

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

FORM 10-Q

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

For the quarterly period ended September 30, 2021

OR

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

For the transition period from _____ to _____

001-13106 (Essex Property Trust, Inc.)
333-44467-01 (Essex Portfolio, L.P.)
(Commission File Number)

ESSEX PROPERTY TRUST, INC.
ESSEX PORTFOLIO, L.P.

(Exact name of Registrant as Specified in its Charter)

Maryland
(Essex Property Trust, Inc.)
California
(Essex Portfolio, L.P.)

(State or Other Jurisdiction of Incorporation or Organization)

77-0369576
(Essex Property Trust, Inc.)
77-0369575
(Essex Portfolio, L.P.)
(I.R.S. Employer Identification Number)

1100 Park Place, Suite 200
San Mateo, California 94403
(Address of Principal Executive Offices, Including Zip Code)

(650) 655-7800
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$.0001 par value (Essex Property Trust, Inc.)	ESS	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Essex Property Trust, Inc. Yes ☒ No ☐

Essex Portfolio, L.P. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Essex Property Trust, Inc. Yes ☒ No ☐

Essex Portfolio, L.P. 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.

Essex Property Trust, Inc.:

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

Emerging growth company ☐

Essex Portfolio, L.P.:

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

Emerging growth company ☐

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

Essex Property Trust, Inc. ☐

Essex Portfolio, L.P. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Essex Property Trust, Inc. Yes ☐ No ☒

Essex Portfolio, L.P. Yes ☐ No ☒

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 65,087,831 shares of Common Stock (\$.0001 par value) of Essex Property Trust, Inc. were outstanding as of October 25, 2021.

EXPLANATORY NOTE

This report combines the reports on Form 10-Q for the three and nine month periods ended September 30, 2021 of Essex Property Trust, Inc., a Maryland corporation, and Essex Portfolio, L.P., a Delaware limited partnership of which Essex Property Trust, Inc. is the sole general partner.

Unless stated otherwise or the context otherwise requires, references to the "Company," "we," "us" or "our" mean collectively Essex Property Trust, Inc. and those entities/subsidiaries owned or controlled by Essex Property Trust, Inc., including Essex Portfolio, L.P., and references to the "Operating Partnership" mean Essex Portfolio, L.P. and those entities/subsidiaries owned or controlled by Essex Portfolio, L.P. Unless stated otherwise or the context otherwise requires, references to "Essex" mean Essex Property Trust, Inc., not including any of its subsidiaries.

Essex operates as a self-administered and self-managed real estate investment trust ("REIT"), and is the sole general partner of the Operating Partnership. As the sole general partner of the Operating Partnership, Essex has exclusive control of the Operating Partnership's day-to-day management.

The Company is structured as an umbrella partnership REIT ("UPREIT") and Essex contributes all net proceeds from its various equity offerings to the Operating Partnership. In return for those contributions, Essex receives a number of Operating Partnership limited partnership units ("OP Units," and the holders of such OP Units, "Unitholders") equal to the number of shares of common stock it has issued in the equity offerings. Contributions of properties to the Company can be structured as tax-deferred transactions through the issuance of OP Units, which is one of the reasons why the Company is structured in the manner outlined above. Based on the terms of the Operating Partnership's partnership agreement, OP Units can be exchanged into Essex common stock on a one-for-one basis. The Company maintains a one-for-one relationship between the OP Units issued to Essex and shares of common stock.

The Company believes that combining the reports on Form 10-Q of Essex and the Operating Partnership into this single report provides the following benefits:

- enhances investors' understanding of Essex and the Operating Partnership by enabling investors to view the business as a whole in the same manner as management views and operates the business;
- eliminates duplicative disclosure and provides a more streamlined and readable presentation since a substantial portion of the disclosure applies to both Essex and the Operating Partnership; and
- creates time and cost efficiencies through the preparation of one combined report instead of two separate reports.

Management operates Essex and the Operating Partnership as one business. The management of Essex consists of the same members as the management of the Operating Partnership.

All of the Company's property ownership, development, and related business operations are conducted through the Operating Partnership and Essex has no material assets, other than its investment in the Operating Partnership. Essex's primary function is acting as the general partner of the Operating Partnership. As general partner with control of the Operating Partnership, Essex consolidates the Operating Partnership for financial reporting purposes. Therefore, the assets and liabilities of Essex and the Operating Partnership are the same on their respective financial statements. Essex also issues equity from time to time and guarantees certain debt of the Operating Partnership, as disclosed in this report. The Operating Partnership holds substantially all of the assets of the Company, including the Company's ownership interests in its co-investments. The Operating Partnership conducts the operations of the business and is structured as a partnership with no publicly traded equity. Except for the net proceeds from equity offerings by the Company, which are contributed to the capital of the Operating Partnership in exchange for OP Units (on a one-for-one share of common stock per OP Unit basis), the Operating Partnership generates all remaining capital required by the Company's business. These sources of capital include the Operating Partnership's working capital, net cash provided by operating activities, borrowings under its revolving credit facilities, the issuance of secured and unsecured debt and equity securities and proceeds received from disposition of certain properties and co-investments.

The Company believes it is important to understand the few differences between Essex and the Operating Partnership in the context of how Essex and the Operating Partnership operate as a consolidated company. Stockholders' equity, partners' capital and noncontrolling interest are the main areas of difference between the condensed consolidated financial statements of Essex and those of the Operating Partnership. The limited partners of the Operating Partnership are accounted for as partners' capital in the Operating Partnership's condensed consolidated financial statements and as noncontrolling interest in Essex's condensed consolidated financial statements. The noncontrolling interest in the Operating Partnership's condensed consolidated financial statements include the interest of unaffiliated partners in various consolidated partnerships and co-investment partners. The noncontrolling interest in Essex's condensed consolidated financial statements include (i) the same noncontrolling interest as

presented in the Operating Partnership's condensed consolidated financial statements and (ii) OP Unitholders. The differences between stockholders' equity and partners' capital result from differences in the equity issued at Essex and Operating Partnership levels.

To help investors understand the significant differences between Essex and the Operating Partnership, this report on Form 10-Q provides separate condensed consolidated financial statements for Essex and the Operating Partnership; a single set of consolidated notes to such financial statements that includes separate discussions of stockholders' equity or partners' capital, and earnings per share/unit, as applicable; and a combined Management's Discussion and Analysis of Financial Condition and Results of Operations.

This report on Form 10-Q also includes separate Part I, Item 4. Controls and Procedures sections and separate Exhibits 31 and 32 certifications for each of Essex and the Operating Partnership in order to establish that the requisite certifications have been made and that Essex and the Operating Partnership are compliant with Rule 13a-15 or Rule 15d-15 of the Securities Exchange Act of 1934 (the "Exchange Act") and 18 U.S.C. §1350.

In order to highlight the differences between Essex and the Operating Partnership, the separate sections in this report on Form 10-Q for Essex and the Operating Partnership specifically refer to Essex and the Operating Partnership. In the sections that combine disclosure of Essex and the Operating Partnership, this report refers to actions or holdings as being actions or holdings of the Company. Although the Operating Partnership is generally the entity that directly or indirectly enters into contracts and co-investments and holds assets and debt, reference to the Company is appropriate because the Company is one business and the Company operates that business through the Operating Partnership. The separate discussions of Essex and the Operating Partnership in this report should be read in conjunction with each other to understand the results of the Company on a consolidated basis and how management operates the Company.

The information furnished in the accompanying unaudited condensed consolidated balance sheets, statements of income and comprehensive income, equity, capital, and cash flows of the Company and the Operating Partnership reflect all adjustments which are, in the opinion of management, necessary for a fair presentation of the aforementioned condensed consolidated financial statements for the interim periods and are normal and recurring in nature, except as otherwise noted.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the notes to such unaudited condensed consolidated financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations herein. Additionally, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements included in the Company's annual report on Form 10-K for the year ended December 31, 2020.

**ESSEX PROPERTY TRUST, INC.
ESSEX PORTFOLIO, L.P.
FORM 10-Q
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Part I – Financial Information
Item 1. Condensed Consolidated Financial Statements
ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES

Condensed Consolidated Balance Sheets

(Unaudited)

(In thousands, except parenthetical and share amounts)

	<u>ASSETS</u>	<u>September 30, 2021</u>	<u>December 31, 2020</u>
Real estate:			
Rental properties:			
Land and land improvements	\$ 2,997,904	\$ 2,929,009	
Buildings and improvements	12,414,770	12,132,736	
	15,412,674	15,061,745	
Less: accumulated depreciation	(4,509,243)	(4,133,959)	
	10,903,431	10,927,786	
Real estate under development	212,426	386,047	
Co-investments	1,081,861	1,018,010	
Real estate held for sale	—	57,938	
	12,197,718	12,389,781	
Cash and cash equivalents-unrestricted	49,910	73,629	
Cash and cash equivalents-restricted	11,042	10,412	
Marketable securities, net of allowance for credit losses of zero as of both September 30, 2021 and December 31, 2020	183,140	147,768	
Notes and other receivables, net of allowance for credit losses of \$0.7 million and \$0.8 million as of September 30, 2021 and December 31, 2020, respectively (includes related party receivables of \$33.9 million and \$4.7 million as of September 30, 2021 and December 31, 2020, respectively)	213,985	195,104	
Operating lease right-of-use assets	69,756	72,143	
Prepaid expenses and other assets	63,090	47,340	
Total assets	\$ 12,788,641	\$ 12,936,177	
	<u>LIABILITIES AND EQUITY</u>		
Unsecured debt, net	\$ 5,405,520	\$ 5,607,985	
Mortgage notes payable, net	640,118	643,550	
Lines of credit	42,662	—	
Accounts payable and accrued liabilities	220,428	152,855	
Construction payable	32,777	31,417	
Dividends payable	143,036	141,917	
Distributions in excess of investments in co-investments	29,037	—	
Operating lease liabilities	71,520	74,037	
Liabilities associated with real estate held for sale	—	29,845	
Other liabilities	38,946	39,140	
Total liabilities	6,624,044	6,720,746	
Commitments and contingencies			
Redeemable noncontrolling interest	32,698	32,239	
Equity:			
Common stock; \$0.0001 par value, 670,000,000 shares authorized; 65,081,032 and 64,999,015 shares issued and outstanding, respectively	7	6	
Additional paid-in capital	6,875,508	6,876,326	
Distributions in excess of accumulated earnings	(917,315)	(861,193)	
Accumulated other comprehensive loss, net	(8,968)	(14,729)	
Total stockholders' equity	5,949,232	6,000,410	
Noncontrolling interest	182,667	182,782	
Total equity	6,131,899	6,183,192	
Total liabilities and equity	\$ 12,788,641	\$ 12,936,177	

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Income and Comprehensive Income
(Unaudited)
(In thousands, except share and per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Rental and other property	\$ 360,620	\$ 368,464	\$ 1,062,253	\$ 1,126,363
Management and other fees from affiliates	2,237	2,347	6,707	7,312
	<u>362,857</u>	<u>370,811</u>	<u>1,068,960</u>	<u>1,133,675</u>
Expenses:				
Property operating, excluding real estate taxes	69,529	68,037	197,895	197,310
Real estate taxes	45,802	44,358	135,408	132,364
Corporate-level property management expenses	9,068	8,619	27,120	26,024
Depreciation and amortization	130,564	130,202	387,887	395,370
General and administrative	12,712	13,310	34,746	42,244
Expensed acquisition and investment related costs	108	2	164	104
	<u>267,783</u>	<u>264,528</u>	<u>783,220</u>	<u>793,416</u>
Gain on sale of real estate and land	42,897	22,654	142,993	39,251
Earnings from operations	137,971	128,937	428,733	379,510
Interest expense	(50,019)	(55,430)	(152,639)	(165,024)
Total return swap income	2,660	2,977	8,137	7,749
Interest and other income	11,998	6,512	48,756	12,696
Equity income from co-investments	25,433	14,960	60,692	53,514
Deferred tax expense on unrealized gain on unconsolidated co-investment	(3,041)	—	(5,391)	(1,636)
Loss on early retirement of debt, net	—	(19,114)	(18,982)	(23,820)
Gain on remeasurement of co-investment	—	—	2,260	234,694
Net income	<u>125,002</u>	<u>78,842</u>	<u>371,566</u>	<u>497,683</u>
Net income attributable to noncontrolling interest	<u>(6,612)</u>	<u>(5,181)</u>	<u>(19,886)</u>	<u>(24,558)</u>
Net income available to common stockholders	<u>\$ 118,390</u>	<u>\$ 73,661</u>	<u>\$ 351,680</u>	<u>\$ 473,125</u>
Comprehensive income	<u>\$ 125,829</u>	<u>\$ 80,818</u>	<u>\$ 377,529</u>	<u>\$ 494,668</u>
Comprehensive income attributable to noncontrolling interest	<u>(6,639)</u>	<u>(5,247)</u>	<u>(20,088)</u>	<u>(24,455)</u>
Comprehensive income attributable to controlling interest	<u>\$ 119,190</u>	<u>\$ 75,571</u>	<u>\$ 357,441</u>	<u>\$ 470,213</u>
Per share data:				
Basic:				
Net income available to common stockholders	<u>\$ 1.82</u>	<u>\$ 1.13</u>	<u>\$ 5.41</u>	<u>\$ 7.22</u>
Weighted average number of shares outstanding during the period	<u>65,048,486</u>	<u>65,232,837</u>	<u>65,013,477</u>	<u>65,561,820</u>
Diluted:				
Net income available to common stockholders	<u>\$ 1.82</u>	<u>\$ 1.13</u>	<u>\$ 5.40</u>	<u>\$ 7.21</u>
Weighted average number of shares outstanding during the period	<u>65,147,781</u>	<u>65,241,428</u>	<u>65,075,174</u>	<u>65,676,093</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES

Condensed Consolidated Statements of Equity for the three and nine months ended September 30, 2021 and 2020
(Unaudited)
(In thousands)

	Common stock		Additional paid-in capital	Distributions in excess of accumulated earnings	Accumulated other comprehensive loss, net	Noncontrolling interest	Total
	Shares	Amount					
Three months ended September 30, 2021							
Balances at June 30, 2021	65,004	\$ 7	\$6,862,879	\$ (899,663)	\$ (9,768)	\$ 183,248	\$ 6,136,703
Net income	—	—	—	118,390	—	6,612	125,002
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	704	24	728
Change in fair value of marketable debt securities, net	—	—	—	—	96	3	99
Issuance of common stock under:							
Stock option and restricted stock plans, net	68	—	15,572	—	—	—	15,572
Sale of common stock, net	—	—	(118)	—	—	—	(118)
Equity based compensation costs	—	—	1,573	—	—	55	1,628
Changes in the redemption value of redeemable noncontrolling interest	—	—	1,253	—	—	420	1,673
Distributions to noncontrolling interest	—	—	—	—	—	(7,257)	(7,257)
Redemptions of noncontrolling interest	9	—	(5,651)	—	—	(438)	(6,089)
Common stock dividends (\$2.09 per share)	—	—	—	(136,042)	—	—	(136,042)
Balances at September 30, 2021	65,081	\$ 7	\$6,875,508	\$ (917,315)	\$ (8,968)	\$ 182,667	\$ 6,131,899

Nine months ended September 30, 2021	Common stock		Additional paid-in capital	Distributions in excess of accumulated earnings	Accumulated other comprehensive loss, net	Noncontrolling interest	Total
	Shares	Amount					
Balances at December 31, 2020	64,999	\$ 6	\$6,876,326	\$ (861,193)	\$ (14,729)	\$ 182,782	\$ 6,183,192
Net income	—	—	—	351,680	—	19,886	371,566
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	5,417	190	5,607
Change in fair value of marketable debt securities, net	—	—	—	—	344	12	356
Issuance of common stock under:							
Stock option and restricted stock plans, net	112	1	12,401	—	—	—	12,402
Sale of common stock, net	—	—	(202)	—	—	—	(202)
Equity based compensation costs	—	—	9,172	—	—	323	9,495
Retirement of common stock, net	(40)	—	(9,172)	—	—	—	(9,172)
Changes in the redemption value of redeemable noncontrolling interest	—	—	(5,499)	—	—	577	(4,922)
Contributions from noncontrolling interest	—	—	—	—	—	1,900	1,900
Distributions to noncontrolling interest	—	—	—	—	—	(22,114)	(22,114)
Redemptions of noncontrolling interest	10	—	(7,518)	—	—	(889)	(8,407)
Common stock dividends (\$6.27 per share)	—	—	—	(407,802)	—	—	(407,802)
Balances at September 30, 2021	65,081	\$ 7	\$6,875,508	\$ (917,315)	\$ (8,968)	\$ 182,667	\$ 6,131,899

Three months ended September 30, 2020	Common stock		Additional paid-in capital	Distributions in excess of accumulated earnings	Accumulated other comprehensive loss, net	Noncontrolling Interest	Total
	Shares	Amount					
Balances at June 30, 2020	65,331	\$ 7	\$6,944,805	\$ (760,028)	\$ (18,710)	\$ 186,807	\$6,352,881
Net income	—	—	—	73,661	—	5,181	78,842
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	1,821	63	1,884
Change in fair value of marketable debt securities, net	—	—	—	—	89	3	92
Issuance of common stock under:							
Sale of common stock, net	—	—	(95)	—	—	—	(95)
Equity based compensation costs	—	—	2,279	—	—	82	2,361
Retirement of common stock, net	(121)	—	(26,586)	—	—	—	(26,586)
Changes in the redemption value of redeemable noncontrolling interest	—	—	2,346	—	—	176	2,522
Distributions to noncontrolling interest	—	—	—	—	—	(7,677)	(7,677)
Redemptions of noncontrolling interest	—	—	(1,118)	—	—	(150)	(1,268)
Common stock dividends (\$2.0775 per share)	—	—	—	(135,474)	—	—	(135,474)
Balances at September 30, 2020	65,210	\$ 7	\$6,921,631	\$ (821,841)	\$ (16,800)	\$ 184,485	\$6,267,482

Nine months ended September 30, 2020	Common stock		Additional paid-in capital	Distributions in excess of accumulated earnings	Accumulated other comprehensive loss, net	Noncontrolling Interest	Total
	Shares	Amount					
Balances at December 31, 2019	66,092	\$ 7	\$ 7,121,927	\$ (887,619)	\$ (13,888)	\$ 183,077	\$ 6,403,504
Net income	—	—	—	473,125	—	24,558	497,683
Cash flow hedge losses reclassified to earnings	—	—	—	—	3,171	111	3,282
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	(5,911)	(208)	(6,119)
Change in fair value of marketable debt securities, net	—	—	—	—	(172)	(6)	(178)
Issuance of common stock under:							
Stock option and restricted stock plans, net	95	—	9,201	—	—	—	9,201
Sale of common stock, net	—	—	(228)	—	—	—	(228)
Equity based compensation costs	—	—	8,956	—	—	338	9,294
Retirement of common stock, net	(985)	—	(222,990)	—	—	—	(222,990)
Cumulative effect upon adoption of ASU No. 2016-13	—	—	—	(190)	—	—	(190)
Changes in the redemption value of redeemable noncontrolling interest	—	—	6,888	—	—	(197)	6,691
Changes in noncontrolling interest from acquisition	—	—	—	—	—	1,349	1,349
Distributions to noncontrolling interest	—	—	—	—	—	(23,689)	(23,689)
Redemptions of noncontrolling interest	8	—	(2,123)	—	—	(848)	(2,971)
Common stock dividends (\$6.2325 per share)	—	—	—	(407,157)	—	—	(407,157)
Balances at September 30, 2020	65,210	\$ 7	\$ 6,921,631	\$ (821,841)	\$ (16,800)	\$ 184,485	\$ 6,267,482

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES

Condensed Consolidated Statements of Cash Flows

(Unaudited)

(In thousands, except parenthetical amounts)

	Nine Months Ended September 30,	
	2021	2020
Cash flows from operating activities:		
Net income	\$ 371,566	\$ 497,683
Adjustments to reconcile net income to net cash provided by operating activities:		
Straight-lined rents	8,734	(15,485)
Depreciation and amortization	387,887	395,370
Amortization of discount on marketable securities	—	(6,598)
Amortization of discount and debt financing costs, net	7,987	5,177
Gain on sale of marketable securities	(2,499)	(124)
Income from early redemption of notes receivable	(4,747)	—
Provision for credit losses	(110)	100
Unrealized gains on equity securities recognized through income	(23,772)	(2,215)
Earnings from co-investments	(60,692)	(53,514)
Operating distributions from co-investments	78,360	41,202
Accrued interest from notes and other receivables	(12,253)	(1,574)
Gain on the sale of real estate and land	(142,993)	(39,251)
Equity-based compensation	5,399	4,923
Loss on early retirement of debt, net	18,982	23,820
Gain on remeasurement of co-investment	(2,260)	(234,694)
Changes in operating assets and liabilities:		
Prepaid expenses, receivables, operating lease right-of-use assets, and other assets	2,470	(5,088)
Accounts payable, accrued liabilities, and operating lease liabilities	62,699	43,095
Other liabilities	5,119	610
Net cash provided by operating activities	<u>699,877</u>	<u>653,437</u>
Cash flows from investing activities:		
Additions to real estate:		
Acquisitions of real estate and acquisition related capital expenditures, net of cash acquired	(105,469)	(459,355)
Redevelopment	(39,092)	(41,592)
Development acquisitions of and additions to real estate under development	(45,381)	(90,273)
Capital expenditures on rental properties	(81,063)	(64,269)
Investments in notes receivable	(102,012)	(20,431)
Collections of notes and other receivables	88,744	98,711
Proceeds from insurance for property losses	591	612
Proceeds from dispositions of real estate	297,454	280,246
Contributions to co-investments	(223,175)	(61,056)
Changes in refundable deposits	(8,356)	96
Purchases of marketable securities	(23,740)	(38,909)
Sales and maturities of marketable securities	14,995	56,890
Non-operating distributions from co-investments	131,297	37,342
Net cash used in investing activities	<u>(95,207)</u>	<u>(301,988)</u>
Cash flows from financing activities:		
Proceeds from unsecured debt and mortgage notes	745,505	1,452,808
Payments on unsecured debt and mortgage notes	(952,608)	(587,057)
Proceeds from lines of credit	601,435	1,038,426
Repayments of lines of credit	(558,773)	(1,093,426)
Retirement of common stock	(9,172)	(222,990)

	Nine Months Ended September 30,	
	2021	2020
Additions to deferred charges	(8,237)	(13,761)
Payments related to debt prepayment penalties	(18,342)	(19,605)
Net proceeds from issuance of common stock	(202)	(228)
Net proceeds from stock options exercised	17,847	14,865
Payments related to tax withholding for share-based compensation	(5,445)	(5,664)
Contributions from noncontrolling interest	1,900	—
Distributions to noncontrolling interest	(21,979)	(23,302)
Redemption of noncontrolling interest	(8,407)	(2,971)
Redemption of redeemable noncontrolling interest	(4,463)	—
Common stock dividends paid	(406,818)	(400,563)
Net cash (used in) provided by financing activities	(627,759)	136,532
Net (decrease) increase in unrestricted and restricted cash and cash equivalents	(23,089)	487,981
Unrestricted and restricted cash and cash equivalents at beginning of period	84,041	81,094
Unrestricted and restricted cash and cash equivalents at end of period	\$ 60,952	\$ 569,075
Supplemental disclosure of cash flow information:		
Cash paid for interest (net of \$5.0 million and \$12.3 million capitalized in 2021 and 2020, respectively)	\$ 147,371	\$ 160,927
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 5,225	\$ 5,192
Supplemental disclosure of noncash investing and financing activities:		
Transfers between real estate under development and rental properties, net	\$ 222,055	\$ 252,946
Transfer from real estate under development to co-investments	\$ 1,853	\$ 1,387
Reclassifications to (from) redeemable noncontrolling interest to/from additional paid in capital and noncontrolling interest	\$ 4,922	\$ (6,691)

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PORTFOLIO, L.P. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(Unaudited)
(In thousands, except parenthetical and unit amounts)

<u>ASSETS</u>	<u>September 30, 2021</u>	<u>December 31, 2020</u>
Real estate:		
Rental properties:		
Land and land improvements	\$ 2,997,904	\$ 2,929,009
Buildings and improvements	12,414,770	12,132,736
	15,412,674	15,061,745
Less: accumulated depreciation	(4,509,243)	(4,133,959)
	10,903,431	10,927,786
Real estate under development	212,426	386,047
Co-investments	1,081,861	1,018,010
Real estate held for sale, net	—	57,938
	12,197,718	12,389,781
Cash and cash equivalents-unrestricted	49,910	73,629
Cash and cash equivalents-restricted	11,042	10,412
Marketable securities, net of allowance for credit losses of zero as of both September 30, 2021 and December 31, 2020	183,140	147,768
Notes and other receivables, net of allowance for credit losses of \$0.7 million and \$0.8 million as of September 30, 2021 and December 31, 2020, respectively (includes related party receivables of \$33.9 million and \$4.7 million as of September 30, 2021 and December 31, 2020, respectively)	213,985	195,104
Operating lease right-of-use assets	69,756	72,143
Prepaid expenses and other assets	63,090	47,340
Total assets	\$ 12,788,641	\$ 12,936,177
<u>LIABILITIES AND CAPITAL</u>		
Unsecured debt, net	\$ 5,405,520	\$ 5,607,985
Mortgage notes payable, net	640,118	643,550
Lines of credit	42,662	—
Accounts payable and accrued liabilities	220,428	152,855
Construction payable	32,777	31,417
Distributions payable	143,036	141,917
Distributions in excess of investments in co-investments	29,037	—
Operating lease liabilities	71,520	74,037
Liabilities associated with real estate held for sale	—	29,845
Other liabilities	38,946	39,140
Total liabilities	6,624,044	6,720,746
Commitments and contingencies		
Redeemable noncontrolling interest	32,698	32,239
Capital:		
General Partner:		
Common equity (65,081,032 and 64,999,015 units issued and outstanding, respectively)	5,958,200	6,015,139
	5,958,200	6,015,139
Limited Partners:		
Common equity (2,282,464 and 2,294,760 units issued and outstanding, respectively)	56,385	58,184
Accumulated other comprehensive loss	(5,340)	(11,303)
Total partners' capital	6,009,245	6,062,020
Noncontrolling interest	122,654	121,172
Total capital	6,131,899	6,183,192
Total liabilities and capital	\$ 12,788,641	\$ 12,936,177

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PORTFOLIO, L.P. AND SUBSIDIARIES
Condensed Consolidated Statements of Income and Comprehensive Income
(Unaudited)
(In thousands, except unit and per unit amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Rental and other property	\$ 360,620	\$ 368,464	\$ 1,062,253	\$ 1,126,363
Management and other fees from affiliates	2,237	2,347	6,707	7,312
	<u>362,857</u>	<u>370,811</u>	<u>1,068,960</u>	<u>1,133,675</u>
Expenses:				
Property operating, excluding real estate taxes	69,529	68,037	197,895	197,310
Real estate taxes	45,802	44,358	135,408	132,364
Corporate-level property management expenses	9,068	8,619	27,120	26,024
Depreciation and amortization	130,564	130,202	387,887	395,370
General and administrative	12,712	13,310	34,746	42,244
Expensed acquisition and investment related costs	108	2	164	104
	<u>267,783</u>	<u>264,528</u>	<u>783,220</u>	<u>793,416</u>
Gain on sale of real estate and land	42,897	22,654	142,993	39,251
Earnings from operations	137,971	128,937	428,733	379,510
Interest expense	(50,019)	(55,430)	(152,639)	(165,024)
Total return swap income	2,660	2,977	8,137	7,749
Interest and other income	11,998	6,512	48,756	12,696
Equity income from co-investments	25,433	14,960	60,692	53,514
Deferred tax expense on unrealized gain on unconsolidated co-investment	(3,041)	—	(5,391)	(1,636)
Loss on early retirement of debt, net	—	(19,114)	(18,982)	(23,820)
Gain on remeasurement of co-investment	—	—	2,260	234,694
Net income	125,002	78,842	371,566	497,683
Net income attributable to noncontrolling interest	(2,444)	(2,588)	(7,483)	(8,015)
Net income available to common unitholders	<u>\$ 122,558</u>	<u>\$ 76,254</u>	<u>\$ 364,083</u>	<u>\$ 489,668</u>
Comprehensive income	<u>\$ 125,829</u>	<u>\$ 80,818</u>	<u>\$ 377,529</u>	<u>\$ 494,668</u>
Comprehensive income attributable to noncontrolling interest	(2,444)	(2,588)	(7,483)	(8,015)
Comprehensive income attributable to controlling interest	<u><u>\$ 123,385</u></u>	<u><u>\$ 78,230</u></u>	<u><u>\$ 370,046</u></u>	<u><u>\$ 486,653</u></u>
Per unit data:				
Basic:				
Net income available to common unitholders	<u>\$ 1.82</u>	<u>\$ 1.13</u>	<u>\$ 5.41</u>	<u>\$ 7.22</u>
Weighted average number of common units outstanding during the period	<u>67,336,164</u>	<u>67,528,346</u>	<u>67,307,259</u>	<u>67,858,961</u>
Diluted:				
Net income available to common unitholders	<u>\$ 1.82</u>	<u>\$ 1.13</u>	<u>\$ 5.40</u>	<u>\$ 7.21</u>
Weighted average number of common units outstanding during the period	<u>67,435,459</u>	<u>67,536,937</u>	<u>67,368,956</u>	<u>67,973,234</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PORTFOLIO, L.P. AND SUBSIDIARIES

Condensed Consolidated Statements of Capital for the three and nine months ended September 30, 2021 and 2020

(Unaudited)

(In thousands)

	General Partner		Limited Partners		Accumulated other comprehensive loss, net	Noncontrolling interest	Total
	Common Equity		Common Equity				
Three months ended September 30, 2021	Units	Amount	Units	Amount			
Balances at June 30, 2021	65,004	\$ 5,963,223	2,294	\$ 56,950	\$ (6,167)	\$ 122,697	\$ 6,136,703
Net income	—	118,390	—	4,168	—	2,444	125,002
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	728	—	728
Change in fair value of marketable debt securities, net	—	—	—	—	99	—	99
Issuance of common units under:							
General partner's stock based compensation, net	68	15,572	—	—	—	—	15,572
Sale of common stock by general partner, net	—	(118)	—	—	—	—	(118)
Equity based compensation costs	—	1,573	—	55	—	—	1,628
Changes in the redemption value of redeemable noncontrolling interest	—	1,253	—	141	—	279	1,673
Distributions to noncontrolling interest	—	—	—	—	—	(2,488)	(2,488)
Redemptions	9	(5,651)	(12)	(160)	—	(278)	(6,089)
Distributions declared (\$2.09 per unit)	—	(136,042)	—	(4,769)	—	—	(140,811)
Balances at September 30, 2021	65,081	\$ 5,958,200	2,282	\$ 56,385	\$ (5,340)	\$ 122,654	\$ 6,131,899

	General Partner		Limited Partners		Accumulated other comprehensive loss, net	Noncontrolling interest	Total
	Common Equity		Common Equity				
<u>Nine months ended September 30, 2021</u>	Units	Amount	Units	Amount			
Balances at December 31, 2020	64,999	\$ 6,015,139	2,295	\$ 58,184	\$ (11,303)	\$ 121,172	\$ 6,183,192
Net income	—	351,680	—	12,403	—	7,483	371,566
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	5,607	—	5,607
Change in fair value of marketable debt securities, net	—	—	—	—	356	—	356
Issuance of common units under:							
General partner's stock based compensation, net	112	12,402	—	—	—	—	12,402
Sale of common stock by general partner, net	—	(202)	—	—	—	—	(202)
Equity based compensation costs	—	9,172	—	323	—	—	9,495
Retirement of common units, net	(40)	(9,172)	—	—	—	—	(9,172)
Changes in the redemption value of redeemable noncontrolling interest	—	(5,499)	—	129	—	448	(4,922)
Contributions from noncontrolling interest	—	—	—	—	—	1,900	1,900
Distributions to noncontrolling interest	—	—	—	—	—	(7,756)	(7,756)
Redemptions	10	(7,518)	(13)	(296)	—	(593)	(8,407)
Distributions declared (\$6.27 per unit)	—	(407,802)	—	(14,358)	—	—	(422,160)
Balances at September 30, 2021	65,081	\$ 5,958,200	2,282	\$ 56,385	\$ (5,340)	\$ 122,654	\$ 6,131,899

	<u>General Partner</u>		<u>Limited Partners</u>		Accumulated other comprehensive loss, net	Noncontrolling interest	Total
	<u>Common Equity</u>		<u>Common Equity</u>				
<u>Three months ended September 30, 2020</u>	Units	Amount	Units	Amount			
Balances at June 30, 2020	65,331	\$ 6,184,784	2,296	\$ 61,437	\$ (15,423)	\$ 122,083	\$ 6,352,881
Net income	—	73,661	—	2,593	—	2,588	78,842
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	1,884	—	1,884
Change in fair value of marketable debt securities, net	—	—	—	—	92	—	92
Issuance of common units under:							
Sale of common stock by general partner, net	—	(95)	—	—	—	—	(95)
Equity based compensation costs	—	2,279	—	82	—	—	2,361
Retirement of common units, net	(121)	(26,586)	—	—	—	—	(26,586)
Changes in redemption value of redeemable noncontrolling interest	—	2,346	—	98	—	78	2,522
Distributions to noncontrolling interest	—	—	—	—	—	(2,908)	(2,908)
Redemptions	—	(1,118)	—	—	—	(150)	(1,268)
Distributions declared (\$2.0775 per unit)	—	(135,474)	—	(4,769)	—	—	(140,243)
Balances at September 30, 2020	65,210	\$ 6,099,797	2,296	\$ 59,441	\$ (13,447)	\$ 121,691	\$ 6,267,482

Nine months ended September 30, 2020	General Partner		Limited Partners		Accumulated other comprehensive loss, net	Noncontrolling interest	Total
	Common Equity		Common Equity				
	Units	Amount	Units	Amount			
Balances at December 31, 2019	66,092	\$ 6,234,315	2,302	\$ 57,359	\$ (10,432)	\$ 122,262	\$ 6,403,504
Net income	—	473,125	—	16,543	—	8,015	497,683
Cash flow hedge losses reclassified to earnings	—	—	—	—	3,282	—	3,282
Change in fair value of derivatives and amortization of swap settlements	—	—	—	—	(6,119)	—	(6,119)
Change in fair value of marketable debt securities, net	—	—	—	—	(178)	—	(178)
Issuance of common units under:							
General partner's stock based compensation, net	95	9,201	—	—	—	—	9,201
Sale of common stock by general partner, net	—	(228)	—	—	—	—	(228)
Equity based compensation costs	—	8,956	2	338	—	—	9,294
Retirement of common units, net	(985)	(222,990)	—	—	—	—	(222,990)
Cumulative effect upon adoption of ASU No. 2016-13	—	(190)	—	—	—	—	(190)
Changes in redemption value of redeemable noncontrolling interest	—	6,888	—	(318)	—	121	6,691
Changes in noncontrolling interest from acquisition	—	—	—	—	—	1,349	1,349
Distributions to noncontrolling interest	—	—	—	—	—	(9,381)	(9,381)
Redemptions	8	(2,123)	(8)	(173)	—	(675)	(2,971)
Distributions declared (\$6.2325 per unit)	—	(407,157)	—	(14,308)	—	—	(421,465)
Balances at September 30, 2020	65,210	\$ 6,099,797	2,296	\$ 59,441	\$ (13,447)	\$ 121,691	\$ 6,267,482

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PORTFOLIO, L.P. AND SUBSIDIARIES

Condensed Consolidated Statements of Cash Flows

(Unaudited)

(In thousands, except parenthetical amounts)

	Nine Months Ended September 30,	
	2021	2020
Cash flows from operating activities:		
Net income	\$ 371,566	\$ 497,683
Adjustments to reconcile net income to net cash provided by operating activities:		
Straight-lined rents	8,734	(15,485)
Depreciation and amortization	387,887	395,370
Amortization of discount on marketable securities	—	(6,598)
Amortization of discount and debt financing costs, net	7,987	5,177
Gain on sale of marketable securities	(2,499)	(124)
Income from early redemption of notes receivable	(4,747)	—
Provision for credit losses	(110)	100
Unrealized gains on equity securities recognized through income	(23,772)	(2,215)
Earnings from co-investments	(60,692)	(53,514)
Operating distributions from co-investments	78,360	41,202
Accrued interest from notes and other receivables	(12,253)	(1,574)
Gain on the sale of real estate and land	(142,993)	(39,251)
Equity-based compensation	5,399	4,923
Loss on early retirement of debt, net	18,982	23,820
Gain on remeasurement of co-investment	(2,260)	(234,694)
Changes in operating assets and liabilities:		
Prepaid expenses, receivables, operating lease right-of-use assets, and other assets	2,470	(5,088)
Accounts payable, accrued liabilities, and operating lease liabilities	62,699	43,095
Other liabilities	5,119	610
Net cash provided by operating activities	699,877	653,437
Cash flows from investing activities:		
Additions to real estate:		
Acquisitions of real estate and acquisition related capital expenditures, net of cash acquired	(105,469)	(459,355)
Redevelopment	(39,092)	(41,592)
Development acquisitions of and additions to real estate under development	(45,381)	(90,273)
Capital expenditures on rental properties	(81,063)	(64,269)
Investments in notes receivable	(102,012)	(20,431)
Collections of notes and other receivables	88,744	98,711
Proceeds from insurance for property losses	591	612
Proceeds from dispositions of real estate	297,454	280,246
Contributions to co-investments	(223,175)	(61,056)
Changes in refundable deposits	(8,356)	96
Purchases of marketable securities	(23,740)	(38,909)
Sales and maturities of marketable securities	14,995	56,890
Non-operating distributions from co-investments	131,297	37,342
Net cash used in investing activities	(95,207)	(301,988)
Cash flows from financing activities:		
Proceeds from unsecured debt and mortgage notes	745,505	1,452,808
Payments on unsecured debt and mortgage notes	(952,608)	(587,057)
Proceeds from lines of credit	601,435	1,038,426
Repayments of lines of credit	(558,773)	(1,093,426)
Retirement of common units	(9,172)	(222,990)

	Nine Months Ended September 30,	
	2021	2020
Additions to deferred charges	(8,237)	(13,761)
Payments related to debt prepayment penalties	(18,342)	(19,605)
Net proceeds from issuance of common units	(202)	(228)
Net proceeds from stock options exercised	17,847	14,865
Payments related to tax withholding for share-based compensation	(5,445)	(5,664)
Contributions from noncontrolling interest	1,900	—
Distributions to noncontrolling interest	(6,323)	(6,287)
Redemption of noncontrolling interests	(8,407)	(2,971)
Redemption of redeemable noncontrolling interests	(4,463)	—
Common units distributions paid	(422,474)	(417,578)
Net cash (used in) provided by financing activities	(627,759)	136,532
Net (decrease) increase in unrestricted and restricted cash and cash equivalents	(23,089)	487,981
Unrestricted and restricted cash and cash equivalents at beginning of period	84,041	81,094
Unrestricted and restricted cash and cash equivalents at end of period	\$ 60,952	\$ 569,075
Supplemental disclosure of cash flow information:		
Cash paid for interest (net of \$5.0 million and \$12.3 million capitalized in 2021 and 2020, respectively)	\$ 147,371	\$ 160,927
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 5,225	\$ 5,192
Supplemental disclosure of noncash investing and financing activities:		
Transfers between real estate under development and rental properties, net	\$ 222,055	\$ 252,946
Transfer from real estate under development to co-investments	\$ 1,853	\$ 1,387
Reclassifications to (from) redeemable noncontrolling interest to/from general and limited partner capital and noncontrolling interest	\$ 4,922	\$ (6,691)

See accompanying notes to the unaudited condensed consolidated financial statements.

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES
ESSEX PORTFOLIO, L.P. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
September 30, 2021 and 2020
(Unaudited)

(1) Organization and Basis of Presentation

The accompanying unaudited condensed consolidated financial statements present the accounts of Essex Property Trust, Inc. ("Essex" or the "Company"), which include the accounts of the Company and Essex Portfolio, L.P. and its subsidiaries (the "Operating Partnership," which holds the operating assets of the Company), prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") for interim financial information and in accordance with the instructions to Form 10-Q. In the opinion of management, all adjustments necessary for a fair presentation of the financial position, results of operations, and cash flows for the periods presented have been included and are normal and recurring in nature. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements included in the Company's annual report on Form 10-K for the year ended December 31, 2020.

All significant intercompany accounts and transactions have been eliminated in the unaudited condensed consolidated financial statements.

The unaudited condensed consolidated financial statements for the three and nine months ended September 30, 2021 and 2020 include the accounts of the Company and the Operating Partnership. Essex is the sole general partner of the Operating Partnership, with a 96.6% general partnership interest as of both September 30, 2021 and December 31, 2020. Total Operating Partnership limited partnership units ("OP Units," and the holders of such OP Units, "Unitholders") outstanding were 2,282,464 and 2,294,760 as of September 30, 2021 and December 31, 2020, respectively, and the redemption value of the units, based on the closing price of the Company's common stock totaled approximately \$729.8 million and \$544.8 million as of September 30, 2021 and December 31, 2020, respectively.

As of September 30, 2021, the Company owned or had ownership interests in 246 operating apartment communities, aggregating 60,799 apartment homes, excluding the Company's ownership interest in preferred interest co-investments, loan investments, three operating commercial buildings, and a development pipeline comprised of two consolidated projects and one unconsolidated joint venture project. The operating apartment communities are located in Southern California (primarily Los Angeles, Orange, San Diego, and Ventura counties), Northern California (the San Francisco Bay Area) and the Seattle metropolitan areas.

