

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended September 30, 2017

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 1-15371

**iStar Inc.**

(Exact name of registrant as specified in its charter)

**Maryland**

(State or other jurisdiction of  
incorporation or organization)

**1114 Avenue of the Americas, 39th Floor**

**New York, NY**

(Address of principal executive offices)

**95-6881527**

(I.R.S. Employer  
Identification Number)

**10036**

(Zip code)

Registrant's telephone number, including area code: **(212) 930-9400**

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company  Emerging growth company   
(Do not check if a smaller reporting company)

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

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.

As of November 1, 2017, there were 68,200,015 shares, \$0.001 par value per share, of iStar Inc. common stock outstanding.

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## PART I. CONSOLIDATED FINANCIAL INFORMATION

## Item 1. Financial Statements

**iStar Inc.**  
**Consolidated Balance Sheets**  
(In thousands, except per share data)

	As of	
	September 30, 2017 (unaudited)	December 31, 2016
<b>ASSETS</b>		
Real estate		
Real estate, at cost	\$ 1,687,318	\$ 1,740,893
Less: accumulated depreciation	(363,456)	(353,619)
Real estate, net	1,323,862	1,387,274
Real estate available and held for sale	65,658	237,531
Total real estate	1,389,520	1,624,805
Land and development, net	861,507	945,565
Loans receivable and other lending investments, net	1,109,442	1,450,439
Other investments	289,037	214,406
Cash and cash equivalents	1,912,448	328,744
Accrued interest and operating lease income receivable, net	10,849	11,254
Deferred operating lease income receivable, net	87,696	88,189
Deferred expenses and other assets, net	134,720	162,112
Total assets	\$ 5,795,219	\$ 4,825,514
<b>LIABILITIES AND EQUITY</b>		
<b>Liabilities:</b>		
Accounts payable, accrued expenses and other liabilities	\$ 466,374	\$ 211,570
Loan participations payable, net	122,489	159,321
Debt obligations, net	4,278,954	3,389,908
Total liabilities	4,867,817	3,760,799
Commitments and contingencies (refer to Note 11)	—	—
Redeemable noncontrolling interests	3,513	5,031
<b>Equity:</b>		
iStar Inc. shareholders' equity:		
Preferred Stock Series D, E, F, G and I, liquidation preference \$25.00 per share (refer to Note 13)	12	22
Convertible Preferred Stock Series J, liquidation preference \$50.00 per share (refer to Note 13)	4	4
Common Stock, \$0.001 par value, 200,000 shares authorized, 68,200 and 72,042 shares issued and outstanding as of September 30, 2017 and December 31, 2016, respectively	68	72
Additional paid-in capital	3,357,489	3,602,172
Retained earnings (deficit)	(2,465,654)	(2,581,488)
Accumulated other comprehensive income (loss) (refer to Note 13)	(3,830)	(4,218)
Total iStar Inc. shareholders' equity	888,089	1,016,564
Noncontrolling interests	35,800	43,120
Total equity	923,889	1,059,684
Total liabilities and equity	\$ 5,795,219	\$ 4,825,514

