or other debt service charges, any amortization related to above and below market leases, any straight-lining of rents under GAAP, impairment charges and any non-cash charges such as depreciation or amortization of financing costs.

“Non-Consenting Lender” is defined in Section 2.19(b).

“Non-Core Properties” means properties that are not retail.

“Non-Recourse Indebtedness” means, with respect to any Person, (a) Indebtedness for which the liability of such Person (except for liability for fraud, misrepresentation, misapplication of cash, waste, environmental claims and liabilities and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financing of real estate, including, without limitation, provisions converting such Indebtedness to recourse in connection with certain bankruptcy filings, transfer violations or other defaults (any such liability being referred to as “Non-Recourse Carveouts”)) either is contractually limited to collateral securing such Indebtedness or is so limited by operation of law and (b) if such Person is a Single Asset Entity, any Indebtedness for borrowed money of such Person.

“Note” means a promissory note, in substantially the form of Exhibit I hereto duly executed by the Borrower and payable to the order of a Lender in the amount of its

"Notice of Assignment" is defined in Section 12.3(b).

"Obligations" means the Advances, the Facility Letter of Credit Obligations and all accrued and unpaid fees and all other obligations of Borrower to the Administrative Agent or the Lenders arising under this Agreement or any of the other Loan Documents, provided, however, that the definition of 'Obligations' shall not create any guarantee by any Subsidiary Guarantor of any Excluded Swap Obligations of such Subsidiary Guarantor for purposes of determining any obligations of any Subsidiary Guarantor.

"OFAC" means the U.S. Department of the Treasury Office of Foreign Assets Control.

"Original Credit Agreement" is defined in the Recitals hereto.

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

"Other Pari Passu Debt" means (a) the Private Placement Facility and (b) after the Subsidiary Guarantors' Release Date, any other Indebtedness incurred by Borrower; provided, however, that, in the case of (a) or (b), (i) such Indebtedness shall be pari passu with the Indebtedness evidenced by the Loan Documents and, to the extent outstanding, the Term Loan Documents, both in right of payment and with respect to security and (ii) no Guarantee Obligations shall exist under such Indebtedness unless Guarantee Obligations on a pari passu basis in right of payment and with respect to security shall exist (or Borrower shall cause to exist) in favor of the Lenders hereunder and, to the extent outstanding, the lenders under the Term Loan Agreement, with such Guarantee Obligations in favor of Lenders to be documented in a manner reasonably satisfactory to Administrative Agent.

"Other Pari Passu Debt Documents" all documents and other instruments now or hereafter evidencing any Other Pari Passu Debt, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Outstanding Facility Amount" means, at any time, the sum of all then outstanding Advances and Facility Letter of Credit Obligations.

"Participant Register" is defined in Section 12.2.3.

"Participants" is defined in Section 12.2.1.

"Payment Date" means, with respect to the payment of interest accrued on any Advance, the first day of each calendar month.

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"Percentage" means, as of any date for each Lender, the percentage of the Aggregate Commitment which is represented by such Lender's Commitment, or if the Commitments have been terminated, the percentage of the total Outstanding Facility Amount which is represented

been terminated, the percentage of the total Outstanding Facility Amount which is represented by such Lender's outstanding Loans, and outstanding participations in Facility Letter of Credit Obligations.

"Permitted Investments" are defined in Section 6.19.

"Permitted Liens" means (a) Liens for taxes, assessments or governmental charges or levies on a Project if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves shall have been set aside on its books; (b) Liens imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than sixty (60) days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on its books and there is no risk of loss, forfeiture, or sale of any interest in a Project during the pending of such proceeding; (c) Liens arising out of pledges or deposits under workers' compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation; (d) Easements, restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any material and adverse way affect the marketability of the same or materially and adversely interfere with the use thereof in the business of the Borrower or its Subsidiaries; (e) the rights of tenants under leases or subleases at a Project not interfering with the ordinary conduct of business of the owner of such Project; (f) Liens securing judgments that do not otherwise give rise to a Default or Unmatured Default; (g) utility deposits and other deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, purchase contracts, construction contracts, governmental contracts, statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (h) Liens for purchase money obligations for equipment (or Liens to secure Indebtedness incurred within 90 days after the purchase of any equipment to pay all or a portion of the purchase price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition of any such equipment, or extensions, renewals, or replacements of any of the foregoing for the same or lesser amount), provided that (I) the Indebtedness secured by any such Lien does not exceed the purchase price of such equipment, (II) any such Lien encumbers only the asset so purchased and the proceeds upon sale, disposition, loss or destruction thereof, and (III) such Lien, after giving effect to the Indebtedness secured thereby,

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| does not give rise to a Default or Unmatured Default, and (i) Liens, if any, securing the Indebtedness and other obligations incurred by Borrower pursuant to this Agreement or pursuant to the Term Loan Agreement or pursuant to the Other Pari Passu Debt Documents.

"Person" means any natural person, corporation, limited liability company, joint venture, partnership, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Assets" means the assets of an employee benefit plan within the meaning of 29 C.F.R. 2510.3-101.

"Preferred Dividends" means, with respect to any entity, dividends or other distributions which are payable to holders of any ownership interests in such entity which entitle the holders of such ownership interests to be paid on a preferred basis prior to dividends or other

distributions to the holders of other types of ownership interests in such entity.

"Prime Rate" means a rate per annum equal to the prime rate of interest publicly announced from time to time by Administrative Agent or its parent as its prime rate (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes. In the event that there is a successor to the Administrative Agent by merger, or the Administrative Agent assigns its duties and obligations to an Affiliate, then the term "Prime Rate" as used in this Agreement shall mean the prime rate, base rate or other analogous rate of the new Administrative Agent.

"Private Placement Facility" that certain Note Purchase Agreement, which may be hereafter entered into by the Borrower and certain of its Subsidiaries with certain note purchasers, together with the notes and other note documents issued or delivered thereunder, in each case, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Prohibited Person" is defined in Section 5.20(b).

"Project" means any real estate asset located in the United States owned by the Borrower or any of its Subsidiaries or any Investment Affiliate, and operated or intended to be operated as a retail property or another commercial property allowable under the Permitted Investments definition.

"Property" of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

"Purchasers" is defined in Section 12.3(a).

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"QFC Credit Support" is defined in Section 9.17.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant guarantee becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as such an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Ratings Based Pricing Schedule" is defined in Exhibit G.

"Recourse Indebtedness" means any Indebtedness of the Borrower or any other member of the Consolidated Group for borrowed money with respect to which the liability of the obligor for payment is not limited to the obligor's interest in specified assets securing such Indebtedness (either contractually or by virtue of the fact that such obligor owns no material assets other than those securing such Indebtedness), provided, however, that the existence of personal recourse of such obligor or others for any such Indebtedness on account of Non-Recourse Carveouts shall not, by itself, cause such Indebtedness to be characterized as Recourse Indebtedness. For purposes of the foregoing and for the avoidance of doubt, (a) if the Indebtedness is partially guaranteed then the portion of such Indebtedness that is not so guaranteed shall still not constitute Recourse Indebtedness if it otherwise satisfies the requirements in this definition, (b) if the liability of a guarantor under any such guaranty is itself limited solely to specific assets of such guarantor then such Indebtedness shall only constitute Recourse Indebtedness by virtue of such guaranty to the extent of then-current value of such specified assets of such guarantor and (c) if such obligor is acting as a guarantor of Indebtedness for purposes of minimizing taxes on the creation of the deed of trust or mortgage securing such Indebtedness and such obligor's liability does not exceed the value of the assets securing such Indebtedness then such obligor's guarantee obligations shall not constitute Recourse Indebtedness.

"Recipient" means the Administrative Agent and any Lender.

"Register" is defined in Section 12.3(c).

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official

Reserve System.

"Reference Year" has the meaning set forth in the definition of Applicable Sustainability Adjustment.

"Reimbursement Obligations" means at any time, the aggregate of the Obligations of the Borrower to the Lenders, the Issuing Bank and the Administrative Agent in respect of all unreimbursed payments or disbursements made by the Lenders, the Issuing Bank and the Administrative Agent under or in respect of the Facility Letters of Credit.

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

"Reportable Event" means a reportable event as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan, excluding, however, such events as to which the PBGC by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, provided, however, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

"Required Lenders" means Lenders in the aggregate having more than 50% of the Aggregate Commitment or, if the Aggregate Commitment has been terminated, Lenders in the aggregate holding more than 50% of the aggregate unpaid principal amount of the outstanding Advances, provided that, the Commitment and Advances held by any then-current Defaulting Lender shall be subtracted from the Aggregate Commitment and the outstanding Advances solely for the purpose of calculating the Required Lenders at such time.

"Reserve Requirement" means, with respect to a LIBOR Rate Loan and Interest Period, that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Federal Reserve Board or other governmental authority or agency having jurisdiction with respect thereto for determining the maximum reserves (including, without limitation, basic, supplemental, marginal and emergency reserves) for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D) maintained by a member bank of the Federal Reserve System.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Sacramento Project" means the Project known as The Railyards, located in the City of Sacramento, County of Sacramento, State of California which originally consisted of approximately 205 acres.

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"Sanctions Laws and Regulations" means any applicable sanctions, prohibitions or requirements imposed by any applicable executive order or by any applicable sanctions program administered by OFAC, the United Nations Security Council, the European Union or Her Majesty's Treasury.

"Second Amendment" shall mean that certain Second Amendment, dated as of May 11, 2022, to this Agreement, by and among the Borrower, the Lenders party thereto and the Administrative Agent.

"Secured Indebtedness" means any Indebtedness of the Borrower or any other member of the Consolidated Group which is secured by a Lien on a Project, any ownership interests in

any Person or any other assets which had, in the aggregate, a value in excess of the amount of such Indebtedness at the time such Indebtedness was incurred.

“Section” means a numbered section of this Agreement, unless another document is specifically referenced.

“Single Asset Entity” means a Person (other than an individual) that (a) only owns a single Property; (b) is engaged only in the business of owning, developing and/or leasing such Property; and (c) receives substantially all of its gross revenues from such Property. In addition, if the assets of a Person consist solely of (i) Capital Stock in one or more other Single Asset Entities that collectively own a single Property and (ii) cash and other assets of nominal value incidental to such Person’s ownership of the other Single Asset Entities, such Person shall also be deemed to be a Single Asset Entity for purposes hereof.

“Single Employer Plan” means a Plan maintained by the Borrower or any member of the Controlled Group for employees of the Borrower or any member of the Controlled Group.

“S&P” means Standard & Poor’s Ratings Group and its successors.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Advance” means a Term SOFR Advance and/or a Daily Simple SOFR Advance, as the context may require.

“SOFR Applicable Margin” means, as of any date, the Applicable Margin used to determine the Daily Simple SOFR Rate or Term SOFR Rate, as applicable, as determined from time to time in accordance with the definition of “Applicable Margin.”

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“SOFR Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“SOFR Index Adjustment” means 0.10%.

“SOFR Loan” means each Loan bearing interest at a rate based upon (a) Adjusted Term SOFR (other than pursuant to clause (iii) of the definition of “Alternate Base Rate”) or (b) Adjusted Daily Simple SOFR.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“Subsidiary” of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries; provided,

however, that, with respect to the Borrower, "Subsidiary" shall include all Persons which are required to be consolidated with the Borrower in accordance with GAAP. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Borrower.

"Subsidiary Guarantor" means, as of any date, each Subsidiary of the Borrower which is then a party to the Subsidiary Guaranty pursuant to Section 6.21.

"Subsidiary Guarantors' Release Date" means the date, if any, on which each Subsidiary Guarantor is released from the Subsidiary Guaranty pursuant to Section 6.21 or other unanimous Lender consent.

"Subsidiary Guaranty" means the guaranty to be executed and delivered by those Subsidiaries of the Borrower which are required to be Subsidiary Guarantors as of the Agreement Effective Date, substantially in the form of Exhibit D attached to this Agreement, as the same may be amended, supplemented or otherwise modified from time to time pursuant to Section 6.21, including any joinders executed by additional Subsidiaries required to become Subsidiary Guarantors from time to time hereunder.

"Substantial Portion" means, with respect to any Property of the Borrower or its Subsidiaries, Property which represents more than 10% of then-current Total Asset Value.

"Supported QFC" is defined in Section 9.17.

"Sustainability Adjustment Date" means January 1 of each calendar year; provided that the Borrower has previously provided to the Administrative Agent a certificate referencing the Applicable Sustainability Adjustment for the applicable Reference Year pursuant to Section

6.1(i); provided, further, that if the Borrower delivers a certificate reflecting a revised Sustainability Rating for such Reference Year pursuant to clause (iii) to the proviso to the definition of "Applicable Sustainability Adjustment", the first day of the calendar quarter immediately following the date of delivery of such revised certificate shall constitute a Sustainability Adjustment Date.

"Sustainability Adjustment Period" means, (a) in the case of the initial Sustainability Adjustment Period, the period commencing on the first Sustainability Adjustment Date following the date hereof and ending on (but excluding) the next Sustainability Adjustment Date and (b) in the case of each other Sustainability Adjustment Period, the period commencing on the last day of the immediately preceding Sustainability Adjustment Period and ending on (but excluding) the next Sustainability Adjustment Date.

"Sustainability Rating" means, with respect to any Reference Year, the "GRESB Score", as calculated and assigned to the Borrower from time to time by GRESB and published in the most recently released GRESB Real Estate Assessment thereof. It is understood and agreed that the Sustainability Rating for the Reference Year 2020 delivered to the Administrative Agent pursuant to Section 5.1(viii)(z) shall be deemed to be the Borrower's Sustainability Rating as in effect as of the date hereof.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligation" means, with respect to any Subsidiary Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark to market value(s) for such Swap Contracts, as determined based upon one or more

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loan" means those certain term loans made by the lenders party to the Term Loan Agreement pursuant to the terms and conditions set forth in the Term Loan Documents.

"Term Loan Agreement" means that certain Amended and Restated Term Loan Credit Agreement of even date with this Agreement among the Borrower, Wells Fargo Bank, National Association, a national banking association, Bank of America, N.A., a national banking association, PNC Bank, National Association, a national banking association, and certain other banks, financial institutions and entities, as amended as of the First Amendment Effective Date, providing for a \$200,000,000 5 year term loan tranche and a \$200,000,000 5.5 year term loan tranche, subject to increase to an aggregate amount not to exceed \$800,000,000, as the same may be further amended, restated, supplemented, replaced or otherwise modified from time to time, provided that the terms and conditions applicable to the Borrower under the Term Loan Agreement, as so amended, restated, supplemented, replaced or otherwise modified from time to time, shall be no more onerous as to the Borrower in any material respect than the corresponding terms and conditions then applicable to the Borrower under this Agreement.

"Term Loan Documents" means the Term Loan Agreement and the other loan documents defined as "Loan Documents" therein, as such Term Loan Documents may be further amended, restated, supplemented, replaced or otherwise modified from time to time, provided that the terms and conditions applicable to the Borrower under such Term Loan Documents, as so amended, restated, supplemented, replaced or otherwise modified from time to time, shall be no more onerous as to the Borrower in any material respect than the corresponding terms and conditions then applicable to the Borrower under the Loan Documents.

"Term SOFR" means for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Lookback Day") that is two SOFR Business Days prior to the first day of such Interest Period (and rounded in accordance with the Administrative Agent's customary practice), as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Lookback Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding SOFR Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding SOFR Business Day is not more than three SOFR Business Days prior to such Lookback Day, and for any calculation with respect to a Floating Rate Loan, the Term SOFR

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Reference Rate for a tenor of one month on the day that is two SOFR Business Days prior to the date the Alternate Base Rate is determined, subject to the proviso provided above.

"Term SOFR Administrator" means CME (or a successor administrator of the Term SOFR Reference Rate, as selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Advance" means an Advance comprised of Term SOFR Loans.

"Term SOFR Loan" means each Loan bearing interest at a rate based upon a Term SOFR Rate.

"Term SOFR Rate" means the relevant Adjusted Term SOFR for such Term SOFR

TERM SOFR Rate means the relevant Adjusted Term SOFR for such Term SOFR Loan Interest Period plus the SOFR Applicable Margin in effect from time to time.

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Total Asset Value" means, as of any date of determination, (i) the Consolidated NOI attributable to Projects then owned by the Borrower or a member of the Consolidated Group (excluding 100% of the Consolidated NOI attributable to Projects not so owned for the prior four fiscal quarters for which Consolidated NOI is calculated) divided by the Capitalization Rate for each property type applied to the portion of such Consolidated NOI attributable to such property type, plus (ii) 100% of the sum of (x) the price paid for any Projects then owned by the Borrower or a member of the Consolidated Group and first acquired by the Borrower or a member of the Consolidated Group on or after the first day of the most recent four prior fiscal quarters of the Borrower for which financial results have been reported and (y) the cost of capital expenditures actually incurred in connection with such Projects, plus (iii) cash, Cash Equivalents (including cash or Cash Equivalents held in restricted Section 1031 accounts under the sole control of any member of the Consolidated Group) and Marketable Securities owned by the Consolidated Group as of the end of the most recent fiscal quarter of the Borrower for which financial results have been reported, plus (iv) Unimproved Land, Development Projects and Mortgage Note Receivables, in each case, to the extent owned by the Consolidated Group as of the end of the most recent fiscal quarter of the Borrower for which financial results have been reported (with each such asset valued at undepreciated GAAP book value, after taking into account any impairments), plus (v) the applicable Consolidated Group Pro Rata Share of (A) Net Operating Income for the most recent four fiscal quarters of the Borrower for which financial results have been reported attributable to any Projects then owned by an Investment Affiliate (excluding Net Operating Income attributable to Projects not so owned for such entire prior four fiscal quarters) divided by (B) the applicable Capitalization Rate, plus (vi) the Consolidated Group Pro Rata Share of the price paid for any Projects then owned by an Investment Affiliate and first acquired by an Investment Affiliate on or after the first day of such period of four prior fiscal quarters plus (vii) the Consolidated Group Pro Rata Share of cash, Cash Equivalents and Marketable Securities owned by Investment Affiliates as of the end of such most recent fiscal quarter plus (viii) the applicable Consolidated Group Pro Rata Shares of Unimproved Land, Development Projects and Mortgage Note Receivables owned by Investment Affiliates as of the end of such

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most recent fiscal quarter (with each such asset valued at undepreciated GAAP book value, after taking into account any impairments).

"Transferee" is defined in Section 12.4.

"Type" means, with respect to any Advance, its nature as either a Floating Rate Advance, Daily Simple SOFR Advance or LIBOR Rate Term SOFR Advance.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unencumbered Pool" means the Unencumbered Properties.

"Unencumbered Pool NOI" means, as of any date of determination, the sum of (a) the aggregate Net Operating Income for the most recent four (4) full fiscal quarters for which financial results of Borrower have been reported attributable to Unencumbered Properties owned by (i) the Borrower or (ii) a Subsidiary Guarantor, or after the Subsidiary Guarantors' Release Date, the Wholly-Owned Subsidiary or Joint Venture that owns an Unencumbered Property, for the entirety of such period, as adjusted by deducting therefrom any income attributable to Excluded Tenants plus, (b) in the case of any Unencumbered Property that was owned by (i) the Borrower or (ii) a Subsidiary Guarantor, or after the Subsidiary Guarantors' Release Date, the Wholly-Owned Subsidiary or Joint Venture that owns an Unencumbered Property, as of the last day of such most recent period of four (4) fiscal quarters, but not so owned for the full period, the amount of Net Operating Income that would have been earned if such Unencumbered Property had been so owned for such period of four (4) full fiscal quarters, as established by Borrower and reasonably approved by the Administrative Agent on behalf of the Lenders, plus (c) in the case of any Unencumbered Property owned by (i) the Borrower or (ii) a Subsidiary Guarantor, or after the Subsidiary Guarantors' Release Date, the Wholly-Owned Subsidiary or Joint Venture that owns an Unencumbered Property, as of such date of determination, but not so owned as of the last day of such most recent period of four (4) fiscal quarters, the amount of Net Operating Income that would have been earned if such Unencumbered Property had been so owned for such period of four (4) full fiscal quarters, as established by Borrower and reasonably approved by the Administrative Agent on behalf of the Lenders. Net Operating Income of a Joint Venture Property shall be limited to the aggregate ownership percentage of Borrower and its Subsidiaries in such Joint Venture.

“Unencumbered Pool Value” means, as of any date of determination, (a) the aggregate Adjusted Unencumbered NOI attributable to Unencumbered Properties included in the Unencumbered Pool as of such determination date and also owned for the entirety of the most recent four (4) consecutive fiscal quarters for which financial results of Borrower have been reported (provided that the contribution to Adjusted Unencumbered Pool NOI on account of any Unencumbered Property shall not in any event be a negative number) divided by the Capitalization Rate, plus (b) the aggregate acquisition cost of all Unencumbered Properties included in the Unencumbered Pool as of such determination date but not so owned for such period of four (4) consecutive entire fiscal quarters. For purposes of this definition, to the extent that the aggregate amount included in Unencumbered Pool Value on account of any of the following categories: a) a single Project, b) Projects leased to any single tenant, c) Projects leased to a single tenant with a remaining lease term of less than five (5) years, or d) properties subject to a ground lease, would exceed twenty percent (20%) of Unencumbered Pool Value, the amount in excess of twenty percent (20%) of Unencumbered Pool Value attributable to such category shall be disregarded in the calculation of Unencumbered Pool Value. In addition, to the extent that the aggregate amount included in Unencumbered Pool Value on account of Joint Venture Properties would exceed five percent (5%), the amount in excess of five percent (5%) of Unencumbered Pool Value attributable to such category shall be disregarded in the calculation of Unencumbered Pool Value.