Accounting Pronouncements Adopted in the Current Year

In January 2021, the Financial Accounting Standards Board (the "FASB") issued ASU No. 2021-01 "Reference Rate Reform (Topic 848): Scope." The amendments in ASU No. 2021-01 provide optional expedients to the current guidance on contract modifications and hedge accounting from the expected market transition from LIBOR and other interbank offered rates to alternative reference rates. The guidance generally can be applied to applicable contract modifications through December 31, 2022. The Company adopted this new guidance in January 2021 on a prospective basis. This adoption did not have a material impact on the Company's consolidated results of operations or financial position.

Revenues and Gains on Sale of Real Estate

Revenues from tenants renting or leasing apartment homes are recorded when due from tenants and are recognized monthly as they are earned which generally approximates a straight-line basis, else, adjustments are made to conform to a straight-line basis. Apartment homes are rented under short-term leases (generally, lease terms of 9 to 12 months). Revenues from tenants leasing commercial space are recorded on a straight-line basis over the life of the respective lease. See Note 3, Revenues, for additional information regarding such revenues.

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES
ESSEX PORTFOLIO, L.P. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
September 30, 2021 and 2020
(Unaudited)

The Company also generates other property-related revenue associated with the leasing of apartment homes, including storage income, pet rent, and other miscellaneous revenue. Similar to rental income, such revenues are recorded when due from tenants and recognized monthly as they are earned.

Apart from rental and other property-related revenue, revenues from contracts with customers are recognized as control of the promised services is passed to the customer. For customer contracts related to management and other fees from affiliates (which includes asset management and property management), the transaction price and amount of revenue to be recognized is determined each quarter based on the management fee calculated and earned for that month or quarter. The contract will contain a description of the service and the fee percentage for management services. Payments from such services are one month or one quarter in arrears of the service performed.

The Company recognizes any gains on sales of real estate when it transfers control of a property and when it is probable that the Company will collect substantially all of the related consideration.

Marketable Securities

The Company reports its equity securities and available for sale debt securities at fair value, based on quoted market prices (Level 1 for the common stock and investment funds and Level 2 for the unsecured debt, as defined by the FASB standard for fair value measurements). As of both September 30, 2021 and December 31, 2020, \$2.5 million of equity securities were presented within common stock and stock funds in the tables below, which represent investments measured at fair value, using net asset value as a practical expedient, and are not categorized in the fair value hierarchy.

Any unrealized gain or loss in debt securities classified as available for sale is recorded as other comprehensive income. Unrealized gains and losses in equity securities, realized gains and losses in debt securities, interest income, and amortization of purchase discounts are included in interest and other income on the condensed consolidated statements of income and comprehensive income.

As of September 30, 2021 and December 31, 2020, equity securities and available for sale debt securities consisted primarily of investment-grade unsecured debt, and common stock and stock funds.

As of September 30, 2021 and December 31, 2020, marketable securities consisted of the following (\$ in thousands):

	September 30, 2021		
	Cost	Gross Unrealized Gain (Loss)	Carrying Value
Equity securities:			
Investment funds - debt securities	\$ 61,885	\$ 24	\$ 61,909
Common stock and stock funds	80,079	39,734	119,813
Debt securities:			
<i>Available for sale</i>			
Investment-grade unsecured debt	1,050	368	1,418
Total - Marketable securities	<u>\$ 143,014</u>	<u>\$ 40,126</u>	<u>\$ 183,140</u>

ESSEX PROPERTY TRUST, INC. AND SUBSIDIARIES
ESSEX PORTFOLIO, L.P. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
September 30, 2021 and 2020
(Unaudited)

	December 31, 2020		
	Cost	Gross Unrealized Gain (Loss)	Carrying Value
Equity securities:			
Investment funds - debt securities	\$ 49,646	\$ 985	\$ 50,631
Common stock and stock funds	81,074	15,001	96,075
Debt securities:			
<i>Available for sale</i>			
Investment-grade unsecured debt	1,050	12	1,062
Total - Marketable securities	\$ 131,770	\$ 15,998	\$ 147,768

The Company uses the specific identification method to determine the cost basis of a debt security sold and to reclassify amounts from accumulated other comprehensive income for such securities.

For the three months ended September 30, 2021 and 2020, the proceeds from sales and maturities of marketable securities totaled \$0.1 million and \$52.6 million, respectively, which resulted in zero realized loss and \$91 thousand in realized gains, respectively, for such periods. For the nine months ended September 30, 2021 and 2020, the proceeds from sales and maturities of marketable securities totaled \$15.0 million and \$56.9 million, respectively, which resulted in \$2.5 million and \$0.1 million in realized gains, respectively, for such periods.

For the three and nine months ended September 30, 2021, the portion of equity security unrealized gains that were recognized in income totaled \$7.1 million and \$23.8 million, respectively, and were included in interest and other income on the Company's condensed consolidated statements of income and comprehensive income. For the three and nine months ended September 30, 2020, the portion of equity security unrealized gains or losses that were recognized in income totaled \$3.3 million and \$2.2 million in gains, respectively, and were included in interest and other income on the Company's condensed consolidated statements of income and comprehensive income.

Variable Interest Entities

In accordance with accounting standards for consolidation of variable interest entities ("VIEs"), the Company consolidated the Operating Partnership, 18 DownREIT entities (comprising nine communities), and six co-investments as of September 30, 2021. As of December 31, 2020, the Company consolidated the Operating Partnership, 17 DownREIT entities (comprising nine communities) and five co-investments. The Company consolidates these entities because it is deemed the primary beneficiary. The Company has no assets or liabilities other than its investment in the Operating Partnership. The consolidated total assets and liabilities related to the above consolidated co-investments and DownREIT entities, net of intercompany eliminations, were approximately \$909.1 million and \$323.3 million, respectively, as of September 30, 2021 and \$898.5 million and \$326.8 million, respectively, as of December 31, 2020. Noncontrolling interests in these entities were \$122.4 million and \$120.8 million as of September 30, 2021 and December 31, 2020, respectively. The Company's financial risk in each VIE is limited to its equity investment in the VIE. As of September 30, 2021 and December 31, 2020, the Company did not have any VIEs of which it was not deemed to be the primary beneficiary.

Equity-based Compensation

The cost of share- and unit-based compensation awards is measured at the grant date based on the estimated fair value of the awards. The estimated fair value of stock options and restricted stock granted by the Company are being amortized over the vesting period. The estimated grant date fair values of the long term incentive plan units (discussed in Note 14, "Equity Based Compensation Plans," in the Company's annual report on Form 10-K for the year ended December 31, 2020) are being amortized over the expected service periods.

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Fair Value of Financial Instruments

Management believes that the carrying amounts of the outstanding balances under its lines of credit, and notes and other receivables approximate fair value as of September 30, 2021 and December 31, 2020, because interest rates, yields, and other terms for these instruments are consistent with interest rates, yields, and other terms currently available for similar instruments. Management has estimated that the fair value of the Company's fixed rate debt with a carrying value of \$5.7 billion and \$5.5 billion at September 30, 2021 and December 31, 2020, respectively, was approximately \$6.1 billion and \$6.0 billion, respectively. Management has estimated that the fair value of the Company's \$366.4 million and \$775.1 million of variable rate debt at September 30, 2021 and December 31, 2020, respectively, was approximately \$364.3 million and \$770.1 million, respectively, based on the terms of existing mortgage notes payable, unsecured debt, and variable rate demand notes compared to those available in the marketplace. Management believes that the carrying amounts of cash and cash equivalents, restricted cash, accounts payable and accrued liabilities, construction payables, other liabilities, and dividends payable approximate fair value as of September 30, 2021 and December 31, 2020 due to the short-term maturity of these instruments. Marketable securities are carried at fair value as of September 30, 2021 and December 31, 2020.

Capitalization of Costs

The Company's capitalized internal costs related to development and redevelopment projects were comprised primarily of interest and employee compensation and totaled \$5.6 million and \$6.1 million during the three months ended September 30, 2021 and 2020, respectively, and \$17.5 million and \$24.9 million for the nine months ended September 30, 2021 and 2020, respectively. The Company capitalizes leasing commissions associated with the lease-up of development communities and amortizes the costs over the life of the leases. The amounts capitalized for leasing commissions are immaterial for all periods presented.

Co-investments

The Company owns investments in joint ventures in which it has significant influence, but its ownership interest does not meet the criteria for consolidation in accordance with U.S. GAAP. Therefore, the Company accounts for co-investments using the equity method of accounting. Under the equity method of accounting, the investment is carried at the cost of assets contributed, plus the Company's equity in earnings less distributions received and the Company's share of losses. The significant accounting policies of the Company's co-investment entities are consistent with those of the Company in all material respects.

Upon the acquisition of a controlling interest of a co-investment, the co-investment entity is consolidated and a gain or loss is recognized upon the remeasurement of co-investments in the consolidated statement of income equal to the amount by which the fair value of the Company's previously owned co-investment interest exceeds its carrying value. A majority of the co-investments, excluding most preferred equity investments, compensate the Company for its asset management services and some of these investments may provide promote income if certain financial return benchmarks are achieved. Asset management fees are recognized when earned, and promote fees are recognized when the earnings events have occurred and the amount is determinable and collectible. Any promote fees are reflected in equity income from co-investments.

Changes in Accumulated Other Comprehensive Loss, Net by Component

Essex Property Trust, Inc.
(\$ in thousands):

	Change in fair value and amortization of swap settlements	Unrealized gain on available for sale securities	Total
Balance at December 31, 2020	\$ (14,771)	\$ 42	\$ (14,729)
Other comprehensive income before reclassification	5,406	344	5,750
Amounts reclassified from accumulated other comprehensive loss	11	—	11
Other comprehensive income	5,417	344	5,761
Balance at September 30, 2021	\$ (9,354)	\$ 386	\$ (8,968)

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Essex Portfolio, L.P.
(\$ in thousands):

	Change in fair value and amortization of swap settlements	Unrealized gain on available for sale securities	Total
Balance at December 31, 2020	\$ (11,346)	\$ 43	\$ (11,303)
Other comprehensive income before reclassification	5,595	356	5,951
Amounts reclassified from accumulated other comprehensive loss	12	—	12
Other comprehensive income	5,607	356	5,963
Balance at September 30, 2021	<u>\$ (5,739)</u>	<u>\$ 399</u>	<u>\$ (5,340)</u>

Amounts reclassified from accumulated other comprehensive loss in connection with derivatives are recorded in interest expense on the condensed consolidated statements of income and comprehensive income. Realized gains and losses on available for sale debt securities are included in interest and other income on the condensed consolidated statements of income and comprehensive income.

Redeemable Noncontrolling Interest

The carrying value of redeemable noncontrolling interests in the accompanying condensed consolidated balance sheets was \$32.7 million and \$32.2 million as of September 30, 2021 and December 31, 2020, respectively. The limited partners may redeem their noncontrolling interests for cash in certain circumstances.

The changes to the redemption value of redeemable noncontrolling interests for the nine months ended September 30, 2021 is as follows (\$ in thousands):

Balance at December 31, 2020	\$ 32,239
Reclassification due to change in redemption value and other	4,922
Redemptions	<u>(4,463)</u>
Balance at September 30, 2021	<u>\$ 32,698</u>

Cash, Cash Equivalents and Restricted Cash

Highly liquid investments with original maturities of three months or less when purchased are classified as cash equivalents. Restricted cash balances relate primarily to reserve requirements for capital replacement at certain communities in connection with the Company's mortgage debt.

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the condensed consolidated balance sheets that sum to the total of the same such amounts shown in the condensed consolidated statements of cash flows (\$ in thousands):

	September 30, 2021	December 31, 2020	September 30, 2020	December 31, 2019
Cash and cash equivalents - unrestricted	\$ 49,910	\$ 73,629	\$ 558,446	\$ 70,087
Cash and cash equivalents - restricted	11,042	10,412	10,629	11,007
Total unrestricted and restricted cash and cash equivalents shown in the condensed consolidated statement of cash flows	<u>\$ 60,952</u>	<u>\$ 84,041</u>	<u>\$ 569,075</u>	<u>\$ 81,094</u>

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Accounting Estimates

The preparation of condensed consolidated financial statements, in accordance with U.S. GAAP, requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an on-going basis, the Company evaluates its estimates, including those related to acquiring, developing and assessing the carrying values of its real estate portfolio, its investments in and advances to joint ventures and affiliates, its notes receivables, and its qualification as a real estate investment trust ("REIT"). The Company bases its estimates on historical experience, current market conditions, and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may vary from those estimates and those estimates could be different under different assumptions or conditions.

(2) Significant Transactions During the Nine Months Ended September 30, 2021 and Subsequent Events

Significant Transactions

Acquisitions

In September 2021, the Company acquired 7 South Linden, a commercial property located in South San Francisco, CA for \$33.5 million. The property is fully leased to two commercial tenants. The Company is currently pursuing entitlements to construct an apartment community on the property.

In September 2021, Wesco VI, LLC ("Wesco VI"), a new joint venture with one of the Company's institutional partners, acquired Martha Lake Apartments, a 155 unit apartment home community located in Lynwood, WA, for a total contract price of \$53.0 million. The property is encumbered by a \$29.2 million related party bridge loan from the Company, with an interest rate of 2.15% and is scheduled to mature in December 2021. See the "Co-Investments" section below for further details related to the creation of Wesco VI. See Note 6, Related Party Transactions, for additional details.

In September 2021, the Company acquired Third & Broad, a fully-leased single tenant commercial property located in downtown Seattle, WA for \$52.5 million. The Company will hold the property for future apartment development.

In June 2021, the Company acquired its joint venture partner, BEX III, LLC's ("BEX III") 50.0% interest in The Village at Toluca Lake, a community totaling 145 homes located in Burbank, CA, for total consideration of \$31.8 million. Concurrent with the closing of the acquisition, the Company repaid \$29.5 million in mortgage debt that encumbered the property. As a result of this acquisition, the Company realized a gain on remeasurement of co-investment of \$2.3 million upon consolidation.

Dispositions

In August 2021, the Company sold Devonshire, a non-core apartment community with 276 apartment homes, located in Hemet, CA, for a total contract price of \$54.5 million. The Company recognized a \$42.9 million gain on sale.

In February 2021, the Company sold Hidden Valley, a 324 apartment home community located in Simi Valley, CA, for a total contract price of \$105.0 million. The Company recognized a \$69.2 million gain on sale. In conjunction with the sale, the Company repaid \$29.7 million of mortgage debt that encumbered the property.

In February 2021, the Company sold Park 20, a 197 apartment home community located in San Mateo, CA, for a total contract price of \$113.0 million. The Company recognized an immaterial gain on sale.

In February 2021, the Company sold Axis 2300, a 115 apartment home community located in Irvine, CA, for a total contract price of \$57.5 million. The Company recognized a \$30.8 million gain on sale.

Co-Investments

Joint Ventures

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In September 2021, the Company formed a new joint venture entity, Wesco VI, with an institutional partner. Each partner has a 50.0% ownership interest and an initial equity commitment of \$150.0 million. The joint venture is unconsolidated for financial reporting purposes.

Preferred Equity Investments

In September 2021, the Company originated a preferred equity investment totaling \$26.2 million in one multifamily community located in Southern California. The investment has an initial preferred return of 12.5% and is scheduled to mature in September 2026.

In August 2021, the Company originated a preferred equity investment totaling \$11.0 million in one multifamily community located in Washington. The investment has an initial preferred return of 11.5% and is scheduled to mature in August 2026.

In January 2021, the Company originated a preferred equity investment totaling \$20.0 million in one multifamily community located in Washington. The investment has an initial preferred return of 10.0% and is scheduled to mature in January 2026.

In August 2021, the Company received cash of \$21.6 million, for the partial redemption of a preferred equity investment in a joint venture that holds property located in Northern California.

In March 2021, the Company received cash of \$10.0 million for the full redemption of a preferred equity investment in a joint venture that holds property located in Southern California.

In March 2021, the Company received cash of \$110.2 million, including an early redemption fee of \$3.5 million for the full redemption of a preferred equity investment in a joint venture that holds property located in Southern California.

Notes Receivable

In September 2021, the Company provided a \$29.2 million related party bridge loan to Wesco VI. The note receivable accrues interest at 2.15% and is scheduled to mature in December 2021. The bridge loan is classified within notes and other receivables in the accompanying condensed consolidated balance sheets. See Note 6, Related Party Transactions for additional details.

In March 2021, the Company provided a \$52.5 million related party bridge loan to Wesco I, LLC ("Wesco I") in connection with the payoff of a debt related to one of its properties located in Southern California. The note receivable accrued interest at 2.55% and was paid off in July 2021.

In June 2021, the Company received cash of \$36.5 million, including an early redemption fee of \$4.7 million, for the full redemption of a mezzanine loan on a property located in Northern California.

Common Stock

During the three months ended March 31, 2021, the Company repurchased and retired 40,000 shares totaling \$9.2 million, including commissions. The Company did not repurchase any shares subsequent to March 31, 2021. As of September 30, 2021, the Company had \$214.5 million of purchase authority remaining under its \$250.0 million stock repurchase plan.

Senior Unsecured Debt

In March 2021, the Operating Partnership issued \$450.0 million of senior unsecured notes due on March 1, 2028 with a coupon rate of 1.700% per annum (the "2028 Notes"), which are payable on March 1 and September 1 of each year, beginning on September 1, 2021. The 2028 Notes were offered to investors at a price of 99.423% of par value. The 2028 Notes are general unsecured senior obligations of the Operating Partnership, rank equally in right of payment with all other senior unsecured indebtedness of the Operating Partnership and are unconditionally guaranteed by Essex. The Company used the net proceeds of this offering to repay upcoming debt maturities, including all or a portion of certain unsecured term loans, and for general corporate and working capital purposes.

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In June 2021, the Operating Partnership issued \$300.0 million of senior unsecured notes due on June 15, 2031 with a coupon rate of 2.550% per annum (the "2031 Notes"), which are payable on June 15 and December 15 of each year, beginning on December 15, 2021. The 2031 Notes were offered to investors at a price of 99.367% of par value. The 2031 Notes are general unsecured senior obligations of the Operating Partnership, rank equally in right of payment with all other senior unsecured indebtedness of the Operating Partnership and are unconditionally guaranteed by Essex. The Company used the net proceeds of this offering to repay upcoming debt maturities, including to fund the redemption of \$300.0 million aggregate principal amount (plus the make-whole amount and accrued and unpaid interest) of its outstanding 3.375% senior unsecured notes due January 2023, and for other general corporate and working capital purposes.

Subsequent Events

In October 2021, Wesco VI acquired Monterra, a 139 unit apartment home community in Mill Creek, WA, near Martha Lake, for a total contract price of \$55.0 million.

In October 2021, the Company committed to fund a \$50.0 million mezzanine loan in a multifamily development community located in Northern California, with an initial 11.0% interest rate and a maturity date of October 2025, with options to extend for up to two years. The investment will fund concurrent with the senior construction loan which is scheduled to begin funding in the second half of 2022.

(3) Revenues

Disaggregated Revenue

The following table presents the Company's revenues disaggregated by revenue source (\$ in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Rental income	\$ 355,591	\$ 362,073	\$ 1,046,218	\$ 1,108,658
Other property	5,029	6,391	16,035	17,705
Management and other fees from affiliates	2,237	2,347	6,707	7,312
Total revenues	<u>\$ 362,857</u>	<u>\$ 370,811</u>	<u>\$ 1,068,960</u>	<u>\$ 1,133,675</u>

The following table presents the Company's rental and other property revenues disaggregated by geographic operating segment (\$ in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Southern California	\$ 150,807	\$ 136,651	\$ 434,926	\$ 426,987
Northern California	145,807	147,081	435,883	457,655
Seattle Metro	60,280	60,617	178,180	184,310
Other real estate assets ⁽¹⁾	3,726	24,115	13,264	57,411
Total rental and other property revenues	<u>\$ 360,620</u>	<u>\$ 368,464</u>	<u>\$ 1,062,253</u>	<u>\$ 1,126,363</u>

⁽¹⁾ Other real estate assets consist of revenues generated from retail space, commercial properties, held for sale properties, disposition properties and straight-line rent adjustments for concessions. Executive management does not evaluate such operating performance geographically.

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The following table presents the Company's rental and other property revenues disaggregated by current property category status (\$ in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Same-property ⁽¹⁾	\$ 325,153	\$ 316,639	\$ 957,908	\$ 986,945
Acquisitions ⁽²⁾	14,789	14,237	42,410	40,491
Development ⁽³⁾	8,055	5,461	22,485	13,956
Redevelopment	4,340	4,277	13,079	14,774
Non-residential/other, net ⁽⁴⁾	11,319	13,119	35,721	52,491
Straight line rent concession ⁽⁵⁾	(3,036)	14,731	(9,350)	17,706
Total rental and other property revenues	\$ 360,620	\$ 368,464	\$ 1,062,253	\$ 1,126,363

⁽¹⁾ Properties that have comparable stabilized results as of January 1, 2020 and are consolidated by the Company for the three and nine months ended September 30, 2021 and 2020. A community is generally considered to have reached stabilized operations once it achieves an initial occupancy of 90%.

⁽²⁾ Acquisitions include properties acquired which did not have comparable stabilized results as of January 1, 2020.

⁽³⁾ Development includes properties developed which did not have stabilized results as of January 1, 2020.

⁽⁴⁾ Non-residential/other, net consists of revenues generated from retail space, commercial properties, held for sale properties, disposition properties, student housing, properties undergoing significant construction activities that do not meet our redevelopment criteria, and two communities located in the California counties of Santa Barbara and Santa Cruz, which the Company does not consider its core markets.

⁽⁵⁾ Same-property revenues reflect concessions on a cash basis. Total rental and other property revenues reflect concessions on a straight-line basis in accordance with U.S. GAAP.

Deferred Revenues and Remaining Performance Obligations

When cash payments are received or due in advance of the Company's performance of contracts with customers, deferred revenue is recorded. The total deferred revenue balance related to such contracts was \$2.6 million and \$3.1 million as of September 30, 2021 and December 31, 2020, respectively, and was included in accounts payable and accrued liabilities within the accompanying condensed consolidated balance sheets. The amount of revenue recognized for the nine months ended September 30, 2021 that was included in the December 31, 2020 deferred revenue balance was \$0.5 million, which was included in interest and other income within the condensed consolidated statements of income and comprehensive income.

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer, and is the unit of account in the revenue recognition accounting standard. As of September 30, 2021, the Company had \$2.6 million of remaining performance obligations. The Company expects to recognize approximately 7% of these remaining performance obligations in 2021, an additional 55% through 2023, and the remaining balance thereafter.

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(4) Co-investments

The Company has joint ventures and preferred equity investments in co-investments which are accounted for under the equity method. The co-investments, including BEXAEW, LLC ("BEXAEW"), BEX II, LLC ("BEX II"), BEX IV, LLC ("BEX IV"), 500 Folsom, Wesco I, Wesco III, LLC ("Wesco III"), Wesco IV, LLC ("Wesco IV"), Wesco V, LLC ("Wesco V"), and Wesco VI, own, operate, and develop apartment communities. The carrying values of the Company's co-investments as of September 30, 2021 and December 31, 2020 are as follows (\$ in thousands, except parenthetical amounts):

	Weighted Average Company Ownership Percentage ⁽¹⁾	September 30, 2021	December 31, 2020
Ownership interest in:			
Wesco I ⁽²⁾ , Wesco III, Wesco IV, Wesco V, and Wesco VI	52 %	138,745	178,322
BEXAEW, BEX II, BEX III ⁽³⁾ , BEX IV, and 500 Folsom ⁽⁴⁾	50 %	273,557	152,309
Other	46 %	58,504	27,635
Total operating and other co-investments, net		470,806	358,266
Total development co-investments	50 %	9,965	157,433
Total preferred interest co-investments (includes related party investments of \$87.5 million and \$81.4 million as of September 30, 2021 and December 31, 2020, respectively)		572,053	502,311
Total co-investments, net		\$ 1,052,824	\$ 1,018,010

⁽¹⁾ Weighted average Company ownership percentages are as of September 30, 2021.

⁽²⁾ As of September 30, 2021, the Company's investment in Wesco I was classified as a liability of \$29.0 million.

⁽³⁾ In June 2021, the Company purchased the additional 50% interest in BEX III.

⁽⁴⁾ 500 Folsom had not stabilized as of December 31, 2020. Its carrying value was included in the development co-investments balance as of December 31, 2020.

The combined summarized financial information of co-investments is as follows (\$ in thousands):

	September 30, 2021	December 31, 2020
Combined balance sheets: ⁽¹⁾		
Rental properties and real estate under development	\$ 4,216,981	\$ 4,242,611
Other assets	228,721	200,777
Total assets	\$ 4,445,702	\$ 4,443,388
Debt	\$ 2,705,882	\$ 2,611,365
Other liabilities	221,022	189,515
Equity	1,518,798	1,642,508
Total liabilities and equity	\$ 4,445,702	\$ 4,443,388
Company's share of equity	\$ 1,052,824	\$ 1,018,010

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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Combined statements of income: ⁽¹⁾				
Property revenues	\$ 71,195	\$ 76,581	\$ 211,359	\$ 226,125
Property operating expenses	(27,588)	(28,047)	(81,932)	(79,621)
Net operating income	43,607	48,534	129,427	146,504
Interest expense	(15,347)	(19,369)	(48,012)	(59,700)
General and administrative	(3,331)	(5,161)	(11,641)	(12,636)
Depreciation and amortization	(32,290)	(29,732)	(96,812)	(86,947)
Net loss	\$ (7,361)	\$ (5,728)	\$ (27,038)	\$ (12,779)
Company's share of net income ⁽²⁾	\$ 25,433	\$ 14,960	\$ 60,692	\$ 53,514

⁽¹⁾ Includes preferred equity investments held by the Company.

⁽²⁾ Includes the Company's share of equity income from joint ventures and preferred equity investments, gain on sales of co-investments, co-investment promote income and income from early redemption of preferred equity investments. Includes related party income of \$2.4 million and \$2.2 million for the three months ended September 30, 2021 and 2020, respectively, and \$7.0 million and \$6.4 million for the nine months ended September 30, 2021 and 2020, respectively.

(5) Notes and Other Receivables

Notes and other receivables consist of the following as of September 30, 2021 and December 31, 2020 (\$ in thousands):

	September 30, 2021	December 31, 2020
Note receivable, secured, bearing interest at 9.90%, due November 2021 (Originated November 2018)	\$ 15,337	\$ 14,216
Notes receivable, secured, bearing interest at 10.50%, due February 2023 (Originated March 2020)	16,591	15,299
Note receivable, secured, bearing interest at 11.00%, due October 2023 (Originated April 2020) ⁽¹⁾	—	25,461
Notes receivable, secured, bearing interest at 9.00%, due December 2023 (Originated November 2020)	84,896	79,827
Notes receivable, secured, bearing interest at 11.50%, due November 2024 (Originated November 2020)	28,850	15,423
Related party note receivable, secured, bearing interest at 2.15%, due December 2021 (Originated September 2021) ⁽²⁾	29,157	—
Notes and other receivables from affiliates ⁽³⁾	4,744	4,744
Straight line rent receivables ⁽⁴⁾	16,464	25,214
Other receivables	18,689	15,671
Allowance for credit losses	(743)	(751)
Total notes and other receivables	\$ 213,985	\$ 195,104

⁽¹⁾ In June 2021, the Company received cash of \$36.5 million, including an early redemption fee of \$4.7 million, from the payoff of this note receivable.

⁽²⁾ See Note 6, Related Party Transactions, for additional details.

⁽³⁾ These amounts consist of short-term loans outstanding and due from various joint ventures as of September 30, 2021 and December 31, 2020. See Note 6, Related Party Transactions, for additional details.

⁽⁴⁾ These amounts are receivables from lease concessions recorded on a straight-line basis for the Company's operating properties.

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The following table presents the activity in the allowance for credit losses for notes and other receivables by loan type (\$ in thousands):

	Mezzanine Loans	Bridge Loans	Total
Balance at December 31, 2020	\$ 751	\$ —	\$ 751
Provision for credit losses	(23)	15	(8)
Balance at September 30, 2021	\$ 728	\$ 15	\$ 743

No loans were placed on nonaccrual status or charged off during the nine months ended September 30, 2021 or 2020.

(6) Related Party Transactions

The Company charges certain fees relating to its co-investments for asset management, property management, development and redevelopment services. These fees from affiliates totaled \$2.7 million and \$3.0 million during the three months ended September 30, 2021 and 2020, respectively, and \$7.5 million and \$8.7 million during the nine months ended September 30, 2021 and 2020, respectively. All of these fees are net of intercompany amounts eliminated by the Company. The Company netted development and redevelopment fees of approximately \$0.5 million and \$0.6 million against general and administrative expenses for the three months ended September 30, 2021 and 2020, and \$0.8 million and \$1.4 million for the nine months ended September 30, 2021 and 2020, respectively.

The Company's Chairman and founder, Mr. George M. Marcus, is the Chairman of the Marcus & Millichap Company ("MMC"), which is a parent company of a diversified group of real estate service, investment, and development firms. Mr. Marcus is also the Co-Chairman of Marcus & Millichap, Inc. ("MMI"), and Mr. Marcus owns a controlling interest in MMI, a national brokerage firm listed on the New York Stock Exchange. For the three and nine months ended September 30, 2021, the Company did not pay any brokerage commissions related to real estate transactions to MMC and its affiliates. For the three and nine months ended September 30, 2020, the Company paid brokerage commissions totaling zero and \$0.2 million, respectively, to MMC and its affiliates related to real estate transactions.

In September 2021, the Company provided a \$29.2 million related party bridge loan to Wesco VI in connection with the acquisition of Martha Lake Apartments. The note receivable accrues interest at 2.15% and is scheduled to mature in December 2021. The bridge loan is classified within notes and other receivables in the accompanying condensed consolidated balance sheets and had an outstanding balance of \$29.2 million as of September 30, 2021.

In March 2021, the Company provided a \$52.5 million related party bridge loan to Wesco I in connection with the payoff of a debt related to one of its properties located in Southern California. The note receivable accrued interest at 2.55% and was paid off in July 2021.

In November 2019, the Company provided an \$85.5 million related party bridge loan to Wesco V in connection with the acquisition of Velo and Ray, a 308 unit apartment home community located in Seattle, WA. The note receivable accrued interest at LIBOR plus 1.30% and was scheduled to mature in February 2020, but was paid off in January 2020. The bridge loan was classified within notes and other receivables in the accompanying condensed consolidated balance sheets.

In June 2019, the Company acquired Brio, a 300 unit apartment home community located in Walnut Creek, CA. The Company issued DownREIT units to an affiliate of MMC, based on a contract price of \$164.9 million. The property was encumbered by \$98.7 million of mortgage debt which was assumed by the Company at the time of acquisition. As a result of this transaction, the Company consolidated the property, based on a VIE analysis performed by the Company.

In February 2019, the Company funded a \$24.5 million preferred equity investment in an entity whose sponsor is an affiliate of MMC, which owns a multifamily development community located in Mountain View, CA. The investment has an initial preferred return of 11.0% and is scheduled to mature in February 2024.

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In October 2018, the Company funded a \$18.6 million preferred equity investment in an entity whose sponsor is an affiliate of MMC. The entity wholly owns a 268 apartment home community development located in Burlingame, CA. This investment accrues interest based on an initial 12.0% preferred return. The investment is scheduled to mature in April 2024.

In May 2018, the Company made a commitment to fund a \$26.5 million preferred equity investment in an entity whose sponsors include an affiliate of MMC. The entity wholly owns a 400 apartment home community located in Ventura, CA. This investment accrues interest based on a 10.25% preferred return. The investment is scheduled to mature in May 2023. As of September 30, 2021, the Company had funded \$23.4 million of the commitment. The remaining committed amount will be funded if and when requested by the sponsors.

In March 2017, the Company converted its existing \$15.3 million preferred equity investment in Sage at Cupertino, a 230 apartment home community located in San Jose, CA, into a 40.5% common equity ownership interest in the property. The Company issued DownREIT units to the other members, including an MMC affiliate, based on an estimated property valuation of \$90.0 million. At the time of the conversion, the property was encumbered by \$52.0 million of mortgage debt. As a result of this transaction, the Company consolidates the property, based on a consolidation analysis performed by the Company.

As described in Note 5, Notes and Other Receivables, the Company has provided short-term loans to affiliates. As of September 30, 2021 and December 31, 2020, \$33.9 million and \$4.7 million, respectively, of short-term loans remained outstanding due from joint venture affiliates and is classified within notes and other receivables in the accompanying condensed consolidated balance sheets.

(7) Debt

Essex does not have indebtedness as debt is incurred by the Operating Partnership. Essex guarantees the Operating Partnership's unsecured debt including the revolving credit facilities for the full term of the facilities.

Debt consists of the following (\$ in thousands):

	September 30, 2021	December 31, 2020	Weighted Average Maturity In Years as of September 30, 2021
Unsecured bonds private placement - fixed rate	\$ —	\$ 199,950	0.0
Term loan - variable rate	99,969	549,380	0.4
Bonds public offering - fixed rate	5,305,551	4,858,655	8.9
Unsecured debt, net ⁽¹⁾	5,405,520	5,607,985	
Lines of credit ⁽²⁾	42,662	—	
Mortgage notes payable, net ⁽³⁾	640,118	643,550	8.7
Total debt, net	<u>\$ 6,088,300</u>	<u>\$ 6,251,535</u>	
Weighted average interest rate on fixed rate unsecured bonds private placement and bonds public offering	3.3 %	3.4 %	
Weighted average interest rate on variable rate term loan	1.1 %	1.7 %	
Weighted average interest rate on lines of credit	1.0 %	1.0 %	
Weighted average interest rate on mortgage notes payable	2.6 %	2.7 %	

⁽¹⁾ Includes unamortized discount of \$10.4 million and \$10.1 million and unamortized debt issuance costs of \$34.1 million and \$31.9 million, as of September 30, 2021 and December 31, 2020, respectively.

⁽²⁾ Lines of credit, related to the Company's two lines of unsecured credit aggregating \$1.24 billion as of September 30, 2021, excludes unamortized debt issuance costs of \$4.6 million and \$3.7 million as of September 30, 2021 and December 31, 2020, respectively. These debt issuance costs are included in prepaid expenses and other assets on the condensed consolidated balance sheets. As of September 30, 2021, the Company's \$1.2 billion credit facility had an interest rate of LIBOR plus 0.775%, which is based on a tiered rate structure tied to the Company's credit ratings and a scheduled maturity date of September 2025 with

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three six-month extensions, exercisable at the Company's option. As of September 30, 2021, the Company's \$35.0 million working capital unsecured line of credit had an interest rate of LIBOR plus 0.775%, which is based on a tiered rate structure tied to the Company's credit ratings, and a scheduled maturity date of February 2023.

⁽³⁾ Includes total unamortized premium of \$2.8 million and \$3.9 million, reduced by unamortized debt issuance costs of \$1.5 million and \$1.8 million, as of September 30, 2021 and December 31, 2020, respectively.

The aggregate scheduled principal payments of the Company's outstanding debt, excluding lines of credit, as of September 30, 2021 are as follows (\$ in thousands):

Remaining in 2021	\$	893
2022		143,188
2023		302,945
2024		403,109
2025		633,054
Thereafter		4,605,629
Total	\$	6,088,818

(8) Segment Information

The Company's segment disclosures present the measure used by the chief operating decision makers for purposes of assessing each segment's performance. The Company's chief operating decision makers are comprised of several members of its executive management team who use net operating income ("NOI") to assess the performance of the business for the Company's reportable operating segments. NOI represents total property revenues less direct property operating expenses.

The executive management team generally evaluates the Company's operating performance geographically. The Company defines its reportable operating segments as the three geographical regions in which its communities are located: Southern California, Northern California, and Seattle Metro.

Excluded from segment revenues and NOI are management and other fees from affiliates and interest and other income. Non-segment revenues and NOI included in the following schedule also consist of revenues generated from commercial properties and properties that have been sold. Other non-segment assets include items such as real estate under development, co-investments, real estate held for sale, cash and cash equivalents, marketable securities, notes and other receivables, and prepaid expenses and other assets.

The revenues and NOI for each of the reportable operating segments are summarized as follows for the three and nine months ended September 30, 2021 and 2020 (\$ in thousands):

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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Southern California	\$ 150,807	\$ 136,651	\$ 434,926	\$ 426,987
Northern California	145,807	147,081	435,883	457,655
Seattle Metro	60,280	60,617	178,180	184,310
Other real estate assets	3,726	24,115	13,264	57,411
Total property revenues	<u>\$ 360,620</u>	<u>\$ 368,464</u>	<u>\$ 1,062,253</u>	<u>\$ 1,126,363</u>
Net operating income:				
Southern California	\$ 103,660	\$ 91,639	\$ 300,761	\$ 295,402
Northern California	98,948	102,559	299,489	329,338
Seattle Metro	39,876	41,216	119,041	126,422
Other real estate assets	2,805	20,655	9,659	45,527
Total net operating income	245,289	256,069	728,950	796,689
Management and other fees from affiliates	2,237	2,347	6,707	7,312
Corporate-level property management expenses	(9,068)	(8,619)	(27,120)	(26,024)
Depreciation and amortization	(130,564)	(130,202)	(387,887)	(395,370)
General and administrative	(12,712)	(13,310)	(34,746)	(42,244)
Expensed acquisition and investment related costs	(108)	(2)	(164)	(104)
Gain on sale of real estate and land	42,897	22,654	142,993	39,251
Interest expense	(50,019)	(55,430)	(152,639)	(165,024)
Total return swap income	2,660	2,977	8,137	7,749
Interest and other income	11,998	6,512	48,756	12,696
Equity income from co-investments	25,433	14,960	60,692	53,514
Deferred tax expense on unrealized gain on unconsolidated co-investment	(3,041)	—	(5,391)	(1,636)
Loss on early retirement of debt, net	—	(19,114)	(18,982)	(23,820)
Gain on remeasurement of co-investment	—	—	2,260	234,694
Net income	<u>\$ 125,002</u>	<u>\$ 78,842</u>	<u>\$ 371,566</u>	<u>\$ 497,683</u>

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Total assets for each of the reportable operating segments are summarized as follows as of September 30, 2021 and December 31, 2020 (\$ in thousands):

	September 30, 2021	December 31, 2020
Assets:		
Southern California	\$ 3,949,224	\$ 3,981,650
Northern California	5,489,918	5,408,019
Seattle Metro	1,369,129	1,403,678
Other real estate assets	95,160	134,439
Net reportable operating segment - real estate assets	10,903,431	10,927,786
Real estate under development	212,426	386,047
Co-investments	1,081,861	1,018,010
Real estate held for sale	—	57,938
Cash and cash equivalents, including restricted cash	60,952	84,041
Marketable securities	183,140	147,768
Notes and other receivables	213,985	195,104
Operating lease right-of-use assets	69,756	72,143
Prepaid expenses and other assets	63,090	47,340
Total assets	\$ 12,788,641	\$ 12,936,177

(9) Net Income Per Common Share and Net Income Per Common Unit

(\$ in thousands, except share and unit data):

Essex Property Trust, Inc.

	Three Months Ended September 30, 2021			Three Months Ended September 30, 2020		
	Income	Weighted-average Common Shares	Per Common Share Amount	Income	Weighted-average Common Shares	Per Common Share Amount
Basic:						
Net income available to common stockholders	\$ 118,390	65,048,486	\$ 1.82	\$ 73,661	65,232,837	\$ 1.13
Effect of Dilutive Securities:						
Stock options	—	99,295		—	8,591	
Diluted:						
Net income available to common stockholders	\$ 118,390	65,147,781	\$ 1.82	\$ 73,661	65,241,428	\$ 1.13

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	Nine Months Ended September 30, 2021			Nine Months Ended September 30, 2020		
	Income	Weighted-average Common Shares	Per Common Share Amount	Income	Weighted-average Common Shares	Per Common Share Amount
Basic:						
Net income available to common stockholders	\$ 351,680	65,013,477	<u>\$ 5.41</u>	\$ 473,125	65,561,820	<u>\$ 7.22</u>
Effect of Dilutive Securities:						
Stock options	—	61,697		—	20,026	
DownREIT units	—	—		587	94,247	
Diluted:						
Net income available to common stockholders	\$ 351,680	65,075,174	<u>\$ 5.40</u>	\$ 473,712	65,676,093	<u>\$ 7.21</u>

The table above excludes from the calculations of diluted earnings per share weighted average convertible OP Units of 2,287,678 and 2,295,510, which include vested 2014 Long-Term Incentive Plan Units, and 2015 Long-Term Incentive Plan Units for the three months ended September 30, 2021 and 2020, respectively, and 2,291,725 and 2,297,141 for the nine months ended September 30, 2021 and 2020, respectively, because they were anti-dilutive. The related income allocated to these convertible OP Units aggregated \$4.2 million and \$2.6 million for the three months ended September 30, 2021 and 2020, respectively, and \$12.4 million and \$16.5 million for the nine months ended September 30, 2021 and 2020, respectively. Additionally, the table excludes all DownREIT units for which the Operating Partnership has the ability and intention to redeem the units for cash and does not consider them to be common stock equivalents.

Stock options of zero and 493,567 for the three months ended September 30, 2021 and 2020, respectively, and 116,380 and 299,046 for the nine months ended September 30, 2021 and 2020, respectively, were excluded from the calculation of diluted earnings per share because the assumed proceeds per share of such options plus the average unearned compensation were greater than the average market price of the common stock for the periods ended and, therefore, were anti-dilutive.

Essex Portfolio, L.P.