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

**iStar Inc.**  
**Consolidated Statements of Operations**  
(In thousands, except per share data)  
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Revenues:</b>				
Operating lease income	\$ 47,806	\$ 46,800	\$ 142,155	\$ 147,270
Interest income	25,442	32,258	83,145	99,877
Other income	20,662	13,442	172,037	35,079
Land development revenue	25,962	31,554	178,722	74,389
Total revenues	119,872	124,054	576,059	356,615
<b>Costs and expenses:</b>				
Interest expense	48,732	55,105	148,684	168,173
Real estate expense	36,280	35,243	106,554	104,815
Land development cost of sales	27,512	22,004	165,888	50,842
Depreciation and amortization	11,846	12,201	37,297	39,781
General and administrative	20,955	19,666	73,347	62,433
(Recovery of) provision for loan losses	(2,600)	(14,955)	(8,128)	(12,749)
Impairment of assets	595	8,741	15,292	11,753
Other expense	2,704	819	20,849	4,741
Total costs and expenses	146,024	138,824	559,783	429,789
Income (loss) before earnings from equity method investments and other items	(26,152)	(14,770)	16,276	(73,174)
Loss on early extinguishment of debt, net	(616)	(36)	(4,142)	(1,618)
Earnings from equity method investments	2,461	26,540	13,677	74,254
Income (loss) from continuing operations before income taxes	(24,307)	11,734	25,811	(538)
Income tax (expense) benefit	1,278	8,256	(972)	9,859
Income (loss) from continuing operations	(23,029)	19,990	24,839	9,321
Income from discontinued operations	—	3,721	4,939	10,934
Gain from discontinued operations	—	—	123,418	—
Income tax expense from discontinued operations	—	—	(4,545)	—
Income from sales of real estate <sup>(1)</sup>	19,313	34,444	28,267	88,387
Net income (loss)	(3,716)	58,155	176,918	108,642
Net (income) loss attributable to noncontrolling interests	160	967	(4,450)	(6,915)
Net income (loss) attributable to iStar Inc.	(3,556)	59,122	172,468	101,727
Preferred dividends	(30,974)	(12,830)	(56,634)	(38,490)
Net (income) loss allocable to Participating Security holders <sup>(2)</sup>	—	—	—	(27)
Net income (loss) allocable to common shareholders	\$ (34,530)	\$ 46,292	\$ 115,834	\$ 63,210
<b>Per common share data:</b>				
Income (loss) attributable to iStar Inc. from continuing operations:				
Basic	\$ (0.48)	\$ 0.60	\$ (0.11)	\$ 0.70
Diluted	\$ (0.48)	\$ 0.41	\$ (0.11)	\$ 0.57
Net income (loss) attributable to iStar Inc.:				
Basic	\$ (0.48)	\$ 0.65	\$ 1.61	\$ 0.85
Diluted	\$ (0.48)	\$ 0.44	\$ 1.61	\$ 0.66
Weighted average number of common shares:				
Basic	71,713	71,210	71,972	74,074
Diluted	71,713	115,666	71,972	118,590

(1) Income from sales of real estate represents gains from sales of real estate that do not qualify as discontinued operations.

(2) Participating Security holders are non-employee directors who hold common stock equivalents ("CSEs") and restricted stock awards granted under the Company's Long Term Incentive Plans that are eligible to participate in dividends (refer to Note 14 and Note 15).

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



**iStar Inc.**  
**Consolidated Statements of Comprehensive Income (Loss)**  
(In thousands)  
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
Net income (loss)	\$ (3,716)	\$ 58,155	\$ 176,918	\$ 108,642
<b>Other comprehensive income (loss):</b>				
Reclassification of (gains)/losses on cash flow hedges into earnings upon realization <sup>(1)</sup>	56	112	(135)	487
Unrealized gains/(losses) on available-for-sale securities	(116)	(202)	450	263
Unrealized gains/(losses) on cash flow hedges	(56)	249	338	(1,070)
Unrealized gains/(losses) on cumulative translation adjustment	(36)	(249)	(265)	(259)
Other comprehensive income (loss)	(152)	(90)	388	(579)
Comprehensive income (loss)	(3,868)	58,065	177,306	108,063
Comprehensive (income) loss attributable to noncontrolling interests	160	967	(4,450)	(6,915)
Comprehensive income (loss) attributable to iStar Inc.	<u>\$ (3,708)</u>	<u>\$ 59,032</u>	<u>\$ 172,856</u>	<u>\$ 101,148</u>

(1) Reclassified to "Interest expense" in the Company's consolidated statements of operations are \$16 and \$76 for the three and nine months ended September 30, 2017, respectively, and \$20 and \$202 for the three and nine months ended September 30, 2016, respectively. Reclassified to "Earnings from equity method investments" in the Company's consolidated statements of operations are \$40 and \$204 for the three and nine months ended September 30, 2017, respectively, and \$92 and \$285 for the three and nine months ended September 30, 2016, respectively.