“Unencumbered Property” or “Unencumbered Properties” means any Eligible Unencumbered Property as of the Agreement Effective Date, or any Eligible Unencumbered Property subsequently added to the Unencumbered Pool.

“Unencumbered Property Due Diligence” means such information regarding a proposed Unencumbered Property as the Administrative Agent may reasonably request to confirm that it meets the requirements of an Eligible Unencumbered Property, including, but not limited to, if applicable; rent roll, operating statements, and leases.

“Unfunded Liabilities” means the amount (if any) by which the present value of all vested nonforfeitable benefits under all Single Employer Plans exceeds the fair market value of all such Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plans.

“Unimproved Land” means as of any date, land on which no development (other than improvements that are not material and are temporary in nature) has occurred and for which no development is scheduled in the twelve (12) months after such date.

“Unmatured Default” means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default.

“Unscheduled Mandatory Payments” is defined in Section 2.7(b).

“Unsecured Indebtedness” means, with respect to any Person, all Indebtedness of such Person for borrowed money that does not constitute Secured Indebtedness or Guarantee Obligations. Notwithstanding the foregoing, Unsecured Indebtedness shall include Recourse

"Unsecured Interest Coverage Ratio" means, (i) Adjusted Unencumbered NOI divided by (ii) Unsecured Interest Expense.

"Unsecured Interest Expense" means, as of any date of determination, ~~the greater of (i) that portion of Consolidated Interest Expense attributable to Unsecured Indebtedness for the most recent two (2) fiscal quarters of the Consolidated Group for which financial results have been reported, annualized, and (ii) an amount equal to five and one-half percent (5.5%) of the aggregate Unsecured Indebtedness of the Consolidated Group outstanding as of such date.~~

"Unsecured Leverage Ratio" means, as of any date of determination, the percentage obtained by dividing (i) Unsecured Indebtedness of the Consolidated Group outstanding as of such date by (ii) Unencumbered Pool Value.

"U.S. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" shall have the meaning given to such term in Section 3.5(e)(ii)(B)(III).

"Wholly-Owned Subsidiary" of a Person means, as of any date, any Subsidiary of such Person 100% of the equity securities or other equity ownership interests of which (other than in the case of a corporation, directors' qualifying shares, or, in the case of any entity qualifying or desiring to qualify as a real estate investment trust, so-called "accommodation" shareholders) are at such time directly or indirectly owned by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means the Borrower and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or

to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

Notice Regarding Rates: The interest rate on Loans denominated in Dollars may be determined by reference to a benchmark rate that is, or may in the future become, the subject of regulatory reform or cessation. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base

Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Alternate Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Alternate Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. The Administrative Agent will, in keeping with industry practice, continue using its current rounding practices in connection with the Alternate Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR. In connection with the use or administration of Daily Simple SOFR and Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Daily Simple SOFR and Term SOFR.

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ARTICLE II.

THE CREDIT

2.1. Generally.

Subject to the terms and conditions of this Agreement, Lenders severally agree to make Advances through the Administrative Agent to Borrower from time to time prior to the Facility Termination Date, and to support the issuance of Facility Letters of Credit under Article 2A of this Agreement, provided that the making of any such Advance or the issuance of such Facility Letter of Credit will not:

- (i) cause the then-current Outstanding Facility Amount to exceed the then-current Aggregate Commitment; or
- (ii) cause the then outstanding Facility Letters of Credit Obligations to exceed the Facility Letter of Credit Sublimit.

The Advances may be ratable Floating Rate Advances or ratable LIBORSOFR Rate Advances. This facility ("Facility") is a revolving credit facility. Each Lender shall fund its applicable Percentage of each Advance and no Lender will be required to fund any amounts which, when

Percentage of each Advance and no Lender will be required to fund any amounts which, when aggregated with such Lender's Percentage of all other Advances then outstanding and of all Facility Letter of Credit Obligations, would exceed such Lender's then-current Commitment. Subject to the provisions of this Agreement, Borrower may request Advances hereunder from time to time, repay such Advances and reborrow Advances at any time prior to the Facility Termination Date.

2.2. Ratable and Non Ratable Advances.

Each Advance hereunder shall consist of Loans made from the several Lenders ratably based on each Lender's Percentage. The ratable Advances may be Floating Rate Advances, ~~LIBOR~~SOFR Rate Advances or a combination thereof, selected by the Borrower in accordance with Sections 2.8 and 2.9.

2.3. Periodic Principal Payments.

(a) Optional Prepayments. The Borrower may, upon at least one (1) Business Day's notice to the Administrative Agent, prepay the Advances, which notice shall specify the date and amount of prepayment and whether the prepayment is of ~~LIBOR~~SOFR Rate Advances, Floating Rate Advances, or a combination thereof, and if a combination thereof, the amount allocable to each; provided, however, that (i) any partial prepayment under this Subsection shall be in an amount not less than \$1,000,000 or a whole multiple of \$100,000 in excess thereof and; (ii) any ~~LIBOR~~SOFR Rate Advance prepaid on any day other than the last day of the applicable Interest Period must be accompanied by any amounts payable pursuant to Section 3.4. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, the amount specified in such notice shall be due

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and payable on the date specified therein, together with any amounts payable pursuant to Section 3.4.

(b) Mandatory Prepayments. Mandatory partial principal payments shall be due from time to time if, (i) due to any reduction in the Unencumbered Pool Value or in the Adjusted Unencumbered NOI, whether by an Unencumbered Property failing to continue to satisfy the requirement for qualification as an Eligible Unencumbered Property or by a reduction in the Unencumbered Pool Value or the Adjusted Unencumbered NOI attributable to any Unencumbered Property, the Outstanding Facility Amount shall be in excess of the maximum amount permitted under clauses (e) or (f) of Section 6.17 or (ii) without limiting the effect of any other provision of this Agreement requiring such a principal payment, any of the categories of the Obligations described in clauses (i) - (iii) of Section 2.1 shall be in excess of the maximum amount set forth in the applicable clause. Such principal payments shall be in the amount needed to restore Borrower to compliance with such covenants or such maximum amount. Such mandatory principal payments shall be due and payable (i) in the case of any such reduction arising from results reported in a quarterly financial statement of Borrower and related compliance certificate, ten (10) Business Days after delivery of such quarterly financial statement and compliance certificate under Section 6.1 evidencing such reduction or (ii) in all other cases, ten (10) Business Days after Borrower's receipt of notice from the Administrative Agent of any such failure to continue to qualify as an Unencumbered Property or any such reduction in the amount contributed to the Adjusted Unencumbered NOI or Unencumbered Pool Value or of any such excess over the applicable maximum amount.

2.4. Final Principal Payment.

Any outstanding Advances and all other unpaid Obligations with respect to the Commitments and the Advances not required to be repaid earlier pursuant to the terms hereof shall be paid in full by the Borrower on the Facility Termination Date.

2.5. Facility Fee.

At all times from and after the Agreement Effective Date through the Facility Termination Date a facility fee (the "Facility Fee") shall accrue and be payable by Borrower to the Administrative Agent for the account of each Lender and shall be computed on a daily basis by multiplying (i) the Facility Fee Percentage applicable to such day (as set forth on the Leverage Based Pricing Schedule or the Ratings Based Pricing Schedule, as applicable on such day), expressed as a per diem rate, times the Aggregate Commitment in effect on such day. The Facility Fee shall be payable quarterly in arrears on the first Business Day of each calendar quarter (for the prior calendar quarter) and upon any termination of the Aggregate Commitment in its entirety. Following its receipt of any such Facility Fee, Administrative Agent shall promptly pay to each Lender an amount equal to such Lender's Percentage of the daily amount of such Facility Fee, based on such Lender's Commitment on such day. The Facility Fee shall be computed on a 360 day year, and actual days elapsed.

2.6. Other Fees.

The Borrower agrees to pay all fees payable to the Administrative Agent and the Arrangers, as applicable, pursuant to the Borrower's separate letter agreements with the Administrative Agent and the Arrangers (collectively, the "Fee Letter").

2.7. Minimum Amount of Each Advance.

Each Advance shall be in the minimum amount of \$100,000; provided, however, that, subject to Section 2.1, any Floating Rate Advance may be in the amount of the unused aggregate Commitments.

2.8. Method of Selecting Types and Interest Periods for New Advances.

The Borrower shall select the Type of Advance and, in the case of each LIBORSOFR Rate Advance, the Interest Period applicable to each Advance from time to time. The Borrower shall give the Administrative Agent irrevocable notice (a "Borrowing Notice") in the form attached as Exhibit F hereto (i) not later than 1:00 p.m. Cleveland time on the Business Day immediately preceding the Borrowing Date of each Floating Rate Advance, and (ii) not later than noon Cleveland time, at least three (3) Business Days before the Borrowing Date for each LIBORSOFR Rate Advance (~~unless the Interest Period for such LIBOR Rate Advance is daily, in which case, such time period shall be no later than noon Cleveland time on the Business Day of such Advance~~):

- (i) the Borrowing Date, which shall be a Business Day, of such Advance,
- (ii) the aggregate amount of such Advance,
- (iii) the Type of Advance selected (and in the absence of any selection it shall be assumed that the Borrower has selected a LIBORFloating Rate Advance), and
- (iv) in the case of each LIBORSOFR Rate Advance, the selection of a Daily Simple SOFR Advance or Term SOFR Advance (in the absence of any selection, it shall be assumed that the Borrower has selected a Daily Simple SOFR Advance), and in the case of each Term SOFR Advance, the Interest Period applicable thereto (and in the absence of any selection it shall be assumed that the Borrower has selected an Interest Period of one month).

Each Lender shall make available its Loan or Loans, in funds immediately available in Cleveland to the Administrative Agent at its address specified pursuant to Article XIII on each Borrowing Date not later than (i) 11:00 a.m. (Cleveland time), in the case of Floating Rate Advances which have been requested by a Borrowing Notice given to the Administrative Agent not later than 1:00 p.m. (Cleveland time) on the Business Day immediately preceding such Borrowing Date, or (ii) noon (Cleveland time) in the case of all other Advances. The

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Administrative Agent will make the funds so received from the Lenders available to the Borrower at the account specified by the Borrower in the Borrowing Notice.

No Interest Period may end after the Facility Termination Date, and, unless the Lenders otherwise agree in writing, in no event may there be more than six (6) different Interest Periods for LIBORSOFR Rate Advances outstanding at any one time.

2.9. Conversion and Continuation of Outstanding Advances.

Floating Rate Advances shall continue as Floating Rate Advances unless and until such Floating Rate Advances are converted into LIBORSOFR Rate Advances. Each LIBORSOFR

Rate Advance shall continue as a **LIBORSOFR** Rate Advance until the end of the then applicable Interest Period therefor, at which time such **LIBORSOFR** Rate Advance shall be automatically converted as a **LIBORSOFR** Rate Advance, but with an Interest Period of one month unless the Borrower shall have given the Administrative Agent an irrevocable notice (a "Conversion/Continuation Notice") requesting that, at the end of such Interest Period, such **LIBORSOFR** Rate Advance either continue as a **LIBORSOFR** Rate Advance for the same or another Interest Period or be converted to an Advance of another Type. Notwithstanding the provision for automatic conversion in the foregoing sentence, if the effective date of any such automatic conversion is less than one month prior to the then-current Facility Termination Date, such **LIBORSOFR** Rate Advance shall be automatically converted into a Floating Rate Advance. Subject to the terms of Section 2.7, the Borrower may elect from time to time to convert all or any part of an Advance of any Type into any other Type or Types of Advances; provided that, if any conversion of any **LIBORSOFR** Rate Advance shall be made on any day other than the last day of the Interest Period applicable thereto, the Borrower shall be obligated to pay the amounts, if any, payable pursuant to Section 3.4. The Borrower shall give the Administrative Agent a Conversion/Continuation Notice regarding each conversion of an Advance to a **LIBORSOFR** Rate Advance or continuation of a **LIBORSOFR** Rate Advance not later than 11:00 a.m. (Cleveland time), at least three (3) Business Days, in the case of a conversion into or continuation of a **LIBORSOFR** Rate Advance, prior to the date of the requested conversion or continuation, specifying:

- (i) the requested date which shall be a Business Day, of such conversion or continuation;
- (ii) the aggregate amount and Type of the Advance which is to be converted or continued; and
- (iii) the amount and Type(s) of Advance(s) into which such Advance is to be converted or continued and, in the case of a conversion into or continuation of a **LIBORTerm SOFR** Rate Advance, the duration of the Interest Period applicable thereto.

2.10. Changes in Interest Rate, Etc

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Each Floating Rate Advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made or is converted from a **LIBORSOFR** Rate Advance into a Floating Rate Advance pursuant to Section 2.9 to but excluding the date it becomes due or is converted into a **LIBORSOFR** Rate Advance pursuant to Section 2.9 hereof, at a rate per annum equal to the Floating Rate for such day. Changes in the rate of interest on that portion of any Advance maintained as a Floating Rate Advance will take effect simultaneously with each change in the Alternate Base Rate. Each **LIBORSOFR** Rate Advance shall bear interest from and including the first day of the Interest Period applicable thereto to (but not including) the last day of such Interest Period at the interest rate determined as applicable to such **LIBORSOFR** Rate Advance.

2.11. Rates Applicable After Default

Notwithstanding anything to the contrary contained in Section 2.8 or 2.9, during the continuance of a Default or Unmatured Default the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2 requiring unanimous consent of the Lenders to changes in interest rates), declare that no Advance may be made as, converted into or

continued as a **LIBORSOFR** Rate Advance. During the continuance of a Default the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2 requiring unanimous consent of the Lenders to changes in interest rates), declare that the Default Rate shall apply, provided, however, that the Default Rate shall become applicable automatically if a Default occurs under Section 7.1 or 7.2, unless waived by the Required Lenders.

2.12. Method of Payment

All payments of the Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Administrative Agent at the Administrative Agent's address specified pursuant to Article XIII, or at any other Lending Installation of the Administrative Agent located in the continental United States specified in writing at least three (3) Business Days in advance by the Administrative Agent to the Borrower, by noon (Cleveland time) on the date when due and shall be applied ratably by the Administrative Agent among the Lenders. As provided elsewhere herein, all Lenders' interests in the Advances and the Loan Documents shall be ratable undivided interests and none of such Lenders' interests shall have priority over the others. Each payment delivered to the Administrative Agent for the account of any Lender or amount to be applied or paid by the Administrative Agent to any Lender shall be paid promptly (on the same day as received by the Administrative Agent if received prior to noon (Cleveland time) on such day and otherwise on the next Business Day) by the Administrative Agent to such Lender in the same type of funds that the Administrative Agent received at its address specified pursuant to Article XIII or at any Lending Installation specified in a notice received by the Administrative Agent from such Lender. Payments received by the

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Administrative Agent but not timely funded to the Lenders shall bear interest payable by the Administrative Agent at the Federal Funds Effective Rate from the date due until the date paid. None of the funds or assets of the Borrower that are used to pay any amount due pursuant to this Agreement shall constitute funds obtained from transactions with or relating to Designated Persons or countries which are the subject of sanctions under any Sanctions Laws and Regulations. Notwithstanding the foregoing, amounts received from any Loan Party that is not a Qualified ECP Guarantor shall not be applied to Obligations that are Excluded Swap Obligations.

2.13. Notes; Telephonic Notices

Each Lender is hereby authorized to record the principal amount of each of its Loans and each repayment on the schedule attached to its Note, provided, however, that the failure to so record shall not affect the Borrower's obligations under such Note. The Borrower hereby authorizes the Lenders and the Administrative Agent to extend, convert or continue Advances, effect selections of Types of Advances and to transfer funds based on written notices made by any Authorized Officer and Borrower agrees to deliver promptly to the Administrative Agent such written notice. The Administrative Agent will at the request of the Borrower, from time to time, but not more often than monthly, provide notice of the amount of the outstanding Aggregate Commitment, the Type of Advance, and the applicable interest rate, if for a **LIBORSOFR** Rate Advance. Upon a Lender's furnishing to Borrower an affidavit and indemnity in form and substance reasonably acceptable to the Borrower, if a Note is mutilated, destroyed, lost or stolen, Borrower shall deliver to such Lender, in substitution therefore, a new note containing the same terms and conditions as such Note being replaced.

2.14. Interest Payment Dates; Interest and Fee Basis

Interest accrued on each Advance shall be payable on each Payment Date, at maturity, whether by acceleration or otherwise, and upon any termination of the Aggregate Commitment in its entirety. Interest, Facility Letter of Credit Fees and all other fees shall be calculated for actual days elapsed on the basis of a 360-day year, except for interest calculated utilizing the Alternate Base Rate, which shall be based on the actual number of days elapsed over a year of 365 or 366 days, as applicable. Interest shall be payable for the day an Advance is made but not for the day of any payment on the amount paid if payment is received prior to noon (Cleveland time) at the place of payment. If any payment of principal or interest on an Advance shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest in connection with such payment.

2.15. Notification of Advances, Interest Rates and Prepayments

later than the close of business on the Business Day such notice is received by the Administrative Agent. The Administrative Agent will notify each Lender of the interest rate applicable to each LIBORSOFR Rate Advance promptly upon determination of such interest rate and will give each Lender prompt notice of each change in the Alternate Base Rate.

2.16. [Reserved]Inability to Determine Interest Rate.

(a) Temporary Inability to Determine Rates. If (A) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Adjusted Daily Simple SOFR or Adjusted Term SOFR cannot be determined pursuant to the definition thereof or (B) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Daily Simple SOFR or Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, in each case of (A) and (B), on or prior to the first day of any Interest Period, the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, (i) any obligation of the Lenders to make or continue the applicable SOFR Loans or to convert Floating Rate Loans to SOFR Loans shall be suspended (to the extent of the affected Interest Periods) until the Administrative Agent revokes such notice and (ii) if such determination affects the calculation of the Base Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate without reference to clause (iii) of the definition of "Base Rate" until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of any applicable SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Floating Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Floating Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 3.4. If the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on Floating Rate Loans shall be determined by the Administrative Agent without reference to clause (iii) of the definition of "Base Rate" until the Administrative Agent revokes such determination.

(b) Permanent Inability to Determine Rate; Benchmark Replacement.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a

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Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of the then-current Benchmark with a Benchmark Replacement pursuant to this Section 2.16(b) will occur prior to the applicable Benchmark Transition Start Date. Unless and until a Benchmark Replacement is effective in accordance with this clause (i), all Loans shall be

converted into Floating Rate Loans in accordance with the provisions of Section (a) above.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of the implementation of any Benchmark Replacement and the effectiveness of any Conforming Changes. The Administrative Agent will notify the Borrower and the removal or reinstatement of any tenor of a Benchmark. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.16(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.16(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if any then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be

representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or incompliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for the applicable SOFR Advance of, conversion to or continuation of SOFR Loans to be made, converted or continued during any

Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Floating Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon Adjusted Term SOFR (or then-current Benchmark) will not be used in any determination of Base Rate.

2.17. Lending Installations

Each Lender may book its Loans at any Lending Installation selected by such Lender and may change its Lending Installation from time to time; provided that such change does not increase the amounts payable by the Borrower under Article III. All terms of this Agreement shall apply to any such Lending Installation and the Notes shall be deemed held by each Lender for the benefit of such Lending Installation. Each Lender may, by written or telex notice at least three (3) Business Days in advance to the Administrative Agent and the Borrower, designate a Lending Installation through which Loans will be made by it and for whose account Loan payments are to be made.

2.18. Non-Receipt of Funds by the Administrative Agent

Unless the Borrower or a Lender, as the case may be, notifies the Administrative Agent prior to the time at which it is scheduled to make payment to the Administrative Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of the Borrower, a payment of principal, interest or fees to the Administrative Agent for the account of the Lenders, that it does not intend to make such payment, the Administrative Agent may assume that such payment has been made. The Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Borrower, as the case may be, has not in fact made such payment to the Administrative Agent, the recipient of such payment shall, on demand by the Administrative Agent, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount at a rate per annum equal to (i) in the case of payment by a Lender, the Federal Funds Effective Rate for such day or (ii) in the case of payment by the Borrower, the interest rate applicable to the relevant Loan. If such Lender so repays such amount and interest thereon to the Administrative Agent within one (1) Business Day after such demand, all interest accruing on the Loan not funded by such Lender during such period shall be payable to such Lender when received from the Borrower.