	Three Months Ended September 30, 2021			Three Months Ended September 30, 2020		
	Income	Weighted-average Common Units	Per Common Unit Amount	Income	Weighted-average Common Units	Per Common Unit Amount
Basic:						
Net income available to common unitholders	\$ 122,558	67,336,164	<u>\$ 1.82</u>	\$ 76,254	67,528,346	<u>\$ 1.13</u>
Effect of Dilutive Securities:						
Stock options	—	99,295		—	8,591	
Diluted:						
Net income available to common unitholders	\$ 122,558	67,435,459	<u>\$ 1.82</u>	\$ 76,254	67,536,937	<u>\$ 1.13</u>

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	Nine Months Ended September 30, 2021			Nine Months Ended September 30, 2020		
	Income	Weighted-average Common Units	Per Common Unit Amount	Income	Weighted-average Common Units	Per Common Unit Amount
Basic:						
Net income available to common unitholders	\$ 364,083	67,307,259	\$ 5.41	\$ 489,668	67,858,961	\$ 7.22
Effect of Dilutive Securities:						
Stock options	—	61,697		—	20,026	
DownREIT units	—	—		587	94,247	
Diluted:						
Net income available to common unitholders	\$ 364,083	67,368,956	\$ 5.40	\$ 490,255	67,973,234	\$ 7.21

Stock options of 0 and 493,567 for the three months ended September 30, 2021 and 2020, respectively, 116,380 and 299,046 for the nine months ended September 30, 2021 and 2020, respectively, were excluded from the calculation of diluted earnings per unit because the assumed proceeds per unit of these options plus the average unearned compensation were greater than the average market price of the common unit for the periods ended and, therefore, were anti-dilutive. Additionally, the table excludes all DownREIT units for which the Operating Partnership has the ability and intention to redeem the units for cash and does not consider them to be common stock equivalents.

(10) Derivative Instruments and Hedging Activities

As of September 30, 2021 and December 31, 2020, the aggregate carrying value of the interest rate swap contracts were a liability of zero and \$2.4 million, respectively. As of September 30, 2021 and December 31, 2020, the swap contracts were presented in the condensed consolidated balance sheets as an asset of zero for both periods and a liability of zero and \$2.4 million, respectively, and were included in other liabilities on the condensed consolidated balance sheets.

The Company has four total return swap contracts, with an aggregate notional amount of \$224.5 million, that effectively convert \$224.5 million of mortgage notes payable to a floating interest rate based on the Securities Industry and Financial Markets Association Municipal Swap Index ("SIFMA") plus a spread. The total return swaps provide fair market value protection on the mortgage notes payable to the counterparties during the initial period of the total return swap until the Company's option to call the mortgage notes at par can be exercised. The Company can currently call all of its total return swaps, with \$224.5 million of the outstanding debt at par. These derivatives do not qualify for hedge accounting and had a carrying and fair value of zero at both September 30, 2021 and December 31, 2020. These total return swaps are scheduled to mature between November 2022 and December 2024. The realized gains of \$2.7 million and \$3.0 million for the three months ended September 30, 2021 and 2020, respectively, and \$8.1 million and \$7.7 million for the nine months ended September 30, 2021 and 2020, respectively, were reported in the condensed consolidated statements of income and comprehensive income as total return swap income.

(11) Commitments and Contingencies

The Company is subject to various lawsuits in the normal course of its business operations. Such lawsuits have not had a material adverse effect on the Company's financial condition, results of operations or cash flows. While no assurances can be given, the Company does not believe there is any pending or threatened litigation against the Company that, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the Company.

The Company is subject to various federal, state, and local environmental and other laws. Compliance by the Company with existing laws has not had a material adverse effect on the Company. However, the Company cannot predict the impact of new, changed or expired laws or regulations on its current portfolio or on other assets that the Company may acquire in the future.

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including, without limitation, certain eviction moratoriums and other mandates that have been, or may be, enacted or extended in connection with the COVID-19 pandemic. To the extent that an environmental or other matter arises or is identified in the future that has other than a remote risk of having a material impact on the condensed consolidated financial statements, the Company will disclose the estimated range of possible outcomes associated with it, and, if an outcome is probable, accrue an appropriate liability for that matter. The Company will consider whether any such matter results in an impairment of value on the affected property and, if so, impairment will be recognized.

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

The following discussion and analysis should be read in conjunction with the Company's Condensed Consolidated Financial Statements and accompanying Notes thereto included elsewhere herein and with the Company's 2020 annual report on Form 10-K for the year ended December 31, 2020. Capitalized terms not defined in this section have the meaning ascribed to them elsewhere in this Quarterly Report on Form 10-Q. The Company makes statements in this section that are forward-looking statements within the meaning of the federal securities laws. For a complete discussion of forward-looking statements, see the section in this Form 10-Q entitled "Forward-Looking Statements."

Essex is a self-administered and self-managed REIT that acquires, develops, redevelops, and manages apartment communities in selected residential areas located on the West Coast of the United States. Essex owns all of its interests in its real estate investments, directly or indirectly through the Operating Partnership. Essex is the sole general partner of the Operating Partnership and, as of September 30, 2021, had an approximately 96.6% general partnership interest in the Operating Partnership.

The Company's investment strategy has two components: constant monitoring of existing markets, and evaluation of new markets to identify areas with the characteristics that underlie rental growth. The Company's strong financial condition supports its investment strategy by enhancing its ability to quickly shift acquisition, development, redevelopment, and disposition activities to markets that will optimize the performance of the Company's portfolio.

As of September 30, 2021, the Company owned or had ownership interests in 246 operating apartment communities, comprising 60,799 apartment homes, excluding the Company's ownership interest in preferred equity co-investments, loan investments, three operating commercial buildings, and a development pipeline comprised of two consolidated projects and one unconsolidated joint venture project.

The Company's apartment communities are located in the following major regions:

Southern California (primarily Los Angeles, Orange, San Diego, and Ventura counties)

Northern California (the San Francisco Bay Area)

Seattle Metro (Seattle metropolitan area)

As of September 30, 2021, the Company's development pipeline was comprised of two consolidated projects under development, one unconsolidated joint venture project under development, and various predevelopment projects aggregating 571 apartment homes, with total incurred costs of \$252.0 million, and estimated remaining project costs of approximately \$84.0 million, \$51.0 million of which represents the Company's share of estimated remaining costs, for total estimated project costs of \$336.0 million.

The Company's consolidated apartment communities are as follows:

	As of September 30, 2021		As of September 30, 2020	
	Apartment Homes	%	Apartment Homes	%
Southern California	22,190	43 %	22,675	43 %
Northern California	19,123	37 %	19,319	37 %
Seattle Metro	10,218	20 %	10,217	20 %
Total	51,531	100 %	52,211	100 %

Co-investments, including Wesco I, Wesco III, Wesco IV, Wesco V, Wesco VI, BEXAEW, BEX II, BEX IV, and 500 Folsom communities, developments under construction, and preferred equity interest co-investment communities are not included in the table presented above for both periods. The community previously held in the BEX III co-investment, which was consolidated in the second quarter of 2021, is excluded from the September 30, 2020 table but included in the September 30, 2021 table.

Current Material Development – the COVID-19 Pandemic

The United States and other countries around the world are continuing to experience impacts related to COVID-19 pandemic and related variants which has created considerable instability, disruption, and uncertainty. Governmental authorities in impacted regions are continuing to take dramatic and unpredictable actions in an effort to slow COVID-19's spread. Federal, state and local jurisdictions have implemented varying forms of requirements on sponsors and patrons of public gatherings and

requiring businesses to make changes to their operations in a manner that may negatively affect profitability, result in job losses and related financial impacts that may affect future operations to an unknown extent. While the California eviction moratorium sunsetted during the quarter, other state and local eviction moratoriums and, laws that limit rent increases during times of emergency and prohibit the ability to collect unpaid rent during certain timeframes, continue to be in effect in various formats at various regions in which Essex's communities are located, impacting Essex properties. The Company is working to comply with the stated intent of local, county, state and federal laws. In that regard, the Company has implemented a wide range of practices to protect and support its employees and residents. Such measures include:

- instituting a hybrid work model for corporate associates to work at the Company's corporate offices and remotely;
- transitioning many public interactions with leasing staff to on-line and telephonic communications;
- increasing cleaning practices for common areas and community amenities and opening common areas and community amenities with limited hours, limited capacity or by reservation only, depending in part on jurisdictional requirements; and
- delaying the response to maintenance orders in certain circumstances in order to promote the protection of our employees and residents.

Due to the COVID-19 pandemic, some of the Company's residents, their health, their employment, and, thus, their ability to pay rent, have been and may continue to be impacted. To support residents, the Company has implemented the following steps, including, but not limited to:

- assembling a Resident Response Team to effectively and efficiently respond to resident needs and concerns with respect to the pandemic;
- structuring payment plans for residents who are unable to pay their rent as a result of the outbreak and waiving late fees where required or applicable for those residents; and
- establishing the Essex Cares fund for the purpose of supporting the Company's residents and communities that are experiencing financial hardships caused by the COVID-19 pandemic.

The impact of the COVID-19 pandemic on the U.S. and world economies generally, and on the Company's results in particular, has been, and may continue to be significant. The long-term impact will largely depend on future developments, which are highly uncertain and cannot be predicted, including, but not limited to, whether employees and employers will continue to promote remote work if and when the pandemic concludes. This includes new information which may emerge concerning the severity of COVID-19 and related variants, the success of actions taken to contain or treat COVID-19 including but not limited to vaccination rates and the impacts of varying vaccine mandates, future laws that may be enacted, the impact on job growth and the broader economy, and reactions by consumers, companies, governmental entities and capital markets. The labor shortage due partly to various government mandates and vaccine requirements implemented during the COVID-19 pandemic and supply chain disruptions may negatively impact the Company's results of operations.

Primarily as a result of the impact of the COVID-19 pandemic, the Company's cash delinquencies as a percentage of scheduled rental income for the Company's stabilized apartment communities or "Same-Property" (stabilized properties consolidated by the Company for the quarters ended September 30, 2021 and 2020) remained higher than the pre-pandemic period but improved from 2.7% for the three months ended September 30, 2020 to 1.4% for the three months ended September 30, 2021. The Company has executed some payment plans and will continue to work with residents to collect such cash delinquencies. As of September 30, 2021, the increase in delinquencies has not had a material adverse impact on the Company's liquidity position. The Company's average financial occupancy for the Company's Same-Property portfolio increased from 96.0% for the three months ended September 30, 2020 to 96.4% for the three months ended September 30, 2021.

The COVID-19 pandemic has not negatively impacted the Company's ability to access traditional funding sources on the same or reasonably similar terms as were available in recent periods prior to the pandemic, as demonstrated by the Company's financing activity during the three months ended September 30, 2021 discussed in the "Liquidity and Capital Resources" section below. The Company is not at material risk of not meeting the covenants in its credit agreements and is able to timely service its debt and other obligations.

Comparison of the Three Months Ended September 30, 2021 to the Three Months Ended September 30, 2020

The Company's average financial occupancy for the Company's Same-Property portfolio was 96.4% and 96.0% for the three months ended September 30, 2021 and 2020, respectively. Financial occupancy is defined as the percentage resulting from dividing actual rental income by total scheduled rental income. Actual rental income represents contractual rental income pursuant to leases without considering delinquency and concessions. Total scheduled rental income represents the value of all apartment homes, with occupied apartment homes valued at contractual rental rates pursuant to leases and vacant apartment homes valued at estimated market rents. The Company believes that financial occupancy is a meaningful measure of occupancy because it considers the value of each vacant apartment home at its estimated market rate.

Market rates are determined using the recently signed effective rates on new leases at the property and are used as the starting point in the determination of the market rates of vacant apartment homes. The Company may increase or decrease these rates based on a variety of factors, including overall supply and demand for housing, concentration of new apartment deliveries within the same submarket which can cause periodic disruption due to greater rental concessions to increase leasing velocity, and rental affordability. Financial occupancy may not completely reflect short-term trends in physical occupancy and financial occupancy rates, and the Company's calculation of financial occupancy may not be comparable to financial occupancy disclosed by other REITs.

The Company does not take into account delinquency and concessions to calculate actual rent for occupied apartment homes and market rents for vacant apartment homes. The calculation of financial occupancy compares contractual rates for occupied apartment homes to estimated market rents for unoccupied apartment homes, and thus the calculation compares the gross value of all apartment homes excluding delinquency and concessions. For apartment communities that are development properties in lease-up without stabilized occupancy figures, the Company believes the physical occupancy rate is the appropriate performance metric. While an apartment community is in the lease-up phase, the Company's primary motivation is to stabilize the property which may entail the use of rent concessions and other incentives, and thus financial occupancy, which is based on contractual income, is not considered the best metric to quantify occupancy.

The regional breakdown of the Company's Same-Property portfolio for financial occupancy for the three months ended September 30, 2021 and 2020 is as follows:

	Three Months Ended September 30,	
	2021	2020
Southern California	97.1 %	95.9 %
Northern California	95.9 %	96.2 %
Seattle Metro	95.8 %	95.9 %

The following table provides a breakdown of revenues amounts, including revenues attributable to the Same-Properties:

Property Revenues (\$ in thousands)	Number of Apartment Homes	Three Months Ended September 30,		Dollar Change	Percentage Change
		2021	2020		
Same-Property Revenues:					
Southern California	20,800	\$ 142,447	\$ 130,829	\$ 11,618	8.9 %
Northern California	16,072	122,426	125,193	(2,767)	(2.2) %
Seattle Metro	10,218	60,280	60,617	(337)	(0.6) %
Total Same-Property Revenues	47,090	325,153	316,639	8,514	2.7 %
Non-Same Property Revenues		35,467	51,825	(16,358)	(31.6) %
Total Property Revenues		\$ 360,620	\$ 368,464	\$ (7,844)	(2.1) %

Same-Property Revenues increased by \$8.5 million or 2.7% to \$325.2 million in the third quarter of 2021 from \$316.6 million in the third quarter of 2020. The increase was primarily attributable to an increase in financial occupancy from 96.0% in the third quarter of 2020 to 96.4% in the third quarter of 2021, a decrease in concessions from \$17.9 million in the third quarter of 2020 to \$9.5 million in the third quarter of 2021, as well as a decrease in cash delinquencies from 2.7% for the three months ended September 30, 2020 to 1.4% for the three months ended September 30, 2021.

Non-Same Property Revenues decreased by \$16.4 million or 31.6% to \$35.5 million in the third quarter of 2021 from \$51.8 million in the third quarter of 2020. The decrease was primarily due to the sale of 416 on Broadway in the fourth quarter of 2020 and the sales of Hidden Valley, Axis 2300, Park 20, and Devonshire Apartments in 2021.

Management and other fees from affiliates decreased by \$0.1 million or 4.3% to \$2.2 million in the third quarter of 2021 from \$2.3 million in the third quarter of 2020. The decrease was primarily due to a decrease of the management fee rate for one of the joint ventures.

Property operating expenses, excluding real estate taxes increased by \$1.5 million or 2.2% to \$69.5 million for the third quarter of 2021 compared to \$68.0 million for the third quarter of 2020, primarily due to increases of \$1.6 million in utilities expense

and \$1.3 million in maintenance and repairs expenses, offset by a decrease of \$1.4 million in administrative expenses. Same-Property operating expenses, excluding real estate taxes, increased by \$2.7 million or 4.4% to \$63.5 million in the third quarter of 2021 compared to \$60.8 million in the third quarter of 2020, primarily due to increases of \$1.5 million in utilities expense, \$1.4 million in maintenance and repairs expenses, and \$0.5 million in insurance and other expenses, offset by a decrease of \$0.7 million in administrative expenses.

Real estate taxes increased \$1.4 million or 3.2% to \$45.8 million for the third quarter of 2021 compared to \$44.4 million for the third quarter of 2020, primarily due to increases in assessed valuations and tax rates. Same-Property real estate taxes increased by \$1.1 million or 2.9% to \$39.2 million in the third quarter of 2021 compared to \$38.1 million in the third quarter of 2020, primarily due to an increase in assessed valuations and tax rates.

Corporate-level property management expenses increased by \$0.5 million or 5.8% to \$9.1 million for the third quarter of 2021 compared to \$8.6 million for the third quarter of 2020.

Gain on sale of real estate and land of \$42.9 million in the third quarter of 2021 was attributable to the sale of Devonshire Apartments.

Depreciation and amortization expense increased by \$0.4 million or 0.3% to \$130.6 million for the third quarter of 2021 compared to \$130.2 million for the third quarter of 2020, primarily due to the recently completed development properties, Mylo, Station Park Green (Phase II and Phase III) and Wallace on Sunset as well as the acquisition of Village at Toluca Lake during the second quarter of 2021. The increases were partially offset by decreases in depreciation expense resulting from property dispositions in 2021, and amortization expense resulting from certain lease intangibles becoming fully amortized during 2020.

Interest expense decreased by \$5.4 million or 9.7% to \$50.0 million for the third quarter of 2021 compared to \$55.4 million for the third quarter of 2020, primarily due to a decrease in average outstanding debt primarily as a result of debt that was paid off or matured, regular principal amortization during and after the third quarter of 2020, and lower average interest rates, which resulted in a decrease in interest expense of \$11.5 million for the third quarter of 2020. These decreases to interest expense were partially offset by the issuance of \$300 million of senior unsecured notes due June 15, 2031 in May 2021, \$450.0 million of senior unsecured notes due March 1, 2028 in February 2021, \$650 million of senior unsecured notes due March 15, 2032 in February and June 2020, and \$600 million of senior unsecured notes due January 15, 2031 and September 1, 2050 in August 2020, which resulted in an increase of \$4.1 million interest expense for the third quarter of 2021. Additionally, there was a \$2.0 million decrease in capitalized interest in the third quarter of 2021, due to a decrease in development activity as compared to the same period in 2020.

Total return swap income of \$2.7 million in the third quarter of 2021 consists of monthly settlements related to the Company's total return swap contracts with an aggregate notional amount of \$224.5 million.

Interest and other income increased by \$5.5 million or 84.6% to \$12.0 million for the third quarter of 2021 compared to \$6.5 million for the third quarter of 2020, primarily due to increases of \$3.8 million in unrealized gains on marketable securities and \$1.6 million in marketable securities and other income.

Equity income from co-investments increased by \$10.4 million or 69.3% to \$25.4 million for the third quarter of 2021 compared to \$15.0 million for the third quarter of 2020, primarily due to increases of \$11.1 million in equity income from non-core co-investments and \$3.3 million in income from preferred equity investments, offset by decreases of \$2.2 million in gain on sale of co-investment communities and \$1.7 million in equity income from co-investments.

Deferred tax expense on unrealized gain on unconsolidated co-investment of \$3.0 million for the third quarter of 2021 resulted from a net unrealized gain of \$10.7 million from unconsolidated co-investments.

Comparison of the Nine Months Ended September 30, 2021 to the Nine Months Ended September 30, 2020

The Company's average financial occupancy for its stabilized apartment communities or "Same-Property" (stabilized properties consolidated by the Company for the nine months ended September 30, 2021 and 2020) was 96.6% and 95.9% for the nine months ended September 30, 2021 and 2020, respectively.

The regional breakdown of the Company's Same-Property portfolio for financial occupancy for the nine months ended September 30, 2021 and 2020 is as follows:

	Nine Months Ended September 30,	
	2021	2020
Southern California	97.0 %	95.7 %
Northern California	96.2 %	96.0 %
Seattle Metro	96.4 %	96.0 %

	Number of Apartment	Nine Months Ended September 30,		Dollar	Percentage
Property Revenues (\$ in thousands)	Homes	2021	2020	Change	Change
Same-Property Revenues:					
Southern California	20,800	\$ 413,384	\$ 407,362	\$ 6,022	1.5 %
Northern California	16,072	366,344	395,273	(28,929)	(7.3) %
Seattle Metro	10,218	178,180	184,310	(6,130)	(3.3) %
Total Same-Property Revenues	47,090	957,908	986,945	(29,037)	(2.9) %
Non-Same Property Revenues		104,345	139,418	(35,073)	(25.2) %
Total Property Revenues		\$ 1,062,253	\$ 1,126,363	\$ (64,110)	(5.7) %

Same-Property Revenues decreased by \$29.0 million or 2.9% to \$957.9 million in the nine months ended September 30, 2021 from \$986.9 million in the nine months ended September 30, 2020. The decrease was primarily attributable to an additional \$10.6 million of cash concessions compared to the prior year period and a decrease of 2.7% in average rental rates from \$2,361 per apartment home in the nine months ended September 30, 2020 to \$2,298 per apartment home in the nine months ended September 30, 2021.

Non-Same Property Revenues decreased by \$35.1 million or 25.2% to \$104.3 million in the nine months ended September 30, 2021 from \$139.4 million in the nine months ended September 30, 2020. The decrease was primarily due to property dispositions in 2020 and the sale of Hidden Valley, Axis 2300, Park 20, and Devonshire Apartments in 2021.

Management and other fees from affiliates decreased by \$0.6 million or 8.2% to \$6.7 million in the nine months ended September 30, 2021 from \$7.3 million in the nine months ended September 30, 2020. The decrease was primarily due to a decrease in asset management fees resulting from the consolidation of six communities as part of the Company's purchase of Canada Pension Plan Investment Board's ("CPPIB") 45.0% co-investment interests in the first quarter of 2020, and a decrease in revenues used to calculate management fees.

Property operating expenses, excluding real estate taxes increased by \$0.6 million or 0.3% to \$197.9 million for the nine months ended September 30, 2021 compared to \$197.3 million for the nine months ended September 30, 2020, primarily due to an increase of \$3.9 million in utilities expense offset by decreases of \$2.0 million in administrative expenses and \$1.3 million in maintenance and repairs expenses partially driven by sales in 2020 and the sales of Hidden Valley, Axis 2300, Park 20, and Devonshire Apartments in 2021. Same-Property operating expenses, excluding real estate taxes, increased by \$3.5 million or 2.0% to \$180.6 million in the nine months ended September 30, 2021 compared to \$177.1 million in the nine months ended September 30, 2020, primarily due to increases of \$3.9 million in utilities expenses and \$1.8 million in insurance and other expenses, offset by decreases of \$1.8 million in administrative expenses and \$0.4 million in maintenance and repairs expenses.

Real estate taxes increased by \$3.0 million or 2.3% to \$135.4 million for the nine months ended September 30, 2021 compared to \$132.4 million for the nine months ended September 30, 2020, primarily due to increases in assessed valuations and tax rates. Same-Property real estate taxes increased by \$3.1 million or 2.8% to \$116.2 million in the nine months ended September 30, 2021 compared to \$113.1 million in the nine months ended September 30, 2020, primarily due to an increase in assessed valuations and tax rates.

Corporate-level property management expenses increased by \$1.1 million or 4.2% to \$27.1 million for the nine months ended September 30, 2021 compared to \$26.0 million for the nine months ended September 30, 2020.

Depreciation and amortization expense decreased by \$7.5 million or 1.9% to \$387.9 million for the nine months ended September 30, 2021 compared to \$395.4 million for the nine months ended September 30, 2020, primarily due to a decrease in amortization expense resulting from certain lease intangibles becoming fully amortized during 2020 and the sale of Hidden Valley, Axis 2300, and Park 20 in the first quarter of 2021.

Gain on sale of real estate and land of \$143.0 million in the nine months ended September 30, 2021 was attributable to the sale of Hidden Valley, Axis 2300, and Park 20 in the first quarter of 2021 and Devonshire Apartments in the third quarter of 2021.

Interest expense decreased by \$12.4 million or 7.5% to \$152.6 million for the nine months ended September 30, 2021 compared to \$165.0 million for the nine months ended September 30, 2020, primarily due to a decrease in average outstanding debt primarily as a result of debt that was paid off or matured, regular principal amortization during and after the third quarter of 2020, and lower average interest rates, which resulted in a decrease in interest expense of \$36.6 million from the third quarter of 2020. These decreases to interest expense were partially offset by the issuance of \$300 million of senior unsecured notes due June 15, 2031 in May 2021, \$450.0 million of senior unsecured notes due March 1, 2028 in February 2021, \$650 million of senior unsecured notes due March 15, 2032 in February and June 2020, and \$600 million of senior unsecured notes due January 15, 2031 and September 1, 2050 in August 2020, which resulted in an increase of \$16.9 million interest expense for the nine months ended September 30, 2021. Additionally, there was a \$7.3 million decrease in capitalized interest in the nine months ended September 30, 2021, due to a decrease in development activity as compared to the same period in 2020.

Total return swap income of \$8.1 million in the nine months ended September 30, 2021 consists of monthly settlements related to the Company's total return swap contracts with an aggregate notional amount of \$224.5 million.

Interest and other income increased by \$36.1 million or 284.3% to \$48.8 million in income for the nine months ended September 30, 2021 compared to \$12.7 million for the nine months ended September 30, 2020, primarily due to increases of \$21.6 million in unrealized gains on marketable securities, \$6.9 million in marketable securities and other income, \$4.7 million in income from early redemption of notes receivable, and \$2.4 million in gain on sale of marketable securities.

Equity income from co-investments increased by \$7.2 million or 13.5% to \$60.7 million for the nine months ended September 30, 2021 compared to \$53.5 million for the nine months ended September 30, 2020, primarily due to increases of \$14.9 million in equity income from non-core co-investments and \$8.8 million in income from preferred equity investments including income from early redemptions. The increases were partially offset by decreases of \$7.8 million in equity income from co-investments, \$6.5 million in co-investment promote income, and \$2.2 million in gain on sale of co-investment communities.

Deferred tax expense on unrealized gain on unconsolidated co-investment of \$5.4 million for the nine months ended September 30, 2021 resulted from a net unrealized gain on \$18.8 million from unconsolidated co-investments.

Loss on early retirement of debt, net of \$19.0 million for the nine months ended September 30, 2021 was primarily due to the early termination of the Company's five interest rate swap contracts in conjunction with the partial repayment of the Company's unsecured term debt and the early repayment of \$300.0 million of senior unsecured notes.

Gain on remeasurement of co-investment of \$2.3 million resulted from the Company's purchase of BEX III's 50.0% interest in The Village at Toluca Lake community in the second quarter of 2021. The gain on remeasurement of \$234.7 million for the nine months ended September 30, 2020 resulted from the Company's purchase of CPPIB's 45.0% co-investment interests during the first quarter of 2020.

Liquidity and Capital Resources

The United States and other countries around the world are continuing to experience an unprecedented health pandemic related to COVID-19, which has created considerable instability and disruption in the U.S. and world economies. Governmental authorities in affected regions have taken extraordinary steps in an effort to slow down the spread of the virus and mitigate its impact on affected populations.

As of September 30, 2021, the Company had \$49.9 million of unrestricted cash and cash equivalents and \$183.1 million in marketable securities, all of which were equity securities or available for sale debt securities. The Company believes that cash flows generated by its operations, existing cash and cash equivalents, marketable securities balances and availability under existing lines of credit are sufficient to meet all of its anticipated cash needs during the next twelve months. Additionally, the capital markets continue to be available and the Company is able to generate cash from the disposition of real estate assets to finance additional cash flow needs, including continued development and select acquisitions. In the event that conditions become further exacerbated due to the COVID-19 pandemic and related economic disruptions, the Company may further utilize other resources such as its cash reserves, lines of credit, or decreased investment in redevelopment activities to supplement operating cash flows. The Company is carefully monitoring and managing its cash position in light of ongoing conditions and levels of operations. The timing, source and amounts of cash flows provided by financing activities and used in investing

activities are sensitive to changes in interest rates and other fluctuations in the capital markets environment, which can affect the Company's plans for acquisitions, dispositions, development and redevelopment activities.

As of September 30, 2021, Moody's Investor Service, and Standard and Poor's credit agencies rated the Company and the Operating Partnership, Baa1/Stable, and BBB+/Stable, respectively.

As of September 30, 2021, the Company had two unsecured lines of credit aggregating \$1.24 billion. As of September 30, 2021, there was \$35.0 million outstanding on the Company's \$1.2 billion unsecured line of credit. The underlying interest rate is based on a tiered rate structure tied to the Company's credit ratings and sustainability-linked metrics and was LIBOR plus 0.775% as of September 30, 2021. This facility is scheduled to mature in September 2025, with three 6-month extensions, exercisable at the Company's option. As of September 30, 2021, there was \$7.7 million outstanding on the Company's \$35.0 million working capital unsecured line of credit. The underlying interest rate on the \$35.0 million line is based on a tiered rate structure tied to the Company's credit ratings and sustainability-linked metrics and was LIBOR plus 0.775% as of September 30, 2021. This facility is scheduled to mature in February 2023.

In June 2021, the Operating Partnership issued \$300.0 million of senior unsecured notes due on June 15, 2031 with a coupon rate of 2.550% per annum (the "2031 Notes"), which are payable on June 15 and December 15 of each year, beginning on December 15, 2021. The 2031 Notes were offered to investors at a price of 99.367% of par value. The 2031 Notes are general unsecured senior obligations of the Operating Partnership, rank equally in right of payment with all other senior unsecured indebtedness of the Operating Partnership and are unconditionally guaranteed by Essex. The Company used the net proceeds of this offering to repay upcoming debt maturities, including to fund the redemption of \$300.0 million aggregate principal amount (plus the make-whole amount and accrued and unpaid interest) of its outstanding 3.375% senior unsecured notes due January 2023, and for other general corporate and working capital purposes.

In March 2021, the Operating Partnership issued \$450.0 million of senior unsecured notes due on March 1, 2028 with a coupon rate of 1.700% per annum (the "2028 Notes"), which are payable on March 1 and September 1 of each year, beginning on September 1, 2021. The 2028 Notes were offered to investors at a price of 99.423% of par value. The 2028 Notes are general unsecured senior obligations of the Operating Partnership, rank equally in right of payment with all other senior unsecured indebtedness of the Operating Partnership and are unconditionally guaranteed by Essex. The Company used the net proceeds of this offering to repay upcoming debt maturities, including all or a portion of certain unsecured term loans, and for general corporate and working capital purposes.

In September 2021, the Company entered into a new equity distribution agreement pursuant to which the Company may offer and sell shares of its common stock having an aggregate gross sales price of up to \$900.0 million (the "2021 ATM Program"). In connection with the 2021 ATM Program, the Company may also enter into related forward sale agreements whereby, at the Company's discretion, it may sell shares of its common stock under the 2021 ATM Program under forward sales agreements. The use of a forward sale agreement would allow the Company to lock in a share price on the sale of shares of its common stock at the time the agreement is executed, but defer receiving the proceeds from the sale of shares until a later date.

The 2021 ATM Program replaces the Company's prior equity distribution agreement entered into in September 2018 (the "2018 ATM Program"), which was terminated upon the establishment of the 2021 ATM Program. During the nine months ended September 30, 2021, the Company did not sell any shares of its common stock through the 2021 ATM Program or through the 2018 ATM Program. As of September 30, 2021, there are no outstanding forward purchase agreements, and \$900.0 million of shares remains available to be sold under the 2021 ATM Program.

In December 2015, the Company's Board of Directors authorized a stock repurchase plan to allow the Company to acquire shares in an aggregate of up to \$250.0 million. In February 2019, the Board of Directors approved the replenishment of the stock repurchase plan such that, as of such date, the Company had \$250.0 million of purchase authority remaining under the stock repurchase plan. In each of May and December 2020, the Board of Directors approved the replenishment of the stock repurchase plan such that, as of such date, the Company had \$250.0 million of purchase authority remaining under the replenished plan. During the nine months ended September 30, 2021, the Company repurchased and retired 40,000 shares of its common stock totaling \$9.2 million, including commissions, at an average price of \$229.30 per share. As of September 30, 2021, the Company had \$214.5 million of purchase authority remaining under the stock repurchase plan.

Essex pays quarterly dividends from cash available for distribution. Until it is distributed, cash available for distribution is invested by the Company primarily in investment grade securities held available for sale or is used by the Company to reduce balances outstanding under its line of credit.

Development and Predevelopment Pipeline

The Company defines development projects as new communities that are being constructed or are newly constructed and are in a phase of lease-up and have not yet reached stabilized operations. As of September 30, 2021, the Company's development pipeline was comprised of two consolidated projects under development, one unconsolidated joint venture project under development and various consolidated predevelopment projects, aggregating 571 apartment homes, with total incurred costs of \$252.0 million, and estimated remaining project costs of approximately \$84.0 million, \$51.0 million of which represents the Company's share of estimated remaining costs, for total estimated project costs of \$336.0 million.

The Company defines predevelopment projects as proposed communities in negotiation or in the entitlement process with an expected high likelihood of becoming entitled development projects. The Company may also acquire land for future development purposes or sale.

The Company expects to fund the development and predevelopment communities by using a combination of some or all of the following sources: its working capital, amounts available on its lines of credit, construction loans, net proceeds from public and private equity and debt issuances, and proceeds from the disposition of assets, if any.

Derivative Activity

The Company uses interest rate swaps, interest rate caps, and total return swap contracts to manage certain interest rate risks. The valuation of these instruments is determined using widely accepted valuation techniques including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves. The fair values of interest rate swaps and total return swaps are determined using the market standard methodology of netting the discounted future fixed cash receipts (or payments) and the discounted expected variable cash payments (or receipts). The variable cash payments (or receipts) are based on an expectation of future interest rates (forward curves) derived from observable market interest rate curves. The Company incorporates credit valuation adjustments to appropriately reflect both its own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements.

Alternative Capital Sources

The Company utilizes co-investments as an alternative source of capital for acquisitions of both operating and development communities. As of September 30, 2021, the Company had an interest in 264 apartment homes in communities actively under development with joint ventures for total estimated costs of \$0.1 billion. Total estimated remaining costs are approximately \$68.0 million, of which the Company estimates its remaining investment in these development joint ventures will be approximately \$34.7 million. In addition, the Company had an interest in 9,468 apartment homes of operating communities with joint ventures for a total book value of \$470.8 million as of September 30, 2021.

Off-Balance Sheet Arrangements

The Company has various unconsolidated interests in certain joint ventures. The Company does not believe that these unconsolidated investments have a materially different impact on its liquidity, cash flows, capital resources, credit or market risk than its consolidated operations. See Note 4, Co-investments, in the Notes to Condensed Consolidated Financial Statements, for carrying values and combined summarized financial information of these unconsolidated investments.

Critical Accounting Policies and Estimates

The preparation of condensed consolidated financial statements, in accordance with U.S. GAAP, requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. The Company defines critical accounting policies as those accounting policies that require the Company's management to exercise their most difficult, subjective and complex judgments. The Company's critical accounting policies and estimates relate principally to the following key areas: (i) accounting for the acquisition of investments in real estate (specifically, the allocation between land and buildings); and (ii) evaluation of events and changes in circumstances indicating whether the Company's rental properties may be impaired. The Company bases its estimates on historical experience, current market conditions, and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from those estimates made by management.

The Company's critical accounting policies and estimates have not changed materially from the information reported in Note 2, Summary of Critical and Significant Accounting Policies, in the Company's annual report on Form 10-K for the year ended December 31, 2020.

Forward-Looking Statements

Certain statements in this "Management's Discussion and Analysis of Financial Condition and Results of Operations," and elsewhere in this quarterly report on Form 10-Q which are not historical facts may be considered forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Exchange Act, including statements regarding the Company's expectations, estimates, assumptions, hopes, intentions, beliefs and strategies regarding the future. Words such as "expects," "assumes," "anticipates," "may," "will," "intends," "plans," "projects," "believes," "seeks," "future," "estimates," and variations of such words and similar expressions are intended to identify such forward-looking statements. Such forward-looking statements include, among other things, statements regarding the Company's expectations related to the continued impact of the COVID-19 pandemic and related variants on the Company's business, financial condition and results of operations and the impact of any additional measures taken to mitigate the impact of the pandemic, the Company's intent, beliefs or expectations with respect to the timing of completion of current development and redevelopment projects and the stabilization of such projects, the timing of lease-up and occupancy of its apartment communities, the anticipated operating performance of its apartment communities, the total projected costs of development and redevelopment projects, co-investment activities, qualification as a REIT under the Internal Revenue Code of 1986, as amended, the real estate markets in the geographies in which the Company's properties are located and in the United States in general, the adequacy of future cash flows to meet anticipated cash needs, its financing activities and the use of proceeds from such activities, the availability of debt and equity financing, general economic conditions including the potential impacts from such economic conditions, including as a result of the COVID-19 pandemic and governmental measures intended to prevent its spread, trends affecting the Company's financial condition or results of operations, changes to U.S. tax laws and regulations in general or specifically related to REITs or real estate, changes to laws and regulations in jurisdictions in which communities the Company owns are located, and other information that is not historical information.

While the Company's management believes the assumptions underlying its forward-looking statements are reasonable, such forward-looking statements involve known and unknown risks, uncertainties and other factors, many of which are beyond the Company's control, which could cause the actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The Company cannot assure the future results or outcome of the matters described in these statements; rather, these statements merely reflect the Company's current expectations of the approximate outcomes of the matters discussed. Factors that might cause the Company's actual results, performance or achievements to differ materially from those expressed or implied by these forward-looking statements include, but are not limited to, the following: the continued impact of the COVID-19 pandemic and related variants, which remains inherently uncertain as to duration and severity, and any additional governmental measures taken to limit its spread and other potential future outbreaks of infectious diseases or other health concerns could continue to adversely affect the Company's business and its tenants, and cause a significant downturn in general economic conditions, the real estate industry, and the markets in which the Company's communities are located; the Company may fail to achieve its business objectives; the actual completion of development and redevelopment projects may be subject to delays; the stabilization dates of such projects may be delayed; the Company may abandon or defer development or redevelopment projects for a number of reasons, including changes in local market conditions which make development less desirable, increases in costs of development, increases in the cost of capital or lack of capital availability, resulting in losses; the total projected costs of current development and redevelopment projects may exceed expectations; such development and redevelopment projects may not be completed; development and redevelopment projects and acquisitions may fail to meet expectations; estimates of future income from an acquired property may prove to be inaccurate; occupancy rates and rental demand may be adversely affected by competition and local economic and market conditions; there may be increased interest rates and operating costs; the Company may be unsuccessful in the management of its relationships with its co-investment partners; future cash flows may be inadequate to meet operating requirements and/or may be insufficient to provide for dividend payments in accordance with REIT requirements; changes in laws or regulations; the terms of any refinancing may not be as favorable as the terms of existing indebtedness; unexpected difficulties in leasing of development projects; volatility in financial and securities markets; the Company's failure to successfully operate acquired properties; unforeseen consequences from cyber-intrusion; the Company's inability to maintain our investment grade credit rating with the rating agencies; government approvals, actions and initiatives, including the need for compliance with environmental requirements; and those further risks, special considerations, and other factors referred to in this quarterly report on Form 10-Q, in the Company's annual report on Form 10-K for the year ended December 31, 2020, and those risk factors and special considerations set forth in the Company's other filings with the Securities and Exchange Commission (the "SEC") which may cause the actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Additionally, the risks, uncertainties and other factors set forth above or otherwise referred to in the reports that the Company has filed with the SEC may be further amplified by the global impact of the COVID-19 pandemic and related variants. All forward-looking statements are made as of the date hereof, the Company assumes no obligation to

update or supplement this information for any reason, and therefore, they may not represent the Company's estimates and assumptions after the date of this report.

Funds from Operations Attributable to Common Stockholders and Unitholders

Funds from Operations Attributable to Common Stockholders and Unitholders ("FFO") is a financial measure that is commonly used in the REIT industry. The Company presents FFO and FFO excluding non-core items (referred to as "Core FFO") as supplemental operating performance measures. FFO and Core FFO are not used by the Company as, nor should they be considered to be, alternatives to net income computed under U.S. GAAP as an indicator of the Company's operating performance or as alternatives to cash from operating activities computed under U.S. GAAP as an indicator of the Company's ability to fund its cash needs.

FFO and Core FFO are not meant to represent a comprehensive system of financial reporting and do not present, nor do they intend to present, a complete picture of the Company's financial condition and operating performance. The Company believes that net income computed under U.S. GAAP is the primary measure of performance and that FFO and Core FFO are only meaningful when they are used in conjunction with net income.

The Company considers FFO and Core FFO to be useful financial performance measurements of an equity REIT because, together with net income and cash flows, FFO and Core FFO provide investors with additional bases to evaluate operating performance and ability of a REIT to incur and service debt and to fund acquisitions and other capital expenditures and to pay dividends. By excluding gains or losses related to sales of depreciated operating properties and excluding real estate depreciation (which can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates), FFO can help investors compare the operating performance of a real estate company between periods or as compared to different companies. By further adjusting for items that are not considered part of the Company's core business operations, Core FFO allows investors to compare the core operating performance of the Company to its performance in prior reporting periods and to the operating performance of other real estate companies without the effect of items that by their nature are not comparable from period to period and tend to obscure the Company's actual operating results. The Company believes that its condensed consolidated financial statements, prepared in accordance with U.S. GAAP, provide the most meaningful picture of its financial condition and its operating performance.

In calculating FFO, the Company follows the definition for this measure published by the National Association of Real Estate Investment Trusts ("NAREIT"), which is the leading REIT industry association. The Company believes that, under the NAREIT FFO definition, the two most significant adjustments made to net income are (i) the exclusion of historical cost depreciation and (ii) the exclusion of gains and losses from the sale of previously depreciated properties. The Company agrees that these two NAREIT adjustments are useful to investors for the following reasons:

- (a) historical cost accounting for real estate assets in accordance with U.S. GAAP assumes, through depreciation charges, that the value of real estate assets diminishes predictably over time. NAREIT stated in its White Paper on Funds from Operations "since real estate asset values have historically risen or fallen with market conditions, many industry investors have considered presentations of operating results for real estate companies that use historical cost accounting to be insufficient by themselves." Consequently, NAREIT's definition of FFO reflects the fact that real estate, as an asset class, generally appreciates over time and depreciation charges required by U.S. GAAP do not reflect the underlying economic realities.
- (b) REITs were created as a legal form of organization in order to encourage public ownership of real estate as an asset class through investment in firms that were in the business of long-term ownership and management of real estate. The exclusion, in NAREIT's definition of FFO, of gains and losses from the sales of previously depreciated operating real estate assets allows investors and analysts to readily identify the operating results of the long-term assets that form the core of a REIT's activity and assists in comparing those operating results between periods.

Management believes that it has consistently applied the NAREIT definition of FFO to all periods presented. However, there is judgment involved and other REITs' calculation of FFO may vary from the NAREIT definition for this measure, and thus their disclosure of FFO may not be comparable to the Company's calculation.