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

**iStar Inc.**  
**Consolidated Statements of Changes in Equity**  
**For the Nine Months Ended September 30, 2017 and 2016**  
(In thousands)  
(unaudited)

	iStar Inc. Shareholders' Equity							Total Equity
	Preferred Stock <sup>(1)</sup>	Preferred Stock Series J <sup>(1)</sup>	Common Stock at Par	Additional Paid-In Capital	Retained Earnings (Deficit)	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests	
Balance as of December 31, 2016	\$ 22	\$ 4	\$ 72	\$ 3,602,172	\$(2,581,488)	\$ (4,218)	\$ 43,120	\$ 1,059,684
Dividends declared—preferred	—	—	—	—	(38,490)	—	—	(38,490)
Issuance of stock/restricted stock unit amortization, net	—	—	—	2,248	—	—	—	2,248
Net income for the period <sup>(2)</sup>	—	—	—	—	172,468	—	5,785	178,253
Change in accumulated other comprehensive income (loss)	—	—	—	—	—	388	—	388
Repurchase of stock	—	—	(4)	(45,924)	—	—	—	(45,928)
Issuance of senior unsecured convertible notes (refer to Note 10)	—	—	—	22,487	—	—	—	22,487
Dividends declared and payable — Series E and Series F Preferred Stock	—	—	—	—	(1,830)	—	—	(1,830)
Redemption of Series E and F Preferred Stock	(10)	—	—	(223,676)	(16,314)	—	—	(240,000)
Change in additional paid in capital attributable to redeemable noncontrolling interest	—	—	—	182	—	—	—	182
Contributions from noncontrolling interests	—	—	—	—	—	—	12	12
Distributions to noncontrolling interests	—	—	—	—	—	—	(13,117)	(13,117)
Balance as of September 30, 2017	<u>\$ 12</u>	<u>\$ 4</u>	<u>\$ 68</u>	<u>\$ 3,357,489</u>	<u>\$(2,465,654)</u>	<u>\$ (3,830)</u>	<u>\$ 35,800</u>	<u>\$ 923,889</u>
Balance as of December 31, 2015	\$ 22	\$ 4	\$ 81	\$ 3,689,330	\$(2,625,474)	\$ (4,851)	\$ 42,218	\$ 1,101,330
Dividends declared—preferred	—	—	—	—	(38,490)	—	—	(38,490)
Issuance of stock/restricted stock unit amortization, net	—	—	—	1,675	—	—	—	1,675
Net income for the period <sup>(2)</sup>	—	—	—	—	101,727	—	10,908	112,635
Change in accumulated other comprehensive income (loss)	—	—	—	—	—	(579)	—	(579)
Repurchase of stock	—	—	(10)	(98,419)	—	—	—	(98,429)
Change in additional paid in capital attributable to redeemable noncontrolling interest	—	—	—	124	—	—	—	124
Contributions from noncontrolling interests	—	—	—	—	—	—	513	513
Change in noncontrolling interest <sup>(3)</sup>	—	—	—	—	—	—	(7,292)	(7,292)
Balance as of September 30, 2016	<u>\$ 22</u>	<u>\$ 4</u>	<u>\$ 71</u>	<u>\$ 3,592,710</u>	<u>\$(2,562,237)</u>	<u>\$ (5,430)</u>	<u>\$ 46,347</u>	<u>\$ 1,071,487</u>

(1) Refer to Note 13 for details on the Company's Preferred Stock.

(2) For the nine months ended September 30, 2017 and 2016, net income (loss) shown above excludes \$(1,335) and \$(3,993) of net loss attributable to redeemable noncontrolling interests.

(3) Includes a payment to acquire a noncontrolling interest (refer to Note 5).