2.19. Replacement of Lenders under Certain Circumstances

(a) The Borrower shall be permitted to replace any Lender which (a) shall be owed amounts pursuant to Sections 3.1, 3.2 or 3.5, (b) is not capable of receiving payments without any deduction or withholding of United States federal income tax pursuant to Section 3.5, (c) cannot maintain its LIBORSOFR Rate Loans at a suitable Lending Installation pursuant to Section 3.32.16 or (d) is a Defaulting Lender with a replacement bank or other financial institution; provided that (i) such replacement does not conflict with any applicable legal or regulatory requirements affecting the Lenders, (ii) no Default shall have occurred and be continuing at the time of such replacement, (iii) the Borrower shall repay (or the replacement bank or institution shall purchase, at par) all Loans and other amounts owing to such replaced Lender prior to the date of replacement, (iv) the Borrower shall be liable to such replaced Lender under Section 3.4 if any LIBORSOFR Rate Loan owing to such replaced Lender shall be prepaid (or purchased) other than on the last day of the Interest Period relating thereto, (v) the replacement bank or institution, if not already a Lender or an Approved Bank, and the terms and conditions of such replacement, shall be reasonably satisfactory to the Administrative Agent (and no such replacement bank or financial institution shall be an Ineligible Institution), (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 12.3 (provided that the Borrower shall be obligated to pay the processing fee referred to therein), (vii) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 3.5 and (viii) any such replacement shall

(b) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment or waiver that, pursuant to the terms of Section 8.2, requires the consent of such Lender and with respect to which the Required Lenders have granted their consent, then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement; provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower and, if not already a Lender or an Approved Bank, the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an assignment substantially in the form of Exhibit B and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of Section 12.3, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 3.2 and 3.5.

2.20. Usury

This Agreement and each Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject any Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If by the terms of this Agreement or the Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the interest rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.21. Extension of Facility Termination Date

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The Borrower shall have the option, after the First Amendment Effective Date, to extend the Facility Termination Date for two (2) periods of six (6) months each, upon satisfaction of the following conditions precedent:

- (i) The Borrower shall provide Administrative Agent with written notice (the "Extension Notice") of the Borrower's intent to exercise such extension option not more than one hundred eighty (180) and not less than sixty (60) days prior to the then current Facility Termination Date;
- (ii) As of the date of the Borrower's delivery of notice of its intent to exercise such extension option, and as of the effective date of such extension,

no Default or Unmatured Default shall have occurred and be continuing and the Borrower shall so certify in writing; and

(iii) On or before the then current Facility Termination Date, the Borrower shall pay to Administrative Agent for the benefit of the Lenders an extension fee (the "Extension Fee") for the extension so exercised in an amount equal to seventy-five one thousandths of one percent (0.075%) of the then-current Commitment of each Lender.

Any such extension shall become effective upon receipt of the Extension Notice and the payment of the Extension Fee.

2.22. Termination or Increase in Commitments

(a) Borrower shall have the right, upon at least three (3) Business Days' notice, to terminate or cancel, in whole or in part, the unused portion of the Aggregate Commitment in excess of the Outstanding Facility Amount, provided that each partial reduction shall be in a minimum amount of \$1,000,000 or any whole multiple of \$100,000 in excess thereof. Any partial termination of the Aggregate Commitment shall be applied to reduce each Lender's Commitment on a pro rata basis. Once terminated or reduced, the Aggregate Commitment may not be reinstated or increased thereafter.

(b) Provided Borrower has not exercised any right to terminate or reduce the Aggregate Commitment and provided no Default or Unmatured Default has occurred and is then continuing, the Borrower shall also have the right from time to time to increase the Aggregate Commitment from the amount of \$350,000,000 up to a maximum of \$700,000,000 by either adding new Approved Banks as Lenders to provide new Commitments or obtaining the agreement of one or more existing Lenders to increase their Commitments. Any such increase by existing Lenders shall be at the sole discretion of such Lenders and no Lender shall have any obligation to increase any of its Commitments. The Administrative Agent's approval of any such new Lenders shall not be unreasonably withheld or delayed, provided, that no new Lender shall be an Ineligible Institution. On the effective date of any such increase, the Borrower shall pay to the

Administrative Agent and the Arrangers any amounts due to them under the applicable Fee Letter (if any) on account of such increase and shall pay to each new lender or then-existing Lender providing such additional Commitment the up-front fee agreed to by the Borrower in its commitment letter with such party. Such increases shall be evidenced by the execution and delivery of an Amendment Regarding Increase in the form of Exhibit J attached hereto by the Borrower, the Administrative Agent and the new Lender or existing Lender providing such additional Commitment, a copy of which shall be forwarded to each Lender by the Administrative Agent promptly after execution thereof. In addition, on or before the effective date of any such increase, the Subsidiary Guarantors shall execute a consent to such increase ratifying and continuing their obligations under the Subsidiary Guaranty. Upon each such increase in the aggregate Commitments, within five (5) Business Days (in the case of any Floating Rate Advance then outstanding) or at the end of the then current Interest Period with respect thereto (in the case of any LIBOR SOFR Rate Advance then outstanding), as applicable, each Lender's Percentage shall be recalculated to reflect such increase in the Commitments and the outstanding principal balance of the Loans shall be reallocated among the Lenders such that the outstanding principal amount of Loans of each Lender shall be equal to such Lender's Percentage (as recalculated). The Lenders agree to cooperate in any required sale and purchase of outstanding Advances to achieve such result. In no event shall the aggregate Commitments exceed \$700 000 000 without the approval of

such that the aggregate amount of such amounts will not exceed the applicable amount of all of the Lenders.

2.23. Applications of Moneys Received

All moneys collected or received by the Administrative Agent on account of the Facility directly or indirectly, including any moneys collected with respect to certain Swap Contracts to the extent provided in Subsection 2.23(v) below, shall be applied in the following order of priority:

- (i) to the payment of all reasonable costs incurred in the collection of such moneys;
- (ii) to the reimbursement of any amounts due to the Lenders in accordance with Article III;
- (iii) to the payment of any issuance fee due to the Issuing Bank pursuant to Section 2A.8(b), to the payment of any Facility Fees then due, and to the payment of any fees to the Administrative Agent then due;
- (iv) to the payment of accrued and unpaid interest then due to the Lenders (other than Defaulting Lenders) under any Loan Documents to and including the date of such application (ratably, and without duplication, according to the accrued and unpaid interest due under each of the Loan Documents);

| (v) (a) in case the entire unpaid principal of the Loans shall not have become due and payable, (i) the whole amount received as interest and Facility Letter of Credit Fees then due to the Lenders (other than Defaulting Lenders) as their respective Percentages appear, (ii) then (x) unless a Default has occurred and is then continuing, first to Floating Rate Advances in accordance with the Lenders' respective Percentages, and second to ~~LIBORSOFR~~ Rate Advances in accordance with the Lenders' respective Percentages or (y) if a Default has occurred and is then continuing, on a pro rata basis to the Lenders as their respective Percentages appear, and (iii) provided that at or prior to the execution of any Swap Contract with one or more Lenders or their respective Affiliates, the Lenders or Lenders' Affiliates party thereto and the Borrower shall have delivered written notice to Administrative Agent that such Swap Contract has been entered into and that collection of the obligations thereunder are to be governed by this Section 2.23, the whole amount, if any, received as principal to each Lender and Affiliate of a Lender under any such Swap Contract on a pro rata basis to pay towards any such obligations then due, or (b) in case the entire unpaid principal of the Loans shall have become due and payable, as a result of a Default or otherwise, to the payment of the whole amount then due and payable on the Loans for principal, together with interest thereon at the Default Rate or the interest rate, as applicable, first to the Lenders (other than Defaulting Lenders) as their respective Percentages appear until all Loans held by such Lenders and all interest thereon has been paid in full, second to the Letter of Credit Collateral Account until the full amount of Facility Letter of Credit Obligations is on deposit therein and last, to each Lender and Affiliate of a Lender under any of the Swap Contracts referenced in clause (a)(iii) of this Subsection 2.23(v) on a pro rata basis until the full amount of obligations under such Swap Contracts then due are repaid;

(vi) To the payment of any other fees, reimbursement or indemnification obligations of Borrower then due to the Lenders (other than the Defaulting Lenders) under any Loan Documents, on a pro rata basis in accordance with the respective amounts due to such Lenders; and

(vii) to the payment of any sums due to the Defaulting Lenders in accordance with their respective Percentages of such aggregate unpaid sums (provided that Administrative Agent shall have the right to set-off against such sums any amounts due from such Defaulting Lender).

ARTICLE IIA

LETTER OF CREDIT SUBFACILITY

2A.1 Obligation to Issue

agrees to issue for the account of the Borrower, one or more Facility Letters of Credit in accordance with this Article IIA, from time to time during the period commencing on the Agreement Effective Date and ending on a date thirty (30) days prior to the then current Facility Termination Date.

2A.2 Types and Amounts

The Issuing Bank shall not have any obligation to:

(i) issue any Facility Letter of Credit if the aggregate maximum amount then available for drawing under Letters of Credit issued by such Issuing Bank, after giving effect to the Facility Letter of Credit requested hereunder, shall exceed any limit imposed by law or regulation upon such Issuing Bank;

(ii) issue any Facility Letter of Credit if, after giving effect thereto, (1) the then applicable Outstanding Facility Amount would exceed the then-current Aggregate Commitment or (2) the then-applicable Outstanding Facility Amount would exceed the then-current Aggregate Commitment or (3) the Facility Letter of Credit Obligations would exceed the Facility Letter of Credit Sublimit; or

(iii) issue any Facility Letter of Credit having an expiration date, or containing automatic extension provisions to extend such date, to a date beyond the then-current Facility Termination Date, provided, further, that a Facility Letter of Credit may, as a result of its express terms or as the result of the effect of an automatic extension provision, have an expiration date of not more than one year beyond the Facility Termination Date, so long as the Borrower delivers to the Administrative Agent for the benefit of the Lenders no later than the then Facility Termination Date either (1) cash collateral for such Letter of Credit for deposit into the Letter of Credit Collateral Account in an amount equal to the stated amount of such Letter of Credit, (2) a backup Letter of Credit having terms acceptable to the Administrative Agent and issued by a domestic financial institution having a rating assigned by Moody's or S&P to its senior unsecured debt of AA/Aa2 or better or (3) other collateral satisfactory to the Administrative Agent. Upon the expiration, cancellation or termination of a Facility Letter of Credit for which cash, a backup Letter of Credit or other collateral has been provided pursuant to the preceding clause (1), (2) or (3), the Administrative Agent shall promptly return any such backup Letter of Credit to the Borrower or release such collateral if such extension is not exercised or is not exercisable.

2A.3 Conditions

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In addition to being subject to the satisfaction of the conditions contained in Article IV hereof, the obligation of the Issuing Bank to issue any Facility Letter of Credit is subject to the satisfaction in full of the following conditions:

(i) the proposed Facility Letter of Credit shall be reasonably satisfactory to the Issuing Bank as to form and content;

(ii) as of the date of issuance, no order, judgment or decree of any court, arbitrator or governmental authority shall purport by its terms to enjoin or restrain the Issuing Bank from issuing the requested Facility Letter of Credit and no law, rule or regulation applicable to the Issuing Bank and no request or directive (whether or not

having the force of law) from any governmental authority with jurisdiction over the Issuing Bank shall prohibit or request that the Issuing Bank refrain from the issuance of Letters of Credit generally or the issuance of the requested Facility Letter or Credit in particular; and

(iii) there shall not exist any Default.

2A.4 Procedure for Issuance of Facility Letters of Credit

(a) Borrower shall give the Issuing Bank and the Administrative Agent at least three (3) Business Days' prior written notice of any requested issuance of a Facility Letter of Credit under this Agreement (a "Letter of Credit Request") and shall (i) immediately provide the Issuing Bank and the Administrative Agent with a telecopy of the written notice required hereunder which has been signed by an Authorized Officer or a telex containing all information required to be contained in such written notice and (ii) promptly provide the Issuing Bank and the Administrative Agent (in no event later than the requested date of issuance) with the written notice required hereunder containing the original signature of an authorized officer; such notice shall be irrevocable, except as provided in Section 2A.4(b)(i) below, and shall specify:

1. the stated amount of the Facility Letter of Credit requested (which stated amount shall not be less than \$50,000);
2. the effective date (which day shall be a Business Day) of issuance of such requested Facility Letter of Credit (the "Issuance Date");
3. the date on which such requested Facility Letter of Credit is to expire (which day shall be a Business Day), subject to Section 2A.2(iii) above;
4. the purpose for which such Facility Letter of Credit is to be issued;
5. the Person for whose benefit the requested Facility Letter of Credit is to be issued; and

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6. any special language required to be included in the Facility Letter of Credit.

Such notice, to be effective, must be received by such Issuing Bank and the Administrative Agent not later than noon (Cleveland time) on the last Business Day on which notice can be given under this Section 2A.4(a).

(b) Subject to the terms and conditions of this Article IIA and provided that the applicable conditions set forth in Article IV hereof have been satisfied, the Issuing Bank shall, on the Issuance Date, issue a Facility Letter of Credit on behalf of the Borrower in accordance with the Letter of Credit Request and the Issuing Bank's usual and customary business practices unless the Issuing Bank has actually received (i) written notice from the Borrower specifically revoking the Letter of Credit Request with respect to such Facility Letter of Credit given not later than the Business Day immediately preceding the Issuance Date, or (ii) written or telephonic notice from the Administrative Agent stating that the issuance of such Facility Letter of Credit would violate Section 2A.2. Notwithstanding anything to the contrary contained in this Section 2A.4, the Issuing Bank shall not be obligated to issue, amend, extend, renew or increase any Facility Letter of Credit at a time when any other Lender is a Defaulting Lender, unless the Issuing Bank is satisfied that the participation therein will otherwise be fully allocated to the Lenders that are Non-Defaulting Lenders consistent with Section 10.14 and the

Defaulting Lender shall have no participation therein, except to the extent the Issuing Bank has entered into arrangements with the Borrower or such Defaulting Lender which are satisfactory to the Issuing Bank in its good faith determination to eliminate the Issuing Bank's Fronting Exposure with respect to any such Defaulting Lender, including the delivery of cash collateral.

(c) The Issuing Bank shall give the Administrative Agent (who shall promptly notify Lenders) and the Borrower written or telex notice, or telephonic notice confirmed promptly thereafter in writing, of the issuance of a Facility Letter of Credit (the "Issuance Notice").

(d) The Issuing Bank shall not extend or amend any Facility Letter of Credit unless the requirements of this Section 2A.4 are met as though a new Facility Letter of Credit was being requested and issued.

2A.5 Reimbursement Obligations; Duties of Issuing Bank

(a) The Issuing Bank shall promptly notify the Borrower and the Administrative Agent (who shall promptly notify Lenders) of any draw under a Facility Letter of Credit. Any such draw shall not be deemed to be a default hereunder but shall constitute an Advance of the Facility in the amount of the Reimbursement Obligation with respect to such Facility Letter of Credit and shall bear interest from the date of the relevant drawing(s) under the pertinent Facility Letter of Credit at the Floating Rate; provided that if a Default regarding the non-payment of any monetary obligations to the Administrative Agent or the Lenders exists at the time of any such drawing(s), then the Borrower shall reimburse the Issuing Bank for drawings under a Facility Letter of Credit issued by the Issuing Bank no later than the next

succeeding Business Day after the payment by the Issuing Bank and until repaid such Reimbursement Obligation shall bear interest at the Default Rate.

(b) Any action taken or omitted to be taken by the Issuing Bank under or in connection with any Facility Letter of Credit, if taken or omitted in the absence of willful misconduct or gross negligence, shall not put the Issuing Bank under any resulting liability to any Lender or, provided that such Issuing Bank has complied with the procedures specified in Section 2A.4, relieve any Lender of its obligations hereunder to the Issuing Bank. In determining whether to pay under any Facility Letter of Credit, the Issuing Bank shall have no obligation relative to the Lenders other than to confirm that any documents required to be delivered under such Letter of Credit appear to have been delivered in compliance, and that they appear to comply on their face, with the requirements of such Letter of Credit.

2A.6 Participation

(a) Immediately upon issuance by the Issuing Bank of any Facility Letter of Credit in accordance with the procedures set forth in this Article IIA, each Lender shall be deemed to have irrevocably and unconditionally purchased and received from the Issuing Bank, without recourse, representation or warranty, an undivided interest and participation equal to such Lender's Percentage in such Facility Letter of Credit (including, without limitation, all obligations of the Borrower with respect thereto) and all related rights hereunder and under the Subsidiary Guaranty and other Loan Documents.

(b) In the event that the Issuing Bank makes any payment under any Facility Letter of Credit and the Borrower shall not have repaid such amount to the Issuing Bank pursuant to Section 2A.5 hereof, the Issuing Bank shall promptly notify the Administrative Agent, which shall promptly notify each Lender of such failure, and each Lender shall promptly and unconditionally pay to the Administrative Agent for the account of the Issuing Bank the amount of such Lender's Percentage of the unreimbursed amount of such payment, and the Administrative Agent shall promptly pay such amount to the Issuing Bank. A Lender's payments of its Percentage of such Reimbursement Obligation as aforesaid shall be deemed to be a Loan by such Lender and shall constitute outstanding principal under such Lender's Note. The failure of any Lender to make available to the Administrative Agent for the account of the Issuing Bank its Percentage of the unreimbursed amount of any such payment shall not relieve any other Lender of its obligation hereunder to make available to the Administrative Agent for the account of such Issuing Bank its Percentage of the unreimbursed amount of any payment on the date such payment is to be made, but no Lender shall be responsible for the failure of any other Lender to make available to the Administrative Agent its Percentage of the unreimbursed amount of any payment on the date such payment is to be made. Any Lender which fails to make any payment required pursuant to this Section 2A.6(b) shall be deemed to be a Defaulting Lender hereunder.

(c) Whenever the Issuing Bank receives a payment on account of a Reimbursement Obligation, including any interest thereon, the Issuing Bank shall promptly pay

equal to such Lender's Percentage thereof.

(d) Upon the request of the Administrative Agent or any Lender, the Issuing Bank shall furnish to such Administrative Agent or Lender copies of any Facility Letter of Credit to which the Issuing Bank is party and such other documentation as may reasonably be requested by the Administrative Agent or any Lender.

(e) The obligations of a Lender to make payments to the Administrative Agent for the account of the Issuing Bank with respect to a Facility Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, set-off, qualification or exception whatsoever other than a failure of any such Issuing Bank to comply with the terms of this Agreement relating to the issuance of such Facility Letter of Credit, and such payments shall be made in accordance with the terms and conditions of this Agreement under all circumstances.

2A.7 Payment of Reimbursement Obligations

(a) The obligation of the Borrower to pay to the Administrative Agent for the account of the Issuing Bank the amount of all Advances for Reimbursement Obligations, interest and other amounts payable to the Issuing Bank under or in connection with any Facility Letter of Credit when due shall be absolute and unconditional, irrespective of any claim, set-off, defense or other right which the Borrower may have at any time against any Issuing Bank or any other Person, under all circumstances, including without limitation any of the following circumstances:

(i) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(ii) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against a beneficiary named in a Facility Letter of Credit or any transferee of any Facility Letter of Credit (or any Person for whom any such transferee may be acting), the Administrative Agent, the Issuing Bank, any Lender, or any other Person, whether in connection with this Agreement, any Facility Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between the Borrower and the beneficiary named in any Facility Letter of Credit);

(iii) any draft, certificate or any other document presented under the Facility Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

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(iv) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents; or

(v) the occurrence of any Default.

(b) In the event any payment by the Borrower received by the Issuing Bank or the Administrative Agent with respect to a Facility Letter of Credit and distributed by the Administrative Agent to the Lenders on account of their participations is thereafter set aside, avoided or recovered from the Administrative Agent or Issuing Bank in connection with any receivership, liquidation, reorganization or bankruptcy proceeding, each Lender which received such distribution shall, upon demand by the Administrative Agent, contribute such Lender's

Percentage of the amount set aside, avoided or recovered together with interest at the rate required to be paid by the Issuing Bank or the Administrative Agent upon the amount required to be repaid by the Issuing Bank or the Administrative Agent.

2A.8 Compensation for Facility Letters of Credit

(a) The Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders (including the Issuing Bank), based upon the Lenders' respective Percentages, a per annum fee (the "Facility Letter of Credit Fee") as a percentage of the face amount of each Facility Letter of Credit outstanding equal to the LIBORSOFR Applicable Margin in effect from time to time while such Facility Letter of Credit is outstanding. The Facility Letter of Credit Fee relating to any Facility Letter of Credit shall accrue on a daily basis and shall be due and payable in arrears on the first Business Day of each calendar quarter following the issuance of such Facility Letter of Credit and, to the extent any such fees are then due and unpaid, on the Facility Termination Date or any other earlier date that the Advances and Facility Letter of Credit Obligations are due and payable in full. The Administrative Agent shall promptly remit such Facility Letter of Credit Fees, when paid, to the other Lenders in accordance with their Percentages thereof. The Borrower shall not have any liability to any Lender for the failure of the Administrative Agent to promptly deliver funds to any such Lender and shall be deemed to have made all such payments on the date the respective payment is made by the Borrower to the Administrative Agent, provided such payment is received by the time specified in Section 2.13 hereof.

(b) The Issuing Bank also shall have the right to receive solely for its own account an issuance fee equal to one-eighth of one percent (0.125%) of the face amount of each Facility Letter of Credit payable by the Borrower on the Issuance Date for each such Facility Letter of Credit and on the date of any increase therein or extension thereof. The Issuing Bank shall also be entitled to receive its reasonable out-of-pocket costs and the Issuing Bank's customary administrative charges of issuing, amending and servicing Facility Letters of Credit and processing draws thereunder.