The following table is a reconciliation of net income available to common stockholders to FFO and Core FFO for the three and nine months ended September 30, 2021 and 2020 (in thousands, except share and per share amounts):

Essex Property Trust, Inc.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net income available to common stockholders	\$ 118,390	\$ 73,661	\$ 351,680	\$ 473,125
Adjustments:				
Depreciation and amortization	130,564	130,202	387,887	395,370
Gains not included in FFO attributable to common stockholders and unitholders	(42,897)	(24,879)	(145,253)	(276,170)
Depreciation and amortization from unconsolidated co-investments	15,044	12,883	44,592	38,191
Noncontrolling interest related to Operating Partnership units	4,168	2,593	12,403	16,543
Depreciation attributable to third party ownership and other	(145)	(134)	(412)	(407)
Funds from operations attributable to common stockholders and unitholders	\$ 225,124	\$ 194,326	\$ 650,897	\$ 646,652
Funds from operations attributable to common stockholders and unitholders per share - diluted	\$ 3.34	\$ 2.88	\$ 9.67	\$ 9.53
Non-core items:				
Expensed acquisition and investment related costs	108	2	164	104
Deferred tax expense on unrealized gain on unconsolidated co-investment ⁽¹⁾	3,041	—	5,391	1,636
Gain on sale of marketable securities	—	(91)	(2,499)	(124)
Unrealized gains on marketable securities	(7,091)	(3,288)	(23,772)	(2,215)
Provision for credit losses	(3)	3	(110)	100
Equity income from non-core co-investments ⁽²⁾	(10,868)	213	(19,266)	(4,373)
Loss on early retirement of debt, net	—	19,114	18,982	23,820
Loss (gain) on early retirement of debt from unconsolidated co-investment	15	—	18	(38)
Co-investment promote income	—	—	—	(6,455)
Income from early redemption of preferred equity investments and notes receivable	—	—	(8,260)	(210)
General and administrative and other, net	252	2,510	765	5,642
Insurance reimbursements, legal settlements, and other, net	(4)	132	(190)	69
Core Funds from Operations attributable to common stockholders and unitholders	\$ 210,574	\$ 212,921	\$ 622,120	\$ 664,608
Core Funds from Operations attributable to common stockholders and unitholders per share-diluted	\$ 3.12	\$ 3.15	\$ 9.24	\$ 9.80
Weighted average number shares outstanding, diluted ⁽³⁾	67,391,333	67,495,286	67,324,087	67,837,336

⁽¹⁾ Represents deferred tax expense related to net unrealized gains on technology co-investments.

⁽²⁾ Represents the Company's share of co-investment income from technology co-investments.

⁽³⁾ Assumes conversion of all outstanding Operating Partnership limited partnership units ("OP Units") into shares of the Company's common stock and excludes all DownREIT units for which the Operating Partnership has the ability and intention to redeem the units for cash and does not consider them to be common stock equivalents.

Net Operating Income

Net operating income ("NOI") and Same-Property NOI are considered by management to be important supplemental performance measures to earnings from operations included in the Company's condensed consolidated statements of income and comprehensive income. The presentation of Same-Property NOI assists with the presentation of the Company's operations prior to the allocation of depreciation and any corporate-level or financing-related costs. NOI reflects the operating performance of a community and allows for an easy comparison of the operating performance of individual communities or groups of communities. In addition, because prospective buyers of real estate have different financing and overhead structures, with varying marginal impacts to overhead by acquiring real estate, NOI is considered by many in the real estate industry to be a useful measure for determining the value of a real estate asset or group of assets. The Company defines Same-Property NOI as Same-Property revenues less Same-Property operating expenses, including property taxes. Please see the reconciliation of earnings from operations to NOI and Same-Property NOI, which in the table below is the NOI for stabilized properties consolidated by the Company for the periods presented (\$ in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Earnings from operations	\$ 137,971	\$ 128,937	\$ 428,733	\$ 379,510
Adjustments:				
Corporate-level property management expenses	9,068	8,619	27,120	26,024
Depreciation and amortization	130,564	130,202	387,887	395,370
Management and other fees from affiliates	(2,237)	(2,347)	(6,707)	(7,312)
General and administrative	12,712	13,310	34,746	42,244
Expensed acquisition and investment related costs	108	2	164	104
Gain on sale of real estate and land	(42,897)	(22,654)	(142,993)	(39,251)
NOI	245,289	256,069	728,950	796,689
Less: Non-Same Property NOI	(22,807)	(38,308)	(67,844)	(99,957)
Same-Property NOI	\$ 222,482	\$ 217,761	\$ 661,106	\$ 696,732

Item 3: Quantitative and Qualitative Disclosures About Market Risks

Interest Rate Hedging Activities

The Company's objective in using derivatives is to add stability to interest expense and to manage its exposure to interest rate movements or other identified risks. To accomplish this objective, the Company uses interest rate swaps as part of its cash flow hedging strategy. The Company previously had five interest rate swaps that were designated as cash flow hedges of interest rate risk and were terminated as of March 31, 2021 in conjunction with the partial repayment of the Company's unsecured term debt. As of September 30, 2021, the Company also had \$224.5 million of secured variable rate indebtedness.

Additionally, the Company has entered into four total return swap contracts, with an aggregate notional amount of \$224.5 million that effectively convert \$224.5 million of fixed mortgage notes payable to a floating interest rate based on the SIFMA plus a spread and have a carrying value of zero at September 30, 2021. The Company is exposed to insignificant interest rate risk on these swaps as the related mortgages are callable, at par, by the Company, co-terminus with the termination of any related swap. These derivatives do not qualify for hedge accounting.

Interest Rate Sensitive Liabilities

The Company is exposed to interest rate changes primarily as a result of its lines of credit and long-term debt used to maintain liquidity and fund capital expenditures and expansion of the Company's real estate investment portfolio and operations. The Company's interest rate risk management objective is to limit the impact of interest rate changes on earnings and cash flows and to lower its overall borrowing costs. To achieve its objectives, the Company borrows primarily at fixed rates and may enter into derivative financial instruments such as interest rate swaps, caps, and treasury locks in order to mitigate its interest rate risk on a related financial instrument. The Company does not enter into derivative or interest rate transactions for speculative purposes.

The Company's interest rate risk is monitored using a variety of techniques. The table below presents the principal amounts and weighted average interest rates by year of expected maturity to evaluate the expected cash flows.

For the Years Ended	2021	2022	2023	2024	2025	Thereafter	Total	Fair value
(\$ in thousands, except for interest rates)								
Fixed rate debt	\$ 709	42,408	302,093	402,177	632,035	4,384,849	\$ 5,764,271	\$ 6,057,802
Average interest rate	3.4 %	3.7 %	3.4 %	4.0 %	3.5 %	3.1 %	3.2 %	
Variable rate debt ⁽¹⁾	\$ 184	100,780	8,514	932	1,019	255,780	\$ 367,209	\$ 364,250
Average interest rate	1.2 %	1.1 %	1.0 %	1.2 %	1.2 %	1.0 %	1.0 %	

⁽¹⁾ \$224.5 million is subject to total return swaps.

The table incorporates only those exposures that exist as of September 30, 2021. It does not consider those exposures or positions that could arise after that date. As a result, the Company's ultimate realized gain or loss, with respect to interest rate fluctuations and hedging strategies would depend on the exposures that arise prior to settlement.

Item 4: Controls and Procedures

Essex Property Trust, Inc.

As of September 30, 2021, Essex carried out an evaluation, under the supervision and with the participation of management, including Essex's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of Essex's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based upon that evaluation, Essex's Chief Executive Officer and Chief Financial Officer concluded that as of September 30, 2021, Essex's disclosure controls and procedures were effective to ensure that the information required to be disclosed by Essex in the reports that Essex files or submits under the Exchange Act was recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such disclosure controls and procedures were also effective to ensure that information required to be disclosed in the reports that Essex files or submits under the Exchange Act is accumulated and communicated to Essex's management, including Essex's Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

There were no changes in Essex's internal control over financial reporting, that occurred during the quarter ended September 30, 2021, that have materially affected, or are reasonably likely to materially affect, Essex's internal control over financial reporting.

Essex Portfolio, L.P.

As of September 30, 2021, the Operating Partnership carried out an evaluation, under the supervision and with the participation of management, including Essex's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Operating Partnership's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that as of September 30, 2021, the Operating Partnership's disclosure controls and procedures were effective to ensure that the information required to be disclosed by the Operating Partnership in the reports that the Operating Partnership files or submits under the Exchange Act was recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such disclosure controls and procedures were also effective to ensure that information required to be disclosed in the reports that the Operating Partnership files or submits under the Exchange Act is accumulated and communicated to the Operating Partnership's management, including Essex's Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

There were no changes in the Operating Partnership's internal control over financial reporting, that occurred during the quarter ended September 30, 2021, that have materially affected, or are reasonably likely to materially affect, the Operating Partnership's internal control over financial reporting.

Part II -- Other Information

Item 1: Legal Proceedings

The Company is subject to various lawsuits in the normal course of its business operations. While the resolution of any such matter cannot be predicted with certainty, the Company is not currently a party to any legal proceedings nor is any legal proceeding currently threatened against the Company that the Company believes, individually or in the aggregate, would have a material adverse effect on the Company's financial condition, results of operations or cash flows.

Item 1A: Risk Factors

In addition to the other information set forth in this quarterly report on Form 10-Q, you should carefully consider the factors discussed in "Part I. Item 1A. Risk Factors" in the Company's annual report on Form 10-K for the year ended December 31, 2020, which could materially affect the Company's financial condition, results of operations or cash flows. There have been no material changes to the Risk Factors disclosed in Item 1A of the Company's annual report on Form 10-K for the year ended December 31, 2020, as filed with the SEC and available at www.sec.gov. The risks described in the Company's annual report on Form 10-K and subsequent quarterly reports on Form 10-Q are not the only risks facing the Company. Additional risks and uncertainties not currently known or that the Company currently deems to be immaterial may also materially adversely affect the Company's financial condition, results of operations or cash flows.

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

Unregistered Sales of Equity Securities; Essex Portfolio, L.P.

During the three months ended September 30, 2021, the Operating Partnership issued OP Units in private placements in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act, in the amounts and for the consideration set forth below:

During the three months ended September 30, 2021, Essex issued an aggregate of 77,036 shares of its common stock upon the exercise of stock options, the vesting of restricted stock awards, and the exchange of OP Units and DownREIT units by limited partners or members into shares of common stock. Essex contributed the net proceeds of \$15.6 million from the option exercises during the three months ended September 30, 2021 to the Operating Partnership in exchange for an aggregate of 67,743 OP Units, as required by the Operating Partnership's partnership agreement. Furthermore, for each share of common stock issued by Essex in connection with vesting of restricted stock awards and the exchange of OP Units and DownREIT units, the Operating Partnership issued OP Units to Essex, as required by the partnership agreement. During the three months ended September 30, 2021, 9,293 OP Units were issued to Essex pursuant to this mechanism.

Stock Repurchases

In December 2020, the Board of Directors approved the replenishment of the Company's stock repurchase plan such that, as of such date, the Company had \$250.0 million of purchase authority remaining under the replenished plan. As a result of the replenishment, as of September 30, 2021, the Company had \$214.5 million of purchase authority remaining under the stock repurchase plan. The Company did not repurchase any of its common stock during the three months ended September 30, 2021.

Item 3: Defaults Upon Senior Securities

None.

Item 4: Mine Safety Disclosures

Not applicable.

Item 5: Other Information

None.

Item 6: Exhibits

A. Exhibits

<u>10.1</u> *	<u>Third Amended and Restated Revolving Credit Agreement, dated as of September 30, 2021, among Essex Portfolio, L.P., PNC Bank, National Association, as Administrative Agent and L/C Issuer and other lenders party thereto.</u>
<u>31.1</u> *	<u>Certification of Michael J. Schall, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
<u>31.2</u> *	<u>Certification of Barbara Pak, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
<u>31.3</u> *	<u>Certification of Michael J. Schall, Principal Executive Officer of General Partner, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
<u>31.4</u> *	<u>Certification of Barbara Pak, Principal Financial Officer of General Partner, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
<u>32.1</u> *	<u>Certification of Michael J. Schall, Chief Executive Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u> **
<u>32.2</u> *	<u>Certification of Barbara Pak, Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u> **
<u>32.3</u> *	<u>Certification of Michael J. Schall, Principal Executive Officer of General Partner, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u> **
<u>32.4</u> *	<u>Certification of Barbara Pak, Principal Financial Officer of General Partner, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u> **
101.INS	XBRL Instance Document - the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).

* Filed or furnished herewith.

** In accordance with Item 601(b)(32) of Regulation S-K, this Exhibit is not deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section. Such certifications will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrants have duly caused this report to be signed on their behalf by the undersigned thereunto duly authorized.

ESSEX PROPERTY TRUST, INC.

(Registrant)

Date: October 27, 2021

By: /s/ BARBARA PAK

Barbara Pak

*Executive Vice President, Chief Financial Officer
(Authorized Officer, Principal Financial Officer)*

Date: October 27, 2021

By: /s/ JOHN FARIAS

John Farias

Senior Vice President, Chief Accounting Officer

ESSEX PORTFOLIO, L.P.

By Essex Property Trust, Inc., its general partner

(Registrant)

Date: October 27, 2021

By: /s/ BARBARA PAK

Barbara Pak

*Executive Vice President, Chief Financial Officer
(Authorized Officer, Principal Financial Officer)*

Date: October 27, 2021

By: /s/ JOHN FARIAS

John Farias

Senior Vice President, Chief Accounting Officer

THIRD AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

dated as of September 30, 2021 among

ESSEX PORTFOLIO, L.P.,

a California limited partnership, THE LENDERS LISTED

HEREIN,

PNC BANK, NATIONAL ASSOCIATION

as Administrative Agent, and

**PNC CAPITAL MARKETS LLC, U.S. BANK NATIONAL ASSOCIATION, and MUFG UNION BANK,
N.A.,**

as Joint Lead Arrangers and Joint Book Runners

U.S. BANK NATIONAL ASSOCIATION, and MUFG UNION BANK, N.A., as Co-Syndication Agents

**WELLS FARGO BANK, NATIONAL ASSOCIATION, CITIBANK, N.A., and JPMORGAN CHASE
BANK, N.A.,**

as Co-Documentation Agents

**REGIONS BANK, MIZUHO BANK LTD., TRUIST BANK, THE BANK OF NOVA SCOTIA AND CAPITAL
ONE, NATIONAL ASSOCIATION,**

as Co-Managing Agents

CAPITAL MARKETS LLC, as Sustainability Coordinator

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EXHIBIT G-1	FORM OF REVOLVING NOTE	
EXHIBIT G-2	FORM OF SWING LINE NOTE	
EXHIBIT G-3	FORM OF BID NOTE	
EXHIBIT H-1	FORM OF BID REQUEST	
EXHIBIT H-2	FORM OF COMPETITIVE BID	
EXHIBIT I	FORM OF [ENHANCED] SUSTAINABILITY GRID NOTICE	

THIRD AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

This THIRD AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT, dated as of September 30, 2021 (this “Agreement”), is among ESSEX PORTFOLIO, L.P., a California limited partnership (“Borrower”), the several financial institutions from time to time party to this Agreement (collectively, the “Lenders” and individually, a “Lender”), and PNC BANK, NATIONAL ASSOCIATION, as administrative agent for the Lenders (in such capacity, “Administrative Agent”) and as Swing Line Lender and L/C Issuer.

Background

Borrower, Administrative Agent and the Lenders are parties to that certain Second Amended and Restated Revolving Credit Agreement, dated as of January 17, 2018, as amended by that certain First Amendment to Second Amended and Restated Revolving Credit Agreement, dated as of January 11, 2019, and as further amended by that certain Second Amendment to Second Amended and Restated Revolving Credit Agreement, dated as of January 9, 2020, (collectively, the “Original Credit Agreement”).

Borrower, Administrative Agent and the Lenders have agreed to certain modifications and amendments to the Original Credit Agreement and in connection therewith, have agreed to enter into this Agreement, which amends and restates in its entirety the Original Credit Agreement, upon the terms and subject to the conditions hereinafter set forth.

Agreement

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree to amend and restate the Original Credit Agreement to read in full as follows:

1. DEFINITIONS.

1.1 **Defined Terms.** In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

“**Absolute Rate**” means either a rate per annum equal to the Reference Rate plus or minus a margin, or another fixed rate of interest expressed in multiples of 1/100th of one basis point, offered by a Lender for an Absolute Rate Bid Loan.

“**Absolute Rate Bid Loan(s)**” means a Bid Loan that bears interest at a rate determined with reference to an Absolute Rate.

“**Act**” shall have the meaning set forth in **Section 10.17**.

“**Administrative Agent**” means PNC Bank, National Association, in its capacity as administrative agent for the Lenders hereunder and under the other Loan Documents, and any successor administrative agent designated under **Section 9.6**.

“Administrative Agent’s Office” means Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.2, or such other address or account as Administrative Agent may from time to time notify Borrower and the Lenders in writing.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by Administrative Agent.

“Affected Financial Institution” means (i) any EEA Financial Institution or (ii) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Agent’s Payment Office” means the address for payments set forth herein for Administrative Agent, as specified in Schedule 1.2, or such other address as Administrative Agent may from time to time specify by the delivery of a written notice to Borrower and the Lenders.

“Agreement” means this Third Amended and Restated Revolving Credit Agreement, as supplemented, modified, amended or amended and restated from time to time.

“Anti-Corruption Laws” means the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and any other similar anti-corruption Laws or regulations administered or enforced in any jurisdiction in which the Borrower or any of its Subsidiaries conduct business.

“Anti-Terrorism Law” means any Law in force or hereinafter enacted related to terrorism, money laundering, or economic sanctions, including Executive Order No. 13224, the USA PATRIOT Act, the International Emergency Economic Powers Act, 50 U.S.C. 1701, et. seq., the Trading with the Enemy Act, 50 U.S.C. App. 1, et. seq., 18 U.S.C. § 2332d, and 18 U.S.C. § 2339B, and any regulations or directives promulgated under these provisions.

“Applicable Committed Loan Margin” means the Applicable LIBOR Committed Loan Margin or the Applicable Reference Rate Committed Loan Margin determined from the following pricing grid based on the current published or private ratings of Guarantor’s senior unsecured long term debt, as provided below:

TIER	GUARANTOR'S SENIOR UNSECURED LONG TERM DEBT RATING	APPLICABLE LIBOR COMMITTED LOAN MARGIN (BPS)	FACILITY FEE (BPS PER ANNUM)	APPLICABLE REFERENCE RATE COMMITTED LOAN MARGIN (BPS)
I	A- and/or A3 or better	72.5	12.5	0
II	BBB+ and/or Baa1	77.5	15	0
III	BBB and/or Baa2	85	20	0
IV	BBB- and/or Baa3	105	25	5
V	Less than BBB- and/or Baa3	140	30	40

Borrower shall provide to Administrative Agent written evidence of the current rating or ratings on Guarantor's senior unsecured long term debt by any of Moody's, S&P and/or Fitch, if such rating agency has provided to Guarantor a rating on such senior unsecured long term debt, which evidence shall be reasonably acceptable to Administrative Agent; provided, that, at a minimum, Guarantor must provide such a rating from either Moody's or S&P. In the event that Guarantor has a rating on its senior unsecured long term debt provided by (a) both Moody's and S&P, (b) both Moody's and Fitch, (c) both S&P and Fitch, or (d) each of Moody's, S&P and Fitch, and there is a difference in rating between such rating agencies, the Applicable Committed Loan Margin shall be based on the higher rating. Changes in the Applicable Committed Loan Margin shall become effective on the first day following the date on which any of Moody's, S&P or Fitch that has provided Guarantor a rating on Guarantor's senior unsecured long term debt changes such rating. Borrower shall notify Administrative Agent of any such changes in Guarantor's senior unsecured long term debt pursuant to and in accordance with Section 6.4(i).

Notwithstanding the foregoing, from and after the date that Borrower provides to Administrative Agent the Sustainability Grid Notice or the Enhanced Sustainability Grid Notice (as applicable), the Applicable Committed Loan Margin shall be based on the following grid (the "Sustainability Metric Grid") for the period commencing from the fifth (5th) Business Day following the date such Sustainability Grid Notice or Enhanced Sustainability Grid Notice (as applicable) is delivered to Administrative Agent until the date that is three hundred seventy (370) days from the date such Sustainability Grid Notice or Enhanced Sustainability Grid Notice (as applicable) is delivered to Administrative Agent, unless a Sustainability Grid Notice for the subsequent fiscal year is delivered to Administrative Agent on or prior to such date, in which case the Sustainability Metric Grid shall remain in effect. Administrative Agent and Sustainability Coordinator may rely conclusively on any Sustainability Grid Notice and Enhanced Sustainability Grid Notice delivered by Borrower without any responsibility to verify the accuracy thereof. Each party hereto hereby agrees that neither Sustainability Coordinator nor Administrative Agent shall have any responsibility for (or liability in respect of) reviewing, auditing or otherwise evaluating any calculation by Borrower of any Sustainability Metric Target or any Sustainability Metric (or any of the data or computations that are part of or related to any such calculation) set forth in any Sustainability Grid Notice or any Enhanced Sustainability Grid Notice.

TIER	GUARANTOR'S SENIOR UNSECURED LONG TERM DEBT RATING	SUSTAINABLE LIBOR COMMITTED LOAN MARGIN (BPS)	ENHANCED SUSTAINABLE LIBOR COMMITTED LOAN MARGIN (BPS)	FACILITY FEE (BPS PER ANNUM)	APPLICABLE REFERENCE RATE COMMITTED LOAN MARGIN (BPS)
I	A- and/or A3 or better	71.5	70	12.5	0
II	BBB+ and/or Baa1	76.5	75	15	0
III	BBB and/or Baa2	84	82.5	20	0
IV	BBB- and/or Baa3	104	102.5	25	5
V	Less than BBB- and/or Baa3	139	137.50	30	40

“Applicable LIBOR Committed Loan Margin” means the Applicable Committed Loan Margin for LIBOR Committed Loans.

“Applicable Reference Rate Committed Loan Margin” means the Applicable Committed Loan Margin for Reference Rate Committed Loans.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender,
(b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means PNC Capital Markets LLC, U.S. Bank National Association, and Union Bank, N.A., in their capacities as joint lead arrangers and joint book runners.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.5), and accepted by Administrative Agent, in substantially the form of Exhibit E or any other form approved by Administrative Agent.

“Availability” means, at any time, an amount equal to the lesser of (a) the Maximum Commitment Amount at such time and (b) the maximum possible Outstanding Amount of all Loans, together with the maximum possible Outstanding Amount of all L/C Obligations, that would permit Borrower to remain in compliance with the financial covenants set forth in Sections 6.9, 6.11 and 6.12 on a pro forma basis (i.e., using the covenant compliance calculations from the Compliance Certificate most recently delivered by Borrower and then giving effect to the amount of any requested Loan or Letter of Credit).

“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 (i) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (ii) 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).

“Beneficial Owner” means, for Borrower, each of the following: (a) each individual, if any, who, directly or indirectly, owns 25% or more of Borrower’s equity interests; and (b) a single individual with significant responsibility to control, manage, or direct Borrower.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Bid Borrowing” means a borrowing consisting of simultaneous Bid Loans of the same Type from each of the Lenders whose offer to make one or more Bid Loans as part of such borrowing has been accepted under the auction bidding procedures described in Section 2.18.

“Bid Loan” has the meaning set forth in Section 2.18.1.

“Bid Loan Lender” means, in respect of any Bid Loan, the Lender making such Bid Loan to Borrower.

“Bid Loan Sublimit” means an amount equal to 50% of the Maximum Commitment Amount. The Bid Loan Sublimit is part of, and not in addition to, the Maximum Commitment Amount.

“Bid Note(s)” means each promissory note of Borrower payable to the order of a Lender, substantially in the form of Exhibit G-3 hereto, and any amendments, supplements, modifications, renewals, replacements, consolidations or extensions thereof, evidencing the aggregate indebtedness of Borrower to a Lender resulting from Bid Loans made by such Lender pursuant to this Agreement.

“Bid Request” means a written request for one or more Bid Loans substantially in the form of Exhibit H-1.

“Borrower” has the meaning set forth in the introductory clause hereof.

“Borrower’s Knowledge” means the actual knowledge of the general counsel, principal financial officer or chief executive officer of the general partner of Borrower; provided, however, that, if Administrative Agent, L/C Issuer or any Lender sends a notice with regards to any matter pursuant to the provisions of Section 10.2 hereof, Borrower shall be deemed to have knowledge of the matters set forth in such notice as of the date of receipt of such written notice.

“Borrowing” means a Swing Line Borrowing, a Committed Borrowing or a Bid Borrowing.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, Pittsburgh Pennsylvania and/or the state where Administrative Agent’s Office is located, are authorized or required by Law to close and, if the applicable Business Day relates to any LIBOR Loan, means any such day on which dealings in dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Capital Interest” means, with respect to any Joint Venture, the ratio of (i) Borrower’s contribution to the capital of such Joint Venture to (ii) the aggregate amount of all contributions to the capital of such Joint Venture.

“Capitalization Rate” means 5.75%.

“Capital Reserve” means \$50.00 per unit per quarter for all stabilized real properties owned by Guarantor and its consolidated subsidiaries.

“Cash and Cash Equivalents” means, as of any date, unrestricted cash and unrestricted:

(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 three months from the date of their purchase;

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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;

(viii) investments in money market funds in which substantially all the assets are comprised of investments of the character, quality and maturity described in clauses

(i) through (vii) of this definition; and

(ix) marketable securities actively traded on a public exchange.

"Cash Collateralize" has the meaning set forth in Section 2.5.5. Derivatives of such term have corresponding meanings.

"Certificate of Beneficial Ownership" means, for Borrower, a certificate in form and substance acceptable to Administrative Agent and the Lenders (as amended or modified by Administrative Agent from time to time in its sole discretion), certifying, among other things, the Beneficial Owner of Borrower.

"Change in Control" means (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person will be deemed to have "beneficial ownership" of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35.0% of the total voting power of the then outstanding voting stock of Guarantor; provided, however, that Persons acquiring common shares of Guarantor from Guarantor in connection with an acquisition or other transaction with Guarantor, 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 or (b) during any period of 12 consecutive months ending after the Closing, individuals who at the beginning of any such 12 month period constituted the Board of Directors of Guarantor cease for any reason to constitute a majority of the Board of Directors of Guarantor then in office, excluding any change in directors or trustees resulting from (i) the election of any new directors whose election by the Board of Directors or whose nomination for election by the shareholders of Guarantor 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), (ii) the retirement/resignation of any director or trustee as a result of compliance with any written policy of Guarantor requiring retirement/resignation from the Board of Directors upon reaching the retirement age specified in such policy, (iii) the death or disability of any director or trustee, (iv) satisfaction of any requirement for the majority of the members of the board of directors or trustees of Guarantor to qualify under applicable law as independent directors or trustees or (v) the replacement of any director or trustee who is an officer or employee of Guarantor or an affiliate of Guarantor with any other officer or employee of Guarantor or an affiliate of Guarantor.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Administrative Agent for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of Law) , in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

“Closing Date” means the earliest date on which all conditions precedent set forth in Section 5.1 are satisfied or waived in accordance with Section 10.1(a).

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.

“Commitment” means, as to each Lender, its obligation to (a) make Committed Loans to Borrower pursuant to Section 2, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Committed Borrowing” means a borrowing consisting of simultaneous Committed Loans of the same Type and, in the case of LIBOR Committed Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.1.

“Committed Loan” has the meaning set forth in Section 2.1(a)(i).

“Competitive Bid” means a written offer by a Lender to make one or more Bid Loans, substantially in the form of Exhibit H-2, duly completed and signed by a Lender.

“Completion of Construction” means, with respect to any real property, the date that final certificates of occupancy have been issued for all buildings on such property.

“Compliance Certificate” means a compliance certificate, substantially similar to the form of Exhibit D, signed and certified by an authorized financial officer of Borrower.

“Covered Entity” means (a) Borrower and Guarantor and (b) each Person that, directly or indirectly, is in control of Borrower or Guarantor. For purposes of this definition, control of a Person means the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of

such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

“Daily LIBOR Rate” shall mean, for any day, the rate per annum determined by Administrative Agent by dividing (x) the Published Rate by (y) a number equal to 1.00 minus the LIBOR Reserve Percentage. Notwithstanding the foregoing, if the Daily LIBOR Rate as determined above would be less than zero (0.00) in such calculations, such rate shall be deemed to be zero (0.00) for purposes of this Agreement.

“Debt Service” means with respect to any Indebtedness, the sum of (x) the aggregate interest payments, Letter of Credit Fee and other fees paid or payable in respect of or relating to such Indebtedness, plus (y) the aggregate principal installments paid and payable (but not balloon payments) and excluding any non-cash mark to market items and prepayment premiums.

“Default” means any event or circumstance which, with notice or the passage of time or both, would become an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to (i) fund all or any portion of its portion of the Committed Loans, participations in L/C Obligations or participations in Swing Loans when required to be funded hereunder unless such Lender notifies Administrative Agent and 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, must be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent or any Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due; (b) has notified Borrower or 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 its portion of the Loans 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, must be specifically identified in such writing or public statement) cannot be satisfied); (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender will cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower); (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under 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, or (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; provided that a Lender will not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in such 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; (e) has purchased or otherwise acquired all or any portion of another Lender's Commitment, excluding any purchase or acquisition in accordance with the terms and conditions set forth in Section 10.5 or (f) becomes the subject of a Bail-In Action.

"Defaulting Lender Amount" has the meaning given to it in Section 2.16.1. "Defaulting Lender Notice" has the meaning given to it in Section 2.16.1.

"Default Rate" means the per annum rate of interest that is 400 basis points in excess of the rate otherwise applicable.

"Designated Borrower's Account" has the meaning given to it in Section 9.4. "Dollar" and "\$" mean lawful money of the United States.

"EBITDA" means, for any fiscal period of Guarantor and its consolidated subsidiaries, without duplication, (a) the sum for such period of (i) consolidated net income, (ii) consolidated interest expense (including capitalized interest expense); (iii) consolidated charges against income for all federal, state and local taxes based on income, (iv) consolidated depreciation expense, (v) consolidated amortization expense, (vi) the aggregate amount of other non-cash charges and expenses, and (vii) the aggregate amount of extraordinary losses included in the determination of consolidated net income for such period, less (b) the aggregate amount of extraordinary gains included in the determination of consolidated net income for such period, and in each case excluding all Non-Borrower Interests, all as determined in accordance with GAAP, consistently applied. For purposes of this definition, EBITDA includes Borrower's pro rata shares of interest expense, federal, state and local taxes based on income, depreciation expense and amortization expense for such Joint Venture Investments. For the purposes of calculating EBITDA in order to determine Gross Asset Value, EBITDA shall not be deemed to include corporate level general and administrative expenses and other corporate expenses, such as land holding costs, employee and trustee stock and stock option expenses and pursuit costs write-offs, all as determined in good faith by the Borrower.

"EEA Financial Institution" means (i) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (ii) any entity established in an EEA Member Country which is a parent of an institution described in clause (i) of this definition, or (iii) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (i) or (ii) 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, Lichtenstein, 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.

“Electing Lender” has the meaning given to it in Section 2.16.1.

“Election Notice” has the meaning given to it in Section 2.16.1.

“Election Period” has the meaning set forth in Section 2.16.1.

“Eligible Assignee” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; (d) an Eligible Lender, and (e) any other Person (other than a natural person (or holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person) or a Defaulting Lender) approved by (i) Administrative Agent in its reasonable discretion, and (ii) unless an Event of Default has occurred and is continuing, Borrower (each such approval by Borrower not to be unreasonably withheld or delayed); provided, however, that notwithstanding the foregoing, “Eligible Assignee” shall not include Borrower or any of Borrower’s Affiliates or subsidiaries. Approval by Administrative Agent or, if required, by Borrower of any Person as an Eligible Assignee shall not constitute a waiver of any right to approve any other Person before such other Person can become an Eligible Assignee.

“Eligible Lender” means any Person, other than Borrower or any Affiliates or subsidiaries of Borrower who (i) is rated BBB or better by S&P or Baa2 or better by Moody’s or is a commercial bank, financial institution, institutional lender with total assets of at least \$10,000,000,000, and (ii) is regularly engaged in the business of commercial real estate lending and maintains one or more lending offices in the United States.

“Embargoed Property” means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by the Lenders or the Administrative Agent of any applicable Anti-Terrorism Law if the Lenders were to obtain an encumbrance on, lien on, pledge of or security interest in such property, or provide services in consideration of such property.

“EMC” means Essex Management Corporation, a California corporation.

“Enhanced Sustainability Grid Notice” means that certain written notice in the form attached hereto as Exhibit I stating that the Sustainability Metric for Borrower’s most recently ended fiscal year was greater than or equal to the Enhanced Sustainability Metric Target for such fiscal year.

“Enhanced Sustainability Metric Target” means, with respect to any fiscal year of Borrower, the Enhanced Sustainability Metric Target specified in the table provided in the definition of “Sustainability Metric Target”.

“Environmental Laws” means all federal, state, and local laws, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, governmental restrictions and regulations relating to pollution and the protection of the environment or the release of any Hazardous Substances into the environment, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, et seq.,

the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq., the Clean Water Act, 33 U.S.C. § 466 et seq., as amended, and the Clean Air Act, 42 U.S.C. § 7401 et seq.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any ERISA Affiliate.

“Erroneous Payment” has the meaning assigned to it in Section 9.11.1.

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 9.11.4.

“Erroneous Payment Impacted Class” has the meaning assigned to it in Section 9.11.4.

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 9.11.4.

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 9.11.4

“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.

“Event of Default” means any of the events or circumstances specified in Section 8.1.

“Excluded Taxes” means, with respect to Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it, under the laws of any Governmental Authority, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any

Governmental Authority, and (c) in the case of a Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.1.5, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 3.1.5.

"Extended Maturity Date" means the First Extended Maturity Date, the Second Extended Maturity Date or the Third Extended Maturity Date, as applicable, if the extension option for the applicable Extension Period is duly exercised by Borrower hereunder pursuant to Section 2.9.

"Extension Period(s)" means the First Extension Period, the Second Extension Period or the Third Extension Period, as applicable, and "Extension Periods" means all of the aforementioned Extension Periods.

"Facility Fee" has the meaning given to it in Section 2.11.1.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Open Rate" means, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) which is the daily federal funds open rate as quoted by ICAP North America, Inc. (or any successor) as set forth on the Bloomberg Screen BTMM for that day opposite the caption "OPEN" (or on such other substitute Bloomberg Screen that displays such rate), or as set forth on such other recognized electronic source used for the purpose of displaying such rate as selected by Administrative Agent (an "Alternate Source") (or if such rate for such day does not appear on the Bloomberg Screen BTMM (or any substitute screen) or on any Alternate Source, or if there shall at any time, for any reason, no longer exist a Bloomberg Screen BTMM (or any substitute screen) or any Alternate Source, a comparable replacement rate determined by Administrative Agent at such time (which determination shall be conclusive absent manifest error); provided however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the "open" rate on the immediately preceding Business Day. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Federal Funds Open Rate without notice to Borrower. Notwithstanding the foregoing, if the Federal Funds Open Rate as determined above would be less than zero (0.00) in such calculations, such rate shall be deemed to be zero (0.00) for purposes of this Agreement.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business

Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to PNC Bank on such day on such transactions, as determined by Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate as determined above would be less than zero (0.00) in such calculations, such rate shall be deemed to be zero (0.00) for purposes of this Agreement.

“Fee Letter” has the meaning given to it in Section 2.11.3.

“First Extended Maturity Date” means the earlier to occur of March 30, 2026, and such earlier date during the First Extension Period as this Agreement shall terminate in accordance with its terms.

“First Extension Period” means the period commencing on the date immediately following the Original Maturity Date and expiring on the First Extended Maturity Date, as more fully set forth in Section 2.9 hereof.

“Fitch” means Fitch, Inc.

“Fixed Charges” means, for any fiscal period of Guarantor and its consolidated subsidiaries, the sum of the following items for such period (including Borrower’s pro rata share of each such item for each Joint Venture): (i) interest expense (whether paid or accrued), other than interest expense on Permitted Subordinated Indebtedness, (ii) capitalized interest expense, other than capitalized interest expense with respect to Permitted Subordinated Indebtedness, (iii) preferred stock dividends, (iv) scheduled principal payments on Indebtedness, other than balloon payments and other than payments in respect to Permitted Subordinated Indebtedness, and (v) a reserve for recurring capital expenditures in an amount equal to the Capital Reserve for such period. For the purposes hereof, “Fixed Charges” shall not include any non-cash interest expense or deferred amortization costs.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction. As an example, if Borrower is a resident of the United States for tax purposes, a “Foreign Lender” will be any Lender that is organized under the laws of any country, other than the United States.

“Fronting Fee” has the meaning set forth in Section 2.11.2.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Funds From Operations” means, with respect to Guarantor and its consolidated subsidiaries, net income calculated in conformity with the National Association of Real Estate Investment Trusts in its White Paper on Funds From Operations, as published from time to time.

“GAAP” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Gross Asset Value” means, at any time, the sum (without duplication) of (i) an amount equal to EBITDA for Guarantor and its consolidated subsidiaries for the most recent four (4) consecutive fiscal quarters for which Administrative Agent has received financial statements (the “Measuring Period”) (excluding any income attributable to properties bought or sold during such Measuring Period), and divided by the applicable Capitalization Rate (expressed as a decimal); (ii) the amount of cash and marketable securities held by Guarantor and its consolidated subsidiaries as of the end of such Measuring Period; (iii) the aggregate acquisition cost of properties acquired by Guarantor or any of its consolidated subsidiaries during such Measuring Period (including Borrower’s pro rata shares of any properties acquired by Joint Ventures, based on its Capital Interests in such Joint Ventures); and (iv) the aggregate book value of all development property as of the end of the Measuring Period (including Borrower’s pro rata share of development property held by Joint Ventures, based on its Capital Interests in such Joint Ventures). For the purposes of the foregoing clause (iv), “development property” shall include all properties from the date that such properties are listed as development projects in Guarantor’s 10K or 10Q until the date that is eighteen (18) months following the date on which Completion of Construction on such development property has occurred.

“Guarantor” means Essex Property Trust, Inc., a Maryland corporation operating as a real estate investment trust.

“Guaranty” means that certain Payment Guaranty, dated of even date herewith, executed by Guarantor and substantially in the form of Exhibit F-I attached hereto.

“Guaranty Obligation” means, as applied to any Person, without duplication, any direct or indirect liability of that Person with respect to any Indebtedness, lease, dividend, letter of credit or other obligation of another Person. The amount of any Guaranty Obligation shall be deemed equal to the maximum reasonably anticipated liability in respect thereof.

“Hazardous Substance” means any substance, material or waste, including asbestos and petroleum (including crude oil or any fraction thereof), polychlorinated biphenyls, radon gas,

urea formaldehyde foam insulation, explosive or radioactive material, or infectious or medical wastes, which is or becomes designated, classified or regulated as “toxic,” “hazardous,” a “pollutant” or similar designation under, or which is regulated pursuant to, any Environmental Law.

“Honor Date” shall have the meaning set forth in Section 2.5.1(a). “Increase Effective Date” has the meaning set forth in Section 2.17.3(e).

“Indebtedness” of any Person means, without duplication, (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services; (c) all reimbursement obligations with respect to surety bonds, letters of credit and similar instruments; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (f) all indebtedness referred to in clauses (a) through (e) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (g) all Guaranty Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (e) above.

“Indemnified Taxes” means Taxes other than Excluded Taxes. “Indemnitee” has the meaning set forth in Section 10.4(b). “Information” has the meaning set forth in Section 10.6. “Intercompany Creditor” has the meaning set forth in Section 6.14(b).

“Initial Term” means the period from the Closing Date through the Original Maturity Date.

“Insolvency Proceeding” means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case (a) and (b) undertaken under U.S. federal, state or foreign law, including the United States Bankruptcy Code (11 U.S.C. §101 et seq.).

“Installed Solar Generating Capacity” has the meaning given that term in the definition of Sustainability Metric.

“Interest Payment Date” means (a) for each Reference Rate Loan and each Absolute Rate Bid Loan, the first day of each calendar quarter (beginning on March 1, 2021) during the term of this Agreement, (b) for each LIBOR Loan and each LIBOR Margin Bid Loan, the last day of the applicable Interest Period, but not less often than every three (3) months, (c) the Maturity Date, and (d) the date of any prepayment of any Loan made hereunder, as to the amount prepaid.

“Interest Period” means (a) with respect to any LIBOR Committed Loan, the period commencing on the Business Day the Loan is disbursed or continued or on the conversion date on which the Loan is converted to a LIBOR Committed Loan and ending on the date that is (x) seven days (to the extent available) or one, three or six months thereafter or (y) such other period as approved by Administrative Agent if available from all Lenders, in each case as selected by Borrower in its Notice of Borrowing or Conversion/Continuation; (b) as to each LIBOR Margin Bid Loan, the period commencing on the Business Day the LIBOR Margin Bid Loan is disbursed and ending on the date that is (x) seven days (to the extent available) or one, three, six or twelve months thereafter or (y) such other period as approved by Administrative Agent if available from all Lenders, in each case, as selected by Borrower in its Bid Request; and (c) as to each Absolute Rate Bid Loan, a period of not less than fourteen days and not more than 180 days as selected by Borrower in its Bid Request; provided that:

(a) if any Interest Period pertaining to a LIBOR Loan would otherwise end on a day that is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day; and

(b) any Interest Period pertaining to a LIBOR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and Borrower (or any subsidiary of Borrower or Joint Venture) or in favor the L/C Issuer and relating to any such Letter of Credit.

“Joint Venture” means a Person in which Borrower has an ownership interest that is less than 100%.

“Joint Venture Investments” means the aggregate amount of Borrower’s investments (valued in accordance with GAAP), advances and loans to Joint Ventures unconsolidated under GAAP.

“Law(s)” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing.

“L/C Issuer” means PNC Bank in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.2.4. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender Reply Period” has the meaning given to it in Section 10.2(f).