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

**iStar Inc.**  
**Consolidated Statements of Cash Flows**  
(In thousands)  
(unaudited)

	For the Nine Months Ended September 30,	
	2017	2016
<b>Cash flows from operating activities:</b>		
Net income	\$ 176,918	\$ 108,642
<b>Adjustments to reconcile net income to cash flows from operating activities:</b>		
(Recovery of) provision for loan losses	(8,128)	(12,749)
Impairment of assets	15,292	11,753
Depreciation and amortization	38,198	42,184
Non-cash expense for stock-based compensation	12,730	7,644
Amortization of discounts/premiums and deferred financing costs on debt obligations, net	9,793	12,954
Amortization of discounts/premiums on loans, net	(10,098)	(10,835)
Deferred interest on loans, net	1,162	(5,632)
Gain from discontinued operations	(123,418)	—
Earnings from equity method investments	(13,677)	(74,254)
Distributions from operations of other investments	39,076	44,893
Deferred operating lease income	(4,870)	(7,340)
Income from sales of real estate	(28,775)	(88,387)
Land development revenue in excess of cost of sales	(12,834)	(23,547)
Loss on early extinguishment of debt, net	1,392	1,618
Debt discount on repayments of debt obligations	(6,634)	(5,369)
Other operating activities, net	12,210	4,115
<b>Changes in assets and liabilities:</b>		
Changes in accrued interest and operating lease income receivable, net	2,533	5,715
Changes in deferred expenses and other assets, net	(8,271)	(14,194)
Changes in accounts payable, accrued expenses and other liabilities	(5,792)	(11,773)
Cash flows provided by (used in) operating activities	86,807	(14,562)
<b>Cash flows from investing activities:</b>		
Originations and fundings of loans receivable, net	(177,952)	(226,012)
Capital expenditures on real estate assets	(24,891)	(55,385)
Capital expenditures on land and development assets	(84,966)	(87,891)
Acquisitions of real estate assets	—	(4,740)
Repayments of and principal collections on loans receivable and other lending investments, net	491,680	243,780
Net proceeds from sales of real estate	201,939	412,335
Net proceeds from sales of land and development assets	174,979	64,159
Net proceeds from sales of other investments	—	39,810
Distributions from other investments	40,772	25,795
Contributions to and acquisition of interest in other investments	(181,279)	(45,635)
Changes in restricted cash held in connection with investing activities	5,491	(603)
Other investing activities, net	646	(14,265)
Cash flows provided by investing activities	446,419	351,348
<b>Cash flows from financing activities:</b>		
Borrowings from debt obligations and convertible notes	1,903,643	696,401
Repayments and repurchases of debt obligations	(726,795)	(1,065,253)
Proceeds from loan participations payable	—	22,844
Preferred dividends paid	(38,490)	(38,490)
Repurchase of stock	(45,928)	(99,335)
Payments for deferred financing costs	(27,972)	(8,930)
Payments for withholding taxes upon vesting of stock-based compensation	(511)	(1,203)
Distributions to noncontrolling interests	(12,889)	(7,248)
Other financing activities, net	(599)	821
Cash flows provided by (used in) financing activities	1,050,459	(500,393)
Effect of exchange rate changes on cash	19	16
Changes in cash and cash equivalents	1,583,704	(163,591)
Cash and cash equivalents at beginning of period	328,744	711,101
Cash and cash equivalents at end of period	\$ 1,912,448	\$ 547,510
Supplemental disclosure of non-cash investing and financing activity:		

Fundings and repayments of loan receivables and loan participations, net	\$	(37,405)	\$	31,030
Accrual for redemption of preferred stock and preferred stock dividends		241,830		—
Accounts payable for capital expenditures on land and development assets		5,700		3,187
Accounts payable for capital expenditures on real estate assets		2,574		—
Acquisitions of real estate and land and development assets through deed-in-lieu		—		9,083
Developer fee payable		—		9,478
Accrued financing costs		3,031		—

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

**iStar Inc.**  
**Notes to Consolidated Financial Statements**  
**(unaudited)**

**Note 1—Business and Organization**

**Business**—iStar Inc. (the "Company"), doing business as "iStar," finances, invests in and develops real estate and real estate related projects as part of its fully-integrated investment platform. The Company also provides management services for its ground lease and net lease equity method investments (refer to Note 7). The Company has invested more than \$35 billion over the past two decades and is structured as a real estate investment trust ("REIT") with a diversified portfolio focused on larger assets located in major metropolitan markets. The Company's primary business segments are real estate finance, net lease, operating properties and land and development (refer to Note 17).