2A.9 Letter of Credit Collateral Account

The Borrower hereby agrees that it will immediately upon the occurrence of a Default, or prior to the Facility Termination Date if a Facility Letter of Credit is outstanding and unexpired on such date as provided in Section 2A.2(iii) above, establish a special collateral account (the "Letter of Credit Collateral Account") at the Administrative Agent's office at the address specified pursuant to Article XIII, in the name of the Borrower but under the sole dominion and control of the Administrative Agent, for the benefit of the Lenders, and in which the Borrower shall have no interest other than as set forth in Section 8.1. The Letter of Credit Collateral Account shall hold the deposits the Borrower is required to make upon the Facility Termination Date related to any such outstanding and unexpired Facility Letter of Credit or after a Default on account of any outstanding Facility Letters of Credit as described in Section 8.1. In addition to the foregoing, the Borrower hereby grants to the Administrative Agent, for the benefit of the Lenders holding a Commitment, a security interest in and to the Letter of Credit Collateral Account and any funds that may hereafter be on deposit in such account, including income earned thereon. The Lenders acknowledge and agree that the Borrower has no obligation to fund the Letter of Credit Collateral Account unless and until so required under Section 2A.2(iii) or Section 8.1 hereof.

2A.10 Obligations Absolute

The obligations of the Borrower to the Lenders under this Agreement with respect to Facility Letters of Credit (and of the Lenders to make payments to the Issuing Bank with respect to Facility Letters of Credit) shall be absolute, unconditional and irrevocable, and shall be paid and performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following circumstances: (i) any lack of validity or enforceability of this Agreement, any Facility Letter of Credit or any of the other Loan Documents; (ii) any improper use which may be made of any Facility Letter of Credit or any improper acts or omissions of any beneficiary or transferee of any Facility Letter of Credit in connection therewith; (iii) the existence of any claim, set-off, defense or any right which the Borrower or any of its Subsidiaries or Affiliates may have at any time against any beneficiary or any transferee of any Facility Letter of Credit (or persons or entities for whom any such beneficiary or any such transferee may be acting) or the Lenders (other than the defense of payment to the Lenders in accordance with the terms of this Agreement) or any other person, whether in connection with any Facility Letter of Credit, this Agreement, any other Loan Document, or any unrelated transaction; (iv) any draft, demand, certificate, statement or any other documents presented under any Facility Letter of Credit proving to be insufficient, forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect whatsoever; (v) any breach of any agreement between the Borrower or any of its Subsidiaries or Affiliates and any beneficiary or transferee of any Facility Letter of Credit; (vi) any irregularity in the transaction with respect to which any Facility Letter of Credit is issued, including any fraud by the beneficiary or any transferee of such Facility Letter of Credit; (vii)

payment by the Issuing Bank under any Facility Letter of Credit against presentation of a sight draft, demand, certificate or other document which does not comply with the terms of such Facility Letter of Credit, provided that such payment shall not have constituted gross negligence or willful misconduct on the part of the Issuing Bank as determined by a court of competent jurisdiction after the exhaustion of all applicable appeal periods; (viii) any non-application or misapplication by the beneficiary of a Letter of Credit of the proceeds of such Facility Letter of Credit; (ix) the legality, validity, form, regularity or enforceability of the Facility Letter of Credit; (x) the failure of any payment by the Issuing Bank to conform to the terms of a Facility Letter of Credit (if, in the Issuing Bank's good faith judgment, such payment is determined to be appropriate); (xi) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents; (xii) the occurrence of any Default or Unmatured Default; and (xiii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

ARTICLE III.

CHANGE IN CIRCUMSTANCES

3.1. Yield Protection

Subject to the provisions of Section 3.6, if, on or after the date of this Agreement, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or applicable Lending Installation with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(a) subjects any Lender or any applicable Lending Installation party hereto to any Taxes, or changes the basis of taxation of payments (other than for Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and Connection Income Taxes) to any Lender in respect of its **LIBORSOFR** Rate Loans, or

(b) imposes or increases or makes applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation (other than ~~the Reserve Requirement and~~ any other reserves and assessments taken into account in determining the interest rate applicable to **LIBORSOFR** Rate Advances, if any), or

(c) imposes any other condition the direct result of which is to increase the cost to any Lender or any applicable Lending Installation of making, funding or

Loans, or requires any Lender or any applicable Lending Installation to make any payment calculated by reference to the amount of LIBORSOFR Rate Loans, by a material amount,

and the result of any of the foregoing is to increase the cost to such Lender or applicable Lending Installation, as the case may be, of making or maintaining its LIBORSOFR Rate Loans or Commitment or to reduce the return received by such Lender or applicable Lending Installation in connection with such LIBORSOFR Rate Loans or Commitment, then, subject to the provisions of Section 3.6, Borrower shall pay such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction in amount received.

3.2. Changes in Capital Adequacy Regulations

If a Lender in good faith determines the amount of capital or liquidity required or expected to be maintained by such Lender, any Lending Installation of such Lender or any corporation controlling such Lender is increased as a result of a Change (as hereinafter defined), then, within 15 days of demand by such Lender, Borrower shall pay such Lender the amount necessary to compensate for any shortfall in the rate of return on the portion of such Lender's capital which such Lender in good faith determines is attributable to this Agreement, its outstanding credit exposure hereunder or its obligation to make Loans hereunder (after taking into account such Lender's policies as to capital adequacy). "Change" means (i) any change after the date of this Agreement in the Risk-Based Capital Guidelines (as hereinafter defined) or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of this Agreement which affects the amount of capital or liquidity required or expected to be maintained by any Lender or any Lending Installation or any corporation controlling any Lender. Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives promulgated thereunder and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change", regardless of the date enacted, adopted or issued. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, regardless of the date enacted, adopted or issued.

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3.3. Benchmark Replacement Setting

~~Notwithstanding anything to the contrary herein or in any other Loan Document:~~

~~(a) Replacing USD LIBOR. On March 5, 2021, the Financial Conduct Authority ("FCA"), the regulatory supervisor of USD LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month and 3-month USD LIBOR tenor settings. On the earliest of (i) July 1, 2023, (ii) the date that all Available Tenors of USD LIBOR have either~~

permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (iii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action by or consent of any other party to, this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) Replacing Future Benchmarks. If any Benchmark Transition Event occurs after the date hereof (other than as described above with respect to USD LIBOR), the then-current Benchmark will be replaced with the Benchmark Replacement for all purposes hereunder and under any Loan Document in respect of any Benchmark setting on the later of (i) as of 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders and the Borrower or (ii) such other date as may be determined by the Administrative Agent, in each case, without any further action or consent of any other party to this Agreement or any other Loan Document, so long as the Administrative Agent has not received, by such time (or, in the case of clause (ii) above, such time as may be specified by the Administrative Agent as a deadline to receive objections, but in any case, no less than five (5) Business Days after the date such notice is provided to the Lenders and the Borrower), written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke Borrowing Notice or Conversion/Continuation Notice that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing Notice or Conversion/Continuation Notice to Base Rate Loans. During the period referenced in the foregoing sentence, the component of

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Alternate Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement (whether in connection with the replacement of USD LIBOR or any future Benchmark), the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section including, without limitation, any determination with respect to a tenor, rate or adjustment, or implementation of any Benchmark Replacement Conforming Changes, the timing of implementation of any Benchmark Replacement or of the occurrence or non-occurrence of an event,

circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding on all parties hereto absent manifest error and may be made in its sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section, and shall not be a basis of any claim of liability of any kind or nature by any party hereto, all such claims being hereby waived individually by each party hereto.

(e) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for such Benchmark (including any Benchmark Replacement) settings and (ii) if such tenor becomes available or representative, the Administrative Agent may reinstate any previously removed tenor for such Benchmark (including any Benchmark Replacement) settings.

(f) Certain Defined Terms. As used in this Section:

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“Benchmark” means, initially, USD LIBOR; provided that if a replacement for the Benchmark has occurred pursuant to this Section, then “Benchmark” means the applicable

~~Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.~~

"Benchmark Replacement" means, for any Available Tenor:

- ~~(1) for purposes of clause (a) of this Section, the first alternative set forth below that can be determined by the Administrative Agent~~
 - ~~(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one month's duration and 0.26161% (26.161 basis points) for an Available Tenor of three months' duration; or~~
 - ~~(b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment for an Available Tenor of one month's duration (0.11448% (11.448 basis points)); and~~
- ~~(2) for purposes of clause (b) of this Section, the sum of: (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value, or zero), in each case, that has been selected pursuant to this clause (2) by the Administrative Agent and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;~~

~~provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for all purposes of this Agreement and the other Loan Documents; and provided further, that, if the Borrower has provided a notification to the Administrative Agent in writing on or prior to the date on which the Benchmark Replacement will become effective that the Borrower has a Swap Contract in place with respect to any of the Loans as of the date of such notice (which such notification the Administrative Agent shall be entitled to rely upon and shall have no duty or obligation to ascertain the correctness or completeness of), then the Administrative Agent, in its sole discretion, may decide not to determine the Benchmark Replacement pursuant to clause (1)(a) above for such Benchmark Transition Event or Early Opt-in Election, as applicable.~~

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially

determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Transition Event" means, with respect to any then-current Benchmark (other than USD LIBOR), the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

"Early Opt-in Election" means the occurrence of:

(i) a notification by the Administrative Agent to each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(ii) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve

Bank of New York, or any successor thereto.

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

"Term SOFR" means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"USD LIBOR" means the London interbank offered rate for U.S. dollars.

The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to USD LIBOR or with respect to any alternative or successor benchmark thereto, or replacement rate therefor or thereof, including, without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 3.3, will be similar to, or produce the same value or economic equivalence of, USD LIBOR or any other benchmark or have the same volume or liquidity as did USD LIBOR or any other benchmark rate prior to its discontinuance or unavailability.

3.3. [Reserved]

3.4. Funding Indemnification

If any payment of a LIBOR Rate Advance occurs on a date which is not the last day of the applicable LIBOR Interest Period, whether because of acceleration, prepayment or otherwise, or a ratable LIBOR Rate Advance is not made on the date specified by Borrower for any reason other than default by the Lenders or as a result of unavailability pursuant to Section

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3.3. Borrower will indemnify each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost (incurred or expected to be incurred) in liquidating or employing deposits acquired to fund or maintain the LIBOR Rate Advance and shall pay all such losses or costs within fifteen (15) days after written demand therefor

The Borrower shall compensate each Lender upon its written request (which request shall set forth the detailed basis for requesting and the method of calculating such compensation), for all reasonable losses, costs, expenses and liabilities (including, without limitation, any loss, cost, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its SOFR Loans) which such Lender may sustain in connection with any of the following: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of SOFR Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Continuation or Conversion (whether or not withdrawn by the Borrower or deemed withdrawn); (ii) if any repayment, prepayment, Conversion or Continuation of any SOFR Loan occurs on a date that is not the last day of an Interest Period applicable thereto; (iii) if any prepayment of any of its SOFR Loans is not made on any date specified in a notice of prepayment given by the Borrower; (iv) as a result of an assignment by a Lender of any SOFR Loan other than on the last day of the Interest Period applicable thereto pursuant to a request by the Borrower pursuant to Section 2.9 or (v) as a consequence of (y) any other default by the Borrower to

repay or prepay any SOFR Loans when required by the terms of this Agreement or (z) an election made pursuant to Section 2.9. The written request of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such request within 10 days after receipt thereof.

3.5. Taxes

(a) All payments by the Borrower and the Subsidiary Guarantors hereunder and under any of the other Loan Documents shall be made without setoff or counterclaim, and free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower or applicable Subsidiary Guarantor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.5) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower and the Subsidiary Guarantors shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Borrower and the Subsidiary Guarantors shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.5) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error; provided that the determinations in such statement are made on a reasonable basis and in good faith.

(d) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower or a Subsidiary Guarantor has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower and each Subsidiary Guarantor to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.2 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection.

(e) As soon as practicable after any payment of Taxes by the Borrower or any Subsidiary Guarantor to a Governmental Authority pursuant to this Section 3.5, Borrower or such Guarantor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly

withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in the immediately following clauses (ii)(A), (ii)(B) and (ii)(D)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN, or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN, or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN, or W-8BEN-E, as applicable; or

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form

W-8BEN, or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

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Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.5 (including by the payment of additional amounts pursuant to this Section 3.5), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.5 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving

rise to such refund has not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it reasonably deems confidential) to the indemnifying party or any other Person.

(g) Each party's obligations under this Section 3.5 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

3.6. Lender Statements; Survival of Indemnity

If any Lender becomes entitled to claim any additional amounts pursuant to Sections 3.1, 3.2 or 3.5, Borrower shall not be required to pay the same unless they are the result of requirements imposed generally on lenders similar to such Lender and not the result of some specific reserve or similar requirement imposed on such Lender as a result of such Lender's special circumstances. If any Lender becomes entitled to claim any additional amounts pursuant to Sections 3.1, 3.2 or 3.5, such Lender shall provide Borrower with not less than thirty (30) days written notice (with a copy to the Administrative Agent) specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount; *provided* that Borrower is not required to compensate Lender pursuant to Sections 3.1, 3.2 or 3.5 for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender notifies

Borrower of the events giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore. To the extent reasonably possible, each Lender shall designate an alternate Lending Installation with respect to its **LIBORSOFR** Rate Loans to reduce any liability of Borrower to such Lender under Sections 3.1, 3.2 and 3.5 or to avoid the unavailability of **LIBORSOFR** Rate Advances under Section 3.32.16, so long as such designation is not, in the reasonable judgment of such Lender, disadvantageous to such Lender. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a **LIBORSOFR** Rate Loan shall be calculated as though each Lender funded its **LIBORSOFR** Rate Loan through the purchase of a deposit of the type and maturity corresponding to the deposit used as a reference in determining the **LIBORSOFR** Base Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall be payable thirty (30) days after receipt by Borrower of such written statement. The obligations of Borrower under Sections 3.1, 3.2, 3.4 and 3.5 shall survive payment of the Obligations and termination of this Agreement.

ARTICLE IV. CONDITIONS PRECEDENT

4.1. Initial Advance

The Lenders shall not be required to make the initial Advance hereunder, or issue the initial Facility Letter of Credit hereunder, unless and until (a) the Borrower shall, prior to or concurrently therewith, have paid all fees due and payable to the Lenders and the Administrative Agent hereunder, and (b) the Borrower shall have furnished to the Administrative Agent the following:

(a) The duly executed originals of this Agreement (with sufficient originals thereof for each of the Lenders), the Notes payable to each of the Lenders, the Subsidiary Guaranty and any other additional Loan Documents;

(b) (A) Certificates of good standing for each Loan Party from its state of organization, certified by the appropriate governmental officer and dated not more than thirty (30) days prior to the Agreement Effective Date, and (B) foreign qualification certificates for each Loan Party certified by the appropriate governmental officer and dated not more than thirty (30) days prior to the Agreement Effective Date, for each jurisdiction in which an Unencumbered Property owned by such Loan Party is located;

(c) Copies of the formation documents (including code of regulations, if appropriate) of the Loan Parties, certified by an officer of the Borrower or such other Loan Party, as appropriate, together with all amendments thereto;

(d) Incumbency certificates, executed by officers of the Loan Parties, which shall identify by name and title and bear the signature of the Persons authorized to sign

this Agreement and the additional Loan Documents and to make borrowings hereunder on behalf of such parties, upon which certificate the Administrative Agent and the Lenders shall be entitled to rely until informed of any change in writing by the applicable Loan Party;

(e) Copies, certified by a Secretary or an Assistant Secretary of the applicable Loan Party, of the Board of Directors' resolutions (and resolutions of other bodies, if any are reasonably deemed necessary by counsel for the Administrative Agent) authorizing the Advances provided for herein, with respect to the Borrower, and the execution, delivery and performance of this Agreement and the additional Loan Documents to be executed and delivered by the applicable Loan Party;

(f) Written opinions of the Loan Parties' counsel, addressed to the Lenders, in form and substance reasonably acceptable to the Administrative Agent;

(g) A certificate, signed by an Authorized Officer of the Borrower, stating that on the Agreement Effective Date no Default or Unmatured Default has occurred and is continuing, and there has been no change in the financial condition or business of the Borrower and the Consolidated Group taken as a whole since the date of the most recent financial statements delivered to the Administrative Agent which would have a Material Adverse Effect, that all representations and warranties of the Borrower are true and correct in all material respects as of the Agreement Effective Date;

(h) The most recent financial statements of the Borrower;

(i) UCC financing statement searches with respect to the Borrower and each of the other Loan Parties from the state of its organization and with respect to each owner of an Initial Unencumbered Property from the state in which such Unencumbered Property is located;

(j) Written money transfer instructions, addressed to the Administrative Agent and signed by an Authorized Officer, together with such other related money transfer authorizations as the Administrative Agent may have reasonably requested;

(k) A pro forma compliance certificate in the form of Exhibit A, utilizing the covenants established herein and executed by the Borrower's chief financial officer or chief accounting officer;

(l) Evidence that all fees due to each of the Lenders with respect to this Agreement have been paid;

(m) The Unencumbered Property Due Diligence;

(n) The absence of any action, suit, investigation or proceeding, pending or threatened, in any court or before any arbitrator or Governmental Authority that is

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reasonably expected to have a material adverse effect on the Borrower and the Consolidated Group, taken as a whole, or that is reasonably expected to have a material adverse effect on any transaction contemplated hereby or on the ability of the Borrower or the Subsidiary Guarantors, taken as a whole, to perform their respective obligations under the Loan Documents;

(o) Evidence satisfactory to the Administrative Agent of payment in full of all amounts due to any lender under the Original Credit Agreement which is not continuing as a Lender hereunder and of acceptance by it of the termination of its commitment thereunder;

(p) A Beneficial Ownership Certification, if Borrower qualifies as a legal entity customer under the Beneficial Ownership Regulation, which such Beneficial Ownership Certification shall also be delivered to any Lender that so requests in addition with any other "know your customer" information that such Lender requests;

(q) Evidence satisfactory to the Administrative Agent that the modified Term Loan Agreement has become, or is becoming, effective on such date; and

(r) Such other documents as the Administrative Agent or its counsel may have reasonably requested, the form and substance of which documents shall be reasonably acceptable to the parties and their respective counsel.

For purposes of determining compliance with the conditions specified in this Section 4.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a lender upon delivery of its executed signature page to the Administrative Agent without conditions for release or, if a Lender delivers its signature page with conditions for release, notice from that Lender to the Administrative Agent (or its counsel) that such conditions for release have been met.

4.2. Each Advance and Issuance

The Lenders shall not be required to make any Advance or issue any Facility Letter of Credit unless on the applicable Borrowing Date:

(a) Prior to, and after giving effect to such Advance or issuance, there shall not exist any Default or Unmatured Default; and

(b) The representations and warranties contained in Article V are true and correct as of such Borrowing Date with respect to the Loan Parties in existence on such Borrowing Date, except (i) to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall be

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true and correct on and as of such earlier date or (ii) for changes in factual circumstances which are permitted by this Agreement.

Each Borrowing Notice and each Letter of Credit Request with respect to each such Advance shall constitute a representation and warranty by the Borrower that the conditions contained in Sections 4.2(a) (in the case of the initial Borrowing Notice) and (b) have been satisfied.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

5.1. Existence

Borrower is a corporation duly organized and validly existing under the laws of the State of Maryland, with its principal place of business in Downers Grove, Illinois and is duly qualified as a foreign corporation, properly licensed (if required), in good standing and has all requisite

authority to conduct its business in each jurisdiction in which its business is conducted, except where the failure to be so qualified, licensed and in good standing and to have the requisite authority would not have a Material Adverse Effect. Each of the Borrower's Subsidiaries are duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and have all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except where the failure to be so qualified, licensed and in good standing and to have the requisite authority would not have a Material Adverse Effect.

5.2. Authorization and Validity

The Borrower has the corporate power and authority and legal right to execute and deliver the Loan Documents and to perform its obligations thereunder. The execution and delivery by the Borrower of the Loan Documents and the performance of its obligations thereunder have been duly authorized by proper corporate proceedings, and the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity, or by the discretion of any court in awarding equitable remedies, regardless of whether such enforcement is considered in a proceeding of equity or at law.

5.3. No Conflict; Government Consent

Neither the execution and delivery by the Borrower or the other Loan Parties of the Loan Documents, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrower, or any of Borrower's Subsidiaries or the Borrower's or any Subsidiary's articles of incorporation, operating agreements, partnership agreement, or by-laws, or the provisions of any indenture, instrument or agreement to which the Borrower or any of Borrower's Subsidiaries is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, except where such violation, conflict or default would not have a Material Adverse Effect, or result in the creation or imposition of any Lien in, of or on the Property of the Borrower or a Subsidiary pursuant to the terms of any such indenture, instrument or agreement. No order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required as a condition to the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, any of the Loan Documents other than the filing of a copy of this Agreement.