“Lenders” means PNC Bank and the several additional financial institutions from time to time a party to this Agreement.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in the Administrative Questionnaire for such Lender, or such other office as such Lender may designate to Borrower and Administrative Agent in writing from time to time.

“Letter of Credit” means a standby letter of credit issued by PNC Bank for Borrower’s account pursuant to Section 2.1.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Fee” has the meaning set forth in Section 2.11.2.

“Letter of Credit Sublimit” means, at any time, the lesser of (a) \$40,000,000 or (b) the difference between (i) the Availability at such time and (ii) the sum of the aggregate Outstanding Amount of all Loans and the Outstanding Amount of all L/C Obligations at such time.

“LIBOR Base Rate” means, for any Interest Period with respect to any LIBOR Loan, the rate per annum equal to the rate per annum which appears on the Bloomberg Page BBAM1 (or on a substitute Bloomberg page that displays rates at which Dollar deposits are offered by leading banks in the London interbank deposit market), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “LIBOR Base Rate” for such Interest Period shall be the rate per annum determined by Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBOR Loan being made, continued or converted by Administrative Agent and with a term equivalent to such Interest Period as would be offered by a source selected by Administrative Agent which has been approved by the British Bankers’ Association as an authorized information vendor for the purpose of displaying rates at which Dollar deposits are offered by leading banks in the London interbank deposit market at their request at approximately 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period.

“LIBOR Bid Margin” means, for LIBOR Margin Bid Loans, the margin above or below the LIBOR Rate to be added to or subtracted from the LIBOR Rate, which margin shall be expressed in multiples of 1/100th of one basis point.

“LIBOR Committed Borrowing” means a Committed Borrowing consisting of LIBOR Committed Loans.

“LIBOR Committed Loan” means a Committed Loan that bears interest at a rate based upon the LIBOR Rate.

“LIBOR Loan” means a LIBOR Committed Loan or a LIBOR Margin Bid Loan. “LIBOR Margin Bid Loan” means a Bid Loan that bears interest at a rate based upon the

LIBOR Rate.

“LIBOR Rate” means, the interest rate per annum (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) determined by Administrative Agent by dividing (i) the LIBOR Base Rate by (ii) a number equal to 1.00 minus the LIBOR Reserve Percentage. The LIBOR Rate may also be expressed by the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR Base Rate}}{1.0 - \text{LIBOR Reserve Percentage}}$$

Notwithstanding the foregoing, if the LIBOR Rate as determined above would be less than zero (0.00) in such calculations, such rate shall be deemed to be zero (0.00) for purposes of this Agreement.

“LIBOR Reserve Percentage” means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or

other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities”). The LIBOR Rate for the purposes of each outstanding LIBOR Loan, and the Daily LIBOR Rate for the purposes of each Reference Rate Loan, shall be adjusted automatically as of the effective date of any change in the LIBOR Reserve Percentage.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the lessor’s interest under a capital lease (determined in accordance with GAAP), any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement under the UCC or any comparable law naming the owner of the asset to which such lien relates as debtor) and any contingent or other agreement to provide any of the foregoing, but not including the interest of a lessor under an operating lease (determined in accordance with GAAP).

“Loan(s)” means an extension of credit by a Lender to Borrower pursuant to Article 2, and may be a Bid Loan, a Committed Loan or, in the case of the Swing Line Lender, a Swing Loan.

“Loan Documents” means this Agreement, the Notes, the Guaranty, each Issuer Document, the Sustainability Grid Notice, the Enhanced Sustainability Grid Notice, and any other documents delivered to Administrative Agent, on behalf of the Lenders, in connection therewith, in each case as supplemented, modified, amended or amended and restated from time to time.

“Maturity Date” means the earlier of the following dates: (a) the Original Maturity Date or, if Borrower has exercised one or more of its extension options pursuant to and in accordance with Section 2.9 hereof, the applicable Extended Maturity Date, or (b) any earlier date on which all of the Loans shall become due, whether by acceleration, mandatory prepayment or otherwise, provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximum Commitment Amount” means, at any time, an amount equal to One Billion Two Hundred Million Dollars (\$1,200,000,000), subject to increase pursuant to, and on the terms and subject to the conditions set forth in Section 2.17, and to decrease pursuant to the provisions of Section 2.7.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Net Operating Income” for a property means, for the relevant period, the aggregate total cash revenues actually collected from the normal operation of such property (excluding all security deposits until such time as the tenant or other user making such deposit is no longer

entitled to return thereof), plus amounts payable to unrelated third parties on behalf of the owner of the property, if actually paid, plus the proceeds of any rental or business interruption insurance actually received by the owner of the property with respect to such property, from which there shall be deducted all costs and expenses paid or payable by the owner and relating to such property (other than Debt Service which is paid and balloon payments), including (a) any charges paid in connection with the use, ownership or operation of such property, (b) any cost of repairs and maintenance, (c) management fees calculated as the greater of (x) the actual management fees for the applicable period and (y) 3% of the aggregate gross revenues for such property for the relevant period, plus any other costs associated with the management of such property, (d) any payroll cost and other expenses for general administration and overhead paid in connection with the use, ownership or operation of such property, (e) current real estate taxes, (f) any sums paid or subject to payment in the nature of a rebate, refund or other adjustment to revenue previously collected, (g) all assessment bond indebtedness (whether principal or interest) in respect of such property paid or payable for the interval in question, (h) all amounts paid to unrelated third parties on behalf of the owner of the property, and (i) any and all costs or expenses, of whatever nature or kind, incurred in connection with the use, ownership or operation of the property; provided, however, that such costs and expenses paid or payable by Borrower and relating to such property shall not include tenant improvement costs, leasing commissions or the costs and expenses of capital improvements and capital repairs, or depreciation, amortization or other non-cash expenses.

“Non-Borrower Interests” means (a) the portion of capital contributed to Borrower or any Joint Venture by a Person other than Borrower or Guarantor; and (b) the portion of income of Borrower or any Joint Venture that is allocated to a Person other than Borrower or Guarantor.

“Non-Recourse Indebtedness” means, with respect to any Person, Indebtedness of that Person with respect to which recourse to such Person for payment is contractually limited to specific assets encumbered by a Lien securing such Indebtedness. Notwithstanding the foregoing, Indebtedness of any Person shall not fail to constitute Non-Recourse Indebtedness by reason of the inclusion in any document evidencing, governing, securing or otherwise relating to such Indebtedness to the effect that such Person shall be liable, beyond the assets securing such Indebtedness, for (a) misapplied moneys, including insurance and condemnation proceeds and security deposits, (b) liabilities (including environmental liabilities) of the holders of such Indebtedness and their Affiliates to third parties, (c) breaches of customary representations and warranties given to the holders of such Indebtedness, (d) commission of waste with respect to any part of the collateral securing such Indebtedness, (e) recovery of rents, profits or other income attributable to the collateral securing such Indebtedness collected following a default, (f) fraud, gross negligence or willful misconduct, (g) breach of any covenants regarding compliance with ERISA, and (h) other similar exceptions to the non-recourse nature of the Indebtedness imposed by an institutional lender.

“Notes” means, collectively, the Revolving Notes, the Swing Line Note and the Bid Notes.

“Notice of Committed Borrowing or Conversion/Continuation” means a notice substantially in the form of Exhibit B given by Borrower to Administrative Agent pursuant to

Section 2.3, 2.5 or Section 2.6, as applicable, which shall include, in the case of a request for a Letter of Credit, a Letter of Credit Application.

“O&M Plan” means an operations and maintenance plan relating to any asbestos containing materials.

“Obligations” means all Loans, L/C Borrowings, advances, debts, liabilities, obligations and covenants owing from Borrower or Guarantor to any Lender, Administrative Agent or any Indemnitee under any Loan Document, whether absolute or contingent, due or to become due, now existing or hereafter arising, and including interest and fees that accrue after the commencement by or against Borrower or Guarantor of any proceeding under any Insolvency Proceeding naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Obligor” has the meaning set forth in Section 6.14(b).

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Original Maturity Date” means September 30, 2025.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document. Other Taxes shall not include any Excluded Taxes.

“Outstanding Amount” means(s) (a) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to the issuance, extension or increase of any Letter of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Participant” shall have the meaning set forth in Section 10.5(d). “Payment Recipient” has

the meaning set forth in Section 9.11.1.

“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any entity succeeding to any or all of its functions under ERISA.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Borrower or any ERISA Affiliate or to which Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple

employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Permitted Subordinated Indebtedness” means Indebtedness owing by an Obligor to an Intercompany Creditor, provided that such Intercompany Creditor has executed a subordination agreement in form and substance acceptable to Administrative Agent in its reasonable discretion.

“Permitted Liens” means (i) liens for taxes, assessments or governmental charges or levies to the extent that Borrower or any subsidiary of Borrower is not yet required to pay the amount secured thereby; and (ii) liens imposed by law, such as carrier’s, warehouseman’s, mechanic’s, materialman’s and other similar liens, arising in the ordinary course of business in respect of obligations that are not overdue or are being actively contested in good faith by appropriate proceedings and in compliance with Section 6.14(c) hereof, as long as Borrower or a subsidiary of Borrower, as applicable, has established and maintained adequate reserves for the payment of the same and, by reason of nonpayment, no property of Borrower or a subsidiary of Borrower, as applicable, is in danger of being lost or forfeited; and (iii) easements, covenants, conditions and restrictions; reciprocal easement and access agreements and similar agreements relating to ownership and operation.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, joint stock company, business trust, unincorporated association or Governmental Authority.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Platform” has the meaning given to it in Section 6.3. “PNC Bank” means PNC

Bank, National Association.

“Prime Rate” means the rate of interest in effect for such day as publicly announced from time to time by PNC Bank as its “prime rate.” The Prime Rate is determined from time to time by PNC Bank as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by PNC Bank to any particular class or category of customers. If and when the Prime Rate changes, the rate of interest with respect to any obligation to which the Prime Rate applies will change automatically without notice to Borrower, effective on the date of any such change.

“Pro Rata Share” means, as to any Lender at any time, the percentage indicated for such Lender as its “Pro Rata Share” on Schedule 1.1 (expressed as a decimal rounded to the ninth decimal place), as such percentage may be adjusted from time to time as a result of an increase in the Maximum Commitment Amount as provided in Section 2.17, or to account for any assignments of a Lender’s interest as provided in Section 10.5.

“Published Rate” means the rate of interest published each Business Day in The Wall Street Journal “Money Rates” listing under the caption “London Interbank Offered Rates” for a

one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the eurodollar rate for a one month period as published in another publication determined by Administrative Agent).

“Reference Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Open Rate plus one-half of one percent (.5%), (b) the Prime Rate and (c) the Daily LIBOR Rate plus one percent (1%).

“Reference Rate Committed Borrowing” means a Committed Borrowing consisting of Reference Rate Committed Loans.

“Reference Rate Committed Loan” means a Committed Loan that bears interest based on the Reference Rate.

“Register” shall have the meaning set forth in Section 10.5(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Reportable Compliance Event” means that: (a) any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint, or similar charging instrument, arraigned, custodially detained, penalized or the subject of an assessment for a penalty, or enters into a settlement with an Governmental Authority in connection with any sanctions or other Anti-Terrorism Law or Anti-Corruption law, or any predicate crime to any Anti-Terrorism Law or Anti-Corruption Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations represents a violation of any Anti-Terrorism Law or Anti-Corruption Law; (b) any Covered Entity engages in a transaction that has caused or may cause the Lenders or the Administrative Agent to be in violation of any Anti-Terrorism Laws, including a Covered Entity’s use of any proceeds of the Loans to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Person or Sanctioned Jurisdiction; or (c) any Collateral becomes Embargoed Property.

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

“Responsible Officer” means any officer of the general partner of Borrower having the authority to execute Loan Documents, Notices of Committed Borrowing or Conversion/Continuation or Bid Requests on behalf of Borrower, as identified to Administrative Agent in a certificate executed by the General Counsel, Principal Financial Officer, Chief Executive Officer, Vice President-Finance or Secretary of Borrower’s general partner.

“Required Lenders” means, as of any date of determination, the Lenders having at least 51% of the Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to issue Letters of Credit have been terminated pursuant to Section 8.2, the Lenders holding in the aggregate at least 51% of the Outstanding Amount of all Loans plus the Outstanding Amount of all L/C Obligations (with the aggregate amount of each

Lender's risk participation and funded participation in L/C Obligations and Swing Loans being deemed "held" by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Outstanding Amount held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; and provided further that if there are fewer than three Lenders, all Lenders shall be Required Lenders.

"Requirements of Law" means, as to any Person, any law (statutory or common), treaty, rule or regulation, or any determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Requirements" has the meaning set forth in Section 6.1.1.

"Revolving Note(s)" means each promissory note of Borrower payable to the order of a Lender, substantially in the form of Exhibit G-I hereto, and any amendments, supplements, modifications, renewals, replacements, consolidations or extensions thereof, evidencing the aggregate indebtedness of Borrower to a Lender resulting from Loans (other than Bid Loans) made by such Lender pursuant to this Agreement; "Revolving Notes" means, at any time, all of the Notes (other than the Swing Line Note and the Bid Notes) executed by Borrower in favor of a Lender outstanding at such time.

"Sanctioned Jurisdiction" means any country, territory, region or whose government is the subject of sanctions administered by OFAC.

"Sanctioned Person" mean any individual person, group, regime or entity listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

"Second Extended Maturity Date" means the earlier to occur of September 30, 2026, and such earlier date during the Second Extension Period as this Agreement shall terminate in accordance with its terms.

"Second Extension Period" means the period commencing on the date immediately following the First Extended Maturity Date and expiring on the Second Extended Maturity Date, as more fully set forth in Section 2.9 hereof.

"Secured Debt" means (i) other than with respect to Joint Ventures, Indebtedness that is secured by a Lien encumbering real property owned or leased by the obligor and (ii) with respect to a Joint Venture, Borrower's and Guarantor's pro rata share of Indebtedness that is secured by a Lien encumbering real property owned by such Joint Venture based upon Borrower's and Guarantor's Capital Interests in such Joint Venture. Notwithstanding the foregoing, Secured Debt shall not include any Permitted Subordinated Indebtedness.

"Supplemental Signature Page" has the meaning set forth in Section 2.17.3(c).

"Sustainability Baseline" as of any determination date means the Sustainability Metric for the Sustainability Metric Base Year, as adjusted to remove any photovoltaic electricity

generating capacity attributable to projects which were subsequently disposed of by Borrower prior to the Sustainability Metric Date.

“Sustainability Coordinator” means PNC Capital Markets LLC.

“Sustainability Grid Notice” means that certain written notice provided by Borrower to Administrative Agent in the form attached hereto as Exhibit I stating that the Sustainability Metric for Borrower’s most recently ended fiscal year was greater than or equal to the Sustainability Metric Target for such fiscal year.

“Sustainability Metric” means the sum of installed photovoltaic electricity generating capacity measured in kilowatts (kW) of all solar panels owned or managed by Borrower or its subsidiaries (including joint-venture subsidiaries) which, as of the Sustainability Metric Date, have been installed and permitted to operate by the relevant governmental authorities or utility companies (the “Installed Solar Generating Capacity”).

“Sustainability Metric Auditor” means an internationally recognized “big four” auditing firm or a reputable sustainability assurance provider reasonably satisfactory to Administrative Agent and Sustainability Coordinator.

“Sustainability Metric Base Year” means fiscal year 2020.

“Sustainability Metric Date” means December 31st of any fiscal year for which the Borrower is computing the Sustainability Metric.

“Sustainability Metric Target” means, with respect to any fiscal year of Borrower, the Sustainability Metric specified in the table below for the corresponding fiscal year specified below:

Fiscal Year	Sustainability Metric Target	Enhanced Sustainability Metric Target
2021	120% of Sustainability Baseline	135% of Sustainability Baseline
2022	140% of Sustainability Baseline	170% of Sustainability Baseline
2023	160% of Sustainability Baseline	205% of Sustainability Baseline
2024	180% of Sustainability Baseline	240% of Sustainability Baseline
2025	200% of Sustainability Baseline	275% of Sustainability Baseline
2026	220% of Sustainability Baseline	310% of Sustainability Baseline

“S&P” means S&P Global Ratings, a division of S&P Global, Inc.

“Swing Line” has the meaning given to it in Section 2.2.1.

“Swing Line Availability” means, at any time, the lesser of (a) \$50,000,000, or (b) the difference between (i) the Availability at such time and (ii) the sum of the Outstanding Amount of all Loans and the Outstanding Amount of all L/C Obligations at such time.

“Swing Line Borrowing” means a borrowing of a Swing Loan pursuant to Section 2.2.

“Swing Line Lender” means PNC Bank, in its capacity as the maker of Swing Loans under Section 2.2, or any successor or replacement thereto under Sections 9.6 or 10.5(h).

“Swing Line Note” means the promissory note of Borrower payable to the order of the Swing Line Lender, substantially in the form of Exhibit G-2 attached hereto, to evidence the Swing Loans, and any amendments, supplements, modifications, renewals, replacements, consolidations or extensions thereof.

“Swing Loan” and “Swing Loans” have the meanings given to them in Section 2.2.1. “Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority and arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, including any interest, additions to tax or penalties applicable thereto.

“Third Extended Maturity Date” means the earlier to occur of March 30, 2027, and such earlier date during the Third Extension Period as this Agreement shall terminate in accordance with its terms.

“Third Extension Period” means the period commencing on the date immediately following the Second Extended Maturity Date and expiring on the Third Extended Maturity Date, as more fully set forth in Section 2.9 hereof.

“Total Liabilities” means, without duplication, (a) all Indebtedness of Guarantor and its consolidated subsidiaries, including subordinated debt, capitalized leases, purchase obligations (defined as nonrefundable deposits and non-contingent obligations), L/C Obligations and unfunded obligations of Guarantor, Borrower or any consolidated subsidiary reported in accordance with GAAP, (b) Borrower’s and Guarantor’s pro rata share of non-recourse liabilities of unconsolidated Joint Ventures, based on its Capital Interests in such Joint Ventures; and (c) all liabilities of Affiliates that are recourse to Borrower or Guarantor. The term “Total Liabilities” does not include (i) that portion of Borrower’s liabilities attributable to Non-Borrower Interests; (ii) any Permitted Subordinated Indebtedness; and (iii) to the extent any of the items set forth in the foregoing clauses (a) through (c) would be included as liabilities on the liability side of the balance sheet of Borrower and/or Guarantor in accordance with GAAP, excluding therefrom all accounts payable, accrued interest and expenses, prepaid rents, security deposits, tax liabilities and dividends declared but not yet paid.

“Type” means, (a) in connection with a Committed Loan, the characterization of such loan as a Reference Rate Committed Loan or a LIBOR Committed Loan, and (b) in connection with a Bid Loan, its characterization of such loans as an Absolute Rate Bid Loan or a LIBOR Margin Bid Loan.

“UCC” means the Uniform Commercial Code as in effect in any jurisdiction, as the same may be amended, modified or supplemented from time to time.

“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.

“Unencumbered Asset Value” means, at any time, an amount equal to the sum of the Unencumbered Development Property Value plus the Unencumbered Stabilized Asset Property Value. In the event the sum of (i) the Unencumbered Development Property Value and (ii) the Unencumbered Stabilized Asset Property Value for Unencumbered Stabilized Asset Properties which are Joint Ventures (not including downREIT properties) exceeds 25% of the Unencumbered Asset Value, such excess value shall not be included in the calculation of the Unencumbered Asset Value. For the purposes hereof, “downREIT properties” means any real property which is owned by a Person in which Borrower or its Affiliate is the sole general partner or sole managing member and the third party limited partner in such Person retains economic interests in such Person which mirror ownership interests in Guarantor’s common stock.

“Unencumbered Development Property” means a real property listed on Exhibit A-2 and any additional real property which satisfies the following conditions:

(a) such real property is wholly owned by Borrower or any of its consolidated subsidiaries in fee simple title, or such real property is subject to a financeable ground lease (as determined by Administrative Agent in its reasonable discretion) in favor of Borrower or any of its consolidated subsidiaries, in excess of 30 years (provided that no less than 25 years shall be remaining on such ground lease) and such real property is located within the United States);

(b) such real property is comprised of primarily residential apartment projects under development or acquired residential apartment projects in the process of being leased up prior to stabilization; and

(c) such real property is free of all liens, encumbrances and negative pledges, except for: (i) liens for taxes, assessments or governmental charges or levies to the extent that the owner of such real property is not yet required to pay the amount secured thereby; and (ii) liens imposed by law, such as carrier’s, warehouseman’s, mechanic’s, materialman’s and other similar liens, arising in the ordinary course of business in respect of obligations that are not overdue or are being actively contested in good faith by appropriate proceedings, as long as the owner of such real property, as applicable, has established and maintained adequate reserves for the payment of the same and, by reason of nonpayment, such real property is not in danger of being lost or forfeited; and (iii) easements; covenants, conditions and restrictions; reciprocal easement and access agreements and similar agreements relating to ownership and operation.

Such development property shall no longer qualify as an Unencumbered Development Property on the date that is the earlier of (i) twelve months following the date on which Completion of Construction on such Unencumbered Development Property has occurred (with respect to

development properties) or the date that such Unencumbered Development Property has reached stabilization (with respect to acquired properties being leased up prior to stabilization), or (ii) the first fiscal quarter in which such Unencumbered Development Property becomes a Unencumbered Stabilized Asset Property.

“Unencumbered Development Property Value” means, at any time, for all Unencumbered Development Property, the aggregate cost book value determined in accordance with GAAP (as shown on the Borrower’s consolidated balance sheet).

“Unencumbered Property” means each Unencumbered Development Property and each Unencumbered Stabilized Asset Property.

“Unencumbered Stabilized Asset Property” means a real property listed on Exhibit A-I and any additional real property which satisfies the following conditions:

(a) such real property is wholly owned by Borrower or any of its consolidated subsidiaries in fee simple title, or such real property is subject to a financeable ground lease (as determined by Administrative Agent in its reasonable discretion) in favor of Borrower or any of its consolidated subsidiaries, in excess of 30 years (provided that no less than 25 years shall be remaining on such ground lease) and such real property is located within the United States);

(b) such real property is operated primarily as residential apartments; and

(c) such real property is free of all liens, encumbrances and negative pledges, except for: (i) liens for taxes, assessments or governmental charges or levies to the extent that the owner of such real property is not yet required to pay the amount secured thereby; and (ii) liens imposed by law, such as carrier’s, warehouseman’s, mechanic’s, materialman’s and other similar liens, arising in the ordinary course of business in respect of obligations that are not overdue or are being actively contested in good faith by appropriate proceedings, as long as the owner of such real property, as applicable, has established and maintained adequate reserves for the payment of the same and, by reason of nonpayment, such real property is not in danger of being lost or forfeited; and (iii) easements; covenants, conditions and restrictions; reciprocal easement and access agreements and similar agreements relating to ownership and operation.

“Unencumbered Stabilized Asset Property Value” means, at any time, the aggregate of the values determined for each Unencumbered Stabilized Asset Property as follows:

(a) if at such time Borrower or its consolidated subsidiary has owned such Unencumbered Stabilized Asset Property for four or more full consecutive calendar quarters (or, with respect to any such real property that was formerly an Unencumbered Development Property or a development property, if such real property has qualified as an Unencumbered Stabilized Asset Property for four or more full consecutive calendar quarters), an amount equal to (A) its Net Operating Income for the most recent four consecutive quarter period (including, with respect to any such Unencumbered Stabilized Asset Property which is a Joint Venture, Borrower’s pro rata share of such Net Operating Income, based on Borrower’s Capital Interests in such Joint Venture), less the Capital Reserve for such period, divided by (B) the Capitalization Rate (expressed as a decimal);

(b) if at such time Borrower or its consolidated subsidiary has owned such Unencumbered Stabilized Asset Property for one full calendar quarter or more but fewer than four full consecutive calendar quarters (or, with respect to any such real property that was formerly an Unencumbered Development Property or a development property, if such real property has qualified as an Unencumbered Stabilized Asset Property for one full calendar quarter or more but fewer than four full consecutive calendar quarters), an amount equal to (i) its annualized Net Operating Income for the number of the most recent full consecutive calendar quarters that Borrower or its consolidated subsidiary has owned such property (e.g., Net Operating Income for properties owned for two full consecutive calendar quarters is annualized by multiplying by a factor of two) (including, with respect to any such Unencumbered Stabilized Asset Property which is a Joint Venture, Borrower's pro rata share of such annualized Net Operating Income, based on Borrower's Capital Interests in such Joint Venture), less the Capital Reserve for such period, divided by (ii) the Capitalization Rate (expressed as a decimal); or

(c) if at such time Borrower or its consolidated subsidiary has owned such Unencumbered Stabilized Asset Property for less than one full calendar quarter (or, with respect to any such real property that was formerly an Unencumbered Development Property or a development property, if such real property has qualified as an Unencumbered Stabilized Asset Property for less than one full calendar quarter), an amount equal to its acquisition cost (including, with respect to any such Unencumbered Stabilized Asset Property which is a Joint Venture, Borrower's pro rata share of such acquisition cost, based on Borrower's Capital Interests in such Joint Venture).

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"Unreimbursed Amount" has the meaning set forth in Section 2.5.1(a).

"Unrestricted Cash and Cash Equivalents" means Cash and Cash Equivalents owned by Borrower and Borrower's share of any Cash and Cash Equivalents owned by any consolidated subsidiary of Borrower that are not subject to any pledge, lien or control agreement, less (i) \$10,000,000; (ii) amounts normally and customarily set aside by Borrower for capital and interest reserves, and (iii) amounts placed with third parties as deposits or security for contractual obligations.

"Unsecured Debt" means, at any time, all Indebtedness of Borrower, Guarantor and any wholly owned subsidiary of Borrower or Guarantor that is not Secured Debt at the end of Guarantor's most recent fiscal quarter, including, without limitation, Indebtedness arising under the Loan Documents; provided, however, with respect to a Joint Venture, the Indebtedness of Borrower and Guarantor with respect to such Joint Venture shall mean Borrower's and Guarantor's pro rata share of such Indebtedness based upon their Capital Interests in such Joint Venture. Notwithstanding the foregoing, Unsecured Debt shall not include (i) any Permitted Subordinated Indebtedness and (ii) all accounts payable, accrued interest and expenses, prepaid rents, security deposits, tax liabilities and dividends declared but not yet paid, which would

otherwise be included as liabilities on the liability side of the balance sheet of Borrower and/or Guarantor in accordance with GAAP.

“Write-Down and Conversion Powers” means (i) 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 (ii) 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. Terms capitalized in this Agreement and not defined in this Section 1 have the meanings given to them elsewhere in this Agreement.

1.2 Other Interpretive Provisions.

1.2.1 Use of Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant to this Agreement. The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms.

1.2.2 Certain Common Terms.

(1) The Agreement. The words “hereof,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule and exhibit references are to this Agreement unless otherwise specified.

(2) Documents. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(3) Meaning of Certain Terms. The term “including” is not limiting and means “including without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(4) Performance. Whenever any performance obligation hereunder (including a payment obligation) is stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date (other than with respect to computation of interest owed or accrued under this Agreement), the word “from” means “from and including” and the words “to” and “until” each mean “to and including”. If any provision of this Agreement refers to any action taken or to be taken by any

Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all reasonable means, direct or indirect, of taking or not taking such action.

(5) Contracts. Unless otherwise expressly provided in this Agreement, references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(6) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(7) Captions. The captions and headings of this Agreement are for convenience of reference only, and shall not affect the construction of this Agreement.

(8) Independence of Provisions. If a conflict exists between the terms of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided, however, that the parties acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement, or unless the applicable provisions are inconsistent or cannot be simultaneously enforced or performed.

(9) Exhibits. All of the exhibits attached to this Agreement are incorporated herein by this reference.

(10) Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.2.3 Accounting Principles.

(1) Accounting Terms. Unless the context otherwise clearly requires, all accounting terms not otherwise expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied.

(2) Fiscal Periods. References herein to “fiscal year” and “fiscal quarter” refer to such fiscal periods of Guarantor and its consolidated subsidiaries.

(3) Rounding. Any financial ratios required to be maintained by Borrower or Guarantor pursuant to this Agreement or any other Loan Document shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.2.4 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its

terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.2.5 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it will be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person will be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

2. LOAN AMOUNTS AND TERMS.

2.1 Amount and Terms of Commitment.

(a) Commitment. Each Lender severally agrees, on the terms and subject to the conditions hereinafter set forth,

(i) to make loans (each such loan, a "Committed Loan") to Borrower from time to time on any Business Day during the period from the Closing Date to the Maturity Date to be used for investments, refinancing of existing indebtedness, general working capital, and for other purposes permitted by Borrower's organizational documents other than the repurchase of Guarantor's common stock, in an aggregate amount not to exceed such Lender's Pro Rata Share of the Availability, and

(ii) to fund drawings on any Letters of Credit that the L/C Issuer issues for Borrower's account from time to time, in an aggregate amount not to exceed at any time outstanding such Lender's Pro Rata Share of the amount of such drawing. On the date that the L/C Issuer issues a Letter of Credit for Borrower's account, each Lender shall be deemed to have unconditionally and irrevocably purchased from the L/C Issuer a pro rata risk participation in the stated amount of such Letter of Credit, without recourse or warranty, in an amount equal to such Lender's Pro Rata Share of the stated amount of such Letter of Credit.

(b) Letters of Credit. The L/C Issuer agrees to issue Letters of Credit in its standard form for the account of Borrower or any subsidiary of Borrower or any Joint Venture on any Business Day during the period from the Closing Date to the Maturity Date, for any purpose for which Borrower can obtain Loans under this Agreement, in an aggregate amount not to exceed the Letter of Credit Sublimit; provided, however, that no Letter of Credit shall have an expiry date (or shall have an "evergreen" or other extension provision that results in a final expiry date) that is later than 30 days prior to the then-applicable Maturity Date.

(c) Letter of Credit Applications and Issuer Documents. Each Letter of Credit issued hereunder (including any supplement, modification, amendment, renewal or extension thereof) will be issued pursuant to the L/C Issuer's standard form of Letter of Credit Application, substantially in the form attached hereto as Exhibit C (as such form may be modified by PNC Bank from time to time), which will set forth the agreement between the account party and the

L/C Issuer regarding the Letter of Credit and drawings thereunder. A copy of each such Letter of Credit Application submitted to the L/C Issuer shall be simultaneously delivered to the Administrative Agent. Additionally, Borrower shall furnish to the L/C Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or Administrative Agent may reasonably require. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(d) Issuance of Letter of Credit. Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such Letter of Credit Application from Borrower or account party thereof and, if not, the L/C Issuer will provide Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from Administrative Agent or Borrower at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 5.2 shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Borrower (or the applicable subsidiary or Joint Venture) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(e) Drawings Constituting L/C or Committed Borrowings. Notwithstanding the provisions of Section 2.5.1, any amount drawn under a Letter of Credit shall, from and after the date on which such drawing is made, constitute a Committed Borrowing for all purposes under this Agreement (including accrual and payment of interest and repayment of principal), other than disbursement of Loan proceeds under Section 2.5, and shall be subject to the provisions of Section 2.5.1. Reimbursement of drawings under any Letter of Credit issued for the account of Borrower's subsidiary or Joint Venture shall be the responsibility of, and shall create an obligation of, Borrower and any guarantor, including Guarantor.

(f) Limited to Availability. Notwithstanding any contrary provision of this Agreement, the Outstanding Amount of all Loans plus the Outstanding Amount of all L/C Obligations shall not at any time exceed the Availability. Within the limits of the Availability, and subject to the other terms and conditions hereof, Borrower may borrow under this Section 2.1 and under Section 2.5 prior to the Maturity Date, repay pursuant to Section 2.8 and reborrow pursuant to this Section 2.1 and pursuant to Section 2.5 prior to the Maturity Date.

(g) Benefits of L/C Issuer. The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (i) provided to Administrative Agent in Article 9 with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article 9

included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

2.1.1 No Obligation to Issue Letters of Credit Under Certain Circumstances. The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(a) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(b) the issuance of such Letter of Credit would violate any laws or one or more policies of the L/C Issuer; or

(c) a default of any Lender's obligations to fund under Section 2.5.1(b) exists or any Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into satisfactory arrangements with Borrower or such Lender to eliminate the L/C Issuer's risk with respect to such Lender including, without limitation, Borrower providing Cash Collateral in the amount of such Defaulting Lender's Pro Rata Share of the requested Letter of Credit.

Letters of Credit shall be issued only for drawing in United States dollars. No Letters of Credit with automatic extension or reinstatement provisions shall be permitted.

2.1.2 Letter of Credit Amendments. The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

2.1.3 Applicability of ISP98. Unless otherwise expressly agreed by the L/C Issuer and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each standby Letter of Credit.

2.2 Swing Line.

2.2.1 Swing Loans. Upon Borrower's request, and subject to the terms and conditions of this Agreement, the Swing Line Lender may, in its sole and absolute discretion, on and after the Closing Date and prior to the Maturity Date, provide to Borrower a swing line credit facility (the "Swing Line") of up to \$50,000,000; provided that the Swing Line Lender shall not in any event make any Loan under the Swing Line (each a "Swing Loan" and collectively, the "Swing Loans") if, after giving effect thereto, (a) the sum of the Outstanding Amount of all Loans plus the Outstanding Amount of all L/C Obligations would exceed the Availability at such time or (b) the aggregate principal amount of all then-outstanding Swing Loans made by the Swing Line Lender would exceed the Swing Line Availability at such time.

Within the limits of the Swing Line Availability, Borrower may borrow under this Section 2.2.1 at any time prior to the Maturity Date, repay pursuant to Sections 2.2.3 or 2.2.4 and reborrow pursuant to this Section 2.2.1 prior to the Maturity Date. Notwithstanding any contrary provision of this Section 2.2, the Swing Line Lender shall not at any time be obligated to make any Swing Loan. Borrower shall not use the proceeds of any Swing Loan to refinance any outstanding Swing Loan.

2.2.2 Interest on Swing Loans. Notwithstanding the provisions of Sections 2.10.1 and 2.10.2, each Swing Loan outstanding under the Swing Line shall accrue interest at a rate per annum equal to the Federal Funds Rate plus the Applicable LIBOR Committed Loan Margin, which interest shall be payable in arrears on each Interest Payment Date and on the due date for Swing Loans set forth in Section 2.2.3, and shall be payable to Administrative Agent for the account of the Swing Line Lender; provided that, notwithstanding any other provision of this Agreement, each Swing Loan shall bear interest for a minimum of one day.

2.2.3 Principal Payable on Swing Loans. Notwithstanding the provisions of Section 2.8, the principal outstanding under the Swing Line shall be due and payable:

(a) at or before 2:00 p.m., on the third Business Day immediately following any date on which a Swing Loan is made under the Swing Line; and

(b) in any event on the Maturity Date;

provided that, if no Event of Default has occurred and remains uncured, and Borrower is permitted to borrow under the terms of this Agreement (the Availability being determined for such purpose without giving effect to any reduction thereof occasioned by such Swing Loans due and payable) at the time such Swing Loans are due, then unless Borrower notifies the Swing Line Lender that it will repay such Swing Loans on their due date, Borrower shall be deemed to have submitted a Notice of Committed Borrowing or Conversion/Continuation for Reference Rate Committed Loans in an amount necessary to repay such Swing Loans on their due date, and the provisions of Section 2.3 concerning (i) the minimum principal amounts required for Committed Borrowings and (ii) the funding of requested Committed Borrowings as Swing Loans shall not apply to Loans made pursuant to this Section 2.2.3.

2.2.4 Prepayments of Swing Loans. Notwithstanding the provisions of Section 2.8.1, Borrower may, from time to time on any Business Day, make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Swing Loans, without incurring any premium or penalty; provided that:

(a) each such voluntary prepayment shall require prior written notice given to Administrative Agent and Swing Line Lender no later than 1:00 p.m. on the day on which Borrower intends to make a voluntary prepayment, and

(b) each such voluntary prepayment shall be in a minimum amount of \$500,000 (or, if less, the aggregate outstanding principal amount of all Swing Loans then outstanding).

2.2.5 Funding of Participations. Immediately upon the making of a Swing Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Loan in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Swing Loan. The Swing Line Lender shall be responsible for invoicing Borrower for interest on the Swing Loans. Until each Bank funds its Reference Rate Committed Loan or risk participation pursuant to this Section 2.2.5 to refinance such Bank's Pro Rata Share of any Swing Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender. From and after the date that any Lender funds such participation pursuant to this Section 2.2.5, such Lender shall, to the extent of its Pro Rata Share, be entitled to receive a ratable portion of any payment of principal and/or interest received by the Swing Line Lender on account of such Swing Loans, payable to such Lender promptly upon such receipt. If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.9 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Pro Rata Share thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Reference Rate. Administrative Agent will make such demand upon the request of the Swing Line Lender. The foregoing procedures for purchases of risk participations and the funding by Lenders of their participations in Swing Loans hereunder shall not delay the funding of any Swing Loan advanced to Borrower under Section 2.2.1 hereof.

2.2.6 Refinancing of Swing Loans.

(a) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Reference Rate Committed Loan in an amount equal to such Lender's Pro Rata Share of the amount of Swing Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Notice of Committed Borrowing or Conversion/Continuation issued under Section 2.3 for purposes hereof) and in accordance with the requirements of Section 2.3, without regard to the minimum and multiples specified therein for the principal amount of Reference Rate Committed Loans, but subject to the unutilized portion of the Commitments and the conditions set forth in Section 5.2. The Swing Line Lender shall furnish Borrower with a copy of the applicable Notice of Committed Borrowing or Conversion/Continuation promptly after delivering such Notice of Committed Borrowing or Conversion/Continuation to Administrative Agent. Each Lender shall make an amount equal to its Pro Rata Share of the amount specified in such Notice of Committed Borrowing or Conversion/Continuation available to Administrative Agent in immediately available funds for the account of the Swing Line Lender at Administrative Agent's Office not later than 2:00 p.m. on the day specified in such Notice of Committed Borrowing or Conversion/Continuation. Subject to Section 2.2.6(b), each Lender that so makes funds available shall be deemed to have made a Reference Rate Committed Loan to Borrower in such amount. Administrative Agent shall remit the funds so received to the Swing Line Lender. Notwithstanding the foregoing, the issuance of a Notice of Committed Borrowing or Conversion/Continuation by the Swing Line Lender under this Section 2.2.6(a) shall not delay the funding of any Swing Loan advanced to Borrower under Section 2.2.1 hereof.

(b) If for any reason any Swing Loan cannot be refinanced by a Committed Borrowing in accordance with Section 2.2.6(a), the request for Reference Rate Committed Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Loan and each Lender's payment to Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.2.6(a) shall be deemed payment in respect of such participation.

(c) If any Lender fails to make available to Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.2.6 by the time specified in Section 2.2.6(a), the Swing Line Lender shall be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this Section 2.2.6(c) shall be conclusive absent manifest error.

(d) Each Lender's obligation to make Committed Loans or to purchase and fund risk participations in Swing Loans pursuant to this Section 2.2.6 shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, Borrower or any other Person for any reason whatsoever, (ii) subject to Section 2.2.8, the occurrence or continuance of a Default, or (iii) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.2.6 is subject to the conditions set forth in Section 5.2. No such funding of risk participations shall relieve or otherwise impair the obligation of Borrower to repay Swing Loans, together with interest as provided herein.

2.2.7 Termination of Swing Line. At any time during the continuance of an Event of Default, the Swing Line Lender may, without Borrower's consent, upon one Business Day's notice to Borrower, terminate the Swing Line and cause Reference Rate Committed Loans to be made by the Lenders in an aggregate amount equal to the amount of principal and interest outstanding under the Swing Line (the Availability being determined for such purpose without giving effect to any reduction thereof occasioned by such Swing Loans), and the conditions precedent set forth in Section 2.3 and Section 5.2, and any requirement of Section 2.3 that a Committed Borrowing be funded as a Swing Loan shall not apply to such Committed Loans. The proceeds of such Committed Loans shall be paid to the Swing Line Lender to retire the outstanding principal and interest owing under the Swing Line.

2.2.8 No Swing Loans Upon Default. The Swing Line Lender shall not, without the approval of all Lenders, make a Swing Loan if the Swing Line Lender then has actual knowledge that a Default has occurred and is continuing.

2.3 Procedure for Obtaining Credit (Committed Loans, Swing Loans and Letters of Credit). Each Committed Borrowing shall be made and each Letter of Credit shall be issued upon the irrevocable written notice (including notice via facsimile confirmed immediately by a telephone call) of Borrower in the form of a Notice of Committed Borrowing or

Conversion/Continuation and, with respect to a Letter of Credit request, a Letter of Credit Application (which notice and, if applicable, Letter of Credit Application, must be received by Administrative Agent (i) prior to 1:00 p.m., three Business Days prior to the requested borrowing date, in the case of LIBOR Committed Loans, or (ii) prior to 10:00 a.m., on the requested borrowing date, in the case of Reference Rate Committed Loans, or (iii) prior to 10:00 a.m., on the requested borrowing date, in the case of Swing Loans, or (iv) five Business Days prior to the requested issuance date of a Letter of Credit), specifying:

(a) the amount of the Committed Borrowing or the Letter of Credit, which in the case of a Committed Borrowing shall be in an aggregate principal amount of not less than

(i) \$500,000 (or the remaining Availability, if less) for Reference Rate Committed Borrowings or Swing Loans, and (ii) \$1,000,000 and increments of \$500,000 in excess thereof for any LIBOR Committed Borrowings;

(b) the requested Committed Borrowing or Letter of Credit issuance date, which shall be a Business Day;

(c) in the case of a Committed Borrowing, the Type of Committed Loans comprising the Committed Borrowing;

(d) in the case of a LIBOR Committed Borrowing, the duration of the Interest Period applicable to the Committed Loans comprising such LIBOR Committed Borrowing. If the Notice of Committed Borrowing or Conversion/Continuation fails to specify the duration of the Interest Period for the Committed Loans comprising a LIBOR Committed Borrowing, such Interest Period shall be one month:

Unless the Required Lenders otherwise agree, during the existence of a Default or Event of Default, Borrower may not elect to have a Committed Loan made as, or converted into or continued as, a LIBOR Committed Loan. Notwithstanding the foregoing provisions of this Section 2.3, any amount drawn under a Letter of Credit shall, from and after the date on which such drawing is made, constitute a Committed Borrowing for all purposes under this Agreement (including accrual and payment of interest and repayment of principal) other than disbursement of Committed Loan proceeds under this Section 2.3. After giving effect to any Loan, there shall not be more than seven (7) different Interest Periods in effect.