**Organization**—The Company began its business in 1993 through the management of private investment funds and became publicly traded in 1998. Since that time, the Company has grown through the origination of new investments, as well as through corporate acquisitions.

**Note 2—Basis of Presentation and Principles of Consolidation**

**Basis of Presentation**—The accompanying unaudited consolidated financial statements have been prepared in conformity with the instructions to Form 10-Q and Article 10-01 of Regulation S-X for interim financial statements. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles in the United States of America ("GAAP") for complete financial statements. These unaudited consolidated financial statements and related notes should be read in conjunction with the consolidated financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2016 (the "2016 Annual Report").

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

In the opinion of management, the accompanying consolidated financial statements contain all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of the results for the interim periods presented. Such operating results may not be indicative of the expected results for any other interim periods or the entire year. Certain prior year amounts have been reclassified in the Company's consolidated financial statements and the related notes to conform to the current period presentation.

**Principles of Consolidation**—The consolidated financial statements include the financial statements of the Company, its wholly owned subsidiaries, controlled partnerships and variable interest entities ("VIEs") for which the Company is the primary beneficiary. All significant intercompany balances and transactions have been eliminated in consolidation. The Company's involvement with VIEs affects its financial performance and cash flows primarily through amounts recorded in "Operating lease income," "Interest income," "Earnings from equity method investments," "Real estate expense" and "Interest expense" in the Company's consolidated statements of operations. The Company has not provided financial support to those VIEs that it was not previously contractually required to provide.

**Consolidated VIEs**—As of September 30, 2017, the Company consolidates VIEs for which it is considered the primary beneficiary. As of September 30, 2017, the total assets of these consolidated VIEs were \$331.4 million and total liabilities were \$74.2 million. The classifications of these assets are primarily within "Land and development, net" and "Real estate, net" on the Company's consolidated balance sheets. The classifications of liabilities are primarily within "Accounts payable, accrued expenses and other liabilities" and "debt obligations, net" on the Company's consolidated balance sheets. The liabilities of these VIEs are non-recourse to the Company and can only be satisfied from each VIE's respective assets. The Company did not have any unfunded commitments related to consolidated VIEs as of September 30, 2017.

**Unconsolidated VIEs**—As of September 30, 2017, the Company has investments in VIEs where it is not the primary beneficiary and accordingly the VIEs have not been consolidated in the Company's consolidated financial statements. As of September 30, 2017, the Company's maximum exposure to loss from these investments does not exceed the sum of the \$65.8 million carrying value of the investments, which are classified in "Other investments" and "Loans receivable and other lending investments, net" on the Company's consolidated balance sheets, and \$80.7 million of related unfunded commitments.

**iStar Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 3—Summary of Significant Accounting Policies**

On January 1, 2017, the Company adopted Accounting Standards Update ("ASU") 2016-09, *Compensation—Stock Compensation: Improvements to Employee Share-Based Payment Accounting* ("ASU 2016-09"), which was issued to simplify several aspects of the accounting for share-based payment transactions, including income tax, classification of awards as either equity or liabilities and classification on the statement of cash flows. The adoption of ASU 2016-09 did not have a material impact on the Company's consolidated financial statements.

As of September 30, 2017, the remainder of the Company's significant accounting policies, which are detailed in the Company's 2016 Annual Report, have not changed materially.

**New Accounting Pronouncements**—In August 2017, the FASB issued Accounting Standards Update ("ASU") 2017-12, *Derivatives and Hedging - Targeted Improvements to Accounting for Hedging Activities* ("ASU 2017-12"), to better align an entity's risk management activities and financial reporting for hedging relationships through changes to both the designation and measurement guidance for qualifying hedging relationships and the presentation of hedge results. ASU 2017-12 expands and refines hedge accounting for both nonfinancial and financial risk components and aligns the recognition and presentation of the effects of the hedging instrument and the hedged item in the financial statements. ASU 2017-12 is effective for interim and annual reporting periods beginning after December 15, 2018. Early adoption is permitted. Management does not believe the guidance will have a material impact on the Company's consolidated financial statements.