5.4. Financial Statements; Material Adverse Effect

All consolidated financial statements of the Loan Parties heretofore or hereafter delivered to the Lenders were prepared in accordance with GAAP in effect on the preparation date of such statements and fairly present in all material respects the consolidated financial condition and operations of the Loan Parties at such date and the consolidated results of their operations for the period then ended and include all material contingent obligations, subject, in the case of interim financial statements, to normal and customary year-end adjustments. From the preparation date of the most recent financial statements delivered to the Lenders through the Agreement Effective Date, there was no change in the business, properties, or condition (financial or otherwise) of the Borrower and its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

5.5. Taxes

The Loan Parties have filed all United States federal tax returns and all other tax returns which are required to be filed and have paid all taxes due pursuant to said returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided or such taxes, the failure to make payment of which when due and payable will not have, in the aggregate, a Material Adverse Effect. No tax liens have been filed and no claims are being asserted with respect to such taxes. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of any taxes or other governmental charges are adequate.

5.6. Litigation

Except as set forth on Schedule 5.6 hereto or as set forth in written notice to the Administrative Agent from time to time, there is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting the Loan Parties which could reasonably be expected to have a Material Adverse Effect.

5.7. Subsidiaries

Schedule 5.7 hereto contains, an accurate list of all Subsidiaries of the Borrower, setting forth their respective jurisdictions of incorporation or formation and the percentage of their respective capital stock or partnership or membership interest owned by the Borrower or other Subsidiaries as of the date hereof. All of the issued and outstanding shares of capital stock of such Subsidiaries that are corporations have been duly authorized and issued and are fully paid and non-assessable.

5.8. ERISA

No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$40,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$40,000,000 the fair market value of the assets of all such underfunded Plans.

5.9. Accuracy of Information

No information, exhibit or report furnished by the Loan Parties to the Administrative Agent or to any Lender in connection with the negotiation of, or compliance with, the Loan Documents contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

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5.10. Regulations of the Board

No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

5.11. Material Agreements

Neither the Borrower nor any Subsidiary is a party to any agreement or instrument or subject to any charter or other corporate restriction which could reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any agreement to which it is a party, which default could have a Material Adverse Effect, or (ii) any agreement or instrument evidencing or governing Indebtedness, which default would constitute a Default hereunder.

5.12. Compliance With Laws

The Borrower has complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof, having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property, except for any non-compliance which would not have a Material Adverse Effect. The Loan Parties have not received any notice to the effect that its operations are not in material compliance with any of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations or the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a Material Adverse Effect.

5.13. Ownership of Properties

On the date of this Agreement, the Borrower and its Subsidiaries will have good and marketable title, free of all Liens other than those permitted by Section 6.14, to all of the Unencumbered Properties.

5.14. Investment Company Act

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Neither the Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

5.15. Solvency

(a) Immediately after the Agreement Effective Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of such Loans, (i) the fair value of the assets of the Borrower and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, subordinated, contingent or otherwise, of the Borrower and its Subsidiaries on a consolidated basis; (ii) the present fair saleable value of the Property of the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries on a consolidated basis on their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become

absolute and matured; and (iv) the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted after the date hereof.

(b) The Borrower and its Subsidiaries on a consolidated basis have not incurred debts beyond their ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

5.16. Insurance

The Loan Parties carry, or cause to be carried, insurance on their Projects, including each Unencumbered Property, with financially sound and reputable insurance companies, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar Projects in localities where the Borrower and its Subsidiaries operate, including, without limitation:

(a) Property and casualty insurance (including coverage for flood and other water damage for any Project located within a 100-year flood plain) in the amount of the replacement cost of the improvements at the Projects (to the extent replacement cost insurance is maintained by companies engaged in similar business and owning similar properties);

- (b) Builder's risk insurance for any Project under construction in the amount of the construction cost of such Project;
- (c) Loss of rental income insurance in the amount not less than one year's gross revenues from the Projects; and
- (d) Comprehensive general liability insurance in the amount of \$20,000,000 per occurrence.

5.17. REIT Status

Borrower is qualified as a real estate investment trust under Section 856 of the Code and currently is in compliance in all material respects with all provisions of the Code applicable to the qualification of the Borrower as a real estate investment trust.

5.18. Environmental Matters

Each of the following representations and warranties is true and correct on and as of the Agreement Effective Date except as disclosed on the environmental assessments delivered to the Administrative Agent pursuant to this Agreement or on Schedule 5.18 attached hereto or to the extent that the facts and circumstances giving rise to any the failure of such representations and warranties to be true and correct, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

- (i) To the best knowledge of the Borrower, with respect to all Projects owned by the Borrower and/or its Subsidiaries (x) for at least two (2) years, have in the last two years, or (y) for less than two (2) years, have for such period of ownership, been in compliance in all material respects with all applicable Environmental Laws.
- (ii) Neither the Borrower nor any of its Subsidiaries has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Projects, nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened.
- (iii) To the best knowledge of the Borrower, Materials of Environmental Concern have not been transported or disposed of to or from the Projects of the Borrower and its Subsidiaries in violation of, or in a manner or to a location which could reasonably give rise to liability of the Borrower or any Subsidiary under, Environmental Laws, nor have any Materials of Environmental Concern migrated or been generated, treated, stored or disposed of at, on or under any of the Projects of the Borrower and its Subsidiaries in violation of, or in

(iv) No judicial proceedings or governmental or administrative action is pending, or, to the knowledge of the Borrower, threatened, under any Environmental Law to which the Borrower or any of its Subsidiaries is or, to the Borrower's knowledge, will be named as a party with respect to the Projects of the Borrower and its Subsidiaries, nor are there any consent decrees or other decrees, consent orders, administrative order or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Projects of the Borrower and its Subsidiaries.

(v) To the best knowledge of the Borrower, there has been no release or threat of release of Materials of Environmental Concern at or from the Projects of the Borrower and its Subsidiaries, or arising from or related to the operations of the Borrower and its Subsidiaries in connection with the Projects in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

5.19. Unencumbered Properties

As of the Agreement Effective Date, Exhibit H is a correct and complete list of all Unencumbered Properties. Each of the Unencumbered Properties included by Borrower in calculations of the Unencumbered Pool Value satisfies all of the requirements contained in this Agreement for the same to be included therein.

5.20. Anti-Terrorism Laws

(a) None of Borrower and Borrower's Subsidiaries is in violation of any Sanctions Laws and Regulations or any other laws or regulations relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) None of Borrower and Borrower's Subsidiaries, or, to the best of Borrower's knowledge, any of their respective directors, officers, brokers or other agents acting with respect to or benefiting from this Agreement is a Prohibited Person. A "Prohibited Person" is any of the following:

(1) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

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

(3) a person or entity with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(4) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(b) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.

(c) None of Borrower and Borrower's Subsidiaries (1) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (2) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (3) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

Borrower does not intend to use, shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan or Facility Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (ii) in any manner that would result in the violation of any applicable Sanctions Laws and Regulations.

5.21. Beneficial Ownership Certification

As of the Agreement Effective Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

ARTICLE VI.

COVENANTS

During the term of this Agreement, unless the Required Lenders shall otherwise consent in writing:

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6.1. Financial Reporting

The Borrower will maintain for the Consolidated Group a system of accounting established and administered in accordance with GAAP, and furnish to the Administrative Agent and the Lenders:

(a) As soon as available, but in any event not later than sixty (60) days after the close of each of the first three fiscal quarters of any fiscal year, for the Consolidated Group, an unaudited consolidated balance sheet as of the close of each such period and the related unaudited consolidated statements of income and retained earnings and of cash flows of the Consolidated Group for such period and the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous year, all certified by the Borrower's chief financial officer or chief executive officer;

(b) Together with the quarterly and annual financial statements required hereunder, the following reports, all certified by an Authorized Officer of the Borrower:

(1) a schedule listing all Projects of the Borrower and its

(1) a schedule listing all Projects of the Borrower and its Subsidiaries and summary information for each such Project, including location, square footage, occupancy, Net Operating Income and debt;

(2) a statement of the Adjusted Unencumbered NOI and occupancy percentage of the Unencumbered Pool as of the end of the prior fiscal quarter; and

(3) a list of all Subsidiary Guarantors as of the end of the most recently ended quarterly or annual fiscal period.

(c) As soon as available, but in any event not later than ninety (90) days after the close of each fiscal year, for the Consolidated Group, audited financial statements, including a consolidated balance sheet as at the end of such year and the related consolidated statements of income and retained earnings and of cash flows for such year, setting forth in each case in comparative form the figures for the previous year, without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, prepared by the Borrower's existing certified public accountant or another independent certified public accountants of nationally recognized standing reasonably acceptable to the Administrative Agent;

(d) Together with the quarterly and annual financial statements required hereunder, a compliance certificate in substantially the form of Exhibit A hereto signed by the Borrower's chief financial officer, chief accounting officer or chief operating officer showing the calculations and computations necessary to determine compliance with this Agreement as of the last day of the period covered by such quarterly or annual financial statement, including without limitation such information as is reasonably requested by

the Administrative Agent to determine compliance as of such date with the covenants contained in Sections 6.16 and 6.17 of this Agreement, and stating that, to such officer's knowledge, no Default or Unmatured Default exists, or if, to such officer's knowledge, any Default or Unmatured Default exists, stating the nature and status thereof;

(e) As soon as possible and in any event within ten (10) days after a responsible officer of the Borrower knows thereof, the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Default under Section 7.10 of this Agreement;

(f) As soon as possible and in any event within ten (10) days after receipt by a responsible officer of the Borrower, a copy of (i) any notice or claim to the effect that the Borrower or any of its Subsidiaries is or may be liable to any Person as a result of the release by the Borrower, any of its Subsidiaries, or any other Person of any Material of Environmental Concern into the environment, and (ii) any notice alleging any violation of any federal, state or local environmental, health or safety law or regulation by the Borrower or any of its Subsidiaries, which, in the case of either (i) or (ii) could have a Material Adverse Effect;

(g) Promptly following the execution thereof, notice and copies thereof of all amendments, modifications, supplements, consents and waivers under the Term Loan Agreement; provided that, unless otherwise requested by the Administrative Agent, such notice shall not be required while the Administrative Agent is a party to the Term Loan Agreement (it being understood and agreed that any such notice shall be provided in accordance with Section 13.1 of this Agreement and, for the avoidance of doubt, may be transmitted by email).

(h) Promptly upon the furnishing thereof to the shareholders of the Borrower, copies of all financial statements, reports and proxy statements so furnished, including without limitation all form 10-K and 10-Q reports filed with the SEC;

(i) Within thirty (30) days following receipt of an updated Sustainability Rating, a certificate setting forth the Applicable Sustainability Adjustment to be made commencing with the first day of the immediately succeeding calendar year following delivery of such certificate, as certified by the Borrower's chief financial officer or chief executive officer; and

(j) Such other information (including, without limitation, financial statements for the Borrower, statements detailing the contributions to Consolidated NOI from individual Projects and non-financial information) as the Administrative Agent may from time to time reasonably request.

At the Borrower's option, the Borrower may deliver information required to be delivered pursuant to this Section 6.1 by posting any such information to an internet website maintained by the Borrower or to the website of the Securities and Exchange Commission (www.sec.gov). Any such information provided in such manner shall only be deemed to have been delivered to

and (ii) only if such information is publicly available without charge on such website. If for any reason, the Administrative Agent or a Lender either did not receive such notice or after reasonable efforts was unable to access such website, then the Administrative Agent or such Lender, as applicable, shall not be deemed to have received such information. In addition to any manner permitted by Article XIII, the Borrower may notify the Administrative Agent or a Lender that information has been posted to such a website by causing an e-mail notification to be sent to an e-mail address specified from time to time by the Administrative Agent or such Lender, as applicable. Notwithstanding the foregoing, (i) the Administrative Agent and each Lender is responsible for signing up, and agrees to signup, for e-mail notifications, if any, permitted by the Borrower's internet website and by submitting the e-mail address to which the Administrative Agent or such Lender, as the case may be, desires to have e-mail notifications delivered to the Administrative Agent or such Lender and the Administrative Agent and each Lender hereby agree that such e-mail notifications to such e-mail addresses will satisfy the notification requirements of this Section 6.1, and (ii) failure of the Administrative Agent or any Lender to sign up for such e-mail notifications or to keep such e-mail addresses current shall relieve the Borrower from any obligation to provide e-mail notifications to the Administrative Agent or such Lender in order to for the Borrower to be entitled to deliver information required to be delivered pursuant to this Section 6.1 by posting such information to the Borrower's internet website.

6.2. Use of Proceeds

The Borrower will use, and will cause each of its Subsidiaries to use, the proceeds of the Advances for its own account for general corporate purposes of the Borrower and its Subsidiaries in the ordinary course of its business, including without limitation the repayment of Indebtedness, Property acquisitions, capital expenditures, development, redevelopment, capital reserves, working capital and any other transaction not prohibited hereunder. The Borrower will not, nor will it permit any Subsidiary to, use any of the proceeds of the Advances (i) to purchase or carry any "margin stock" (as defined in Regulation U) if such usage could constitute a violation of Regulation U by any Lender, or (ii) to fund any purchase of, or offer for, a controlling portion of the Capital Stock of any Person, unless the board of directors or other manager of such Person has consented to such offer. The Borrower shall not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity (i) to fund any activities or business of or with any Designated Person, or in any country or territory, that at the time of such funding is the subject of any sanctions under any Sanctions Laws and Regulations, or (ii) in any other manner that would result in a violation of any Sanctions Laws and Regulations by any party to this Agreement. No Loan or Facility Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions Law or Regulation.

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6.3. Notice of Default

The Borrower will give notice in writing to the Administrative Agent and the Lenders of the occurrence of any Default or Unmatured Default and of any other development, financial or otherwise, which could reasonably be expected to have a Material Adverse Effect promptly after obtaining knowledge thereof.

6.4. Conduct of Business

The Borrower will do, and will cause each Loan Party to do, all things necessary to remain duly incorporated or duly qualified, validly existing and in good standing as a trust, corporation, limited liability company, general partnership or limited partnership, as the case may be, in its jurisdiction of incorporation/formation (except with respect to mergers not prohibited hereunder and Permitted Investments) and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted and to carry on and conduct their businesses in substantially the same manner as they are presently conducted where the failure to do so could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor its Subsidiaries may undertake any business other than the acquisition of commercial properties, providing mortgage note receivables, engaging in construction activities and any business activities and investments incidental thereto (including investments in Marketable Securities) and certain additional activities permitted within the limitations imposed on such additional activities pursuant to Section 6.19 below.

6.5. Taxes

The Borrower will pay, and will cause each of its Subsidiaries to pay, when due all taxes, assessments and governmental charges and levies upon them or their income, profits or Projects, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside.

6.6. Insurance

The Borrower will, and will cause each of its Subsidiaries to, maintain insurance which is consistent with the representation contained in Section 5.16 on all their Projects and the Borrower will furnish to the Administrative Agent upon reasonable request full information as to the insurance carried.

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6.7. Compliance with Laws

The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which they may be subject, the violation of which could reasonably be expected to have a Material Adverse Effect.

6.8. Maintenance of Properties

The Borrower will, and will cause each of its Subsidiaries to, do all things necessary to maintain, preserve, protect and keep their respective Projects, in good condition and repair, working order and condition, ordinary wear and tear excepted, in each case where the failure to so maintain, preserve, protect and keep in good condition and repair will have a Material Adverse Effect.

6.9. Inspection

The Borrower will, and will cause each of its Subsidiaries to, permit the Administrative Agent upon reasonable notice and during normal business hours and subject to rights of tenants, by its representatives and agents, to inspect any of the Projects, corporate books and financial records of the Borrower and each of its Subsidiaries, to examine and make copies of the books of accounts and other financial records of the Borrower and each of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and each of its Subsidiaries with officers thereof, and to be advised as to the same by, their respective officers at such reasonable times and intervals as the Administrative Agent may designate.

6.10. Maintenance of Status

The Borrower shall at all times maintain its status as a real estate investment trust in compliance with all applicable provisions of the Code relating to such status.

6.11. Dividends; Distributions; Redemptions

The Borrower and its Subsidiaries shall be permitted to declare and pay dividends on their Capital Stock, to make distributions with respect thereto from time to time and to honor requests to redeem their Capital Stock, provided, however, that in no event shall the Borrower: (i) pay any such dividends or make any such distributions or honor any redemption requests on any Capital Stock (including without limitation the declaration and payment of Preferred

Dividends or the making of distributions to holders of shares in the Borrower), if such dividends and distributions paid and redemption requests honored on account of the then-current fiscal quarter and the three immediately preceding fiscal quarters, in the aggregate for such period, would cause the Dividend Payout Ratio to exceed 95% for such period or (ii) without the consent of the Administrative Agent and the Required Lenders, pay any such dividends or make any such distributions or make any such redemptions if (A) any Default has occurred and is then continuing or (B) any Unmatured Default arising under Section 7.1 or Section 7.2 hereof has occurred and is then continuing; provided however that, notwithstanding the foregoing, (x) Borrower and its Subsidiaries shall in all cases be permitted to distribute whatever amount of dividends and distributions is necessary to maintain the Borrower's tax status as a real estate investment trust, which dividends and distributions may be made in cash or in Capital Stock at the Borrower's option and (y) Borrower shall be permitted to purchase shares of its Capital Stock pursuant to a tender offer in an aggregate amount of up to \$100,000,000.

6.12. [Intentionally Deleted]

6.13. Plan Assets

The Borrower hereby covenants and agrees that (i) Borrower shall not use any Plan Assets to repay or secure the Obligations, (ii) no assets of the Borrower or any Subsidiary Guarantor are or will be Plan Assets, (iii) each Plan will be in compliance with all applicable requirements of ERISA and the Code except to the extent any defects can be remedied without material liability to the Borrower under Revenue Procedure 2008-50 or any similar procedure and except to the extent that such non-compliance would not have a Material Adverse Effect, and (iv) the Borrower will not have any liability under Title IV of ERISA or Section 412 of the Code with respect to any Plan which would have a Material Adverse Effect.

6.14. Liens

The Borrower will not, nor will it permit any of its Subsidiaries to, create, incur, or suffer to exist any Lien in, of or on the Property of the Borrower or any of its Subsidiaries, except for ~~(i) Permitted Liens and Liens on Properties which are not then included in the Unencumbered Pool, but only to the extent such Liens will not result in a Default in any of Borrower's covenants herein, and (ii) Negative Pledges which are permitted to exist under Section 6.20.~~

6.15. Affiliates

The Borrower will not, nor will it permit any of its Subsidiaries to, enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with,

or make any payment or transfer to, any Affiliate which is not a member of the Consolidated Group except upon fair and reasonable terms no less favorable to the Borrower or such

Subsidiary than the Borrower or such Subsidiary would obtain in a comparable arms-length transaction, but excluding in all events any such transactions, payments or transfers which are either disclosed in filings made by the Borrower with the Securities and Exchange Commission or related to any internalization of the business management services currently provided to the Borrower by the Advisor or any similar transactions.

6.16. [Reserved]

6.17. Indebtedness and Cash Flow Covenants

The Borrower shall not permit:

(a) The Leverage Ratio to be more than sixty percent (60%) at any time; provided that on no more than two (2) occasions prior to the final Facility Termination Date (as it may have been extended), such maximum Leverage Ratio from the date on which a Material Acquisition has occurred through the remainder of the fiscal quarter in which such Material Acquisition has occurred, together with the Leverage Ratio for the two (2) full consecutive fiscal quarters immediately following the fiscal quarter in which such Material Acquisition has occurred, shall be increased to sixty-five percent (65%);

(b) The Fixed Charge Coverage Ratio, as of the last day of any fiscal quarter based upon Borrower's compliance certificate required by Section 6.1(d) hereof, to be less than 1.50 to 1.00;

(c) The aggregate amount of Secured Indebtedness of the Consolidated Group which is also Recourse Indebtedness to be greater than ten percent (10%) of Total Asset Value at any time;

(d) Intentionally Omitted;

(e) The Unsecured Interest Coverage Ratio, as of the last day of any fiscal quarter based upon Borrower's compliance certificate required by Section 6.1(d) hereof to be less than 1.75 to 1.00; provided that no breach of this Section 6.17(e) shall occur unless and until Borrower has failed to make the principal payments required to restore compliance with this covenant as provided in Section 2.3(b);

(f) The Unsecured Leverage Ratio to be more than sixty percent (60%) at any time; provided that (A) on no more than two (2) occasions prior to the final Facility Termination Date (as it may have been extended), such maximum Unsecured Leverage Ratio from the date on which a Material Acquisition has occurred through the remainder of the fiscal quarter in which such Material Acquisition has occurred, together with the

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Unsecured Leverage Ratio for the two (2) full consecutive fiscal quarters immediately following the fiscal quarter in which such Material Acquisition has occurred, shall be increased to sixty-five percent (65%) and (B) no breach of this Section 6.17(f) shall occur unless and until Borrower has failed to make the principal payments required to restore compliance with this covenant as provided in Section 2.3(b); or

(g) The Unencumbered Pool Value to be less than \$350,000,000, or there to be fewer than fifteen (15) Unencumbered Properties, at any time.