In the event a requested Committed Borrowing constitutes a LIBOR Committed Borrowing or a Reference Rate Committed Borrowing, Administrative Agent shall provide each Lender with the Notice of Committed Borrowing or Conversion/Continuation relating thereto on the date that Administrative Agent receives such Notice of Committed Borrowing or Conversion/Continuation (as applicable) from Borrower, together with the amount of such Lender's Pro Rata Share of the amount of the Committed Loans to be funded with such Committed Borrowing. Each Lender shall make the amount specified by Administrative Agent in such notice to such Lender available to Administrative Agent in immediately available funds for the account of Administrative Agent at Administrative Agent's Office not later than 2:00 p.m. on the day specified in such Notice of Committed Borrowing or Conversion/Continuation.

2.4 Loan Accounts; Notes.

2.4.1 Loan Accounts. The Loans made by each Lender shall be evidenced by one or more loan accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. The loan accounts or records maintained by Administrative Agent and each Lender shall, absent manifest error, be conclusive of the amounts of the Loans made by the Lenders to Borrower and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect Borrower's obligations hereunder to pay any amount owing with respect to the Loans. In addition to the accounts and records referred to above, each Lender and Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Loans. In the event of any conflict between the accounts and records maintained by Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

2.4.2 Notes. The Committed Loans made by each Lender shall be evidenced by a Revolving Note in the form of Exhibit G-1 hereto, payable to the order of such Lender in an amount equal to such Lender's Pro Rata Share of the Maximum Commitment Amount on the Closing Date. In addition, the Swing Loans made by the Swing Line Lender may be evidenced by a Swing Line Note in the form of Exhibit G-2 hereto, payable to the order of the Swing Line Lender in the maximum amount of \$50,000,000. In addition, the Bid Loans that may be made by a Lender pursuant to Section 2.18 may be evidenced by Bid Notes payable to the order of each Lender, in the form of Exhibit G-3 hereto. Each Lender may endorse on any schedule annexed to its Note(s) the date, amount and maturity of each Loan that it makes in the case of Committed Loans (which shall not include undrawn amounts on outstanding Letters of Credit, but shall include the amounts of any drawings on outstanding Letters of Credit), and the amount of each payment of principal that Borrower makes with respect thereto. Borrower irrevocably authorizes each Lender to endorse its Note(s), and such Lender's record shall be conclusive absent manifest error; provided, however, that any Lender's failure to make, or its error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect Borrower's obligations to such Lender hereunder or under its Note(s).

2.5 Letters of Credit.

2.5.1 Letter of Credit Drawings and Reimbursements; Funding of Participations.

(a) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify Borrower and Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), Borrower shall reimburse the L/C Issuer through Administrative Agent in an amount equal to the amount of such drawing. If Borrower fails to so reimburse the L/C Issuer by such time, Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Pro Rata Share thereof. In such event, Borrower shall be deemed to have requested a Committed Borrowing of Reference Rate Committed Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without

regard to the minimum and multiples specified in Section 2.3 for the principal amount of Reference Rate Committed Loans, but subject to the amount of the unutilized portion of the Commitments and the conditions set forth in Section 5.2 (other than the delivery of a Notice of Committed Borrowing or Conversion/Continuation). Any notice given by the L/C Issuer or Administrative Agent pursuant to this Section 2.5.1(a) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(b) Each Lender shall upon any notice pursuant to Section 2.5.1(a) make funds available to Administrative Agent for the account of the L/C Issuer, at Administrative Agent's Office in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 2:00 p.m. on the Business Day specified in such notice by Administrative Agent, whereupon, subject to the provisions of Section 2.5.1(c), each Lender that so makes funds available shall be deemed to have made a Reference Rate Committed Loan to Borrower in such amount. Administrative Agent shall remit the funds so received to the L/C Issuer.

(c) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Reference Rate Committed Loans because the conditions set forth in Section 5.2 cannot be satisfied or for any other reason, Borrower shall be deemed to have incurred from the L/C Issuer, an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the rate set forth in Section 2.10.3. In such event, each Lender's payment to Administrative Agent for the account of the L/C Issuer pursuant to Section 2.5.1(b) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.5.1.

(d) Until each Lender funds its Loan or L/C Advance pursuant to this Section 2.5.1 to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of the L/C Issuer.

(e) Each Lender's obligation to make Loans or L/C Advances to reimburse the L/C Issuer, for amounts drawn under Letters of Credit, as contemplated by this Section 2.5.1, shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, or (iii) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Loans pursuant to this Section 2.5.1 is subject to the conditions set forth in Section 5.2 (other than delivery by Borrower of a Notice of Committed Borrowing or Conversion/Continuation). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(f) If any Lender fails to make available to Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the

foregoing provisions of this Section 2.5.1 by the time specified in Section 2.5.1(b), the L/C Issuer, shall be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the L/C Issuer submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this Section 2.5.1(f) shall be conclusive absent manifest error.

2.5.2 Repayment of Participations.

(a) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.5.1, if Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by Administrative Agent.

(b) If any payment received by Administrative Agent for the account of the L/C Issuer pursuant to Section 2.5.1(a) is required to be returned under any of the circumstances described in Section 10.9 (including pursuant to any settlement entered into by the L/C Issuer, in its discretion), each Lender shall pay to Administrative Agent for the account of the L/C Issuer its Pro Rata Share thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

2.5.3 Obligations Absolute. The obligation of Borrower to reimburse the L/C Issuer, for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(a) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(b) the existence of any claim, counterclaim, set-off, defense or other right that Borrower or any subsidiary of Borrower or Joint Venture may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer, or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(c) any draft, demand, certificate or other document presented under such 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; or any loss or delay in the

transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(d) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any insolvency or bankruptcy law; or

(e) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or any subsidiary of Borrower or Joint Venture.

Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will promptly notify the L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

2.5.4 Role of Letter of Credit Issuer. Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, Administrative Agent or any of their respective Related Parties nor any of the respective correspondents, participants or assignees of the L/C Issuer shall be liable to any Lender for (a) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Requisite Lenders, as applicable; (b) any action taken or omitted in the absence of gross negligence or willful misconduct; or (c) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, Administrative Agent or any of their respective Related Parties, nor any of the respective correspondents, participants or assignees of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (a) through (e) of Section 2.5.3. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Notwithstanding anything to the contrary in Section 2.5.3 or in this Section 2.5.4, Borrower or any subsidiary of Borrower or Joint Venture for whose benefit a Letter of Credit was issued may have a claim against the L/C

Issuer, and the L/C Issuer may be liable to Borrower or such subsidiary of Borrower or Joint Venture, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower or such subsidiary or Joint Venture which Borrower or such subsidiary or Joint Venture proves were caused by the willful misconduct or gross negligence of the L/C Issuer or the willful failure of the L/C Issuer to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit.

2.5.5 Cash Collateral. Upon the request of Administrative Agent, (a) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (b) if, as of the Letter of Credit expiration date, any Letter of Credit for any reason remains outstanding and partially or wholly undrawn, Borrower shall immediately Cash Collateralize the aggregate undrawn amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts (determined as of the date of such L/C Borrowing or the Letter of Credit expiration date, as the case may be). Sections 2.8.2(a) and 8.2.3 set forth certain additional requirements to deliver Cash Collateral hereunder. “Cash Collateralize” means to pledge and deposit with or deliver to Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Borrower hereby grants to Administrative Agent, for the benefit of the L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non- interest bearing deposit accounts at Administrative Agent.

2.6 Conversion and Continuation Elections of Committed Loans.

2.6.1 Election to Convert and Renew. Borrower may, upon irrevocable written notice to Administrative Agent in accordance with Section 2.6.2:

(a) elect to convert, on any Business Day, any Reference Rate Committed Loans (or any part thereof in an amount not less than \$1,000,000 and increments of \$500,000 in excess thereof) into LIBOR Committed Loans;

(b) elect to convert on the last day of any Interest Period any LIBOR Committed Loans maturing on such date (or any part thereof in an amount not less than \$500,000) into Reference Rate Committed Loans; or

(c) elect to renew on the last day of any Interest Period (for a new Interest Period that commences immediately upon the expiration of such existing Interest Period) any LIBOR Committed Loans maturing on such date (or any part thereof in an amount not less than \$1,000,000 and increments of \$500,000 in excess thereof);

provided, that if the aggregate amount of LIBOR Committed Loans in respect of any Committed Borrowing shall have been reduced, by payment, prepayment or conversion of part thereof, to less than \$1,000,000, such LIBOR Committed Loans shall automatically convert into Reference Rate Committed Loans, and on and after such date the right of Borrower to continue such

Committed Loans as, and convert such Committed Loans into, LIBOR Committed Loans shall terminate.

2.6.2 Notice of Conversion/Continuation. Borrower shall deliver in writing (including via facsimile confirmed immediately by a telephone call) a Notice of Committed Borrowing or Conversion/Continuation (which notice must be received by Administrative Agent not later than 1:00 p.m., (i) at least three Business Days prior to the conversion date or continuation date, if the Committed Loans are to be converted into or continued as LIBOR Committed Loans, or (ii) on the conversion date, if the Committed Loans are to be converted into Reference Rate Committed Loans) specifying:

- (a) the proposed conversion date or continuation date;
- (b) the aggregate amount of Committed Loans to be converted or continued;
- (c) the nature of the proposed conversion or continuation; and

(d) if Borrower elects to convert a Reference Rate Committed Loan into a LIBOR Committed Loan or elects to continue a LIBOR Committed Loan, the duration of the Interest Period applicable to such Committed Loan. If the Notice of Committed Borrowing or Conversion/Continuation fails to specify the duration of the Interest Period for a LIBOR Committed Loan, such Interest Period shall be one month.

2.6.3 Failure to Select a New Interest Period. If upon the expiration of any Interest Period applicable to LIBOR Committed Loans Borrower has failed to select a new Interest Period to be applicable to LIBOR Committed Loans, or if any Default or Event of Default shall then exist, Borrower shall be deemed to have elected to convert LIBOR Committed Loans into Reference Rate Committed Loans effective as of the expiration date of such current Interest Period.

2.6.4 Number of Interest Periods. Notwithstanding any other provision of this Agreement, after giving effect to any conversion or continuation of any Committed Loans, there shall not be more than ten (10) different Interest Periods in effect for the Committed Loans.

2.7 Voluntary Termination or Reduction of Commitment. Borrower may, upon not less than five Business Days' prior written notice to Administrative Agent, terminate the Lenders' Commitment to make Loans to Borrower or issue Letters of Credit for Borrower's account, or permanently reduce the Maximum Commitment Amount by a minimum amount of \$5,000,000, unless, after giving effect thereto and to any prepayments of Loans made on the effective date thereof, the sum of the aggregate principal amount of (i) the Outstanding Amount of the Loans and (ii) the Outstanding Amount of L/C Obligations would exceed the Availability. Once reduced in accordance with this Section 2.7, the Maximum Commitment Amount may not be increased. Any reduction of the Commitment amounts shall be applied to each Lender according to its Pro Rata Share. No commitment or extension fees paid prior to the effective date of any reduction of the Maximum Commitment Amount or termination of the Lenders' and Swing Line Lender's commitment(s) to make Loans to Borrower or issue Letters of Credit for Borrower's account shall be refunded, and all accrued Facility Fee for the period up to but not

including the effective date of any reduction or termination of the Commitments shall be payable on the effective date of such reduction or termination.

2.8 Principal Payments.

2.8.1 Optional Prepayments of the Committed Loans. Subject to the provisions of Section 3.4, Borrower may, at any time or from time to time, upon at least one Business Day's prior written notice to Administrative Agent with respect to any Reference Rate Committed Loan, or upon at least three Business Days' prior written notice to Administrative Agent with respect to any LIBOR Committed Loan, ratably prepay Committed Loans in full or in part in an amount not less than \$500,000 for Reference Rate Committed Loans (or, if less, the aggregate outstanding principal amount of all Reference Rate Committed Loans and/or Swing Loans) or \$1,000,000 for LIBOR Committed Loans. Such notice of prepayment shall specify the date and amount of such prepayment and the Type(s) of Committed Loans to be prepaid. Administrative Agent will promptly notify each Lender of its receipt of any such notice and such Lender's Pro Rata Share of such prepayment. If Borrower gives a prepayment notice to Administrative Agent, such notice is irrevocable and the prepayment amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid in the case of a prepayment of LIBOR Committed Loans, and all amounts required to be paid pursuant to Section 3.4.

2.8.2 No Optional Prepayments of Bid Loans. No Bid Loan may be prepaid without the prior consent of the applicable Bid Loan Lender.

2.8.3 Mandatory Repayments.

(a) Availability Limit. Should the Outstanding Amount of Loans plus the Outstanding Amount of L/C Obligations at any time exceed the Availability, Borrower shall immediately repay such excess to Administrative Agent, for the account of the Lenders and/or deliver to Administrative Agent Cash Collateral pursuant to Section 2.5.5 hereof, in the amount of the excess of the outstanding but undrawn Letters of Credit over the Availability.

(b) Application of Repayments. Any repayments pursuant to this Section 2.8.3 shall be (i) subject to Section 3.4, and (ii) applied first, to any Reference Rate Committed Loans then outstanding and second, to the LIBOR Committed Loans (in order of the shortest Interest Periods remaining); and third, to the Bid Loans in the order of the shortest Interest Period remaining.

2.8.4 Repayment at Maturity. Borrower shall repay the principal amount of all outstanding Loans on the Maturity Date or, if earlier, upon termination of the Lenders' Commitments pursuant to Section 2.7.

2.8.5 Repayment of Bid Loans. Borrower shall repay each Bid Loan on the last day of the Interest Period in respect thereof.

2.9 Extension of Maturity Date. Borrower may extend (i) the Original Maturity Date for the First Extension Period, (ii) the First Extended Maturity Date for the Second Extension Period, and (iii) the Second Extended Maturity Date for the Third Extension Period, as the case

may be, if the extension option for the applicable Extension Period has been duly exercised pursuant to the terms hereof, upon Borrower's written request, delivered to Administrative Agent at least thirty(30) days and not more than ninety (90) days prior to the applicable Maturity Date, provided that however, that on the date the applicable Extension Period is to become effective, all of the following conditions shall be satisfied (as determined by Administrative Agent):

(a) No Default or Event of Default shall have occurred and remain uncured, and Administrative Agent shall have received a certificate to that effect signed by a Responsible Officer of Borrower;

(b) The representations and warranties set forth in this Agreement and the other Loan Documents shall be correct as though made on and as of that date, and Administrative Agent shall have received a certificate to that effect signed by a Responsible Officer of Borrower;

(c) Borrower shall have paid to Administrative Agent, for the account of the Lenders, an extension fee equal to 6.25 basis points multiplied by the Maximum Commitment Amount on the applicable Maturity Date. The Extension Fee shall be determined as of the date Borrower provides the extension notice for the applicable Extension Period and shall be paid by Borrower on the first day of the applicable Extension Period; and

(d) Borrower shall have executed, acknowledged and delivered to Administrative Agent such documents as Administrative Agent reasonably determines to be necessary to evidence the extension of the applicable Maturity Date.

2.10 Interest.

2.10.1 **Accrual Rate.** Subject to the provisions of Section 2.10.3, (i) each Committed Loan shall bear interest on the outstanding principal amount thereof from the date when made (which, in the case of a drawing on a Letter of Credit, is the date of such drawing) until it becomes due at a rate per annum equal to (A) with respect to a LIBOR Committed Loan, the LIBOR Rate for the applicable Interest Period *plus* the Applicable LIBOR Committed Loan Margin, and (B) with respect to a Reference Rate Committed Loan, the Reference Rate *plus* the Applicable Reference Rate Committed Loan Margin; (ii) each Swing Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at the rate set forth in Section 2.2.2 hereof; and (iii) each Bid Loan shall bear interest on the outstanding principal amount thereof from the date when made until the last day of the Interest Period therefor at a rate per annum equal to the LIBOR Rate for such Interest Period plus (or minus) the LIBOR Bid Margin, or at the Absolute Rate for such Interest Period, as the case may be.

2.10.2 **Payment.** Interest on each Loan shall be payable in arrears on each Interest Payment Date. Interest shall also be payable on the date of any repayment of Loans pursuant to Section 2.8 for the portion of the Loans so repaid, if required by Section 2.9, and upon payment

(including prepayment) of the Loans in full. During the existence of any Event of Default, interest shall also be payable on demand.

2.10.3 Default Interest. Commencing upon the occurrence of any Event of Default, and continuing thereafter while such Event of Default remains uncured, or after maturity or acceleration (unless and until such acceleration is rescinded), Borrower shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the principal amount of all Obligations due and unpaid, at a rate per annum determined by adding 400 basis points to the Applicable Committed Loan Margin, the LIBOR Bid Margin or the Absolute Rate (as applicable) then in effect for such Loans and, in the case of Obligations not subject to an Applicable Committed Loan Margin, the LIBOR Bid Margin or the Absolute Rate, at a rate per annum equal to the Reference Rate plus 400 basis points; provided, however, that on and after the expiration of any Interest Period applicable to any LIBOR Loan outstanding on the date of occurrence of such Event of Default, the principal amount of such Loan shall, during the continuation of such Event of Default, bear interest at a rate per annum equal to the Reference Rate plus 400 basis points in excess of the Applicable Committed Loan Reference Rate Margin then in effect for Reference Rate Committed Loans.

2.10.4 Maximum Legal Rate. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

2.11 Fees.

2.11.1 Facility Fee. Borrower shall pay to Administrative Agent, for the account of the Lenders (based on their respective Pro Rata Shares), a facility fee (the "Facility Fee") computed based on the annual Facility Fee rate specified in the definition of the term "Applicable Committed Loan Margin," multiplied by the actual daily amount of the Maximum Commitment Amount, in each case measured quarterly and payable quarterly in arrears on

(a) each January 1, April 1, July 1, and October 1, commencing October 1, 2021 (for the calendar quarter ending September 30, 2021, but with such initial payment of the Facility Fee pro rated from the Closing Date) and (b) the Maturity Date (with such final payment of the Facility Fee pro rated to the Maturity Date).

2.11.2 Letter of Credit Fees. Borrower shall pay to Administrative Agent, for the account of the Lenders (based on their respective Pro Rata Shares), a letter of credit fee (the "Letter of Credit Fee") for each issued and outstanding Letter of Credit in an amount equal to the Applicable LIBOR Committed Loan Margin multiplied by the daily amount available to be

drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.2.4. The Letter of Credit Fees shall be due and payable quarterly in arrears on (a) each January 1, April 1, July 1, and October 1, commencing October 1, 2021 (for the calendar quarter ending September 30, 2021, but with such initial payment of the Letter of Credit Fee pro rated from the Closing Date) and (b) the Maturity Date (with such final payment of the Letter of Credit Fee pro rated to the Maturity Date). Borrower shall also pay to Administrative Agent, for the account of the L/C Issuer, at the time each Letter of Credit is issued, a fronting fee (the “Fronting Fee”) in an amount equal to 0.125% multiplied by the amount of such Letter of Credit. In addition, Borrower shall pay directly to the L/C Issuer for its own account the other customary administrative, issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

2.11.3 Other Fees. Borrower shall pay to Administrative Agent, for its own account, for the account of the L/C Issuer or for the account of the Lenders, as applicable, such other fees as are required by the Fee Letter, dated on or about the date hereof, between Borrower and Administrative Agent (the “Fee Letter”).

2.12 Computation of Fees and Interest. All computations of interest and fees under this Agreement shall be made on the basis of a 360-day year and actual days elapsed, which results in more interest or fees being paid than if computed on the basis of a 365-day year. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof. Any change in the interest rate on a Loan resulting from a change in the Reference Rate or the applicable reserve requirement, deposit insurance assessment rate or other regulatory cost shall become effective as of the opening of business on the day on which such change in the Reference Rate or such reserve requirement, assessment rate or other regulatory cost becomes effective. Each determination of an interest rate by Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on Borrower and the Lenders in the absence of manifest error.

2.13 Payments by Borrower.

2.13.1 Timing of Payments. All payments (including prepayments) made by Borrower on account of principal, interest, fees and other amounts required hereunder shall be made without set-off or counterclaim. All such payments (other than payments on Swing Loans and Bid Loans) shall, except as otherwise expressly provided herein, be made to Administrative Agent for the account of the Lenders at Agent’s Payment Office, in dollars and in immediately available funds, no later than 2:00 p.m. on the date specified herein. All payments in respect of Swing Loans and Bid Loans shall be paid to Administrative Agent for the account of the Swing Line Lender or the Lender(s) advancing the applicable Bid Loans, as applicable, and shall be paid in dollars and in immediately available funds, no later than 2:00 p.m. on the date specified herein. Any payment received by Administrative Agent later than 2:00 p.m. shall be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue. Administrative Agent will promptly (and in any event, not later than two Business Days after Administrative Agent’s actual receipt) distribute to each Lender its

Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received; provided, however, if and to the extent Administrative Agent shall receive any such payment for the account of Lenders on or before 2:00 p.m. on any Business Day and Administrative Agent shall not have distributed to each Lender its Pro Rata Share (or other applicable share as provided herein) on such Business Day, the distribution to each Lender when made shall include interest at the Federal Funds Rate for each day from the date of Administrative Agent's actual receipt of such payment from Borrower until the date Administrative Agent distributes to each Lender its Pro Rata Share (or other applicable share as provided herein).

2.13.2 Non-Business Days. Subject to the provisions set forth in the definition of the term "Interest Period," whenever any payment hereunder is stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

2.13.3 Payment May be Made by Administrative Agent. Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this Section 2.13.3 shall be conclusive, absent manifest error.

2.14 Payments by the Lenders to Administrative Agent.

2.14.1 Administrative Agent May Make Committed Borrowings Available. With respect to any Committed Borrowing, unless Administrative Agent receives notice from a Lender at least one Business Day prior to the date of such Committed Borrowing, that such Lender will not make available to Administrative Agent, for the account of Borrower, the amount of that Lender's Pro Rata Share of the Committed Borrowing as and when required hereunder, Administrative Agent may assume that each Lender has made such amount available to Administrative Agent in immediately available funds on the Committed Borrowing date and Administrative Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (a) in the case of a payment to be

made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation and

(b) in the case of a payment to be made by Borrower, the interest rate applicable to Reference Rate Committed Loans. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent. A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this Section 2.14.1 shall be conclusive, absent manifest error.

2.14.2 Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Loans and to make payments pursuant to Section 10.4(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.4(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date. No Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.4(c).

2.14.3 Failure to Satisfy Conditions Precedent. If any Lender makes available to Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to Borrower by Administrative Agent because the conditions to the applicable credit extension set forth in Article 5 are not satisfied or waived in accordance with the terms hereof, Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

2.14.4 Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.15 Sharing of Payments, Etc. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations or in Swing Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its Pro Rata Share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations and Swing Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that: (i) if any such participations or subparticipations are purchased and all or

any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and (ii) the provisions of this Section shall not be construed to apply to (x) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Loans to any assignee or participant, other than to Borrower or any subsidiary thereof (as to which the provisions of this Section shall apply).

2.16 Defaulting Lender.

2.16.1 Notice and Cure of Lender Default; Election Period; Electing Lenders. Administrative Agent shall promptly notify (such notice being referred to as the “Defaulting Lender Notice”) Borrower and each non-Defaulting Lender if any Lender is a Defaulting Lender. Each non-Defaulting Lender shall have the right, but in no event or under any circumstance the obligation, to fund any amount that a Defaulting Lender fails to fund (the “Defaulting Lender Amount”), provided that, within 20 days after the date of the Defaulting Lender Notice (the “Election Period”), such non-Defaulting Lender or Lenders (each such Lender, an “Electing Lender”) irrevocably commit(s) by notice in writing (an “Election Notice”) to Administrative Agent, the other Lenders and Borrower to fund the Defaulting Lender Amount. If Administrative Agent receives more than one Election Notice within the Election Period, then the commitment to fund the Defaulting Lender Amount shall be apportioned pro rata among the Electing Lenders in the proportion that the amount of each such Electing Lender’s Commitment bears to the total Commitments of all Electing Lenders. If the Defaulting Lender fails to pay the Defaulting Lender Amount within the Election Period, (a) the Electing Lender or Lenders, as applicable, shall be automatically obligated to fund the Defaulting Lender Amount (and Defaulting Lender shall no longer be entitled to fund such Defaulting Lender Amount) within three Business Days after such notice to Administrative Agent, which Defaulting Lender Amount shall be applied towards reimbursement to Administrative Agent or payment to Borrower as applicable, and (b) Borrower may enforce any rights it may have under this Agreement, at law or in equity, against Defaulting Lender. Notwithstanding any contrary provision of this Agreement, if Administrative Agent has funded the Defaulting Lender Amount, Administrative Agent shall be entitled to reimbursement from the Electing Lenders for its portion of the Defaulting Lender Amount.

2.16.2 Removal of Rights; Indemnity. Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments made by or on behalf of Borrower to Administrative Agent for the Defaulting Lender’s benefit; nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder or under any Note until all Defaulting Lender Amounts are paid in full. Administrative Agent shall hold all such payments received or retained by it for the account of such Defaulting Lender. Amounts payable to a Defaulting Lender shall be paid by Administrative Agent to reimburse Administrative Agent and any Electing Lender pro rata for all Defaulting Lender Amounts funded by such Persons. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents, a Defaulting Lender shall be deemed not to be a “Lender” and such Defaulting Lender’s Commitment shall be deemed to be zero. A Defaulting Lender shall have no right to participate in any discussions among and/or decisions by Lenders hereunder and/or under the other Loan Documents. This Section shall

remain effective with respect to a Defaulting Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement by curing such default by payment of all Defaulting Lender Amounts (a) within the Election Period, or (b) after the Election Period with the consent of the non-Defaulting Lenders. Such Defaulting Lender nonetheless shall be bound by any amendment to, or waiver of, any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under, any Loan Document which is made subsequent to the Defaulting Lender's becoming a Defaulting Lender and prior to such cure or waiver. The operation of this Section or the Section above alone shall not be construed to increase or otherwise affect the Commitment of any non-Defaulting Lender, or to relieve or excuse the performance by Borrower of its duties and obligations hereunder or under any of the other Loan Documents. Furthermore, nothing contained in this Section shall release or in any way limit a Defaulting Lender's obligations as a Lender hereunder and/or under any other of the Loan Documents. Further, a Defaulting Lender shall indemnify and hold harmless Administrative Agent and each of the non-Defaulting Lenders from any claim, loss, or costs incurred by Administrative Agent and/or the non-Defaulting Lenders as a result of a Defaulting Lender's failure to comply with the requirements of this Agreement, including any and all additional losses, damages, costs and expenses (including attorneys' fees) incurred by Administrative Agent and any non-Defaulting Lender as a result of and/or in connection with (i) a non-Defaulting Lender's acting as an Electing Lender, (ii) any enforcement action brought by Administrative Agent against a Defaulting Lender, and (iii) any action brought against Administrative Agent and/or Lenders. The indemnification provided above shall survive any termination of this Agreement.

2.16.3 Commitment Adjustments. In connection with the adjustment of the amounts of the Commitments of the Defaulting Lender and Electing Lender(s) upon the expiration of the Election Period described above, Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the adjustment of the amounts of Commitments in accordance with the foregoing provisions of this Section. For the purpose of voting or consenting to matters with respect to the Loan Documents such modifications shall also reflect the removal of voting rights of the Defaulting Lender and increase in voting rights of Electing Lenders to the extent an Electing Lender has funded the Defaulting Lender Amount. In connection with such adjustments, each Defaulting Lender shall execute and deliver an Assignment and Assumption covering that Lender's Commitment and otherwise comply with Section 10.5. If a Lender refuses to execute and deliver such Assignment and Assumption or otherwise comply with Section 10.5, such Lender hereby appoints Administrative Agent to do so on such Lender's behalf. Administrative Agent shall distribute an amended schedule of Lenders, which shall thereafter be incorporated into this Agreement, to reflect such adjustments. However, all such Defaulting Lender Amounts funded by Administrative Agent or Electing Lenders shall continue to be Defaulting Lender Amounts of the Defaulting Lender pursuant to its obligations under this Agreement.

2.16.4 No Election. In the event that no Lender elects to commit to fund a Defaulting Lender Amount within the applicable Election Period, Administrative Agent shall, upon the expiration of such Election Period, so notify Borrower and each Lender.

2.17 Increase in Maximum Commitment Amount.

2.17.1 Request for Increase Subject to the provisions of Section 2.7, on the terms and subject to the conditions set forth in this Section 2.17, Borrower shall have (A) a one-time right prior to the Original Maturity Date and (B) a one-time right during the Extension Periods, by written notice to Administrative Agent, to request an increase in the Maximum Commitment Amount by (i) first permitting any Lender to increase its Commitment (and accordingly increase the Maximum Commitment Amount by such amount), or (ii) thereafter inviting any Eligible Assignee that has previously been approved by Administrative Agent in writing to become a Lender under this Agreement and to provide a commitment to lend hereunder (and accordingly increase the Maximum Commitment Amount by such amount); provided, however, that in no event shall such actions cause the Maximum Commitment Amount to increase above \$1,500,000,000.

2.17.2 No Lender Consent Required. Each of the Lenders acknowledges and agrees that, notwithstanding any contrary provision of Section 10.1, (i) its consent to any such increase in the Maximum Commitment Amount shall not be required, and (ii) Eligible Assignees may be added to this Agreement and any Lender may increase its Commitment without the consent or agreement of the other Lenders (provided, however, that no Lender's Commitment may be increased without such Lender's consent), so long as Administrative Agent and Borrower have consented in writing to such Eligible Assignee or the increase in the Commitment of any of the Lenders, as applicable.

2.17.3 Administrative Agent Consent and Conditions to Increase. Administrative Agent shall not unreasonably withhold its consent to Borrower's request for an increase in the Maximum Commitment Amount under this Section 2.17 provided that Borrower satisfies all of the following conditions precedent:

(a) No Default or Event of Default shall have occurred and remain uncured on the Increase Effective Date (as hereinafter defined), and Administrative Agent shall have received a certificate to that effect signed by an officer of Borrower;

(b) any Eligible Assignee is acceptable to Administrative Agent in its reasonable discretion;

(c) Borrower and each such Lender or Eligible Assignee shall have executed and delivered to Administrative Agent supplemental signature pages to this Agreement, which signature pages shall contain an acknowledgement and consent to the increase in the Maximum Commitment Amount and shall otherwise be in form and substance reasonably satisfactory to Administrative Agent (each, a "Supplemental Signature Page");

(d) Borrower shall have paid to Administrative Agent, for the account of such Lender or Eligible Assignee, Administrative Agent and the Arranger, as applicable, a commitment fee and/or an arrangement fee in an amount reasonably satisfactory to Administrative Agent and Borrower;

(e) Administrative Agent shall have sent written notice of each such request by Borrower to the Lenders, together with notice of such Eligible Assignee's Commitment or such Lender's increased Commitment, as the case may be, and the effective date (the "Increase");

Effective Date”) of such increase in the Maximum Commitment Amount as set forth on the Supplemental Signature Page; and

(f) all requirements of this Section 2.17 shall have been satisfied.

2.17.4 Rights of Eligible Assignees. Upon the Increase Effective Date, and notwithstanding any contrary provision of this Agreement (a) each such Eligible Assignee shall become a party to this Agreement, and thereafter shall have all of the rights and obligations of a Lender hereunder, (b) each such Eligible Assignee or Lender shall simultaneously pay to Administrative Agent, for distribution to the Lenders whose Pro Rata Shares of the combined Commitments of all of the Lenders have decreased as a result of the new Commitment of such Eligible Assignee or the increased Commitment of such Lender, an amount equal to the product of such Eligible Assignee’s Pro Rata Share (or the increase in such Lender’s Pro Rata Share), expressed as a decimal, multiplied by the aggregate outstanding principal amount of the Loans on the date of determination, and (c) each such Eligible Assignee or Lender shall thereafter be obligated to make its Pro Rata Share of Borrowings to Borrower and shall be obligated to participate in Letter of Credit risk participations and L/C Advances up to and including the amount of such Eligible Assignee’s or Lender’s Pro Rata Share of the increased Maximum Commitment Amount, on the terms and subject to the conditions set forth in this Agreement.

2.17.5 Conditions of Increase in Maximum Commitments. Notwithstanding any contrary provision of this Section 2.17, no increase in the Maximum Commitment Amount will be permitted unless (a) all then outstanding Loans constitute Reference Rate Committed Loans, or (b) the Interest Periods for all outstanding LIBOR Committed Loans will expire (and any new Interest Periods for any such LIBOR Loans will commence) concurrently with the date on which any increase in the Maximum Commitment Amount becomes effective, or (c) Borrower pays to Administrative Agent, for the account of Lenders, all costs arising under Section 3.4 as a result of such increase in the Maximum Commitment Amount.

2.18 Bid Loans.

2.18.1 General. Subject to the terms and conditions set forth herein, each Lender agrees that Borrower may from time to time request the Lenders to submit offers to make loans (each such loan, a “Bid Loan”) to Borrower prior to the Maturity Date pursuant to this Section 2.18; provided, however, that after giving effect to any Bid Borrowing, (i) the Outstanding Amount of all Loans plus the Outstanding Amount of all L/C Obligations shall not exceed the Availability, and (ii) the aggregate Outstanding Amount of all Bid Loans shall not exceed the Bid Loan Sublimit. There shall not be more than seven (7) different Interest Periods in effect with respect to Bid Loans at any time.

2.18.2 Requesting Competitive Bids. Borrower may request the submission of Competitive Bids by delivering a Bid Request to Administrative Agent not later than 1:00 p.m.,
(a) one Business Day prior to the requested date of any Bid Borrowing that is to consist of Absolute Rate Bid Loans, or (b) four Business Days prior to the requested date of any Bid Borrowing that is to consist of LIBOR Margin Bid Loans. Each Bid Request shall specify (i) the requested date of the Bid Borrowing (which shall be a Business Day), (ii) the aggregate principal amount of Bid Loans requested (which must be \$10,000,000 or a whole multiple of \$1,000,000

in excess thereof), (iii) the Type of Bid Loans requested, and (iv) the duration of the Interest Period with respect thereto (which may be seven days (if available) or one, three, six or twelve months), and shall be signed by a Responsible Officer of Borrower. No Bid Request shall contain a request for (A) more than one Type of Bid Loan or (B) Bid Loans having more than three different Interest Periods. Unless Administrative Agent otherwise agrees in its sole and absolute discretion, Borrower may not submit a Bid Request if it has submitted another Bid Request within the prior five Business Days.

2.18.3 Submitting Competitive Bids.

(a) Administrative Agent shall promptly notify each Lender of each Bid Request received by it from Borrower and the contents of such Bid Request.

(b) Each Lender may (but shall have no obligation to) submit a Competitive Bid containing an offer to make one or more Bid Loans in response to such Bid Request. Such Competitive Bid must be delivered to Administrative Agent not later than 10:30 a.m. (i) on the requested date of any Bid Borrowing that is to consist of Absolute Rate Bid Loans, and (ii) three Business Days prior to the requested date of any Bid Borrowing that is to consist of LIBOR Margin Bid Loans; provided, however, that any Competitive Bid submitted by PNC in its capacity as a Lender in response to any Bid Request must be submitted to Administrative Agent not later than 10:15 a.m. on the date on which Competitive Bids are required to be delivered by the other Lenders in response to such Bid Request. Each Competitive Bid shall specify (A) the proposed date of the Bid Borrowing; (B) the principal amount of each Bid Loan for which such Competitive Bid is being made, which principal amount (x) may be equal to, greater than or less than the Commitment of the bidding Lender, (y) must be \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof, and (z) may not exceed the principal amount of Bid Loans for which Competitive Bids were requested; (C) if the proposed Bid Borrowing is to consist of Absolute Rate Bid Loans, the Absolute Rate offered for each such Bid Loan and the Interest Period applicable thereto; (D) if the proposed Bid Borrowing is to consist of LIBOR Margin Bid Loans, the LIBOR Bid Margin with respect to each such LIBOR Margin Bid Loan and the Interest Period applicable thereto; and (E) the identity of the bidding Lender.

(c) Any Competitive Bid shall be disregarded if it (A) is received after the applicable time specified in Section 2.18.3(b), (B) is not substantially in the form of a Competitive Bid as specified herein, (C) contains qualifying, conditional or similar language,

(D) proposes terms other than or in addition to those set forth in the applicable Bid Request, or

(E) is otherwise not responsive to such Bid Request. Any Lender may correct a Competitive Bid containing a manifest error by submitting a corrected Competitive Bid (identified as such) not later than the applicable time required for submission of Competitive Bids. Any such submission of a corrected Competitive Bid shall constitute a revocation of the Competitive Bid that contained the manifest error. Administrative Agent may, but shall not be required to, notify any Lender of any manifest error it detects in such Lender's Competitive Bid.

(d) Subject only to the provisions of Sections 3.2, 3.5 and 5.2(a) through (d) and clause (c) above, each Competitive Bid shall be irrevocable.

2.18.4 Notice to Borrower of Competitive Bids. Not later than 12:00 p.m. on the requested date of any Bid Borrowing that is to consist of Absolute Rate Bid Loans, or three Business Days prior to the requested date of any Bid Borrowing that is to consist of LIBOR Margin Bid Loans, Administrative Agent shall notify Borrower of the identity of each Lender that has submitted a Competitive Bid that complies with Section 2.18.3 and of the terms of the offers contained in each such Competitive Bid.

2.18.5 Acceptance of Competitive Bids. Not later than 12:30 p.m. (i) on the requested date of any Bid Borrowing that is to consist of Absolute Rate Bid Loans, and (ii) three Business Days prior to the requested date of any Bid Borrowing that is to consist of LIBOR Margin Bid Loans, Borrower shall notify Administrative Agent of its acceptance or rejection of the offers notified to it pursuant to Section 2.18.4. Borrower shall be under no obligation to accept any Competitive Bid and may choose to reject all Competitive Bids. In the case of acceptance, such notice shall specify the aggregate principal amount of Competitive Bids for each Interest Period that is accepted. Borrower may accept any Competitive Bid in whole or in part; provided that:

(a) the aggregate principal amount of each Bid Borrowing may not exceed the applicable amount set forth in the related Bid Request;

(b) the principal amount of each Bid Loan must be \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof;

(c) the acceptance of offers may be made only on the basis of ascending Absolute Rates or LIBOR Bid Margins within each Interest Period; and

(d) Borrower may not accept any offer that is described in Section 2.18.3(c) or that otherwise fails to comply with the requirements hereof.

2.18.6 Procedure for Identical Bids. If two or more Lenders have submitted Competitive Bids at the same Absolute Rate or LIBOR Bid Margin, as the case may be, for the same Interest Period, and the result of accepting all of such Competitive Bids in whole (together with any other Competitive Bids at lower Absolute Rates or LIBOR Bid Margins, as the case may be, accepted for such Interest Period in conformity with the requirements of Section 2.18.5(c)) would be to cause the aggregate outstanding principal amount of the applicable Bid Borrowing to exceed the amount specified therefor in the related Bid Request, then, unless otherwise agreed by Borrower, Administrative Agent and such Lenders, such Competitive Bids shall be accepted as nearly as possible in proportion to the amount offered by each such Lender in respect of such Interest Period, with such accepted amounts being rounded to the nearest whole multiple of \$1,000,000.

2.18.7 Notice to Lenders of Acceptance or Rejection of Bids. Administrative Agent shall promptly notify each Lender having submitted a Competitive Bid whether or not its offer has been accepted and, if its offer has been accepted, of the amount of the Bid Loan or Bid Loans to be made by it on the date of the applicable Bid Borrowing. Any Competitive Bid or portion thereof that is not accepted by Borrower by the applicable time specified in Section 2.18.5 shall be deemed rejected.

2.18.8 Notice of LIBOR Base Rate. If any Bid Borrowing is to consist of LIBOR Margin Bid Loans, Administrative Agent shall determine the LIBOR Base Rate for the relevant Interest Period, and promptly after making such determination, shall notify Borrower and the Lenders that will be participating in such Bid Borrowing of such LIBOR Base Rate.

2.18.9 Funding of Bid Loans. Each Lender that has received notice pursuant to Section 2.18.7 that all or a portion of its Competitive Bid has been accepted by Borrower shall make the amount of its Bid Loan(s) available to Administrative Agent in immediately available funds at Administrative Agent's Office not later than 1:00 p.m. on the date of the requested Bid Borrowing. Upon satisfaction of the applicable conditions set forth in Section 5.2(a) through (d), Administrative Agent shall make all funds so received available to Borrower in like funds as received by Administrative Agent.

2.18.10 Notice of Range of Bids. After each Competitive Bid auction pursuant to this Section 2.18, Administrative Agent shall notify each Lender that submitted a Competitive Bid in such auction of the ranges of bids submitted (without the bidder's name) and accepted for each Bid Loan and the aggregate amount of each Bid Borrowing.

2.19 Benchmark Replacement Setting. This Section 2.19 provides a mechanism for determining an alternative rate of interest in the event that the London interbank offered rate is no longer available or in certain other circumstances. 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 the London interbank offered rate or other rates in the definition of "LIBOR Rate" or with respect to any alternative or successor rate thereto, or replacement rate therefor.