In February 2017, the FASB issued ASU 2017-05, *Other Income—Gains and Losses from the Derecognition of Nonfinancial Assets* ("ASU 2017-05"), to clarify the scope of Subtopic 610-20, *Other Income—Gains and Losses from the Derecognition of Nonfinancial Assets*, and to add guidance for partial sales of nonfinancial assets. The amendments in ASU 2017-05 simplify GAAP by eliminating several accounting differences between transactions involving assets and transactions involving businesses. The amendments in ASU 2017-05 require an entity to initially measure a retained noncontrolling interest in a nonfinancial asset at fair value consistent with how a retained noncontrolling interest in a business is measured. Also, if an entity transfers ownership interests in a consolidated subsidiary that is within the scope of ASC 610-20 and continues to have a controlling financial interest in that subsidiary, ASU 2017-05 requires the entity to account for the transaction as an equity transaction, which is consistent with how changes in ownership interests in a consolidated subsidiary that is a business are recorded when a parent retains a controlling financial interest in the business. ASU 2017-05 is effective for interim and annual reporting periods beginning after December 15, 2017. Early adoption is permitted beginning January 1, 2017. Management is evaluating the impact of the guidance on the Company's consolidated financial statements and expects to adopt the retrospective approach, which would require the Company to recast revenue and expenses for all prior periods presented in the year of adoption of the new standard. The Company expects that transactions in assets and businesses in which the Company retains an ownership interest, such as the sale of a controlling interest in its GL business (refer to Note 4), will be impacted by this guidance. As a result, under the retrospective approach, in 2018, the Company expects to record an incremental gain of \$55.5 million in its consolidated statements of operations for the nine months ended September 30, 2017, bringing the Company's full gain on the sale of its GL business to approximately \$178.9 million.

In January 2017, the FASB issued ASU 2017-01, *Business Combinations: Clarifying the Definition of a Business* ("ASU 2017-01"), to provide a more robust framework to use in determining when a set of assets and activities is a business. The amendments provide more consistency in applying the guidance, reduce the costs of application, and make the definition of a business more operable. The Company's real estate acquisitions have historically been accounted for as a business combination or an asset acquisition. Under ASU 2017-01, certain transactions previously accounted for as business combinations under the existing guidance would be accounted for as asset acquisitions under the new guidance. As a result, the Company expects more transaction costs to be capitalized under real estate acquisitions and less transaction costs to be expensed under business combinations. ASU 2017-01 is effective for interim and annual reporting periods beginning after December 15, 2017. Early application is permitted. Management is evaluating the impact of the guidance on the Company's consolidated financial statements.

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows: Restricted Cash* ("ASU 2016-18"), which requires that restricted cash be included with cash and cash equivalents when reconciling beginning and ending cash and cash equivalents on the statement of cash flows. In addition, ASU 2016-18 requires disclosure of what is included in restricted cash. ASU 2016-18 is effective for interim and annual reporting periods beginning after December 15, 2017. Early adoption is permitted. Management does not believe the guidance will have a material impact on the Company's consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows: Classification of Certain Cash Receipts and Cash Payments* ("ASU 2016-15"), which was issued to reduce diversity in practice in how certain cash receipts and cash payments,