6.18. Environmental Matters

Borrower and its Subsidiaries shall:

- (i) Comply with, and use all reasonable efforts to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws and obtain and comply with and maintain, and use all reasonable efforts to ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except to the extent that failure to do so could not be reasonably expected to have a Material Adverse Effect, provided that in no event shall the Borrower or its Subsidiaries be required to modify the terms of leases, or renewals thereof, with existing tenants (i) at Projects owned by the Borrower or its Subsidiaries as of the Agreement Effective Date or (ii) at Projects subsequently acquired by the Borrower or its Subsidiaries as of the date of such acquisition, to add provisions to such effect.
- (ii) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, except to the extent that (i) the same are being contested in good faith by appropriate proceedings and the pendency of such proceedings could not be reasonably expected to have a Material Adverse Effect, or (ii) the Borrower has determined in good faith that contesting the same is not in the best interests of the Borrower and its Subsidiaries and the failure to contest the same could not be reasonably expected to have a Material Adverse Effect, or (iii) the failure to so comply could not reasonably be expected to have a Material Adverse Effect.
- (iii) Defend, indemnify and hold harmless Administrative Agent and each Lender, and their respective officers and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of the

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Borrower, its Subsidiaries or the, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing arise out of the gross negligence or willful misconduct of any indemnified party as determined by a final non-appealable judgment of a court of competent jurisdiction. This indemnity shall continue in full force and effect regardless of the termination of this Agreement.

6.19. Permitted Investments

- (a) The Consolidated Group's activities shall be limited to acquiring commercial properties, holding the Consolidated Group's interests in National Union Fire Insurance Company of Vermont and any other future insurance captive, providing Mortgage Notes Receivable, engaging in construction activities and any business activities and investments incidental thereto (including Investments in Marketable Securities) except that the following additional Investments ("Permitted Investments") shall also be permitted so long as the aggregate value of the Permitted Investments under each of the following clauses (i) through

(v), tested as of the last day of any fiscal quarter based on Borrower's compliance certificate for such quarter, shall not exceed the individual percentage of Total Asset Value limits stated in such clause and the aggregate value of the Permitted Investments under all such clauses on a combined basis shall not at any time exceed twenty-five percent (25%) of Total Asset Value:

- (i) Unimproved Land (other than land included in the definition of Development Projects) -- (valued at undepreciated GAAP book value, after taking into account any impairments) -- five percent (5%) of Total Asset Value;
- (ii) Investments in Investment Affiliates (valued at the portion of Total Asset Value attributable to such entity or its assets as the case may be) -- fifteen percent (15%) of Total Asset Value;
- (iii) Development Projects (valued at undepreciated GAAP book value, after taking into account any impairments) -- fifteen percent (15%) of Total Asset Value;
- (iv) Mortgage Note Receivables (valued at undepreciated GAAP book value, after taking into account any impairments) -- five percent (5%) of Total Asset Value; and
- (v) Non-Core Properties, not including properties, or interests in properties included in subsection (i), (iii) or (iv) above (valued at undepreciated GAAP book value, after taking into account any impairments) -- five percent (5%) of Total Asset Value.

Notwithstanding anything to the contrary contained herein, the Sacramento Project shall not be subject to the limitations set forth in this Section 6.19, or be included in the calculation of the Permitted Investments limitations.

6.20. Negative Pledges

The Borrower agrees that neither the Borrower nor any other members of the Consolidated Group shall enter into or be subject to any agreement governing Indebtedness which contains a Negative Pledge other than (i) restrictions on further subordinate Liens on Projects encumbered by a mortgage, deed to secure debt or deed of trust securing such Indebtedness, or on the direct or indirect ownership interests in the owners of such encumbered Projects, (ii) covenants in any Unsecured Indebtedness requiring (A) that the Consolidated Group maintain a pool of unencumbered properties of a size determined by reference to the total amount of Unsecured Indebtedness of the Consolidated Group on substantially similar terms to those provisions contained herein regarding the Unencumbered Pool (including without limitation clauses (e) and (f) of Section 6.17 above) or (B) that the Consolidated Group not incur Secured Indebtedness which is also Recourse Indebtedness in excess of the maximum percentage of Total Asset Value contained in clause (c) of Section 6.17 above, but that do not generally prohibit the encumbrance of the Borrower's or the Consolidated Group's assets, or the encumbrance of any specific assets ~~or~~, (iii) any Negative Pledge contained in the Term Loan Agreement Documents, or (iv) any provision of any Other Pari Passu Debt Document that either (x) conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios or financial tests (including any financial ratio such as a maximum ratio of unsecured debt to unencumbered assets) that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets or (y) requires the grant of an equal and ratable Lien to secure Unsecured Indebtedness, if a Lien is granted to secure any other Unsecured Indebtedness of such Person.

6.21. Subsidiary Guaranty

Borrower shall cause each of its existing Subsidiaries listed on Exhibit C, which includes the owners of each Unencumbered Property, along with all other current subsidiaries of the Borrower, excluding only the Excluded Subsidiaries, to execute and deliver to the Administrative Agent the Subsidiary Guaranty. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (i) concurrently with the delivery of each compliance certificate required to be delivered pursuant to Section 6.1(d), with respect to each Subsidiary which (x) is acquired or formed (other than Excluded Subsidiaries) during the most recent fiscal quarter period covered by such compliance certificate or (y) was not required to join in the Subsidiary Guaranty because it was an Excluded Subsidiary but shall subsequently not be precluded from doing so during such most recent fiscal quarter and (ii) within five (5) Business Days after the date any Subsidiary has any Recourse Indebtedness or Guarantee Obligations with respect to the Term Loan Agreement, the Borrower shall cause each such Subsidiary to execute and

clarity, that nothing in this sentence shall permit the treatment of any Eligible Unencumbered Property as an Unencumbered Property, or the inclusion of the value attributable to such Eligible Unencumbered Property in Unencumbered Pool Value, until such a joinder to the Subsidiary Guaranty has been so executed and delivered to the Administrative Agent by the Subsidiary owning such Eligible Unencumbered Property. Borrower covenants and agrees that each Subsidiary which it shall cause to execute the Subsidiary Guaranty shall be fully authorized to do so by its supporting organizational and authority documents and shall be in good standing in its state of organization and in the case of any Subsidiary which is the owner of an Unencumbered Property, shall be in good standing in the state in which such Property is located. The delivery by Borrower to the Administrative Agent of any such joinder shall be deemed a representation and warranty by Borrower that each Subsidiary which Borrower caused to execute the Subsidiary Guaranty has been fully authorized to do so by its supporting organizational and authority documents and is in good standing in its state of organization and in the case of a Subsidiary which is the owner of an Unencumbered Property, is in good standing in the state in which such Property is located. From time to time Borrower may request, upon not less than five (5) Business Days prior written notice to the Administrative Agent (or such shorter time as may be agreed by the Administrative Agent), that a Subsidiary Guarantor be released from the Subsidiary Guaranty, which release (the "Release") shall be effected by the Administrative Agent if all of the following conditions are satisfied as of the date of such Release:

- (a) Borrower shall have delivered a compliance certificate showing pro forma compliance with the covenants set forth in herein after giving effect to such Release;
- (b) Substantially concurrently with the Release, such Subsidiary Guarantor shall have no outstanding Recourse Indebtedness or Guarantee Obligations in respect of the Term Loan Agreement; and
- (c) If after giving effect to such Release the resulting reduction in the Unencumbered Pool Value and Unencumbered Pool NOI would cause a breach of either Section 6.17(e) or Section 6.17(f), Borrower shall have repaid such Advances, if any, as may be required to reduce the outstanding Advances to the maximum amount of Advances that can be outstanding without creating such a breach of Section 6.17(e) or Section 6.17(f).

In connection with a Release, Borrower shall deliver to the Administrative Agent a certificate from Borrower's chief executive officer or chief financial officer regarding the matters referred to in the immediately preceding clauses (a), (b) and (c). Notwithstanding the foregoing, the Administrative Agent shall not be obligated to release any such Subsidiary from the Subsidiary Guaranty if (i) such Subsidiary owns any Unencumbered Properties that are not being so released from such status or (ii) a Default or Unmatured Default has occurred and is then continuing. In addition, ~~effective as upon on the earlier of~~ (i) the date on which Borrower receives an Investment Grade Rating or any date thereafter on which Borrower maintains such an Investment Grade Rating, or (ii) the date on which Borrower shall consummate a Private

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Placement Facility in the amount of not less than One Hundred Million Dollars (\$100,000,000.00), Borrower may request, upon not less than five (5) Business Days prior written notice to the Administrative Agent, the release of all Subsidiary Guarantors from the Subsidiary Guaranty other than those which have outstanding Recourse Indebtedness or Guarantee Obligations (other than the Subsidiary Guaranty), which release shall be effected by the Administrative Agent so long as no Default or Unmatured Default shall have occurred and be then continuing and in the case of a release requested in connection with a Private Placement Facility, such release shall be effective simultaneous with the closing of such Private Placement Facility. Administrative Agent is authorized by the Lenders and hereby agrees to execute any reasonable documentation requested by Borrower to evidence such release.

6.22. Intentionally Omitted

6.23. Mergers, Consolidations and Sales of Assets

The Borrower will not, and will not permit any Subsidiary which is an owner of an Unencumbered Property (unless such Subsidiary is released or being released as a Subsidiary Guarantor at such time) to, merge into, including pursuant to a Delaware LLC Division, or consolidate with any other Person, or permit any other Person to merge into or consolidate with it. In addition, the Borrower will not permit the Consolidated Group, in the aggregate, to sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions), including, in each case, pursuant to a Delaware LLC Division, during any period of four (4) consecutive fiscal quarters assets of the Consolidated Group representing an aggregate value of more than twenty-five percent (25%) of the Total Asset Value in effect on the first day of such period, unless, in each case, (1) the Borrower shall have given the Administrative Agent and the Lenders at least 30 days' prior written notice of such transaction, (2) immediately prior thereto, and immediately thereafter and after giving effect thereto, no Default or Unmatured Default is or would be in existence, including, without limitation, a Default or Unmatured Default resulting from a breach of Sections 6.16 and 6.17; and (3) at the time the Borrower gives notice pursuant to clause (1) of this sentence, the Borrower shall have delivered to the Administrative Agent for distribution to each of the Lenders a compliance certificate in the form attached as Exhibit A hereto, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties with the terms and conditions of this Agreement and the other Loan Documents, including without limitation, the financial covenants contained in Sections 6.16 and 6.17, after giving effect to such transaction. Notwithstanding the foregoing, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing: (i) any Subsidiary may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, provided that following such transaction Borrower remains an entity organized under the laws of the United State of America, (ii) any Subsidiary may merge into any other member of the Consolidated Group in a transaction in which the surviving entity is a member of the Consolidated Group and remains an entity organized under the laws of the United State of America, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the

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Borrower or to another member of the Consolidated Group, (iv) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (v) any Subsidiary that is a Delaware LLC may consummate a Delaware LLC Division if, immediately upon the consummation of the Delaware LLC Division, the assets of the applicable Delaware Divided LLC are held by one or more Subsidiaries at such time or, with respect to assets not so held by one or more Subsidiaries, such Delaware LLC Division, in the aggregate, would otherwise result in a sale, transfer or other disposition permitted by this Section 6.23.

ARTICLE VII.

DEFUALTS

The occurrence of any one or more of the following events shall constitute a Default:

7.1. Nonpayment of any principal payment due hereunder (including without limitation any principal payment due on account of Advances made to pay Reimbursement Obligations) or under any Note when due.

7.2. Nonpayment of interest upon any Note or of any fee or other payment

Obligations under any of the Loan Documents within five (5) Business Days after the same becomes due.

7.3. The breach of any of the terms or provisions of Sections 6.2, 6.4, 6.10, 6.11, 6.13, 6.16, 6.17, 6.19, 6.20, 6.21 or 6.23.

7.4. Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries to the Lenders or the Administrative Agent under or in connection with this Agreement, or any material certificate or information delivered in connection with this Agreement or any other Loan Document shall be materially false on the date as of which made, provided that the facts or conditions giving rise to such falsity are not corrected by the Borrower within thirty (30) days after written notice of such falsity from the Administrative Agent.

7.5. The breach by the Borrower (other than a breach which constitutes a Default under Section 7.1, 7.2, 7.3 or 7.4) of any of the terms or provisions of this Agreement which is not remedied within thirty (30) days after written notice from the Administrative Agent.

7.6. The default by the Borrower or any other member of the Consolidated Group or any Investment Affiliate beyond any applicable notice and cure period in the payment of any amount due under, or the performance of any term, provision or condition contained in, the Term Loan Agreement or any other agreement with respect to (A) Recourse Indebtedness of the Borrower or of any other member of the Consolidated Group if the aggregate amount of Recourse Indebtedness so in default exceeds \$50,000,000 (provided that if the total underlying Indebtedness so in default exceeds the portion which constitutes Recourse Indebtedness, only the portion that constitutes Recourse Indebtedness shall be taken into account in determining

such \$50,000,000 threshold), or (B) any Non-Recourse Indebtedness of the Borrower or any other member of the Consolidated Group or any Investment Affiliate in excess of \$150,000,000 in the aggregate (any such Indebtedness causing the applicable threshold in clause (A) or clause (B) to be exceeded, together with the Indebtedness under the Term Loan Agreement, being referred to herein as "Material Indebtedness") or any other event shall occur or condition exist, which causes or permits any such Material Indebtedness to be due and payable or required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity thereof.

7.7. The Borrower or any Subsidiary Guarantor shall (i) have an order for relief entered with respect to it under the Federal bankruptcy laws as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any Substantial Portion of its Property, (iv) institute any proceeding seeking an order for relief under the Federal bankruptcy laws as now or hereafter in effect or seeking to adjudicate it as a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) fail to contest in good faith any appointment or proceeding described in Section 7.8 or (vi) admit in writing its inability to pay its debts generally as they become due.

7.8. A receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any Subsidiary Guarantor or for any Substantial Portion of the Property of the Borrower or any Subsidiary Guarantor or a proceeding described in Section 7.7(iv) shall be instituted against the Borrower or any Subsidiary Guarantor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of ninety (90) consecutive days.

7.9. The Borrower or any Subsidiary Guarantor shall fail within ninety (90) days to pay, bond or otherwise discharge any judgments or orders for the payment of money (to the extent not covered by insurance as to which the insurer has been notified of such judgment or order and has not issued a notice denying coverage thereof) in an amount which, when added to all other judgments or orders outstanding against the Borrower or any Subsidiary Guarantor would exceed \$50,000,000 in the aggregate, which have not been stayed on appeal or otherwise appropriately contested in good faith.

7.10. An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding (i) \$10,000,000 in any year or (ii) \$40,000,000 for all periods.

7.11. Any Change in Control shall occur.

7.12. Failure to complete any direct remediation obligation within the time period permitted by law or governmental order (or within a reasonable time in light of the nature of the

values are in excess of \$100,000,000 after all administrative hearings and appeals have been concluded, and if litigation is applicable to such obligation, after a final non-appealable judgment of a court of competent jurisdiction has been entered. Notwithstanding the foregoing, the Sacramento Project shall not be subject to this Section 7.12 and the value thereof shall be excluded in any calculation of the \$100,000,000 amount described in this Section 7.12.

7.13. The occurrence of any "Default" as defined in any Loan Document or the breach of any of the terms or provisions of any Loan Document, which default or breach continues beyond any period of grace therein provided.

7.14. Any Governmental Authority shall issue any order or other directive requiring the Borrower to make any payment in excess of \$50,000,000 after all administrative hearings and appeals have been concluded, and if litigation is applicable to such obligation, after a final non-appealable judgment of a court of competent jurisdiction has been entered.

7.15 The attempted disavowal, revocation or termination by the Borrower or any Loan Party of any of the Loan Documents.

ARTICLE VIII.

ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES

8.1. Acceleration

If any Default described in Section 7.7 or 7.8 occurs with respect to the Borrower, the obligations of the Lenders to make Loans hereunder shall automatically terminate and the Obligations shall immediately become due and payable without any election or action on the part of the Administrative Agent or any Lender. If any other Default occurs, so long as a Default exists Lenders shall have no obligation to make any Loans and the Required Lenders, at any time prior to the date that such Default has been fully cured, may permanently terminate the obligations of the Lenders to make Loans hereunder and declare the Obligations to be due and payable, or both, whereupon if the Required Lenders elected to accelerate (i) the Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrower hereby expressly waives and (ii) if any automatic or optional acceleration has occurred, the Administrative Agent, as directed by the Required Lenders (or if no such direction is given within thirty (30) days after a request for direction, as the Administrative Agent deems in the best interests of the Lenders, in its sole discretion), shall use its good faith efforts to collect all amounts owed by the Borrower and any Guarantor under the Loan Documents by exercising all rights and remedies provided for under this Agreement or otherwise available at law or in equity, including without limitation by filing and diligently pursuing judicial action.

In addition to the foregoing, following the occurrence of a Default and so long as any Facility Letter of Credit has not been fully drawn and has not been cancelled or expired by its terms, upon demand by the Required Lenders the Borrower shall deposit in the Letter of Credit Collateral Account cash in an amount equal to the aggregate undrawn face amount of all outstanding Facility Letters of Credit and all fees and other amounts due or which may become due with respect thereto, provided, however, that if any Default as described in Section 7.7 or 7.8 with respect to the Borrower occurs, the obligation to make such deposit into the Letter of Credit Collateral Account shall be automatic without any election or other action required on the part of the Administrative Agent or any Lender. The Borrower shall have no control over funds in the Letter of Credit Collateral Account. Such funds shall be promptly applied by the Administrative Agent to reimburse the Issuing Bank for drafts drawn from time to time under the

Facility Letters of Credit and associated issuance costs and fees. Such funds, if any, remaining in the Letter of Credit Collateral Account following the payment of all Obligations in full shall, unless the Administrative Agent is otherwise directed by a court of competent jurisdiction, be promptly paid over to the Borrower.

If, within ten (10) days after acceleration of the maturity of the Obligations or termination of the obligations of the Lenders to make Loans hereunder as a result of any Default (other than any Default as described in Section 7.7 or 7.8 with respect to the Borrower) and before any judgment or decree for the payment of the Obligations due shall have been obtained or entered, all of the Lenders (in their sole discretion) shall so direct, the Administrative Agent shall, by notice to the Borrower, rescind and annul such acceleration and/or termination.

8.2. Amendments

Subject to the provisions of this Article VIII the Required Lenders (or the Administrative Agent with the consent in writing of the Required Lenders) and the Borrower may enter into agreements supplemental hereto for the purpose of adding or modifying any provisions to the Loan Documents or changing in any manner the rights of the Lenders or the Borrower hereunder or waiving any Default hereunder; provided, however, that no such supplemental agreement or waiver shall, without the consent of all Lenders:

- (a) Extend the Facility Termination Date (except as provided in Section 2.21), or forgive all or any portion of the principal amount of any Loan or accrued interest thereon or the Facility Fee, reduce the Applicable Margins or Facility Fee Percentage or modify the underlying interest rate options (or modify any definition herein used in calculating such options which would have the effect of modifying such options) or extend the time of payment of any such principal, interest or facility fees.
- (b) Release any Subsidiary Guarantor from the Subsidiary Guaranty, except as expressly provided for herein;
- (c) Reduce the percentage specified in the definition of Required Lenders.

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- (d) Increase the Aggregate Commitment beyond \$700,000,000 provided that no Lender's Commitment can be increased without the consent of such Lender;
- (e) Amend the definitions of Commitment or Percentage;
- (f) Permit the Borrower to assign its rights under this Agreement.
- (g) Amend Sections 6.21, 8.1, 8.2, or 11.2.
- (h) Waive any Default under Section 7.1.

No amendment of any provision of this Agreement relating to the Administrative Agent shall be effective without the written consent of the Administrative Agent.

8.3. Preservation of Rights

No delay or omission of the Lenders or the Administrative Agent to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Loan notwithstanding the existence of a

Default or the inability of the Borrower to satisfy the conditions precedent to such Loan shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by the Lenders required pursuant to Section 8.2, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to the Administrative Agent and the Lenders until the Obligations have been paid in full.

ARTICLE IX.

GENERAL PROVISIONS

9.1. Survival of Representations

All representations and warranties of the Borrower contained in this Agreement shall survive delivery of the Notes and the making of the Loans herein contemplated.

9.2. Governmental Regulation

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Anything contained in this Agreement to the contrary notwithstanding, no Lender shall be obligated to extend credit to the Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

9.3. [Intentionally Deleted]

9.4. Headings

Section headings in the Loan Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Loan Documents.

9.5. Entire Agreement

The Loan Documents embody the entire agreement and understanding among the Borrower, the Administrative Agent and the Lenders and supersede all prior commitments, agreements and understandings among the Borrower, the Administrative Agent and the Lenders relating to the subject matter thereof.

9.6. Several Obligations; Benefits of the Agreement

The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which the Administrative Agent is authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. The Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to the Agreement and their respective successors and assigns.