(a) Announcements Related to LIBOR. On March 5, 2021, the ICE Benchmark Administration, the administrator of LIBOR (the "IBA") and the U.K. Financial Conduct Authority, the regulatory supervisor for the IBA, announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month USD LIBOR tenor settings (collectively, the "Cessation Announcements"). The parties hereto acknowledge that, as a result of the Cessation Announcements, a Benchmark Transition Event occurred on March 5, 2021 with respect to USD LIBOR under clauses (1) and (2) of the definition of Benchmark Transition Event below; provided however, no related Benchmark Replacement Date occurred as of such date.

(b) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement

Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to Lenders and the Borrower without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time in consultation with Borrower 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. Administrative Agent will promptly notify Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to paragraph (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent, or, if applicable, any Lender (or group of Lenders) pursuant to this Section titled “Benchmark Replacement Setting,” including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section titled “Benchmark Replacement Setting.”

(e) 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 the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) 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 Administrative Agent in its reasonable discretion or (B) 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 or will be no longer representative, then Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative 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 or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Administrative Agent may modify the

definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Benchmark Unavailability Period. Upon Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any request for a Loan bearing interest based on USD LIBOR, conversion to or continuation of Loans bearing interest based on USD LIBOR to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Borrower will be deemed to have converted any such request into a request for a Loan of or conversion to Loans bearing interest at the Reference Rate. 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 the Reference Rate based upon the then- current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Reference Rate.

(g) Term SOFR Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (i) the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting (the “Secondary Term SOFR Conversion Date”) and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; and (ii) Loans outstanding on the Secondary Term SOFR Conversion Date bearing interest based on the then-current Benchmark shall be deemed to have been converted to Loans bearing interest at the Benchmark Replacement with a tenor approximately the same length as the interest payment period of the then-current Benchmark; provided that, this paragraph (g) shall not be effective unless Administrative Agent has delivered to Lenders and Borrower a Term SOFR Notice. For the avoidance of doubt, Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(h) Certain Defined Terms. As used in this Section titled “Benchmark Replacement Setting”:

“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 or is based on a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period pursuant to this Agreement 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 paragraph (e) of this Section titled “Benchmark Replacement Setting”, or (y) if the then current Benchmark is not a term rate nor based on a term rate, any payment period for interest calculated with reference to such Benchmark pursuant to this Agreement as of such date.

“Benchmark” means, initially, USD LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or 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 paragraph (b) or (g) of this Section titled “Benchmark Replacement Setting.”

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by Administrative Agent (in consultation with Borrower) for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by Administrative Agent and Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then- current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided, further, that, in the case of an Other Benchmark Rate Election, the “Benchmark Replacement” shall mean the alternative set forth in clause (3) above and when such clause is used to determine the Benchmark Replacement in connection with the occurrence of an Other Benchmark Rate Election, the alternate benchmark rate selected by Administrative Agent and Borrower shall be the term benchmark rate that is used in lieu of a USD LIBOR-based rate in relevant other U.S. dollar-denominated syndicated credit facilities; provided, further, that, with respect to a Term SOFR Transition Event, on the applicable Benchmark Replacement Date, the “Benchmark Replacement” shall revert to and shall be determined as set forth in clause (1) of this definition. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor for any setting of such Unadjusted Benchmark Replacement,

- (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the applicable amount(s) set forth below:

Available Tenor

Benchmark Replacement Adjustment*

One-Week	0.03839% (3.839 basis points)
One-Month	0.11448% (11.448 basis points)
Two-Months	0.18456% (18.456 basis points)
Three-Months	0.26161% (26.161 basis points)
Six-Months	0.42826% (42.826 basis points)

* These values represent the ARRC/ISDA recommended spread adjustment values available here:

https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf

- (2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and Borrower for the applicable Corresponding Tenor giving due consideration to (i) 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 on the applicable Benchmark Replacement Date or (ii) 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;

provided that, if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of “Benchmark Replacement Adjustment” shall be deemed to be the Available Tenor that has approximately the same length (disregarding business day adjustments) as the payment period for interest calculated with reference to such Unadjusted Benchmark Replacement.

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Reference Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents); provided that, notwithstanding anything herein to the contrary, no “Benchmark Replacement Conforming Changes” shall result in any material effect on the timing or amount of payments or borrowings.

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

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) 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);
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date determined by Administrative Agent, which date shall promptly follow the date of the public statement or publication of information referenced therein;
- (3) in the case of a Term SOFR Transition Event, the date that is set forth in the Term SOFR Notice provided to Lenders and Borrower pursuant to this Section titled “Benchmark Replacement Setting”, which date shall be at least 30 days from the date of the Term SOFR Notice; or
- (4) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders and the Borrower, so long as Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to Lenders and the Borrower, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

- (1) 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);

- (2) a public statement or publication of information by an Governmental Authority having jurisdiction over Administrative Agent, 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
- (3) 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) or an Governmental Authority having jurisdiction over Administrative Agent announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer 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 Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section titled “Benchmark Replacement Setting” and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section titled “Benchmark Replacement Setting.”

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if Administrative Agent decides in its reasonable discretion that any such convention is not administratively feasible for Administrative Agent, then Administrative Agent may establish another convention in its reasonable discretion which shall be consistent with the then prevailing market conventions.

“Early Opt-in Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:

- (1) a notification by Administrative Agent to (or the request by Borrower to Administrative Agent to notify) 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
- (2) the joint election by Administrative Agent and Borrower to trigger a fallback from USD LIBOR and the provision by Administrative Agent of written notice of such election to 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 or, if no floor is specified, zero.

“Other Benchmark Rate Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of: (x) either (i) a request by Borrower to Administrative Agent, or (ii) notice by Administrative Agent to Borrower, that, at the determination of Borrower or Administrative Agent, as applicable, U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a USD LIBOR based rate, a term benchmark rate as a benchmark rate, (y) Administrative Agent, and Borrower jointly elect to trigger a fallback from USD LIBOR and (z) the provision, as applicable, by Administrative Agent of written notice of such election to Borrower and Lenders.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by Administrative Agent in its reasonable discretion.

“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.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by Administrative Agent to Lenders and Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, and is determinable for each Available Tenor, (b) the administration of Term SOFR is administratively feasible for Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, (and, for the avoidance of doubt, not in the case of an Other Benchmark Rate Election) has previously occurred resulting in a Benchmark Replacement in accordance with Section titled “Benchmark Replacement Setting” that is not Term SOFR.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“USD LIBOR” means the London interbank offered rate for U.S. dollars.

3. TAXES, YIELD PROTECTION AND ILLEGALITY.

3.1 Taxes.

3.1.1 Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if Borrower shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.1) Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, and (iii) Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

3.1.2 Payment of Other Taxes by Borrower. Without limiting the provisions of Section 3.1.1 above, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

3.1.3 Indemnification by Borrower. Borrower shall indemnify Administrative Agent, each Lender and the L/C Issuer, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other 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

Borrower by a Lender or the L/C Issuer (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

3.1.4 Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Borrower shall deliver to 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 Administrative Agent.

3.1.5 Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to Borrower (with a copy to Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, in the event that Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to Borrower and 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 request of Borrower or Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable: (i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party, (ii) duly completed copies of Internal Revenue Service 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 to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or (iv) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Law to permit Borrower to determine the withholding or deduction required to be made. If a payment made to a Foreign Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA, if such Foreign 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 Foreign Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or 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 Borrower or Administrative Agent as may be necessary

for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Foreign Lender has complied with such Foreign Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

3.1.6 Treatment of Certain Refunds. If Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section, it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 3.1 with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrower, upon the request of Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Administrative Agent, such Lender or the L/C Issuer in the event Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrower or any other Person.

3.2 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBOR Loans, or to determine or charge interest rates based upon the LIBOR Base Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by such Lender to Borrower through Administrative Agent (a "LIBOR Suspension Notice"), any obligation of such Lender to make or continue LIBOR Committed Loans or to convert Reference Rate Committed Loans to LIBOR Committed Loans shall be suspended until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such LIBOR Suspension Notice, Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), repay, prepay or, if applicable, convert all LIBOR Loans of such Lender to Reference Rate Committed Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted. Delivery of a LIBOR Suspension Notice shall not affect the obligation of any other Lender to make, maintain and fund LIBOR Loans under the terms of this Agreement, unless such other Lender also delivers a LIBOR Suspension Notice under this Section 3.2.

3.3 Increased Costs.

3.3.1 Increased Costs Generally. If any Change in Law shall: (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or

the L/C Issuer; (ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any LIBOR Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.1 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or (iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or LIBOR Loans made by such Lender or any Letter of Credit or participation therein; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBOR Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; provided, however, that such Lender's or the LC Issuer's determination of any such amounts assessed against Borrower shall be consistent with the determination of amounts assessed against other borrowers that are similarly situated to Borrower.

3.3.2 Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy or liquidity), then from time to time Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered; provided, however, that such Lender's or LC Issuer's determination of any such amounts assessed against Borrower shall be consistent with the determination of amounts assessed against other borrowers that are similarly situated to Borrower.

3.3.3 Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3 for any increased costs incurred or reductions suffered more than three months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies Borrower in writing of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive,

then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.4 Funding Losses. Borrower agrees to pay to Administrative Agent, from time to time, for the account of the Lenders, any amount that would be necessary to reimburse the Lenders for, and to hold the Lenders harmless from, any loss or expense which the Lenders may reasonably sustain or incur as a consequence of:

(a) the failure of Borrower to make any required payment or prepayment of principal of any LIBOR Loan (including payments made after any acceleration thereof);

(b) the failure of Borrower to borrow, continue or convert a Committed Loan after Borrower has given a Notice of Committed Borrowing or Conversion/Continuation;

(c) the failure of Borrower to make any prepayment after Borrower has given a notice in accordance with Section 2.8.1;

(d) the prepayment (including pursuant to Section 2.8.2) of a LIBOR Loan on a day which is not the last day of the Interest Period with respect thereto;

(e) the conversion pursuant to Section 2.6 of any LIBOR Loan to a Reference Rate Committed Loan on a day that is not the last day of the respective Interest Period; or

(f) any assignment of a LIBOR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any such loss or expense arising from the liquidation or reemployment of funds obtained to maintain the LIBOR Loans hereunder or from fees payable to terminate the deposits from which such funds were obtained. Solely for purposes of calculating amounts payable by Borrower to Administrative Agent, for the account of Lenders, under this Section 3.4, each LIBOR Loan (and each related reserve, special deposit or similar requirement) shall be conclusively deemed to have been funded at the rate of interest used to determine such LIBOR Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Loan is in fact so funded.

3.5 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a LIBOR Loan or a conversion to or continuation thereof that (a) dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBOR Loan, (b) adequate and reasonable means do not exist for determining the LIBOR Base Rate for any requested Interest Period with respect to a proposed LIBOR Committed Loan, or (c) the LIBOR Base Rate for any requested Interest Period with respect to a proposed LIBOR Committed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBOR Committed Loans shall be suspended until Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, Borrower may revoke any pending request for a Committed Borrowing of, conversion to

or continuation of LIBOR Committed Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Reference Rate Committed Loans in the amount specified therein.

3.6 Certificate of Lender. Any Lender or the L/C Issuer if claiming reimbursement or compensation pursuant to this Article 3, shall deliver to Borrower through Administrative Agent a certificate setting forth in reasonable detail the amount payable to such Lender or the L/C Issuer, or its holding company, as the case may be, hereunder, and such certificate shall be conclusive absent manifest error. Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

3.7 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.3, or Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1, or if any Lender gives a notice pursuant to Section 3.2, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.3, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.2, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.3, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1, Borrower may replace such Lender in accordance with Section 10.13.

3.8 Survival. The agreements and obligations of Borrower in this Article 3 shall survive the payment and performance of all other Obligations for a period of four (4) years after the Maturity Date.

4. Reserved.

5. CONDITIONS TO DISBURSEMENTS.

5.1 Conditions to Initial Loans. The obligation of the Lenders to make the initial Loan after the Closing Date is subject to the satisfaction of all of the following conditions precedent:

5.1.1 Deliveries to Administrative Agent. Administrative Agent shall have received each of the following items, in form and substance satisfactory to Administrative Agent and the Lenders:

(a) Loan Documents. This Agreement, each Note (including each Revolving Note, the Swing Line Note and each Bid Note), the Guaranty and each other document the Required Lenders may reasonably require, executed and acknowledged as appropriate;

(b) Authorizations. Evidence that the execution, delivery and performance by Borrower and Guarantor, as the case may be, of this Agreement and the other Loan Documents have been duly authorized, executed and delivered by Responsible Officers of Borrower and/or Guarantor, including, without limitation, authorizing resolutions and incumbency certificates for such Responsible Officers;

(c) Governing Documents. Copies of Borrower's current partnership agreement and certificate of limited partnership and any amendments and modifications thereto, and Guarantor's articles of incorporation and any amendments and modifications thereto;

(d) Good Standing. If required by Administrative Agent, Certificates of Good Standing for Borrower and Guarantor from their respective states of organization and from any other state in which Borrower and Guarantor is required to qualify to conduct its business;

(e) Legal Opinions. A written opinion of Borrower's legal counsel and a written opinion of Guarantor's legal counsel, each covering such matters as Administrative Agent may reasonably require. The legal counsel and the terms of the opinion must be reasonably acceptable to Administrative Agent;

(f) Insurance. If required by Administrative Agent, evidence of any insurance coverage required by Section 6.1.3 of this Agreement;

(g) Certificate Regarding No Default or Material Adverse Change. A certificate of Borrower's Responsible Officer, dated the Closing Date, certifying that (i) the representations and warranties contained in Article 7 are true and correct on and as of such date, as though made on and as of such date; (ii) the calculation of the Availability as of the Closing Date is true and correct on and as of such date; (iii) no Default or Event of Defaults exists or would result from the extensions of credit advanced on the Closing Date; and (iv) no material adverse change in the business, assets, operations, condition (financial or otherwise) or prospects of Borrower, Guarantor or any of their subsidiaries or Affiliates has occurred since September 30, 2017, and Guarantor's senior unsecured debt rating has not changed since September 30, 2017;

Property Information. Evidence of the insurance required under Section 6.1.3.

(i) Other Items. Any other items that Administrative Agent reasonably requires.

Without limiting the generality of the provisions of Section 9.4, for purposes of determining compliance with the conditions specified in this Section 5.1, 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 unless Administrative Agent shall have received

written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.1.2 Payment of Fees. Borrower shall have paid to Administrative Agent, for its own account or for the account of the Lenders, as applicable, the fees set forth in the Fee Letter that are due on or before the Closing Date.

5.1.3 Payment of Expenses. Payment of the expenses of preparing this Agreement and the other Loan Documents, including reasonable attorneys' fees and costs and any and all other fees due from Borrower to Administrative Agent.

5.2 Conditions of all Borrowings and Letters of Credit. The obligation of the Lenders to make any Loan or of the L/C Issuer to issue any Letter of Credit is subject to the satisfaction of all of the following conditions precedent on the relevant borrowing date:

(a) Administrative Agent shall have received a Notice of Committed Borrowing or Conversion/Continuation requesting an extension of credit or Borrower shall have submitted a Bid Request pursuant to Section 2.18;

(b) The requested extension of credit shall not cause the aggregate Outstanding Amount of all Loans and the Outstanding Amount of all L/C Obligations to exceed the Availability at such time (and if the requested extension of credit is for a Swing Loan, such requested extension shall not cause the aggregate principal amount of all then outstanding Swing Loans to exceed either of the limitations contained in Sections 2.2.1(b) and, if the request is for a Bid Loan, shall not cause the aggregate outstanding principal amount of Bid Loans to exceed the Bid Loan Sublimit at such time);

(c) The representations and warranties of Borrower set forth in Article 7 of this Agreement (other than the representation contained in the last sentence of Section 7.6) shall be true and correct in all material respects on and as of the date of such Borrowing with the same force and effect as if made on and as of such date;"

(d) No Default or Event of Default shall exist or result from such Borrowing;and

(e) If Borrower has requested issuance of a Letter of Credit, Administrative Agent shall have received a Letter of Credit Application signed by the account party (and Borrower, if Borrower is not the account party), and the Fronting Fee for such Letter of Credit described in Section 2.11.2.

5.3 Transitional Arrangements.

(a) Effective on the Closing Date, without the necessity of further action by any party: (i) the outstanding principal amount of the "Loans" (as defined in the Original Credit Agreement) owed to the Lenders under the Original Credit Agreement shall be converted and continued as Committed Loans, as if made by the Lenders pursuant to this Agreement; and (ii) each outstanding "Letter of Credit" (as defined in the Original Credit Agreement) shall continue in full force and effect as a Letter of Credit issued under this Agreement for so long as

such Letter of Credit remains outstanding or any draft thereunder has not been reimbursed, and all “L/C Advances” (as defined in the Original Credit Agreement) shall be entitled to the security and subject to the provisions set forth in this Agreement. Each Lender agrees to participate in all such Letters of Credit in accordance with the terms of this Agreement as if each such Letter of Credit were issued hereunder. Upon the Closing Date, each Lender whose Pro Rata Share of the combined Commitments of all of the Lenders has increased (as evidenced by the difference for such Lender between its Pro Rata Share reflected in the Original Credit Agreement and its Pro Rata Share reflected in this Agreement) shall pay to Administrative Agent, for distribution to the Lenders whose Pro Rata Shares of the combined Commitments of all of the Lenders has decreased pursuant to this Agreement, an amount equal to the product of the increase in such Lender’s Pro Rata Share (expressed as a decimal) multiplied by the aggregate outstanding principal amount of the Committed Loans on the date of determination.

(b) Except as otherwise provided in this Agreement, the Original Credit Agreement and the promissory notes issued thereunder shall be superseded by this Agreement, the replacement Notes issued hereunder and the other Loan Documents and shall be of no further force or effect and such promissory notes issued under the Original Credit Agreement shall be surrendered by the Lenders under the Original Credit Agreement to Administrative Agent, marked cancelled and returned to Borrower. As of the Closing Date, (i) Guarantor shall execute and deliver a replacement Guaranty for the original Guaranty signed by Guarantor in connection with the Original Credit Agreement (in substantially the same form as such original Guaranty) and (ii) upon Administrative Agent’s receipt of such executed original Guaranty on the Closing Date, the original Guaranty shall terminate and be of no further force and effect.

(c) All interest and all commitment, facility and other fees and expenses owing or accruing under or in respect of the Original Credit Agreement shall be calculated as of the Closing Date (prorated in the case of any fractional periods), and shall be paid on such date in accordance with the method specified in the Original Credit Agreement, as if it were still in effect.

(d) All of the terms, conditions, provisions and covenants in the other Loan Documents shall remain unaltered and in full force and effect, except as modified by this Agreement, and are hereby ratified and confirmed. To the extent that any term or provision of this Agreement is or may be deemed expressly inconsistent with any term or provision in any other Loan Document, the terms and provisions hereof shall control.

6. COVENANTS OF BORROWER. Borrower promises to keep each of the following covenants:

6.1 Specific Affirmative Covenants.

6.1.1 Compliance with Law. Guarantor shall comply with all existing and future laws, regulations, orders and requirements of, and all agreements with and commitments to, all Governmental Authorities having jurisdiction over Guarantor or Guarantor’s business. Notwithstanding any contrary provision in this Section, Guarantor shall have a right to contest all existing and future Requirements of Law before complying therewith. Borrower shall, and shall cause its subsidiaries to, as applicable, comply with all existing and future laws (including

Environmental Laws), regulations, orders, building restrictions and requirements of, and all agreements with and commitments to, all Governmental Authorities having jurisdiction over Borrower or Borrower's business or such subsidiary or such subsidiary's business, as applicable, including those pertaining to the construction, sale, leasing or financing of any Unencumbered Property or the environmental condition of any Unencumbered Property, and with all recorded covenants and restrictions affecting any Unencumbered Property (all collectively, the "Requirements"). Notwithstanding any contrary provision in this Section, (i) Borrower and each applicable subsidiary of Borrower shall have a right to contest all existing and future Requirements of Law (other than those relating to Environmental Laws) before complying therewith, and (ii) Borrower and each such subsidiary shall have a right to contest all existing and future Requirements relating to Environmental Laws for one year, before complying therewith, provide that no Unencumbered Property is in danger of being lost or forfeited.

6.1.2 Reserved.

6.1.3 Insurance. Borrower shall, or shall cause the applicable subsidiaries of Borrower to, maintain the following insurance:

(a) Special Form property damage insurance in non-reporting form on each of its Unencumbered Properties, with a policy limit in an amount not less than the full insurable value of the improvements located on such property on a replacement cost basis, including tenant improvements, if any, with a deductible amount, if any, reasonably satisfactory to Administrative Agent, which insurance shall cover such risks as are ordinarily insured against by similar businesses. The policy shall include a business interruption (or rent loss, if more appropriate) endorsement in the amount of six months' principal and interest payments, taxes and insurance premiums, and any other endorsements reasonably required by Administrative Agent. In addition, with respect to any Unencumbered Development Property, builder's risk insurance of a type and in an amount customarily carried in the case of similar construction in similar locations. Notwithstanding the foregoing, earthquake insurance with respect to any Unencumbered Property shall not be required unless (i) institutional lenders generally require earthquake insurance for similar types of multifamily real property in the geographic location where such Unencumbered Property is located, and (ii) such insurance is generally available at commercially reasonable rates.

(b) Comprehensive General Liability coverage with such limits as Administrative Agent may reasonably require. Coverage shall be written on an occurrence basis, not claims made, and shall cover liability for personal injury, death, bodily injury and damage to property, products and completed operations.

(c) Workers' compensation insurance for all employees of Borrower and each subsidiary in such amount as is required by law and including employer's liability insurance, if required by Administrative Agent.

All policies of insurance required by Administrative Agent must be issued by companies reasonably approved by Administrative Agent and otherwise be reasonably acceptable to Administrative Agent as to amount, forms, risk coverages and deductibles. In addition, each policy (except workers' compensation) must provide Administrative Agent at least 30 days' prior

notice of cancellation, non-renewal or modification. If Borrower or the applicable subsidiary of Borrower fails to keep any such coverage in effect while any Commitment is outstanding, Administrative Agent may procure the coverage at Borrower's expense. Borrower shall reimburse Administrative Agent, on demand, for all premiums advanced by Administrative Agent or Lenders, which advances shall be considered to be additional loans to Borrower hereunder at the Default Rate applicable to Reference Rate Committed Loans. Neither Administrative Agent nor any Lender shall, because of accepting, reasonably disapproving, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

6.1.4 Preservation of Rights. Borrower shall, and shall cause the applicable subsidiary of Borrower to, obtain and preserve all rights, privileges and franchises necessary or desirable for the operation of each Unencumbered Property owned by Borrower or such subsidiary of Borrower. Borrower and Guarantor shall also obtain and preserve, and shall cause their respective applicable subsidiaries to obtain and preserve, all rights, privileges and franchises necessary or desirable for the conduct of Borrower's, Guarantor's and such subsidiaries' business. Borrower shall, and shall cause its applicable subsidiary to, maintain any Unencumbered Property owned by it in good condition. Borrower shall, and shall cause its applicable subsidiary to, at Borrower's or such subsidiary's sole cost and expense, follow all recommendations in any asbestos survey conducted by an expert selected by Borrower or such subsidiary and approved by Administrative Agent with respect to any Unencumbered Property owned by Borrower or such subsidiary regarding safety conditions for, and maintenance of, any asbestos containing materials, including any recommendation to institute an O&M Plan.

6.1.5 Taxes. Borrower and Guarantor shall make, and shall cause their respective applicable subsidiaries to make, timely payments of all local, state and federal taxes; provided, however, that none of Borrower, Guarantor or any such subsidiary need pay any such taxes (a) that it is contesting in good faith and by appropriate proceedings that were promptly commenced and are being diligently pursued, and (b) for which Borrower, Guarantor or such subsidiary, as applicable, has created an appropriate reserve or other provision as required by GAAP, and no material property of Borrower, Guarantor or such subsidiary is in imminent danger of being lost or forfeited.

6.1.6 Certificate of Beneficial Ownership and Other Additional Information. If Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, then Borrower shall provide to Administrative Agent and the Lenders: (i) promptly upon such qualification, a Certificate of Beneficial Ownership in form and substance acceptable to Administrative Agent and the Lenders and thereafter from time to time confirmation of the accuracy of the information set forth in the most recent Certificate of Beneficial Ownership provided to Administrative Agent and the Lenders; (ii) a new Certificate of Beneficial Ownership, in form and substance acceptable to Administrative Agent and the Lenders, when the individual(s) to be identified as a Beneficial Owner have changed; and (iii) such other information and documentation as may reasonably be requested by Administrative Agent or any Lender from time to time for purposes of compliance by Administrative Agent or such Lender with applicable laws (including without limitation the Act and other "know your customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by Administrative Agent or such Lender to comply therewith.

6.1.7 Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws.

(a) The Loan Parties covenant and agree that (A) they shall immediately notify Administrative Agent and each of the Lenders in writing upon the occurrence of a Reportable Compliance Event; and (B) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to Administrative Agent and each of the Lenders, upon request by Administrative Agent or any of the Lenders, the Loan Parties shall provide substitute Collateral acceptable to the Lenders that is not Embargoed Property.

(b) Each Covered Entity shall conduct their business in compliance with all Anti-Corruption Laws and maintain policies and procedures designed to ensure compliance with such Laws.

6.2 Payment of Expenses

(a) Borrower shall pay or reimburse Administrative Agent, within fifteen days after demand, for (i) the costs of electronic distribution services (such as SyndTrak or IntraLinks) incurred in connection with the closing and administration of the transactions contemplated by the Loan Documents (which costs with respect to administration are expected to be approximately \$2,500 per year and which shall in no event exceed \$5,000 per year); and (ii) costs, expenses and other amounts described in Section 10.4(a) hereof. Such costs and expenses shall include fees for due diligence and environmental services (including only those services performed by Administrative Agent or Lender employees and the cost of those services that Administrative Agent or any Lender incurs because it believes that such services are required), electronic distribution service charges, legal fees and expenses of counsel, counsel's travel expenses associated with any syndication, lender meetings or other conferences and any other reasonable fees and costs for services, regardless of whether such services are furnished by Administrative Agent's or any Lender's employees or by independent contractors.

(b) Borrower shall pay or reimburse Administrative Agent for the benefit of each Lender within fifteen (15) days after demand for all costs and expenses, including all electronic distribution service, legal, audit and review fees and expenses (including the allocated cost of such services by Administrative Agent's employees) incurred by Administrative Agent in connection with the enforcement or preservation of any rights or remedies under any Loan Document with respect to a Default or an Event of Default (including any "workout" or restructuring of the Loans, and any bankruptcy, insolvency or other similar proceeding, judicial proceeding or arbitration).

Borrower acknowledges that none of the fees described in Section 2.11 include amounts payable by Borrower under this Section 6.2. All such sums incurred by Administrative Agent or any Lender and not immediately reimbursed by Borrower within fifteen (15) days of written notice by Administrative Agent shall be considered an additional loan to Borrower hereunder at the Default Rate applicable to Reference Rate Committed Loans. The agreements in this Section shall survive the termination of the Commitments and repayment of all other Obligations.

6.3 Financial and Other Information; Certification. Borrower shall provide to Administrative Agent the following financial information and statements for Guarantor and its consolidated subsidiaries prepared on a consolidated basis:

(a) Within 90 days after each fiscal year end, the annual audited consolidated financial statements of Guarantor prepared in accordance with GAAP, and accompanied by the opinion of KPMG LLP or another nationally recognized Certified Public Accountant stating that such consolidated financial statements present fairly the financial positions of Guarantor for the periods indicated in conformity with GAAP applied on a basis consistent with prior years and are not subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit.

(b) Within 45 days after the end of each of the first three fiscal quarters, quarterly unaudited financial statements of Guarantor, including cash flow statements, certified by a Responsible Officer of Guarantor, and (to the extent appropriate), be prepared on a consolidated basis according to GAAP.

(c) Reserved.

(d) If requested by Administrative Agent, copies of Borrower’s and Guarantor’s federal income tax return (with all schedule K-1’s attached), within fifteen days of filing, and, if requested by Administrative Agent, copies of any extensions of the filing date, certified by an appropriate Responsible Officer as being complete and correct in all material respects.

(e) Copies of Guarantor’s Form 10-K Annual Report within 90 days of its fiscal year end.

(f) Copies of Guarantor’s Form 10-Q Quarterly Report within 45 days after the end of each calendar quarter except fiscal year end and copies of all statements, reports and notices sent or made available generally by Borrower or Guarantor to their respective security holders at the time they are so sent or made available, any financial statements contained therein to be certified by the chief financial officer of Borrower, and (to the extent appropriate) to be prepared on a consolidated basis according to GAAP and to include Borrower and Guarantor.

(g) Within 60 days of the end of each of the first three fiscal quarters and in addition within 90 days of the end of each fiscal year, a Compliance Certificate of Borrower signed and certified by an authorized financial officer of Borrower (i) setting forth the information and computations (in sufficient detail) to determine the Gross Asset Value, the Total Liabilities, the Unsecured Debt, the Secured Debt, the Unencumbered Stabilized Asset Property Value, the Unencumbered Development Property Value, the Unencumbered Asset Value, the EBITDA, the Fixed Charges, and to establish that Borrower is in compliance with all financial covenants set forth in this Agreement at the end of the period covered by the financial statements then being furnished, (ii) stating specifically that the Outstanding Amount of Loans plus the Outstanding Amount of L/C Obligations is less than or equal to the Availability, and (iii) setting forth whether there existed as of the date of the most recent financial statements of Guarantor and its consolidated subsidiaries and whether there exists as of the date of the certificate, any

Default or Event of Default under this Agreement and, if any such Default or Event of Default exists, specifying the nature thereof and the action Borrower is taking and proposes to take with respect thereto.

(h) Reserved.

(i) In connection with delivery by Borrower of any Sustainability Grid Notice or Enhanced Sustainability Notice to Administrative Agent, Borrower shall simultaneously deliver a report from a Sustainability Metric Auditor confirming the certifications and calculations contained in such Sustainability Grid Notice or Enhanced Sustainability Notice.

(j) Any other financial or other information concerning the affairs and properties of Borrower, Guarantor and any subsidiary of Borrower or Guarantor as Administrative Agent may reasonably request, to be furnished promptly upon such request.

Documents required to be delivered pursuant to Section 6.3(f) or (g) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet at its website address set forth on the signature page hereof (or such other website address as notified to Administrative Agent and the Lenders); or (ii) on which such documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); provided that: (A) upon request by Administrative Agent, Borrower shall deliver paper copies of such documents to Administrative Agent until a written request to cease delivering paper copies is given by Administrative Agent, and (B) Borrower shall notify (which may be by facsimile or electronic mail) Administrative Agent of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding the foregoing in every instance Borrower shall be required to provide paper copies of the Compliance Certificates, Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery, and each Lender shall be solely responsible for maintaining its copies of such documents.

Each of Borrower and, by its execution of its consent hereto, Guarantor hereby acknowledges that (a) Administrative Agent and/or the Arranger will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of Borrower, Guarantor or any subsidiary of Borrower or Guarantor hereunder (collectively, "Borrower Materials") by posting Borrower Materials on SyndTrak or IntraLinks or another similar electronic system (the "Platform"), and (b) certain of the Lenders may be "public-side" Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to Borrower, Guarantor, any subsidiary of Borrower or Guarantor or their securities) (each, a "Public Lender"). Each of Borrower and, by its execution of its consent hereto, Guarantor, agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower

Materials “PUBLIC,” Borrower, Guarantor and each subsidiary of Borrower or Guarantor shall be deemed to have authorized Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Borrower, Guarantor, any subsidiary of Borrower or Guarantor or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.6); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.” Notwithstanding the foregoing, neither Borrower nor Guarantor shall be under any obligation to mark any Borrower Materials “PUBLIC.”

6.4 Notices. Borrower shall promptly notify Administrative Agent in writing of any knowledge that any officer of Borrower or Guarantor has of:

(a) any litigation affecting Borrower, Guarantor, any Unencumbered Property, and/or any subsidiary or affiliate of Borrower or Guarantor that directly owns any Unencumbered Property or any development property or whose financial results are consolidated with those of Borrower or Guarantor for reporting purposes, in each case where the aggregate amount at risk or at issue (including litigation costs and attorneys’ fees and expenses, but excluding claims which, in Administrative Agent’s reasonable judgment, are expected to be covered by insurance) exceeds: (1) in the case of litigation affecting an Unencumbered Property, an aggregate amount of \$10,000,000, or (2) in the case of litigation affecting Borrower, Guarantor or any such subsidiary or affiliate of Borrower or Guarantor, an aggregate amount of \$50,000,000;

(b) any written notice from any Governmental Authority having jurisdiction thereover that any property or Borrower’s or Guarantor’s business fails in any material respect to comply with any applicable Law (including any Environmental Law), regulation or court order, where the failure to comply could have a material adverse effect on Borrower or Guarantor;

(c) any material adverse change in the physical condition of any Unencumbered Property or Borrower’s or Guarantor’s financial condition or operations, or any other circumstance that materially adversely affects Borrower’s or any subsidiary of Borrower’s intended use of any Unencumbered Property or Borrower’s ability to repay the Loan;

(d) (i) any Default or Event of Default and any failure to comply with this Agreement or any other Loan Document or (ii) any failure to comply with any other material agreement to which Borrower or Guarantor or any consolidated subsidiary of Borrower is a party, including, but not limited to, any loan documentation relating to Indebtedness of Borrower, Guarantor or any such consolidated subsidiary of Borrower, where such noncompliance has a material adverse effect on the ability of Borrower, Guarantor or such consolidated subsidiary of Borrower to perform their respective obligations under the terms of the Loan Documents;

(e) any change in Borrower's or Guarantor's name, legal structure, jurisdiction of formation, place of business to a state other than the State of California, or chief executive office to a state other than the State of California if Borrower or Guarantor has more than one place of business;

(f) any actual or threatened condemnation of any portion of any Unencumbered Property given in writing to Borrower or any subsidiary of Borrower, as the case may be, by any Governmental Authority, or any loss of or substantial damage to any Unencumbered Property;

(g) any notice of any cancellation, alteration or non-renewal of any insurance coverage maintained with respect to any Unencumbered Property;

(h) any written notice received by Borrower from any Governmental Authority that any Unencumbered Property, or any use activity, operation or maintenance thereof or thereon, is not in compliance with any Law, including any Environmental Laws, and including notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or any subsidiary of Borrower which owns any Unencumbered Property or any of their respective Unencumbered Properties pursuant to any applicable Environmental Laws, and (ii) any environmental or similar condition on any real property adjoining or in the vicinity of any Unencumbered Property of Borrower or any Permitted Affiliate that could reasonably be anticipated to cause the applicable Unencumbered Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of such Unencumbered Property under any Environmental Laws; or

(i) any announcement by any of Moody's, S&P and/or Fitch, if such rating agency has provided a rating on Guarantor's senior unsecured long term debt, regarding a change or possible change in such rating of Guarantor's senior unsecured long term debt.

6.5 Negative Covenants.

6.5.1 Limitations on Certain Activities. Without the prior written consent of the Required Lenders (or Administrative Agent at the request of the Required Lenders), which consent shall not be unreasonably withheld or delayed:

(1) other than in the ordinary course of Borrower's business, Borrower shall not lease all or a substantial part of Borrower's business or Borrower's assets;

(2) neither Borrower nor Guarantor shall enter into or invest in any consolidation, merger, pool, syndicate or other combination unless Borrower or Guarantor, as applicable, is the surviving entity and control of Borrower does not change;

(3) the legal structure of Borrower shall not change from a limited partnership that is an operating partnership whose sole general partner is Guarantor, the legal structure of Guarantor shall not change from a publicly traded real estate investment trust under the provisions of Internal Revenue Code Sections 856 and 857, and the legal structure of Borrower and Guarantor shall not change from a so-called up-REIT;

(4) Borrower's or Guarantor's jurisdiction of formation, place of business, or chief executive office (if Borrower or Guarantor has more than one place of business) shall not change except upon 30 days' prior written notice to Administrative Agent;

(5) Borrower's general partner shall not change from Guarantor; and

(6) Reserved.

6.5.2 Material Changes. Borrower and Guarantor shall not in any case:

(1) liquidate or dissolve Borrower's or Guarantor's business; or

(2) dispose of all or substantially all of Borrower's or Guarantor's business or of Borrower's or Guarantor's assets.

6.6 Type of Business; Development Covenants. Borrower shall own, manage, finance, lease and/or operate as an owner, developer and/or asset manager multifamily residential properties, and all of Borrower's other business activities and investments shall be incidental thereto, with the exception of the investments described in clause (d) below. Guarantor and its consolidated subsidiaries shall not own at any time, on a consolidated basis, and without duplication:

(a) entitled and unentitled land,

(b) development properties,

(c) Joint Venture Investments, and

(d) real estate assets (other than multifamily residential properties), or investments in, or loans to, companies that own and/or develop real estate (other than multifamily residential properties),

the value of which exceeds, in the aggregate for all assets described in clauses (a)-(d) above, 35% of Gross Asset Value, or in the aggregate for the assets described in clause (a) above, 10% of Gross Asset Value, or in the aggregate for the assets described in clause (b) above, 25% of Gross Asset Value.

For the purpose of calculating the value for assets in clauses (a) and (b) above, projects that have not yet attained a stabilized occupancy (which, for this purpose only, shall be 90% occupancy) shall be valued at the book value of the project (multiplied, if such project is owned by a Joint Venture, by Borrower's Capital Interest in such Joint Venture). Projects that attain 90% occupancy shall no longer be considered for the purpose of calculating the development limits contained in this Section 6.6.

6.7 Performance of Acts. Upon request by Administrative Agent, Borrower and Guarantor shall perform all acts required of them which may be reasonably necessary or advisable to carry out the intent of the Loan Documents.

6.8 Keeping Guarantor Informed. Borrower shall keep Guarantor (and any other Person giving a guaranty to Administrative Agent and Lenders with regard to the Loans), in its capacity as a guarantor, informed of Borrower's financial condition and business operations and all other circumstances that may affect Borrower's ability to pay or perform its obligations under the Loan Documents. In addition, Borrower shall deliver to Guarantor and any other guarantor all of the financial information required to be furnished to Administrative Agent hereunder.

6.9 Maximum Total Liabilities to Gross Asset Value. Total Liabilities at the end of each calendar quarter shall not exceed 60% of Gross Asset Value at such time; provided, however, Total Liabilities may exceed 60%, so long as for acquisition purposes it does not exceed more than 65%, during any two (2) consecutive calendar quarters. For the purposes of this covenant, (i) Total Liabilities shall be adjusted by deducting therefrom an amount equal to the lesser of (x) Indebtedness that by its terms is scheduled to mature on or before the date that is 24 months from the date of calculation, and (y) Unrestricted Cash and Cash Equivalents and (ii) Gross Asset Value shall be adjusted by deducting therefrom the amount by which Indebtedness is adjusted under clause (i).

6.10 Certain Debt Limitations. (a) The Outstanding Amount of all Loans plus the Outstanding Amount of all L/C Obligations shall not exceed the Availability at any time; and (b) the amount of Secured Debt at the end of each calendar quarter shall not exceed 40% of the Gross Asset Value at such time.

6.11 Fixed Charge Coverage Ratio. The ratio determined at the end of each calendar quarter of (a) EBITDA for the four consecutive calendar quarter period ending on such determination date divided by (b) the amount of Fixed Charges for such four calendar quarter period shall not be less than 1.50:1.0.

6.12 Maximum Unsecured Debt Leverage Ratio. The ratio determined at the end of each calendar quarter of (a) the Unencumbered Asset Value for the four consecutive calendar quarter period ending on such date divided by (b) the amount of Unsecured Debt for such four calendar quarter period shall not be less than 1.50:1.0.

6.13 Maximum Quarterly Dividends. During the continuance of any Event of Default, aggregate distributions shall not exceed the minimum amount that Guarantor must distribute to its shareholders in order to qualify as a real estate investment trust under the provisions of Internal Revenue Code Sections 856 and 857.

6.14 Negative Pledge; Limitations on Affiliate Indebtedness.

(a) Borrower shall not, nor permit its subsidiaries to, create, assume, or allow any Lien (including any judicial lien) on any Unencumbered Property, and neither Borrower nor Guarantor shall create, assume or allow any Lien (including any judicial lien) on Borrower's or Guarantor's direct or indirect ownership interests in any of their respective subsidiaries, except for Permitted Liens; it being understood and agreed by Borrower, Guarantor (as a signatory hereto in its capacity as the general partner of Borrower), and the other parties hereto that nothing contained in this Section 6.14 shall be deemed or construed to prohibit Borrower and Guarantor from delivering from time to time a negative pledge covenant substantially in the form

contained in this Section 6.14 under and pursuant to a third party credit agreement (including any institutional private placement note agreement) or notes issued at any time in a Rule 144A, Regulation S or public offering or exchange of such notes to the institutional creditor or creditors party to any such third party credit agreement (including any such private placement note agreement) or holders of such notes.

(b) Borrower shall not, and shall not permit any of its subsidiaries to, create, assume or allow any negative pledge agreement in favor of any other Person affecting or relating to any Unencumbered Property, other than a negative pledge agreement as contemplated by Section 6.14(a) under and pursuant to a third party credit agreement (including any third party private placement note agreement) with institutional investors or under and pursuant to notes issued at any time in a Rule 144A, Regulation S or public offering or exchange of such notes. In addition, neither Borrower nor Guarantor shall incur nor permit their respective subsidiaries to incur (in this context, an “Obligor”) any intercompany Indebtedness owing to Borrower, Guarantor, any such subsidiary of Borrower or Guarantor or any other Affiliate (in this context, an “Intercompany Creditor”) other than on fair and reasonable terms substantially as favorable to the Obligor as would be obtainable by the Obligor at the time in a comparable arm’s length transaction with a Person other than the Intercompany Creditor.