**iStar Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)**

including debt prepayment or debt extinguishment costs, distributions from equity method investees, and other separately identifiable cash flows, are presented and classified in the statement of cash flows. ASU 2016-15 is effective for interim and annual reporting periods beginning after December 15, 2017. Early adoption is permitted. Management does not believe the guidance will have a material impact on the Company's consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses: Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which was issued to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments held by a reporting entity. This amendment replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company currently records a general reserve that covers performing loans and reserves for loan losses are recorded when (i) available information as of each balance sheet date indicates that it is probable a loss has occurred in the portfolio and (ii) the amount of the loss can be reasonably estimated. The formula-based general reserve is derived from estimated principal default probabilities and loss severities applied to groups of loans based upon risk ratings assigned to loans with similar risk characteristics during our quarterly loan portfolio assessment. The Company estimates loss rates based on historical realized losses experienced within its portfolio and take into account current economic conditions affecting the commercial real estate market when establishing appropriate time frames to evaluate loss experience. The Company believes this general reserve component of its total loan loss reserves should minimize the impact of ASU 2016-13. ASU 2016-13 is effective for interim and annual reporting periods beginning after December 15, 2019. Early adoption is permitted for interim and annual reporting periods beginning after December 15, 2018. Management does not believe the guidance will have a material impact on the Company's consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases* ("ASU 2016-02"), which requires the recognition of lease assets and lease liabilities by lessees for those leases classified as operating leases. For operating leases, a lessee will be required to do the following: (i) recognize a right-of-use asset and a lease liability, initially measured at the present value of the lease payments, in the statement of financial position; (ii) recognize a single lease cost, calculated so that the cost of the lease is allocated over the lease term on a generally straight-line basis and (iii) classify all cash payments within operating activities in the statement of cash flows. For operating lease arrangements for which the Company is the lessee, primarily the lease of office space, the Company expects the impact of ASU 2016-02 to be the recognition of a right-of-use asset and lease liability on its consolidated balance sheets. The accounting applied by the Company as a lessor will be largely unchanged from that applied under previous GAAP. However, in certain instances, a new long-term lease of land subsequent to adoption could be classified as a sales-type lease, which could result in the Company derecognizing the underlying asset from its books and recording a profit or loss on sale and the net investment in the lease. ASU 2016-02 is effective for interim and annual reporting periods beginning after December 15, 2018. Early adoption is permitted. Management is evaluating the impact of the guidance on the Company's consolidated financial statements.

In January 2016, the FASB issued ASU 2016-01, *Financial Instruments - Overall: Recognition and Measurement of Financial Assets and Financial Liabilities* ("ASU 2016-01"), which addresses certain aspects of recognition, measurement, presentation and disclosure of financial instruments. ASU 2016-01 is effective for interim and annual reporting periods beginning after December 15, 2017. Early adoption is not permitted. Management is evaluating the impact of the guidance on the Company's consolidated financial statements.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers* ("ASU 2014-09"), which supersedes existing industry-specific guidance, including ASC 360-20, *Real Estate Sales*. The new standard is principles-based and requires more estimates and judgment than current guidance. Certain contracts with customers, including lease contracts and financial instruments and other contractual rights, are not within the scope of the new guidance. Although most of the Company's revenue is operating lease income generated from lease contracts and interest income generated from financial instruments, certain other of the Company's revenue streams will be impacted by the new guidance. The Company currently expects that income from the sale of residential condominiums, land development revenue and other income will be impacted by ASU 2014-09. The Company does not expect income from the sales of net lease or commercial operating properties to be impacted by ASU 2014-09. In August 2015, the FASB issued ASU 2015-14, *Revenue from Contracts with Customers - Deferral of the Effective Date*, to defer the effective date of ASU 2014-09 by one year. ASU 2014-09 is now effective for interim and annual reporting periods beginning after December 15, 2017. Early adoption is permitted beginning January 1, 2017. Management is evaluating the impact of the guidance on the Company's consolidated financial statements and expects to adopt the full retrospective approach, which would require the Company to recast revenue and expenses for all prior periods presented in the year of adoption of the new standard.

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**Notes to Consolidated Financial Statements (Continued)**
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**Note 4—Real Estate**

The Company's real estate assets were comprised of the following (\$ in thousands):