9.7. Expenses; Indemnification

The Borrower shall reimburse the Administrative Agent for any reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees of a single firm of counsel) paid or incurred by the Administrative Agent in connection with the amendment or modification of the Loan Documents. The Borrower also agrees to reimburse the Administrative Agent for any reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees of a single firm of counsel) paid or incurred by the Administrative Agent in connection with the collection and enforcement of the Loan Documents (including, without limitation, any workout). The Borrower further agrees to indemnify the

judgments, liabilities and expenses (including, without limitation, all reasonable fees and reasonable expenses of a single firm of counsel to the Indemnified Parties (or in the case of a conflict of interest where an affected Indemnified Party notifies the Borrower of such conflict, an additional firm of counsel for such affected Indemnified Party or Indemnified Parties), in each case arising out of or in connection with or by reason of any investigation, litigation or proceeding (each, a “Proceeding”) related to or arising out of this Agreement, the other Loan Documents, the Projects, the transactions contemplated hereby or the direct or indirect application or proposed application of the proceeds of any Loan hereunder, except to the extent that any of the foregoing arise (a) out of the fraud, gross negligence or willful misconduct of the party seeking indemnification therefor as finally determined by a final, non-appealable judgment of a court of competent jurisdiction, (b) from claims of an Indemnified Person against any Affiliate or related Indemnified Person of such Indemnified Person or (c) as a result of any obligation owed by such Indemnified Party to any third party based upon contractual obligations of such Indemnified Party owing to such third party which are not expressly referenced in this Agreement. To the extent permitted by applicable law, (x) the Borrower shall not assert, and hereby waives, any claim against any of the foregoing Indemnified Parties, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, any Loan or Facility Letter of Credit or the use of the proceeds thereof and (y) the Administrative Agent, the Co-Syndication Agents, the Arrangers and the Lenders shall not assert, and hereby waive, any claim against any of the Borrower and any other Loan Party, or any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, any Loan or Facility Letter of Credit or the use of the proceeds thereof, provided that nothing in clause (a) above shall relieve Borrower or any other Loan Party of any obligation it may have to indemnify an Indemnified Person against special, indirect, consequential or punitive damages asserted against such Indemnified Person by a third party. The obligations of the Borrower under this Section 9.7 shall survive the termination of this Agreement. This Section 9.7 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

9.8. Numbers of Documents

All statements, notices, closing documents, and requests hereunder shall be furnished to the Administrative Agent with sufficient counterparts so that the Administrative Agent may furnish one to each of the Lenders.

9.9. Accounting

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Except as provided to the contrary herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP as in effect from time to time; provided that, if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided further that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder

setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made in a manner such that any obligations relating to a lease that was accounted for by a Person as an operating lease under GAAP as of the Agreement Effective Date and any similar lease entered into after the Agreement Effective Date by such Person shall be accounted for as obligations relating to an operating lease and not as Capital Lease Obligations.

9.10. Severability of Provisions

Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

9.11. No Advisory or Fiduciary Responsibility

The relationship between the Borrower, on the one hand, and the Lenders, the Administrative Agent and the Co-Syndication Agents on the other, shall be solely that of borrower and lender. Neither the Administrative Agent nor the Co-Syndication Agents nor any Lender shall have any fiduciary responsibilities to the Borrower. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Co-Syndication Agents and the Arrangers are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Co-Syndication Agents and the Arrangers, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting,

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regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Co-Syndication Agents and the Arrangers each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Co-Syndication Agents nor any Arranger has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Co-Syndication Agents, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor the Co-Syndication Agents nor any Arranger has any obligation to disclose any of such interests to the Borrower, any other Loan Party, or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Co-Syndication Agents and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty to the Borrower or any other Loan Party in connection with any aspect of any transaction contemplated hereby. Neither the

SECURITY, CITY, IN CONNECTION WITH ANY REPORT OR ANY TRANSACTION CONTEMPLATED HEREBY. NEITHER THE Administrative Agent nor the Co-Syndication Agents nor any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations.

9.12. Choice of Law

THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF ILLINOIS, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

9.13. Consent to Jurisdiction

THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF ILLINOIS OR STATE COURT LOCATED IN CHICAGO, ILLINOIS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN

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SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE BORROWER AGAINST THE ADMINISTRATIVE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN CHICAGO, ILLINOIS.

9.14. Waiver of Jury Trial

THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

9.15. Other Agents.

The Co-Syndication Agents shall not have any additional rights or obligations under the Loan Documents, except for those rights, if any, as a Lender.

9.16. Acknowledgement and Consent to Bail In of Affected Financial Institutions

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an Affected Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

9.17. Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.17, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following:

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(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b)

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

9.18. Erroneous Payments.

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

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank, or any Person who has received funds on behalf of a Lender or Issuing Bank

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such Lender or Issuing Bank, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to)

promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.19(b).

(c) Each Lender, Issuing Bank or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Issuing Bank under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Issuing Bank from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender or Issuing Bank that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender or Issuing Lender at any time, (i) such Lender or Issuing Bank shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class (i.e., Revolving Loan or Term Loan) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par plus any accrued and

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unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuing Bank shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Bank shall cease to be a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender or assigning Issuing Bank and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or Issuing Bank shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender or Issuing Bank (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or Issuing Bank and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender or Issuing Bank under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from any Loan Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any

(g) Each party's obligations, agreements and waivers under this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE X.

THE ADMINISTRATIVE AGENT

10.1. Appointment

KeyBank National Association, is hereby appointed Administrative Agent hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Administrative Agent to act as the agent of such Lender. The Administrative Agent agrees to act as such upon the express conditions contained in this Article X. Notwithstanding the use of the defined term "Administrative Agent," it is expressly understood and agreed that the Administrative Agent shall not have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that the Administrative Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders' contractual representative, the Administrative Agent (i) does not hereby assume any fiduciary duties to any of the Lenders, (ii) is a "representative" of the Lenders within the meaning of the term "secured party" as defined in the Illinois Uniform Commercial Code and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders hereby agrees to assert no claim against the Administrative Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Lender hereby waives.

10.2. Powers

The Administrative Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Administrative Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall have no implied duties to the Lenders, or any obligation to the Lenders to take any action thereunder except any action specifically provided for in this Agreement and/or the other Loan Documents to be taken by the Administrative Agent.

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10.3. General Immunity

Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Borrower, the Lenders or any Lender for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith except for its or their own gross negligence or willful misconduct.

10.4. No Responsibility for Loans, Recitals, etc

Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (i) any statement, warranty or representation made by anyone other than the Administrative Agent or one of its Affiliates in connection with any Loan Document or any borrowing hereunder; (ii) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (iii) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered to the Administrative Agent; (iv) the validity, effectiveness or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith with respect to anyone other than the Administrative Agent or one of its Affiliates; (v) the value, sufficiency, creation, perfection, or priority of any interest in any collateral security; or (vi) the financial condition of the Borrower or any Guarantor. Except as otherwise specifically provided herein, the Administrative Agent shall have no duty to disclose to the Lenders information that is not required to be furnished by Borrower to the Administrative Agent at such time, but is voluntarily furnished by Borrower to the Administrative Agent (either in its capacity as Administrative Agent or in its individual capacity).

10.5. Action on Instructions of Lenders

The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the required percentage of the Lenders needed to take such action or refrain from taking such action, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Administrative Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders. The Administrative Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take

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any such action, other than liability, cost or expense that arises from the Administrative Agent's gross negligence or willful misconduct.

10.6. Employment of Agents and Counsel

The Administrative Agent may execute any of its duties as Administrative Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Lenders, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent shall be entitled to advice of counsel concerning all matters pertaining to the agency hereby created and its duties hereunder and under any other Loan Document.

10.7. Reliance on Documents; Counsel

The Administrative Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine

and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by the Administrative Agent, which counsel may be employees of the Administrative Agent.

10.8. Administrative Agent's Reimbursement and Indemnification

The Lenders agree to reimburse and indemnify the Administrative Agent ratably in proportion to their respective Commitments (i) for those amounts which are specifically reimbursable by Borrower under this Agreement and the other Loan Documents, to the extent not so reimbursed by Borrower, (ii) for any other expenses incurred by the Administrative Agent on behalf of the Lenders in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents pursuant to the Administrative Agent's obligations hereunder which are not specifically reimbursable by Borrower under this Agreement or any other Loan Document, to the extent not actually reimbursed by Borrower, and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby (including without limitation, for any such amounts incurred by or asserted against the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders), or the enforcement of any of the terms thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct or a breach of the Administrative Agent's express obligations and

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undertakings to the Lenders. The obligations of the Lenders and the Administrative Agent under this Section 10.8 shall survive payment of the Obligations and termination of this Agreement.

10.9. Rights as a Lender

In the event the Administrative Agent is a Lender, the Administrative Agent shall have the same rights and powers hereunder and under any other Loan Document as any Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, at any time when the Administrative Agent is a Lender, unless the context otherwise indicates, include the Administrative Agent in its individual capacity. The Administrative Agent may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Subsidiaries in which the Borrower or such Subsidiary is not restricted hereby from engaging with any other Person.

10.10. Lender Credit Decision

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on the financial statements prepared by the Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into the Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Agreement and the other Loan Documents.

10.11. Successor Administrative Agent

Except as otherwise provided below, KeyBank National Association shall at all times serve as the Administrative Agent during the term of this Facility so long as KeyBank continues to be a Lender. The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower, such resignation to be effective upon the appointment of a successor Administrative Agent. If the Administrative Agent has been grossly negligent in the performance of its obligations hereunder, the Administrative Agent may be removed at any time by written notice received by the Administrative Agent from other Lenders holding in the aggregate at least two-thirds of that portion of the Aggregate Commitment not held by the Administrative Agent or its affiliates, such removal to be effective on the date specified by such other Lenders. Upon any such resignation or removal, such other Lenders shall appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent which appointment shall, provided no Default or Unmatured Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed (except that the Borrower shall, in

appointed by such other Lenders within thirty days after the resigning Administrative Agent's giving notice of its intention to resign, then the resigning Administrative Agent shall appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent. Notwithstanding the previous sentence, the Administrative Agent may at any time without the consent of the Borrower or any Lender, appoint any of its Affiliates which is a commercial bank as a successor Administrative Agent hereunder. No successor Administrative Agent shall be deemed to be appointed hereunder until such successor Administrative Agent has accepted the appointment. Any such successor Administrative Agent shall be a commercial bank having capital and retained earnings of at least \$500,000,000 (a "Qualified Institution"). Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Administrative Agent. Upon the effectiveness of the resignation or removal of the Administrative Agent, the resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation or removal of an Administrative Agent, the provisions of this Article X shall continue in effect for the benefit of such Administrative Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent hereunder and under the other Loan Documents.

10.12. Notice of Defaults

If a Lender becomes aware of a Default or Unmatured Default, such Lender shall notify the Administrative Agent of such fact provided that the failure to give such notice shall not create liability on the part of a Lender. Upon receipt of such notice that a Default or Unmatured Default has occurred, the Administrative Agent shall promptly notify each of the Lenders of such fact.

10.13. Requests for Approval

If the Administrative Agent requests in writing the consent or approval of a Lender, such Lender shall respond and either approve or disapprove definitively in writing to the Administrative Agent within ten (10) Business Days (or by such earlier date as is conspicuously noted in such request if the Administrative Agent has made a reasonable determination that the Borrower has a legitimate business reason for seeking such consent or approval on an expedited basis) after such written request from the Administrative Agent. If the Lender does not so respond to a request with a ten (10) Business Day response time, that Lender shall be deemed to have approved the request. If the Lender does not so respond to request with less than a ten (10) Business Day response time, that Lender shall be deemed to have denied the request.

10.14. Defaulting Lender Adjustments

Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

- (a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Bank hereunder; third, as the Borrower may request (so long as no Default or Unmatured Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fourth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) satisfy such Defaulting Lender's potential future funding obligations to the Issuing Bank under Article IIA with respect to any then outstanding Facility Letters of Credit; fifth, to the payment of any amounts owing to the Lenders or the Issuing Bank as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; sixth, so long as no Default or Unmatured Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and seventh, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Reimbursement Obligation in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Facility Letters of Credit were issued at a time when the conditions set forth in Article IV were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Reimbursement Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Reimbursement Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Reimbursement Obligations are held by the Lenders pro rata in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a

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Defaulting Lender that are applied (or held) to pay amounts owed or to be owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees.

(i) Each Defaulting Lender shall be entitled to receive Facility Fees for any period during which that Lender is a Defaulting Lender only to extent allocable to the outstanding principal amount of the Loans funded by it rather than the Defaulting Lender's Commitment.

(ii) Each Defaulting Lender shall be entitled to receive Facility Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its applicable Percentage of the stated amount of Facility Letters of Credit for which amounts are being held by the Administrative Agent pursuant to Section 10.14(b) for application to the obligations of such Defaulting Lender.

(iii) With respect to any Facility Fee or Facility Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above,

the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Reimbursement Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Bank's exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Reimbursement Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause such Non-Defaulting Lender's share of the aggregate Outstanding Facility Amount to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(d) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other

Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Facility Letters of Credit to be held pro rata by the Lenders in accordance with their Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

10.15. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I

Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE XI.

SETOFF; RATALE PAYMENTS

11.1. Setoff

In addition to, and without limitation of, any rights of the Lenders under applicable law, if the Borrower or any of the Subsidiary Guarantors becomes insolvent, however evidenced, or any Default occurs, any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other Indebtedness at any time held or owing by any Lender to or for the credit or account of the Borrower or such Subsidiary Guarantor, as the case may be, may be offset and applied toward the payment of the Obligations owing to such Lender at any time prior to the date that such Default has been fully cured, whether or not the Obligations, or any part hereof, shall then be due, provided however that any such offset and application shall only be made after such Lender has obtained the prior written approval of the Administrative Agent, which approval shall not be unreasonably withheld.

11.2. Ratable Payments

If any Lender, whether by setoff or otherwise, has payment made to it upon its Loans (other than payments received pursuant to Sections 3.1, 3.2, 3.4 or 3.5) in a greater proportion

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than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a portion of the Loans held by the other Lenders so that after such purchase each Lender will hold its ratable proportion of Loans. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral ratably in proportion to their Loans. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

ARTICLE XII.

BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

12.1. Successors and Assigns

The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrower and the Lenders and their respective successors and assigns, except that (i) the Borrower shall not have the right to assign its rights or obligations under the Loan Documents and (ii) any assignment by any Lender must be made in compliance with Section 12.3. The parties to the Agreement acknowledge that clause (ii) of this Section 12.1 relates only to absolute assignments and does not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under the Agreement and any Note to a Federal Reserve Bank or (y) in the case of a Lender which is a fund, any pledge or assignment of all or any portion of its rights under the Agreement and any Note to its trustee in support of its obligations to its trustee, *provided, however,* that no such pledge or assignment creating a security interest shall release the transferor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 12.3. The Administrative Agent and Borrower may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 12.3; *provided, however,* that the Administrative Agent and Borrower may in its discretion (but shall not be required to) follow instructions from the Person which made any Loan or which holds any Note to direct payments relating to such Loan or Note to another Person. Any assignee of the rights to any Loan or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Loan.

12.2. Participations

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(1) Permitted Participants; Effect. Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more banks, financial institutions, pension funds, or any other funds or entities (other than an Ineligible Institution) ("Participants") participating interests in any Loan owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the holder of any such Note for all purposes under the Loan Documents, all amounts payable by the Borrower under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents.

(2) Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than those amendments, modifications or waivers with respect to any Loan or Commitment in which such Participant has an interest which would require consent of all the Lenders pursuant to the terms of clauses (a), (b) or (e)

of Section 8.2 hereof.

(3) Participant Register. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The Participant Register shall be available for inspection by Borrower and Administrative Agent, at any reasonable time and upon reasonable prior notice. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(4) Benefit of Setoff. Each Lender shall retain the right of setoff provided in Section 11.1 and shall not be permitted to share such right with any Participant.

12.3. Assignments

(a) Permitted Assignments. Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time assign to any other Lender or to any Affiliate of such Lender or of any other Lender without the prior approval of the Borrower, or to one or more other entities, with the prior approval of the Borrower, which approval of the Borrower (i) shall not be unreasonably withheld or delayed and shall be deemed given if not withheld within five (5) Business Days after written request for such approval from the Administrative Agent and (ii) shall not be required if a Default or Unmatured Default has occurred and is then continuing (such permitted assignees hereinafter referred to as "Purchasers"), all or any portion of its rights and obligations under the Loan Documents provided that any assignment of only a portion of such rights and obligations shall be in an amount not less than \$5,000,000 (it being understood and agreed that no Lender may hold an unparticipated interest of less than \$5,000,000 unless such Lender's interest has been reduced to zero). Notwithstanding the foregoing, no such assignment may be made to an Ineligible Institution. Such assignment shall be substantially in the form of Exhibit B hereto or in such other form as may be agreed to by the parties thereto. The consent of the Administrative Agent shall be required prior to an assignment becoming effective with respect to a Purchaser which is not a Lender or an Affiliate thereof or an entity that manages a Lender. Such consent shall not be unreasonably withheld or delayed.

(b) Effect; Effective Date. Upon (i) delivery to the Administrative Agent and Borrower of a notice of assignment, substantially in the form attached as Exhibit "I" to Exhibit B hereto (a "Notice of Assignment"), together with any consents required by Section 12.3(a), and (ii) payment of a \$3,500 fee by the assignor or assignee to the Administrative Agent for processing such assignment, such assignment shall become effective on the effective date specified in such Notice of Assignment. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by the Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party hereto, and no further consent or action by the Borrower, the Lenders or the Administrative Agent shall be required to release the transferor Lender, and the transferor Lender (other than a transferor Lender transferring to an Affiliate of such Lender unless such Affiliate is a Qualified Institution) shall automatically be released on the effective date of such assignment, with respect to the percentage of the Aggregate Commitment and Loans assigned to such Purchaser. Upon the consummation of any assignment to a Purchaser pursuant to this Section 12.3(b), the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that replacement Notes are issued to such transferor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their Commitment, as adjusted pursuant to such assignment.

(c) Register. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its U.S. offices a copy of each

Notice of Assignment delivered to it and shall record in its records the names and addresses of the Lenders hereunder and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof (the “Register”). The Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and Lenders shall treat each Person whose name is so recorded as a Lender hereunder for all purposes of this Agreement. This Section 12.3(c) shall be construed so that the Obligations are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or the regulations promulgated thereunder). The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and upon reasonable prior notice.

12.4. Dissemination of Information

The Borrower authorizes each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a “Transferee”) and any prospective Transferee any and all information in such Lender’s possession concerning the creditworthiness of the Borrower and its Subsidiaries, subject in each case to the confidentiality provisions of Section 12.6.

12.5. Tax Treatment

If any interest in any Loan Document is transferred to any Transferee which is organized under the laws of any jurisdiction other than the United States or any State thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Section 3.5.

12.6. Confidentiality

Each of Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates’ directors, officers, employees, consultants, service providers, and advisors, including accountants and legal counsel (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, provided that the Administrative Agent or Lender requested to make such disclosure promptly informs the Borrower of such request if lawfully permitted to do so, so that the Borrower may have an opportunity to object and/or seek an appropriate protective order at the Borrower’s sole

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cost and expense, and provided further that the Borrower agrees that in no event shall any such notification be required in respect of any disclosure to bank regulatory authorities having jurisdiction over any Lender, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or the enforcement of rights under the Loan Documents, (f) subject to receipt of a written agreement from such Person containing provisions substantially the same as those of this Section, to any Transferee or prospective Transferee of any of its rights or obligations under this Agreement, (g) with the written consent of Borrower, (h) to any member of the Consolidated Group, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower, which source is not bound by a contractual or other obligation of confidentiality to any

Person. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

ARTICLE XIII.

NOTICES

13.1. Giving Notice

All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing or by facsimile (if confirmed in writing as provided below), or by email (if confirmed in writing as provided below) and addressed or delivered to such party at its address set forth below its signature hereto or at such other address (or to counsel for such party) as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid, shall be deemed given when received and any notice, if transmitted by email or facsimile, shall be deemed given when transmitted (provided a copy of such notice is also sent by overnight delivery service which is scheduled for delivery no later than the first Business Day after the date of such email or facsimile).

13.2. Change of Address.

The Borrower, the Administrative Agent and any Lender may each change the address for service of notice upon it by a notice in writing to the other parties hereto.

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ARTICLE XIV.

PATRIOT ACT

Each Lender hereby notifies the Borrower and the Subsidiary Guarantors that pursuant to the requirements of the USA Act (Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower and the Subsidiary Guarantors, which information includes the name and address of the Borrower and the Subsidiary Guarantors and other information that will allow such Lender to identify the Borrower and the Subsidiary Guarantors in accordance with the Act. The Borrower agrees to cooperate for itself and on behalf of the Subsidiary Guarantors with each Lender and provide true, accurate and complete information to such Lender in response to any such request.

ARTICLE XV.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this

Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Borrower, the Administrative Agent and the Lenders and each party has notified the Administrative Agent by email or telephone, that it has taken such action.

(Remainder of page intentionally left blank.)