(c) Borrower shall have the right to contest (and to cause its applicable subsidiary to contest) in good faith by appropriate legal or administrative proceeding the validity of any prohibited Lien affecting its properties so long as (i) no Event of Default exists and is continuing, (ii) Borrower first deposits (or causes its applicable subsidiary to deposit) with Administrative Agent a bond or other security satisfactory to Administrative Agent in the amount reasonably required by Administrative Agent; (iii) Borrower immediately commences (or causes its applicable subsidiary to immediately commence) its contest of such Lien and continuously pursues the contest in good faith and with due diligence; (iv) foreclosure of the Lien is stayed; and (v) Borrower pays (or causes its applicable subsidiary to pay) any judgment rendered for the Lien claimant or other third party, unless such judgment has been stayed as the result of an appeal, within 30 days after the entry of the judgment. Borrower will (or will cause its applicable subsidiary to) discharge or elect to contest and post an appropriate bond or other security within 30 days of written demand by Administrative Agent.

6.15 Change in Ownership of Borrower or Management of the Unencumbered Property. Borrower shall not cause, permit or suffer (a) any change of the general partner of Borrower, or (b) any Change in Control of Guarantor (whether by tender offer for a majority of the outstanding shares of Guarantor, a merger in which Guarantor is not the surviving entity, or otherwise).

6.16 Books and Records. Each of Borrower and Guarantor shall maintain (and shall cause each of their respective subsidiaries to maintain) adequate books and records (provided that, with respect to any such subsidiary, such books and records shall mean its income and expense statements).

6.17 Audits. Borrower and Guarantor shall allow (and shall cause their respective subsidiaries to allow) Administrative Agent and its agents to inspect its properties and examine, audit and make copies of its books and records at any reasonable time upon reasonable notice to

Borrower. If any of the properties, books or records of Borrower, Guarantor or any of their subsidiaries are in the possession of a third party, Borrower or Guarantor as applicable, shall authorize (and cause their respective applicable subsidiaries to authorize) that third party to permit Administrative Agent or its agents to have access to perform inspections or audits and to respond to Administrative Agent's requests for information concerning such properties, books and records.

6.18 Cooperation. Borrower and Guarantor shall take any action reasonably requested by Administrative Agent to carry out the intent of this Agreement.

6.19 ERISA Plans. Borrower shall give prompt written notice to Administrative Agent of the occurrence of any ERISA Event.

6.20 Use of Proceeds. Borrower shall use the proceeds of the Loan only for
(a) financing for acquisition, development and/or redevelopment of real and personal property,
(b) letters of credit, (c) working capital in Borrower's business, and (d) other purposes permitted by Borrower's organizational documents as they appear as of the Closing Date.

6.21 Use of Proceeds – Ineligible Securities. Borrower shall not use any proceeds of the Loans, directly or indirectly, to purchase or carry, or reduce or retire any loan incurred to purchase or carry, any "Margin Stock" (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

6.22 Sanctions and other Anti-Terrorism Laws. Each Loan Party hereby covenants and agrees that until the Maturity Date, the Loan Party will not, and will not permit any its Subsidiaries to: (a) become a Sanctioned Person and it shall take commercially reasonable precautions to confirm that its employees, officers, directors, affiliates and agents acting on its behalf in connection with this Agreement are not a Sanctioned Person; (b) directly or indirectly through a third party, engage in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction, including any use of the proceeds of the Loans to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Person or Sanctioned Jurisdiction; provided, however, it shall not be deemed a breach of this covenant to not do business with a Sanctioned Jurisdiction or Sanctioned Person to the extent Borrower is doing business with a vendor or similar Person as part of Borrower's ordinary course of business and Borrower did not know such vendor or similar Person was a Sanctioned Person or such jurisdiction was a Sanctioned Jurisdiction; (c) repay the Loans with funds derived from any unlawful activity; (d) permit any Collateral to become Embargoed Property; (e) engage in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction prohibited by any Laws of the United States or other applicable jurisdictions relating to economic sanctions and any Anti-Terrorism Laws; or (f) cause any Lender or the Administrative Agent to violate any sanctions administered by OFAC.

6.23 Anti-Corruption Laws. Each Loan Party hereby covenants and agrees that until the Maturity Date, the Loan Party will not permit any of its Subsidiaries to directly or knowingly indirectly use the Loans or any proceeds thereof for any purpose which would breach any Anti-Corruption Laws in any jurisdiction in which any Covered Entity conducts business.

7. Representations and Warranties. When Borrower and Guarantor sign this Agreement, and until Administrative Agent and Lenders are repaid in full, Borrower and Guarantor make the following representations and warranties. Each request for an extension of credit constitutes a renewed representation and warranty.

7.1 Organization of Borrower and Guarantor. Borrower is a limited partnership duly formed, validly existing and in good standing under the laws of California. Guarantor is an entity duly organized, validly existing and in good standing under the laws of its state of formation or organization.

7.2 Authorization. The execution and compliance with this Agreement and each Loan Document to which Borrower or Guarantor is a party are within such Person's powers, have been duly authorized, and do not conflict with any of such Person's organizational or formation papers.

7.3 Enforceable Agreement. This Agreement is a legal, valid and binding agreement of Borrower, enforceable against Borrower in accordance with its terms, and it and any Loan Document to which it or Guarantor is a party, when executed and delivered, will be similarly legal, valid, binding and enforceable, except as the same may be limited by insolvency, bankruptcy, reorganization, or other laws relating to or affecting the enforcement of creditors' rights or by general equitable principles.

7.4 Good Standing. In each state in which Borrower or Guarantor does business, it is properly licensed, in good standing, and, where required, in compliance with fictitious name statutes.

7.5 No Conflicts. Neither Borrower, Guarantor nor any Unencumbered Property, are in violation of, nor do the terms of this Agreement or any other Loan Document conflict with, any law (including any Environmental Laws), regulation or ordinance, any order of any court or governmental entity, any organizational documents of Borrower or Guarantor, or any covenant or agreement affecting Borrower or Guarantor or any Unencumbered Property, which has a material adverse effect on Borrower, Guarantor or any such Unencumbered Property.

7.6 Financial Information. All financial information which has been and will be delivered to Administrative Agent, including all information relating to the financial condition of Borrower, Guarantor, and their respective subsidiaries and any Unencumbered Property, did as of its date fairly and accurately represent the financial condition being reported on. All such information was and will be prepared in accordance with GAAP, unless otherwise noted. Since September 30, 2017, there has been no material adverse change in the financial condition of Borrower, Guarantor or any such Unencumbered Property.

7.7 Borrower Not a "Foreign Person". Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended from time to time.

7.8 Lawsuits. There are no lawsuits, actions, tax claims, investigations, proceedings, or other disputes, pending or threatened, in any court or before any arbitrator or Governmental Authority that purport to affect Borrower, Guarantor, any subsidiaries or Affiliates of Borrower

or Guarantor, any Unencumbered Property, or any transaction contemplated by this Agreement or any other Loan Document that will have a material adverse effect on Borrower, Guarantor, any Unencumbered Property, or any subsidiaries or Affiliates of Borrower or Guarantor, or any transaction contemplated by this Agreement or any other Loan Document, or on the ability of Borrower, Guarantor or any of their subsidiaries or Affiliates, to perform their respective obligations under the Loan Documents,

7.9 Permits, Franchises. Borrower and Guarantor each possesses all permits, memberships, franchises, contracts and licenses required and all trademark rights, trade name rights, patent rights and fictitious name rights necessary to enable it to conduct the business in which it is now engaged.

7.10 Other Obligations. Neither Borrower nor Guarantor is in material default (taking into account all applicable cure periods, if any) on any material obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation.

7.11 Income Tax Returns. Except as otherwise disclosed to Administrative Agent in a writing referring to this Section 7.11, Borrower has no knowledge of any pending assessments or adjustments of the income tax of Borrower or Guarantor in an amount in excess \$500,000 for any year, individually or in the aggregate.

7.12 No Event of Default. There is no event which is, or with notice or lapse of time or both would be, an Event of Default under this Agreement.

7.13 ERISA Plans.

(a) Borrower has fulfilled its obligations, if any, under the minimum funding standards of ERISA and the Code with respect to each Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Code, and has not incurred any liability with respect to any Plan under Title IV of ERISA.

(b) No Reportable Event has occurred.

(c) No action by Borrower to terminate or withdraw from any Plan has been taken and no notice of intent to terminate a Plan has been filed under Section 4041 of ERISA.

(d) No proceeding has been commenced with respect to a Plan under Section 4042 of ERISA, and no event has occurred or condition exists which might constitute grounds for the commencement of such a proceeding.

7.14 Location of Borrower. Borrower's place of business (or, if Borrower has more than one place of business, its chief executive office) is located at the address listed under Borrower's signature on this Agreement or at such other place as to which Borrower has notified Administrative Agent in writing.

7.15 No Required Third Party/Governmental Approvals. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with any third party or any

Governmental Authority, is necessary or required in connection with the execution, delivery or performance of this Agreement or any other Loan Document to which Borrower or Guarantor is a party, or the enforcement of any such agreements against Borrower or Guarantor.

7.16 Regulated Entities. Neither Borrower nor any Person controlling Borrower is an “Investment Company” within the meaning of the Investment Company Act of 1940; or subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute or regulation limiting its ability to incur Indebtedness.

7.17 Anti-Money Laundering/Anti-Corruption. No: (a) Covered Entity: (i) is a Sanctioned Person, nor are any affiliates, officers or directors or to Borrower’s Knowledge, any employees or agents acting on a Covered Entity’s behalf in connection with this Agreement is a Sanctioned Person; (ii) directly or indirectly through any third party, engages in any transactions or other dealings with any Sanctioned Person or Sanctioned Jurisdiction, or which otherwise are prohibited by any Laws of the United States or Laws of other applicable jurisdictions relating to economic sanctions and other Anti-Terrorism Laws; (b) Collateral is Embargoed Property. Each Covered Entity has (a) conducted its business in compliance with all Anti-Corruption Laws and (b) has instituted and maintains policies and procedures designed to ensure compliance with such Laws.

7.18 Affected Financial Institution. Neither Borrower nor any of its Affiliates or subsidiaries are an Affected Financial Institution.

7.19 Certificate of Beneficial Ownership. The Certificate of Beneficial Ownership executed and delivered to Administrative Agent and Lenders for Borrower on or prior to the date hereof (if such certification was required to be delivered by Administrative Agent), as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date thereof and as of the date any such update is delivered.

8. DEFAULT AND REMEDIES.

8.1 Events of Default. Borrower will be in default under this Agreement upon the occurrence of any one or more of the following events (“Event of Default”):

(a) Borrower fails to make any payment due hereunder, or fails to make any payment demanded by Administrative Agent under any Loan Document, on the earlier of (i) the Maturity Date or (ii) within fifteen days after (x) the date when due or (y) if the payment is unscheduled, the date when payment is demanded by Administrative Agent; or

(b) Borrower fails to perform or observe any term, covenant or agreement contained in (i) any of Sections 6.1.7, 6.13, 6.21, 6.22 and 6.23; or (ii) any of Sections 6.1.3, 6.3, 6.5, 6.14 or 6.17 and does not cure that failure within fifteen days after written notice from Administrative Agent; or (iii) Section 6.4 and does not cure that failure within fifteen days after Borrower’s Knowledge of such failure; or (iv) Section 6.15(a) and (b); or (v) any of Sections 6.9, 6.10, 6.11 or 6.12 and does not cure that failure within 45 days after the end of the fiscal quarter in which such Default arose; or

(c) Borrower fails to comply with any covenant contained in this Agreement other than those referred to in clauses (a) and (b), and does not either cure that failure within 30 days after written notice from Administrative Agent, or, if the default cannot be cured in 30 days, Borrower fails to promptly commence cure (in any event, within ten days after receipt of such notice), and thereafter diligently prosecute such cure to completion, and complete such cure within 90 days after receipt of such notice; or

(d) (i) Borrower, Guarantor or any subsidiary of Borrower or Guarantor institutes or consents to the institution of any Insolvency Proceeding, makes an assignment for the benefit of creditors or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; (ii) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Borrower, Guarantor or any subsidiary of Borrower or Guarantor and the appointment continues undischarged or unstayed for 60 calendar days; (iii) any Insolvency Proceeding relating to Borrower, Guarantor or any subsidiary of Borrower or Guarantor or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; (iv) Borrower, Guarantor or any subsidiary of Borrower or Guarantor becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (b) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of Borrower, Guarantor or any subsidiary of Borrower or Guarantor and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(e) Borrower or Guarantor dissolves or liquidates; or

(f) Any representation or warranty made or given in any of the Loan Documents proves to be false or misleading in any material respect; or

(g) Guarantor breaches or fails to comply with any covenant contained in this Agreement or any other Loan Document applicable to it, other than those defaults included within clause (b) above, and does not cure that failure within 30 days after written notice from Administrative Agent, or, if the default cannot be cured in 30 days, Guarantor fails to promptly commence cure (in any event, within ten days after receipt of such notice), and thereafter diligently prosecute such cure to completion, and complete such cure within 90 days after receipt of such notice; or

(h) A defined event of default occurs under any of the Loan Documents; or

(i) A final non-appealable judgment or order is entered against Borrower, Guarantor or any subsidiary of Borrower or Guarantor that materially adversely affects

(i) Borrower's or such subsidiary's intended use of one or more of the Unencumbered Properties or (ii) Borrower's or Guarantor's ability to repay the Loans; or

(j) Borrower or Guarantor fails, after the expiration of applicable cure periods, if any, to perform any obligation under any other agreement Borrower has with Administrative Agent or any Lender or any Affiliate of Administrative Agent or any Lender; or

(k) Borrower, Guarantor or a subsidiary of Borrower or Guarantor defaults (taking into account applicable notice and cure periods, if any) in connection with any credit such Person has with any holder of Indebtedness of such Person, (i) and such default consists of the failure to make a payment when due on one or more obligations that are recourse to Borrower, Guarantor or a subsidiary of Borrower or Guarantor whose outstanding principal amount exceeds \$50,000,000 individually or in the aggregate and such default has not been waived by the holder of such Indebtedness, or (ii) as result of such default, one or more obligations that are recourse to Borrower, Guarantor or a subsidiary of Borrower or Guarantor whose outstanding principal amount exceeds \$50,000,000 individually or in the aggregate have been accelerated; or

(l) Reserved.

(m) Guarantor shall no longer qualify as a real estate investment trust under the provisions of Code Sections 856 and 857; or

(n) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$15,000,000, or (ii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$15,000,000; or

(o) Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect (unless such Loan Document is replaced in a manner reasonably satisfactory to Administrative Agent); or any of Borrower or Guarantor or a subsidiary of Borrower or Guarantor contests in any manner the validity or enforceability of the remedies of Administrative Agent, the L/C Issuer or any Lender under any Loan Document; or a party to a Loan Document (other than any Lender or Administrative Agent) denies that it has any further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document.

Notwithstanding the foregoing, any event or circumstance described in the foregoing clauses (a)-

(o) with respect to any subsidiary of Borrower or Guarantor shall not constitute an Event of Default hereunder as long as, each Unencumbered Property owned by such subsidiary is not included in the calculation of the Unencumbered Asset Value hereunder for so long as such event or circumstances continues to exist.

8.2 Remedies. If any Event of Default occurs, Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders:

8.2.1 Termination of Commitment to Lend. Declare the Commitment of each Lender and the commitment of the Swing Line Lender to make Loans or Swing Loans, as the case may be, and the commitment of the L/C Issuer to issue Letters of Credit to be terminated, whereupon such commitments shall forthwith be terminated; provided, however, that

Administrative Agent and the Lenders shall continue to honor any outstanding Letter of Credit; and

8.2.2 Acceleration of Loans. Declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower; and

8.2.3 Security for Letters of Credit. Require that Borrower deposit with Administrative Agent, for the benefit of the Lenders, on demand and as cash security for Borrower's obligations under the Loan Documents, Cash Collateral in an amount equal to the aggregate undrawn amount of all then outstanding Letters of Credit (and Borrower hereby grants to Administrative Agent, as administrative agent for the Lenders, a security interest in any such amount deposited with Administrative Agent (and any amount deposited with Administrative Agent pursuant to Section 2.8.2(a)), all earnings thereon and all proceeds thereof, and as to such amounts Administrative Agent shall have the rights and remedies of a secured party under the California Uniform Commercial Code); provided that upon the occurrence of any event specified in Section 8.1(d) above with respect to Borrower or Guarantor, such amounts shall automatically become due and payable without further act of Administrative Agent or the Lenders; and

8.2.4 Exercise of Rights and Remedies. Exercise all rights and remedies available to it under the Loan Documents or applicable Law; provided, however, that upon the occurrence of any event specified in Section 8.1(d) above, the obligation of each Lender and the Swing Line Lender to make Loans or Swing Loans, as the case may be, and the obligation of the L/C Issuer to issue Letters of Credit shall automatically terminate, and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of Administrative Agent or any Lender.

8.3 Application of Funds. After the exercise of remedies provided for in Section 8.2 (or after the Loans have automatically become immediately due and payable and the undrawn amount of outstanding Letters of Credit have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.2.3), any amounts received on account of the Obligations shall be applied by Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including legal fees and expenses and amounts payable under Sections 2.11, 6.2, and 10.4) payable to Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including amounts payable under Sections 2.11, 3.1, 3.3, 3.4, 6.2, and 10.4), ratably among them in proportion to the amounts described in this clause Second are payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to Administrative Agent for the account of the L/C Issuer to Cash Collateralize the aggregate undrawn amount of Letters of Credit; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by law.

Subject to Section 2.5.5, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

9. ADMINISTRATIVE AGENT.

9.1 Appointment and Authority. Each of the Lenders and the L/C Issuer hereby irrevocably appoints PNC Bank to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 9 are solely for the benefit of Administrative Agent, the Lenders and the L/C Issuer, and Borrower shall not have rights as a third party beneficiary of any of such provisions.

9.2 Rights as a Lender. The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.3 Exculpatory Provisions.

9.3.1 Limitation of Administrative Agent’s Duties. Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, Administrative Agent: (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of

Default has occurred and is continuing; (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity.

9.3.2 Limitation of Administrative Agent's Liability. Administrative Agent shall not be liable to any Lender for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 9.1), or (ii) in the absence of its own gross negligence or willful misconduct. Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to Administrative Agent by Borrower, a Lender or the L/C Issuer.

9.3.3 Limitation of Administrative Agent's Responsibilities. Administrative Agent shall not be responsible to any Lender or L/C Issuer for, or have any duty to ascertain or inquire for the benefit of any Lender or L/C Issuer into, (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

9.4 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon, and shall not incur any liability to any Lender or L/C Issuer for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person; provided, however, that notwithstanding any such notice, request or other direction to the contrary, in all events Administrative Agent shall direct that the proceeds of a Borrowing be deposited in the account of the Borrower designated to Administrative Agent on the Closing Date (the "Designated Borrower's Account"). Subject to the foregoing sentence, Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or

the L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.5 Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.6 Resignation of Administrative Agent.

9.6.1 Notice of Resignation. Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States; provided that as long as no Event of Default hereunder has occurred and is continuing, Borrower shall have the right to consent to such successor, such consent to not be unreasonably withheld. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that as long as no Event of Default hereunder has occurred and is continuing, Borrower shall have the right to consent to such successor, such consent to not be unreasonably withheld; provided further that if Administrative Agent shall notify Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed in writing between Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.4 shall continue in effect for the benefit of such

retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

9.6.2 Resignation by PNC Bank. Any resignation by PNC Bank as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

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

9.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Joint Lead Arrangers, the Joint Book Runners, the Co-Syndication Agents, the Co- Documentation Agents, the Co-Managing Agents and the Sustainability Coordinator listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in their respective capacities, as applicable, as Administrative Agent, a Lender or the L/C Issuer hereunder.

9.9 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower, Guarantor or any Permitted Affiliate, Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and Administrative Agent under Sections 2.11, 6.2 and 10.4) allowed in such judicial

proceeding; and (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.11, 6.2 and 10.4. Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 ERISA Matters.

9.10.1 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 the Arranger and their respective Affiliates, and not for the benefit of Borrower or any other Loan Party, that at least one of the following is and will be true:

(a) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans in connection with the Loans or the Commitments,

(b) the transaction exemption set forth in one or more Prohibited Transaction Exemptions (“*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 Commitments and this Agreement,

(c) (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 Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, 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 Commitments and this Agreement, or

(d) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

9.10.2 In addition, unless sub-clause (a) in the immediately preceding subsection 9.10.1 is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (d) in the immediately preceding subsection 9.10.1, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, 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 the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower, that:

(a) none of the Administrative Agent or the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any other documents related to hereto or thereto),

(b) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Loans),

(c) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(d) no fee or other compensation is being paid directly to the Administrative Agent or Lead Arranger or any their Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Commitments or this Agreement.

The Administrative Agent and the Arranger hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.11 Erroneous Payments.

9.11.1 If the Administrative Agent notifies a Lender, the L/C Issuer or any Person who has received funds on behalf of a Lender or the L/C Issuer (any such Lender or L/C Issuer 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 subsection 9.11.2) 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, L/C Issuer or other Payment Recipient on their respective 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 L/C Issuer (as applicable) 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 Overnight Bank Funding 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 subsection 9.11.1 shall be conclusive, absent manifest error.

9.11.2 Without limiting immediately preceding subsection 9.11.1, each Lender, L/C Issuer or any Person who has received funds on behalf of a Lender or a L/C Issuer 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, L/C Issuer or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(a) (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

(b) such Lender or L/C Issuer 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 9.11.

9.11.3 Each Lender and L/C Issuer hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or L/C Issuer under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or L/C Issuer from any source, against any amount due to the Administrative Agent under subsection 9.11.1 or under the indemnification provisions of this Agreement.

9.11.4 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 subsection 9.11.1, from any Lender or L/C Issuer 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 L/C Issuer at any time, (i) such Lender or L/C Issuer shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class 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 or L/C Issuer 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 L/C Issuer hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or L/C Issuer shall cease to be a Lender or L/C Issuer hereunder, as applicable, 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 L/C Issuer 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 L/C Issuer 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 L/C Issuer (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 L/C Issuer 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 L/C Issuer under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “Erroneous Payment Subrogation Rights”).

9.11.5 The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

9.11.6 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

9.11.7 Each party’s obligations, agreements and waivers under this Section 9.11 shall survive the resignation or replacement of the Administrative Agent, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

10. MISCELLANEOUS PROVISIONS.

10.1 Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by Borrower or Guarantor therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Administrative Agent at the written request of the Required Lenders) and, in the case of an amendment, by Borrower or Guarantor, and acknowledged by Administrative Agent, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment or consent shall:

(a) waive any condition set forth in Section 5.1 without the written consent of each Lender;

(b) increase the aggregate Commitment or increase the Commitment of any Lender without the written consent of such Lender;

(c) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders, or any of them, hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the rate of interest or any fees or other amounts payable in connection with the Loans or L/C Borrowings except as expressly provided in this Agreement without the written consent of each Lender directly affected thereby; provided, however, that

only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” or to waive any obligation of Borrower to pay interest or Letter of Credit Fees at the Default Rate, or (ii) to amend any financial covenant hereunder (or any defined term used therein);

(e) change Section 2.13.1, Section 2.15 or Section 8.3 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly affected thereby;

(f) change the voting percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders, or any of them, to take any action hereunder (e.g., the provisions of this Section 10.1 or the definition of the term “Required Lenders”), without the written consent of each Lender;

(g) amend this or any provision requiring consent of all Lenders for action by the Lenders or Administrative Agent, without the written consent of each Lender; or

(h) discharge Borrower or Guarantor, or release all or substantially all of the collateral securing the Obligations, if any, without the written consent of each Lender, except as otherwise may be provided in the Loan Documents, or except where only the consent of the Required Lenders is expressly required by any Loan Document;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to the Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

10.2 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.2(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower, Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 1.2; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.2(b) below, shall be effective as provided in such Section 10.2(b).

(b) Electronic Communications. (i) Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article 2 if such Lender or the L/C Issuer, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications, and (ii) unless Administrative Agent otherwise prescribes,

(y) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (z) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (y) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to Borrower, Guarantor, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of

Borrower's, Guarantor's or Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to Borrower, Guarantor, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Borrower, Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing) purportedly given by or on behalf of Borrower by a Person identifying himself or herself as a Responsible Officer, even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower by a Person identifying himself or herself as a Responsible Officer. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

(f) Communication with Lenders; Availability of Documents. All communications from Administrative Agent to the Lenders requesting the Lenders' determination, consent, approval or disapproval (a) shall be given in the form of a written notice to each Lender, (b) shall be accompanied by a description of the matter or time as to which such determination, approval, consent or disapproval is requested, or shall advise each Lender where such matter or item may be inspected, or shall otherwise describe the matter or issue to be resolved, and (c) shall include Administrative Agent's recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within ten

(10) Business Days after receipt of the request from Administrative Agent (the "Lender Reply Period"). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of the Required Lenders or all the Lenders, Administrative Agent shall submit its recommendation or determination for approval of or

consent to such recommendation or determination to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination of the Required Lenders (and each nonresponding Lender shall be deemed to have concurred with such recommended course of action) or all the Lenders, as the case may be. Administrative Agent will make available to the Lenders copies of the Loan Documents and any notices of default given to Borrower and, to the extent made available to Administrative Agent pursuant to the terms of this Agreement, copies of the organizational documents and financial information of Borrower, Guarantor and their respective subsidiaries and Affiliates.

10.3 No Waiver; Cumulative Remedies. No failure by any Lender, the L/C Issuer or Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 Costs and Expenses; Indemnity; Waiver of Consequential Damages, Etc.

(a) Costs and Expenses. Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. Borrower shall indemnify Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by Borrower or Guarantor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case

of Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Substances on or from any property owned or operated by Borrower or any of its subsidiaries, or any liability under any Environmental Laws related in any way to Borrower or any of its subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or Guarantor, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Borrower or Guarantor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if Borrower or Guarantor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under Sections 10.4(a) or (b) to be paid by it to Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this Section 10.4(c) are subject to the provisions of Section 2.14.2.

(d) Payments. All amounts due under this Section shall be payable not later than fifteen days after demand therefor.

(e) Survival. The agreements in this Section shall survive the resignation of Administrative Agent and the L/C Issuer, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

(f) Waiver of Consequential Damages. The fullest extent permitted by applicable Law, Borrower agrees that it will not assert, and hereby waive, any claim against any Indemnitee on any theory of liability, for special, indirect, consequential or punitive damages arising out of, in connection with, or as a result of any Loan Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby, any Loan, or the use of the proceeds thereof. To the fullest extent permitted by applicable law, Administrative Agent and each Lender agrees that it will not assert, and hereby waives, any claim against Borrower on

any theory of liability, for special, indirect, consequential or punitive damages arising out of, in connection with, or as a result of any Loan Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby, any Loan, or the use of the proceeds thereof; provided that, nothing in this Section 10.4 (f) shall relieve the Borrower of any obligation it may have to indemnify an Indemnitee, as provided in Section 10.4(b), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

10.5 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.5(b), (ii) by way of participation in accordance with the provisions of Section 10.5(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.5(f). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.5(d) and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignment by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this clause (a), participations in L/C Obligations and in Swing Loans) at the time owing to it; provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed), provided that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Bid Loans or Swing Loans; (iii) any assignment of a Commitment must be approved by Administrative Agent, the L/C Issuer and the Swing Line Lender (which consent will not be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself a

Lender or an Affiliate of a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and (iv) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount, if any, required as set forth in Schedule 1.4, and the Eligible Assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire. Subject to acceptance and recording thereof by Administrative Agent pursuant to clause (b) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.1, 3.3, 3.4, and 10.4 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, Borrower (at its expense) shall execute and deliver a Revolving Note and Bid Note to the assignee Lender and, in such event, the assigning Lender shall return the original Revolving Note and Bid Note for cancellation and, if the assignment is for a portion of the assigning Lender's Commitment, replacement by a new Revolving Note issued by Borrower and evidencing the assigning Lender's reduced Commitment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (d) of this Section. Notwithstanding the foregoing, assignment of the obligations of the L/C Issuer after the resignation of PNC Bank as L/C Issuer, or any other successor thereafter acting as L/C Issuer, shall be governed by Section 10.5(h) hereof.

(c) Register. Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Borrower, Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each of Borrower and the L/C Issuer at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a natural person, a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person, or a Defaulting Lender or Borrower or any of Borrower's Affiliates or subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Loans) owing to it);

provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, Guarantor, each Permitted Affiliate, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a)-(g) of Section 10.1 that directly affects such Participant. Subject to clause (e) of this Section, Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.1, 3.3, 3.4, and 10.4 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.15 as though it were a Lender.

(e) Limitations on Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.1 or 3.3 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.1 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Sections 3.1.5 and 3.3.3 as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time PNC Bank assigns all of its Commitment and Loans pursuant to clause (a) above, PNC Bank may, (i) upon 30 days' notice to Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, Borrower shall be entitled to appoint from among the Lenders a successor

L/C Issuer or Swing Line Lender hereunder and, if such designated appointee agrees to act as successor L/C Issuer or Swing Line Lender hereunder, Lenders hereby agree to accept such appointment; provided, however, that no failure by Borrower to appoint any such successor shall affect the resignation of PNC Bank as L/C Issuer or Swing Line Lender, as the case may be. In addition, if PNC Bank fails to issue a Letter of Credit under Section 2.1.2(b) hereof because the issuance of such Letter of Credit would violate any of its policies. PNC Bank will, upon the request of Borrower, resign as L/C Issuer hereunder and Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder and, if such designated appointee agrees to act as successor L/C Issuer hereunder, Lenders hereby agree to accept such appointment; provided, however, that no failure by Borrower to appoint any such successor shall affect the resignation of PNC Bank as L/C Issuer. If PNC Bank resigns as L/C Issuer, it shall retain all the rights and obligations of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Reference Rate Committed Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.5.1). If PNC Bank resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Reference Rate Committed Loans or fund risk participations in outstanding Swing Loans pursuant to Section 2.2.5. Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to PNC Bank to effectively assume the obligations of PNC Bank with respect to such Letters of Credit.

10.6 Confidentiality. Each of Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (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 purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, (g) with the consent of Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower.

For purposes of this Section, “Information” means all information received from Borrower or any subsidiary thereof relating to Borrower or any subsidiary thereof or any of their respective businesses, other than any such information that is available to Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by Borrower or any subsidiary thereof, provided that, in the case of information received from Borrower or any subsidiary thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this 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.

Each of Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning Borrower or a subsidiary thereof, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

10.7 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and the L/C Issuer is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or the L/C Issuer to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and the L/C Issuer under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify Borrower and Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.8 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the parties signing this Agreement and their successors and assigns. No trust is created by this Agreement and no other persons or entities shall have any right of action under this Agreement or any right to the Loan funds.

10.9 Payments Set Aside. To the extent that any payment by or on behalf of Borrower, Guarantor or any Permitted Affiliate is made to Administrative Agent, the L/C Issuer or any Lender, or Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof

originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement and any other Loan Documents by facsimile or in electronic format shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Documents, provided that Administrative Agent reserves the right to require delivery of an original signature page in addition to any signature page delivered via facsimile or electronic format.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any credit extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.4, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1 or Section 3.3, or if any Lender

is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.5), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to Administrative Agent the assignment fee specified in Section 10.5(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.4) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.3 or payments required to be made pursuant to Section 3.1, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

(e) A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT IS TO BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (AS PERMITTED BY SECTION 1646.5 OF THE CALIFORNIA CIVIL CODE OR ANY SIMILAR SUCCESSOR PROVISION), WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE INTERNAL LAWS OF THE STATE OF CALIFORNIA TO THE RIGHTS AND DUTIES OF THE PARTIES.

(b) SUBMISSION TO JURISDICTION. BORROWER AND ADMINISTRATIVE AGENT EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SAN FRANCISCO COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY

APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION WHERE THE BORROWER OR ITS PROPERTIES ARE LOCATED.

(c) WAIVER OF VENUE. BORROWER AND ADMINISTRATIVE AGENT EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.2(a). NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 Judicial Reference. If any action or proceeding by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document is filed in a forum in which predispute waivers of the right to trial by jury are invalid under applicable law, (a) the court shall, and is hereby directed to, make a general reference

pursuant to California Code of Civil Procedure Section 638 (or similar applicable law) to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” (or similar term) as defined in California Code of Civil Procedure Section 1281.8 (or similar applicable law) shall be heard and determined by the court, and (b) the prevailing party, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all fees and expenses of any referee appointed in such action or proceeding.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act.

10.18 Time of the Essence. Time is of the essence of the Loan Documents.

10.19 No Fiduciary Relationship. In connection with all aspects of each transaction contemplated by the Loan Documents, Borrower and Guarantor each acknowledges and agrees that: (i) the Loan Documents and any related arranging or other services described in any of the Loan Documents (or in any commitment letter by PNC Bank, the Arranger or any affiliate thereof) is an arm’s-length commercial transaction between Borrower and its Affiliates, on the one hand, and the Arranger, on the other hand, and Borrower, Guarantor and their respective Affiliates and subsidiaries are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by the Loan Documents;

(ii) in connection with the process leading to such transaction, PNC Bank and the Arranger each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for Borrower, Guarantor or any of their respective subsidiaries, Affiliates, stockholders, creditors or employees or any other party; (iii) neither PNC Bank nor the Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in Borrower’s, Guarantor’s, or any of their respective Affiliates’ or subsidiaries’ favor with respect to any of the transactions contemplated by the Loan Documents or the process leading thereto (irrespective of whether PNC Bank or the Arranger has advised or is currently advising any such Person or its Affiliates on other matters) and neither PNC Bank nor the Arranger has any obligation to Borrower, Guarantor or any of their respective Affiliates or subsidiaries with respect to the transactions contemplated by the Loan Documents except those obligations expressly set forth herein and therein; (iv) PNC Bank and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower, Guarantor, and their respective Affiliates or subsidiaries and PNC Bank and the Arranger have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and

(v) PNC Bank and the Arranger have not provided any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated by the Loan Documents and Borrower, Guarantor, and their respective Affiliates and subsidiaries have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

Borrower and Guarantor each hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against PNC Bank and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty relating to the transactions contemplated by the Loan Documents.

10.20 Amendment and Restatement. This Agreement amends and restates the Original Credit Agreement in full.

10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(i) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(ii) the effects of any Bail-In Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(C) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any applicable Resolution Authority.

10.22 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for 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 and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in

property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the Laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the Laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

As used in this Section 10.22, the following terms have the following meanings:

- (b) “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).

[Remainder of page intentionally left blank]

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

ESSEX PORTFOLIO, L.P.,
a California limited partnership

BY: ESSEX PROPERTY TRUST, INC.,
a Maryland corporation, its general partner

By: /s/ Anne Morrison
Name: Anne Morrison
Title: SVP General Counsel

1100 Park Place, Suite 200 San Mateo, CA 94403
Attn: Kyle Poirier (KPoirier@essex.com); Anika Fischer (afischer@essex.com)
Internet Website: www.essexpropertytrust.com

[Signatures Continue on the Next Page]

[Signature Page to Third Amendment Restated Revolving Credit Agreement]

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent and as L/C Issuer, Swing Line Lender and Lender

By: /s/ David C. Drouillard
David C. Drouillard, Senior Vice President

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

MUFG UNION BANK, N.A.,
as Lender

By: /s/ Gilbert Rosas
Name: Gilbert Rosas
Title: Managing Director

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

U.S. BANK NATIONAL ASSOCIATION,
as Lender

By: /s/ Michael F. Diemer
Name: Michael F. Diemer
Title: Senior Vice President

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

CAPITAL ONE, NATIONAL ASSOCIATION,
as Lender

By: /s/ Jessica W. Phillips
Name: Jessica W. Phillips
Title: Authorized Signatory

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Lender

By: /s/ Craig V. Koshkarian
Name: Craig V. Koshkarian
Title: Director

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

BANK OF THE WEST,
as Lender

By: /s/ Caitlin Sparks

Name: Caitlin Sparks

Title: VP

By: _____

Name:

Title:

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

THE BANK OF NOVA SCOTIA,
as Lender

By: /s/ Ajit Goswami
Name: Ajit Goswami
Title: Managing Director & Industry Head

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

CITIBANK, N.A.,
as Lender

By: /s/ Chris Albano
Name: Chris Albano
Title: Authorized Signatory

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

MIZUHO BANK, LTD.,
as Lender

By: /s/ Donna DeMagistris
Name: Donna DeMagistris
Title: Authorized Signatory

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

JPMORGAN CHASE BANK, N.A.,
as Lender

By: /s/ Nadeige Dang
Name: Nadeige Dang
Title: Executive Director

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

CITY NATIONAL BANK,
as Lender

By: /s/ Cynthia Choy
Name: Cynthia Choy
Title: President

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

REGIONS BANK,
as Lender

By: /s/ William Chalmers

Name: William Chalmers Title: Vice President

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

TRUIST BANK, f/k/a Branch
Banking and Trust Company,
as Lender

By: /s/ Brad Bowen
Name: Brad Bowen
Title: Director

[Signatures Continue on the Next Page]

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

BNP PARIBAS,
as Lender

By: /s/ James Goodall
Name: James Goodall
Title: Managing Director

By: /s/ Kyle Fitzpatrick
Name: Kyle Fitzpatrick
Title: Vice President

[Signature Page to Third Amended and Restated Revolving Credit Agreement]

CONSENT OF GUARANTOR

Reference is made to that certain Third Amended and Restated Revolving Credit Agreement dated as of September 30, 2021 (the "Credit Agreement").

Essex Property Trust, Inc., a Maryland corporation, as the "Guarantor" under the Credit Agreement (a) acknowledges and consents to the amendment and restatement of the Original Credit Agreement as set forth in the Credit Agreement; (b) makes the representations set forth in Article 7 of the Credit Agreement that apply to Guarantor; (c) agrees to be bound by the covenants of Articles 6 and 10 of the Credit Agreement that apply to Guarantor; (d) acknowledges and affirms its obligations as a guarantor in favor of Administrative Agent and the Lenders pursuant to the Guaranty which it is executing and delivering on the date hereof as a replacement for the original Guaranty signed by Guarantor in connection with the Original Credit Agreement; and (e) represents and warrants, to its knowledge, it has no defense, set-off, counterclaim or challenge against the performance of its obligations under the Guaranty or the enforcement of any of the terms or conditions thereof.

Dated as of September 30, 2021

ESSEX PROPERTY TRUST, INC.,
a Maryland corporation, as Guarantor

By: /s/ Anne Morrison

Name: Anne Morrison

Title: SVP General Counsel

1100 Park Place, Suite 200 San Mateo, CA 94403

Attn: Kyle Poirier (KPoirier@essex.com); Anika Fischer
(afischer@essex.com)

[Consent of Guarantor Signature Page to
Third Amended and Restated Revolving Credit Agreement]

ESSEX PROPERTY TRUST, INC.
Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Michael J. Schall, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Essex Property Trust, Inc.;
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 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 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: October 27, 2021

/s/ Michael J. Schall

Michael J. Schall
Chief Executive Officer and President
Essex Property Trust, Inc.

ESSEX PROPERTY TRUST, INC.
Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Barbara Pak, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Essex Property Trust, Inc.;
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 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 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: October 27, 2021

/s/ Barbara Pak

Barbara Pak
Executive Vice President, Chief Financial Officer
Essex Property Trust, Inc.

ESSEX PORTFOLIO, L.P.
Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Michael J. Schall, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Essex Portfolio, L.P.;
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 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 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: October 27, 2021

/s/ Michael J. Schall

Michael J. Schall
Chief Executive Officer and President
Essex Property Trust, Inc., general partner of
Essex Portfolio, L.P.

ESSEX PORTFOLIO, L.P.
Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Barbara Pak, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Essex Portfolio, L.P.;
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 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 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: October 27, 2021

/s/ Barbara Pak

Barbara Pak
Executive Vice President, Chief Financial Officer
Essex Property Trust, Inc., general partner of
Essex Portfolio, L.P.

ESSEX PROPERTY TRUST, INC.
Certification of Chief Executive Officer
Pursuant to 18 U.S.C. Section 1350 as adopted

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, chapter 63 of title 18, United States Code), I, Michael J. Schall, hereby certify, to the best of my knowledge, that the Quarterly Report on Form 10-Q for the period ended September 30, 2021 (the "Form 10-Q") of Essex Property Trust, Inc. fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Essex Property Trust, Inc.

Date: October 27, 2021

/s/ Michael J. Schall

Michael J. Schall
Chief Executive Officer and President
Essex Property Trust, Inc.

**ESSEX PROPERTY TRUST, INC.
Certification of Chief Financial Officer
Pursuant to 18 U.S.C. Section 1350 as adopted**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, chapter 63 of title 18, United States Code), I, Barbara Pak, hereby certify, to the best of my knowledge, that the Quarterly Report on Form 10-Q for the period ended September 30, 2021 (the "Form 10-Q") of Essex Property Trust, Inc. fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Essex Property Trust, Inc.

Date: October 27, 2021

/s/ Barbara Pak

Barbara Pak

Executive Vice President and Chief Financial Officer
Essex Property Trust, Inc.

ESSEX PORTFOLIO, L.P.
Certification of Chief Executive Officer
Pursuant to 18 U.S.C. Section 1350 as adopted

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, chapter 63 of title 18, United States Code), I, Michael J. Schall, hereby certify, to the best of my knowledge, that the Quarterly Report on Form 10-Q for the period ended September 30, 2021 (the “Form 10-Q”) of Essex Portfolio, L.P. fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Essex Portfolio, L.P.

Date: October 27, 2021

/s/ Michael J. Schall

Michael J. Schall
Chief Executive Officer and President
Essex Property Trust, Inc., general partner of
Essex Portfolio, L.P.

ESSEX PORTFOLIO, L.P.
Certification of Chief Financial Officer
Pursuant to 18 U.S.C. Section 1350 as adopted

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, chapter 63 of title 18, United States Code), I, Barbara Pak, hereby certify, to the best of my knowledge, that the Quarterly Report on Form 10-Q for the period ended September 30, 2021 (the "Form 10-Q") of Essex Portfolio, L.P. fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Essex Portfolio, L.P.

Date: October 27, 2021

/s/ Barbara Pak

Barbara Pak

Executive Vice President, Chief Financial Officer

Essex Property Trust, Inc., general partner of

Essex Portfolio, L.P.