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[SIGNATURE PAGES, SCHEDULES AND EXHIBITS ARE INTENTIONALLY OMITTED AND
BEING AMENDED, IF AT ALL, AS SET FORTH IN THE FIRST AMENDMENT]

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Input:

Document 1 ID	iManage://WORKSITE.US.DENTONS.COM/US_Active/121281000/1
Description	#121281000v1<WORKSITE.US.DENTONS.COM> - Annex to Second Amendment to 2nd AR Revolving Credit Agreement for InvenTrust
Document 2 ID	iManage://WORKSITE.US.DENTONS.COM/US_Active/121281000/10
Description	#121281000v10<WORKSITE.US.DENTONS.COM> - Annex to Second Amendment to 2nd AR Revolving Credit Agreement for InvenTrust
Rendering set	Underline Strikethrough

Legend:

Insertion

Deletion

Moved from

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Style change

Format change

Moved deletion

Inserted cell

Deleted cell

Moved cell

Split/Merged cell

Padding cell

Statistics:

	Count
Insertions	375
Deletions	333
Moved from	38
Moved to	38
Style changes	0

Format changes	0
Total changes	784

INVENTRUST PROPERTIES CORP.
List of Subsidiaries

Entity Name	Domestic Jurisdiction
IA-S 66 Beltway 8-Blackhawk, L.P.	Texas
IA Arlington Riverview GP, L.L.C.	Delaware
IA Arlington Riverview Limited Partnership	Illinois
IA Arlington Riverview LP, L.L.C.	Delaware
IA Atlanta Buckhead Member, L.L.C.	Delaware
IA Atlanta Buckhead, L.L.C.	Delaware
IA Austin Scofield GP, L.L.C.	Delaware
IA Austin Scofield Limited Partnership	Illinois
IA Austin Scofield LP, L.L.C.	Delaware
IA Colorado Springs Cheyenne, L.L.C.	Delaware
IA Cypress Cyfair GP, L.L.C.	Delaware
IA Cypress CyFair Limited Partnership	Illinois
IA Cypress Cyfair LP, L.L.C.	Delaware
IA Erlanger Silverlake, L.L.C.	Delaware
IA Greeley Centerplace Holding, L.L.C.	Delaware
IA Greeley Centerplace, L.L.C.	Delaware
IA La Quinta Pavilion, L.L.C.	Delaware
IA League City Bay Colony GP, L.L.C.	Delaware
IA League City Bay Colony Limited Partnership	Illinois
IA League City Bay Colony LP, L.L.C.	Delaware
IA Matthews Sycamore LP, LLC	Delaware
IA Matthews Sycamore GP, LLC	Delaware
IA Matthews Sycamore, LP	Delaware
IA Newnan Coweta, L.L.C.	Delaware
IA Newnan Thomas, L.L.C.	Delaware
IA Ocoee Plantation Grove, L.L.C.	Delaware
IA Orlando Suncrest Village, L.L.C.	Delaware
IA Port Charlotte Peachland, L.L.C.	Delaware
IA Raleigh Bent Tree LP, LLC	Delaware
IA Raleigh Bent Tree GP, LLC	Delaware
IA Raleigh Bent Tree, LP	Delaware
IA Richardson Custer Creek GP, L.L.C.	Delaware
IA Richardson Custer Creek Limited Partnership	Illinois
IA Richardson Custer Creek LP, L.L.C.	Delaware
IA Round Rock University Oaks GP, L.L.C.	Delaware
IA Round Rock University Oaks Limited Partnership	Illinois
IA Round Rock University Oaks LP, L.L.C.	Delaware
IA Sacramento Development VP, L.L.C.	Delaware
IA Sacramento Holdings, L.L.C.	Delaware
IA Sacramento Rail, L.L.C.	Delaware
IA San Pedro Garden, L.L.C.	Delaware
IA Sarasota Tamiami, L.L.C.	Delaware
IA St. Petersburg Gateway, L.L.C.	Delaware
IA Tucker Hugh Howell, L.L.C.	Delaware

IA Westlake GP, L.L.C.	Delaware
IA Westlake Limited Partnership	Illinois
IA Westlake LP, L.L.C.	Delaware
IA Wildomar Bear Creek, L.L.C.	Delaware
IA Woodstock Rose Creek, L.L.C.	Delaware
IAGM Retail Fund I Member, L.L.C.	Delaware
IAGM Retail Fund I,L.L.C.	Delaware
InvenTrust Properties Corp.	Maryland
InvenTrust Property Management, LLC	Delaware
IVT Acquisitions Corp.	Delaware
IVT Antoine Town Center Houston, LLC	Delaware
IVT Bay Landing Bonita Springs, LLC	Delaware
IVT Campus Marketplace San Marcos, LLC	Delaware
IVT Cary Park Town Center LP, LLC	Delaware
IVT Cary Park Town Center GP, LLC	Delaware
IVT Cary Park Town Center, LP	Delaware
IVT Commons at University Place Durham GP, LLC	Delaware
IVT Commons at University Place Durham LP, LLC	Delaware
IVT Commons at University Place Durham, LP	Delaware
IVT Creedmoor Raleigh GP, LLC	Delaware
IVT Creedmoor Raleigh LP, LLC	Delaware
IVT Creedmoor Raleigh, LP	Delaware
IVT Cypress Cyfair, LLC	Delaware
IVT Dallas Prestonwood, LLC	Delaware
IVT Eastfield Village Huntersville, LLC	Delaware
IVT Eldorado Marketplace Frisco, LLC	Delaware
IVT Escarpment Village Austin, LLC	Delaware
IVT Highland at Flower Mound Prairie Road, LLC	Delaware
IVT Highlands at Flower Mound GP, LLC	Delaware
IVT Highlands at Flower Mound LP, LLC	Delaware
IVT Highlands at Flower Mound, LP	Illinois
IVT Kennesaw Marketplace, LLC	Delaware
IVT Kyle Marketplace, LLC	Delaware
IVT Lakeside Crossing Winter Park, LLC	Delaware
IVT Lakeside Winter Park, LLC	Delaware
IVT Northcross Center Huntersville GP, LLC	Delaware
IVT Northcross Center Huntersville LP, LLC	Delaware
IVT Northcross Center Huntersville, LP	Delaware
IVT Old Grove Marketplace Oceanside, LLC	Delaware
IVT OP GP, LLC	Delaware
IVT OP Limited Partnership	Delaware
IVT Paraiso Parc Pembroke Pines, LLC	Delaware
IVT Parke Cedar Park, LLC	Delaware
IVT PGA Plaza Palm Beach Gardens, LLC	Delaware
IVT Plaza Midtown Atlanta, LLC	Delaware
IVT Port Charlotte Peachland, LLC	Delaware
IVT Renaissance Center Durham I GP, LLC	Delaware
IVT Renaissance Center Durham I LP, LLC	Delaware

IVT Renaissance Center Durham I, LP	Delaware
IVT Renaissance Center Durham II, LLC	Delaware
IVT Retail TRS, INC.	Delaware
IVT Rio Pinar Plaza Orlando, LLC	Delaware
IVT River Oaks Valencia, LLC	Delaware
IVT Riverwalk Market Flower Mound, LLC	Delaware
IVT Sandy Plains Centre Marietta, LLC	Delaware
IVT Shoppes at Fairview, LLC	Delaware
IVT Shops at Arbor Trails Austin, LLC	Delaware
IVT Shops at Galleria Bee Cave LLC	Delaware
IVT Shops at Town Center Germantown, LLC	Delaware
IVT Sonterra Village San Antonio, LLC	Delaware
IVT Southern Royal Palm Beach, LLC	Delaware
IVT Spring Stables, LLC	Delaware
IVT Stevenson Ranch Plaza, LLC	Delaware
IVT Stone Ridge San Antonio, LLC	Delaware
IVT Travilah Square Rockville, LLC	Delaware
IVT Trowbridge Crossing Sandy Springs, LLC	Delaware
IVT Walnut Creek Westminster, LLC	Delaware
IVT Westfork Plaza Pembroke Pines, LLC	Delaware
IVT Westpark Glen Allen, LLC	Delaware
IVT Windward Commons Alpharetta, LLC	Delaware
Mainline Holdings, Inc.	Delaware
MB Cypress Cyfair GP, L.L.C.	Delaware
MB Cypress Cyfair Limited Partnership	Illinois
MB Cypress Cyfair LP, L.L.C.	Delaware
MB Houston Blackhawk GP, L.L.C.	Delaware
MB Houston Blackhawk LP, L.L.C.	Delaware
MB Houston Eldridge GP, L.L.C.	Delaware
MB Houston Eldridge Limited Partnership	Illinois
MB Houston Eldridge LP, L.L.C.	Delaware
MB Houston Eldridge Town Center GP, L.L.C.	Delaware
MB Houston Eldridge Town Center Limited Partnership	Illinois
MB Houston Eldridge Town Center LP, L.L.C.	Delaware
MB Houston Windemere GP, L.L.C.	Delaware
MB Houston Windemere Limited Partnership	Illinois
MB Houston Windemere LP, L.L.C.	Delaware
MB League City Bay Colony GP, L.L.C.	Delaware
MB League City Bay Colony Limited Partnership	Illinois
MB League City Bay Colony LP, L.L.C.	Delaware
MB Spring Stables GP, L.L.C.	Delaware
MB Spring Stables Limited Partnership	Illinois
MB Spring Stables LP, L.L.C.	Delaware
SB Retail Insurance Company, LLC	Vermont
IVT Shoppes at Davis Lake Charlotte, LLC	Delaware
IVT Plant Chandler, LLC	Delaware

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statements (No. 333-172862 and No. 333-263342) on Form S-3 and (No. 333-199234, No. 333-205098 and No. 333-274019) on Form S-8 of our reports dated February 14, 2024, with respect to the consolidated financial statements and financial statement schedule III of InvenTrust Properties Corp. and the effectiveness of internal control over financial reporting.

/s/ KPMG, LLP

Chicago, Illinois
February 14, 2024

Certification of Principal Executive Officer

I, Daniel J. Busch, certify that:

1. I have reviewed this Annual Report on Form 10-K of InvenTrust Properties Corp.;
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 14, 2024

By: /s/ Daniel J. Busch

Name: Daniel J. Busch

Title: President and Chief Executive Officer (Principal Executive Officer)

Certification of Principal Financial Officer

I, Michael Phillips, certify that:

1. I have reviewed this Annual Report on Form 10-K of InvenTrust Properties Corp.;
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 14, 2024

By: /s/ Michael Phillips

Name: Michael Phillips

Title: Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)

**Certification of Principal Executive Officer
Pursuant To 18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of The Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of InvenTrust Properties Corp. (the "Company") for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned officer of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to such officer's knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 14, 2024

By: /s/ Daniel J. Busch

Name: Daniel J. Busch

Title: President and Chief Executive Officer (Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as a part of the Report or on a separate disclosure document.

**Certification of Principal Financial Officer
Pursuant To 18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of The Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of InvenTrust Properties Corp. (the "Company") for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned officer of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to such officer's knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 14, 2024
By: /s/ Michael Phillips
Name: Michael Phillips
Title: Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as a part of the Report or on a separate disclosure document.

**INVENTRUST PROPERTIES CORP. POLICY FOR
RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION**

InvenTrust Properties Corp. (the “**Company**”) has adopted this Policy for Recovery of Erroneously Awarded Compensation (the “**Policy**”), effective as of October 2, 2023 (the “**Effective Date**”). Capitalized terms used in this Policy but not otherwise defined herein are defined in Section 11.

1. Persons Subject to Policy

This Policy shall apply to current and former Officers. Each Officer shall be required to sign an acknowledgment in a form prescribed by the Company pursuant to which such Officer will agree to be bound by the terms of, and comply with, this Policy; however, any Officer’s failure to sign any such acknowledgment shall not negate the application of this Policy to the Officer.

2. Compensation Subject to Policy

This Policy shall apply to Incentive-Based Compensation received on or after the Effective Date. For purposes of this Policy, the date on which Incentive-Based Compensation is “received” shall be determined under the Applicable Rules, which generally provide that Incentive-Based Compensation is “received” in the Company’s fiscal period during which the relevant Financial Reporting Measure is attained or satisfied, without regard to whether the grant, vesting or payment of the Incentive-Based Compensation occurs prior to or after the end of that period.

3. Recovery of Compensation

In the event that the Company is required to prepare a Restatement, the Company shall recover, reasonably promptly, the portion of any Incentive-Based Compensation that is Erroneously Awarded Compensation, unless the Committee has determined that recovery from the relevant Officer would be Impractical. Recovery shall be required in accordance with the preceding sentence regardless of whether the applicable Officer engaged in misconduct or otherwise caused or contributed to the requirement for the Restatement and regardless of whether or when restated financial statements are filed by the Company. For clarity, the recovery of Erroneously Awarded Compensation under this Policy will not give rise to any Officer’s right to voluntarily terminate employment for “good reason,” or due to a “constructive termination” (or any similar term of like effect) under any plan, program or policy of or agreement with the Company or any of its affiliates.

4. Manner of Recovery; Limitation on Duplicative Recovery

The Committee shall, in its sole discretion, determine the manner of recovery of any Erroneously Awarded Compensation, which may include, without limitation, reduction or cancellation by the Company or an affiliate of the Company of Incentive-Based Compensation, Erroneously Awarded Compensation, reimbursement or repayment by any person subject to this Policy of the Erroneously Awarded Compensation, and, to the extent permitted by law, an offset of the Erroneously Awarded Compensation against other compensation payable by the Company or an affiliate of the Company to such person. Notwithstanding the foregoing, unless otherwise prohibited by the Applicable Rules, to the extent this Policy provides for recovery of Erroneously Awarded Compensation already recovered by the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 or Other Recovery Arrangements, the amount of Erroneously Awarded Compensation already recovered by the Company from the recipient of such Erroneously Awarded Compensation may be credited to the amount of Erroneously Awarded Compensation required to be recovered pursuant to this Policy from such person.

5. Administration

This Policy shall be administered, interpreted and construed by the Committee, which is authorized to make all determinations necessary, appropriate or advisable for such purpose. The Board of Directors of the Company (the “**Board**”) may re-vest in itself the authority to administer, interpret and construe this Policy in accordance with applicable law, and in such event references herein to the “Committee” shall be deemed to be references to the Board. Subject to any permitted review by the applicable national securities exchange or association pursuant to the Applicable Rules, all determinations and decisions made by the Committee pursuant to the provisions of this Policy shall be final, conclusive and binding on all persons, including the Company and its affiliates, equityholders and employees. The Committee may delegate administrative duties with respect to this Policy to one or more directors or employees of the Company, as permitted under applicable law, including any Applicable Rules.

6. Interpretation

This Policy will be interpreted and applied in a manner that is consistent with the requirements of the Applicable Rules, and to the extent this Policy is inconsistent with such Applicable Rules, it shall be deemed amended to the minimum extent necessary to ensure compliance therewith.

7. No Indemnification; No Liability

Notwithstanding the terms of any insurance policy or any contractual arrangement with any Officer that may provide or be interpreted to the contrary, the Company shall not indemnify or insure any person against the loss of any Erroneously Awarded Compensation pursuant to this Policy, nor shall the Company directly or indirectly pay or reimburse any person for any premiums for third-party insurance policies that such person may elect to purchase to fund such person’s potential obligations under this Policy. None of the Company, an affiliate of the Company or any member of the Committee or the Board shall have any liability to any person as a result of actions taken under this Policy.

8. Application; Enforceability

Except as otherwise determined by the Committee or the Board, the adoption of this Policy does not limit, and is intended to apply in addition to, any other clawback, recoupment, forfeiture or similar policies or provisions of the Company or its affiliates, including any such policies or provisions of such effect contained in any employment agreement, bonus plan, incentive plan, equity-based plan or award agreement thereunder or similar plan, program or agreement of the Company or an affiliate or required under applicable law (the “**Other Recovery Arrangements**”). The remedy specified in this Policy shall not be exclusive and shall be in addition to every other right or remedy at law or in equity that may be available to the Company or an affiliate of the Company.

9. Severability

The provisions in this Policy are intended to be applied to the fullest extent of the law; provided, however, to the extent that any provision of this Policy is found to be unenforceable or invalid under any applicable law, such provision will be applied to the maximum extent permitted, and shall automatically be deemed amended in a manner consistent with its objectives to the extent necessary to conform to any limitations required under applicable law or otherwise required by applicable law or regulation.

10. Amendment and Termination

The Board or the Committee may amend, modify or terminate this Policy in whole or in part at any time and from time to time in its sole discretion. This Policy will terminate automatically when the Company does not have a class of securities listed on a national securities exchange or association.

11. Definitions

"Applicable Rules" means Section 10D of the Exchange Act, Rule 10D-1 promulgated thereunder, the listing rules of the national securities exchange or association on which the Company's securities are listed, and any applicable rules, standards or other guidance adopted by the Securities and Exchange Commission or any national securities exchange or association on which the Company's securities are listed.

"Committee" means the committee of the Board responsible for executive compensation decisions comprised solely of independent directors (as determined under the Applicable Rules), or in the absence of such a committee, a majority of the independent directors serving on the Board.

"Erroneously Awarded Compensation" means the amount of Incentive-Based Compensation received by a current or former Officer that exceeds the amount of Incentive-Based Compensation that would have been received by such current or former Officer based on a restated Financial Reporting Measure, as determined on a pre-tax basis in accordance with the Applicable Rules. For Incentive-Based Compensation based on total stockholder return or stock price, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in the Restatement, Erroneously Awarded Compensation is the Committee's reasonable estimate of the effect of the Restatement on the total stockholder return or stock price upon which the Incentive-Based Compensation was received, with documentation of the determination of such reasonable estimate provided by the Company to the applicable listing exchange or association.

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

"Financial Reporting Measure" means any measure determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures derived wholly or in part from such measures, including GAAP, IFRS and non-GAAP/IFRS financial measures, as well as stock or share price and total equityholder return.

"GAAP" means United States generally accepted accounting principles.

"IFRS" means international financial reporting standards as adopted by the International Accounting Standards Board.

"Impracticable" means (a) the direct costs or expenses paid to third parties to assist in enforcing recovery would exceed the Erroneously Awarded Compensation; provided that the Company has (i) made reasonable attempts to recover the Erroneously Awarded Compensation, (ii) documented such attempt(s), and (iii) provided such documentation to the relevant listing exchange or association, (b) to the extent permitted by the Applicable Rules, the recovery would violate the Company's home country laws pursuant to an opinion of home country counsel; provided that the Company has (i) obtained an opinion of home country counsel, acceptable to the relevant listing exchange or association, that recovery would result in such violation, and (ii) provided such opinion to the relevant listing exchange or association, or (c) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and the regulations thereunder.

"Incentive-Based Compensation" means, with respect to a Restatement, any compensation that is granted, earned, or vested based wholly or in part upon the attainment of one or more Financial Reporting Measures and received by a person: (a) after beginning service as an Officer; (b) who served as an Officer at any time during the performance period for that compensation; (c) while the Company has a class of its securities listed on a national securities exchange or association; and (d) during the applicable Three-Year Period.

"Officer" means each executive officer of the Company, as defined in Rule 10D-1(d) under the Exchange Act.

"Restatement" means an accounting restatement to correct the Company's material noncompliance with any financial reporting requirement under securities laws, including restatements that correct an error in previously issued financial statements (a) that is material to the previously issued financial statements or (b) that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

"Three-Year Period" means, with respect to a Restatement, the three completed fiscal years immediately preceding the date that the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare such Restatement, or, if earlier, the date on which a court, regulator or other legally authorized body directs the Company to prepare such Restatement. The "Three-Year Period" also includes any transition period (that results from a change in the Company's fiscal year) within or immediately following the three completed fiscal years identified in the preceding sentence. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months shall be deemed a completed fiscal year.

FORM OF ACKNOWLEDGMENT AGREEMENT

PERTAINING TO THE INVENTRUST PROPERTIES CORP. POLICY FOR RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION

In consideration of, and as a condition to, the receipt of future cash and equity incentive compensation from InvenTrust Properties Corp. (the "**Company**"), (**Executive**) and the Company are entering into this Acknowledgment Agreement.

1. Executive agrees that compensation received by Executive may be subject to reduction, cancellation, forfeiture and/or recoupment to the extent necessary to comply with (a) the Policy for Recovery of Erroneously Awarded Compensation adopted by the [Board of Directors] of the Company (as amended from time to time, the "**Policy**") and (b) any Other Recovery Arrangements (as defined in the Policy). Executive acknowledges that Executive has received and has had an opportunity to review the Policy.
2. Executive acknowledges and agrees to the terms of the Policy and any Other Recovery Arrangements, including that any compensation received by Executive shall be subject to and conditioned upon the provisions of the Policy and any Other Recovery Arrangements applicable to the Executive.
3. Executive further acknowledges and agrees that Executive is not entitled to indemnification in connection with any enforcement of the Policy or any Other Recovery Arrangements applicable to the Executive and expressly waives any rights to such indemnification under the Company's organizational documents or otherwise.
4. Executive agrees to take all actions requested by the Company in order to enable or facilitate the enforcement of the Policy or any Other Recovery Arrangements applicable to the Executive (including, without limitation, any reduction, cancellation, forfeiture or recoupment of any compensation that Executive has received or to which Executive may become entitled).
5. To the extent any recovery right under the Policy and any Other Recovery Arrangements applicable to the Executive conflicts with any other contractual rights Executive may have with the Company or any affiliate, Executive understands that the terms of the Policy and the Other Recovery Arrangements shall supersede any such contractual rights. Executive agrees that no recovery of compensation under the Policy and the Other Recovery Arrangements will be an event that triggers or contributes to any right of Executive to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or any affiliate.

EXECUTIVE

(Signature)

(Print Name)

(Title)

(Date)

INVENTRUST PROPERTIES CORP.

(Signature)

(Print Name)

(Title)

(Date)