	Net Lease <sup>(1)</sup>	Operating Properties	Total
<b>As of September 30, 2017</b>			
Land, at cost	\$ 223,764	\$ 209,068	\$ 432,832
Buildings and improvements, at cost	926,912	327,574	1,254,486
Less: accumulated depreciation	(306,183)	(57,273)	(363,456)
Real estate, net	844,493	479,369	1,323,862
Real estate available and held for sale <sup>(2)</sup>	—	65,658	65,658
Total real estate	\$ 844,493	\$ 545,027	\$ 1,389,520
<b>As of December 31, 2016</b>			
Land, at cost	\$ 231,506	\$ 211,054	\$ 442,560
Buildings and improvements, at cost	987,050	311,283	1,298,333
Less: accumulated depreciation	(307,444)	(46,175)	(353,619)
Real estate, net	911,112	476,162	1,387,274
Real estate available and held for sale <sup>(2)</sup>	155,051	82,480	237,531
Total real estate	\$ 1,066,163	\$ 558,642	\$ 1,624,805

(1) In 2014, the Company partnered with a sovereign wealth fund to form a venture to acquire and develop net lease assets (the "Net Lease Venture") and gave a right of first refusal to the Net Lease Venture on all new net lease investments (refer to Note 7 for more information on the Net Lease Venture). The Company is responsible for sourcing new opportunities and managing the Net Lease Venture and its assets in exchange for a promote and management fee.

(2) As of December 31, 2016, net lease includes the Company's ground lease ("GL") assets that were reclassified to "Real estate available and held for sale" (refer to "Dispositions" below). As of December 31, 2016, the carrying value of the Company's GL assets were previously classified as \$104.5 million in "Real estate, net," \$37.5 million in "Deferred expenses and other assets, net," \$8.2 million in "Deferred operating lease income receivable, net" and \$3.5 million in "Accrued interest and operating lease income receivable, net" on the Company's consolidated balance sheet. As of September 30, 2017 and December 31, 2016, the Company had \$65.7 million and \$82.5 million, respectively, of residential properties available for sale in its operating properties portfolio.

In the third quarter 2017, in conjunction with the modification of two master leases, the Company exchanged real property with the tenant. The fair value of the property exchanged exceeded the Company's cost basis by approximately \$1.5 million which will be deferred and amortized to "Operating lease income" in the Company's consolidated statements of operations over the remaining master lease terms.

**Real Estate Available and Held for Sale**—During the nine months ended September 30, 2017, the Company transferred one net lease asset with a carrying value of \$0.9 million to held for sale due to an executed contract with a third party. During the nine months ended September 30, 2016, the Company transferred one net lease asset with a carrying value of \$0.7 million and one commercial operating property with a carrying value of \$16.1 million to held for sale due to executed contracts with third parties. During the nine months ended September 30, 2016, the Company also acquired a residential operating property for \$0.8 million that had no operations and was sold as of September 30, 2017.

During the nine months ended September 30, 2016, the Company acquired land for \$3.9 million and simultaneously entered into a 99 year ground lease with the seller. This asset was one of the 12 properties comprising the Company's GL business that was disposed of in April 2017 (see "Disposition of Ground Lease Business" below).

**Disposition of Ground Lease Business**—In April 2017, institutional investors acquired a controlling interest in the Company's GL business through the merger of a Company subsidiary and related transactions (the "Acquisition Transactions"). The Company's GL business was a component of the Company's net lease segment and consisted of 12 properties subject to long-term net leases including seven GLs and one master lease (covering five properties). The acquiring entity was a newly formed unconsolidated entity named Safety, Income & Growth Inc. ("SAFE"). The carrying value of the Company's GL assets was approximately \$161.1 million. Shortly before the Acquisition Transactions, the Company completed the \$227.0 million 2017 Secured Financing on its GL assets (refer to Note 10). The Company received all of the proceeds of the 2017 Secured Financing.



**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
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The Company received an additional \$113.0 million of proceeds in the Acquisition Transactions, including \$55.5 million that the Company contributed to SAFE in its initial capitalization. As a result of the Acquisition Transactions, the Company deconsolidated the 12 properties and the associated 2017 Secured Financing. The Company accounts for its investment in SAFE as an equity method investment (refer to Note 7). The Company accounted for this transaction as an in substance sale of real estate and recognized a gain of \$123.4 million, reflecting the aggregate gain less the fair value of the Company's retained interest in SAFE (refer to Note 2 - Summary of Significant Accounting Policies). The carrying value of the 12 properties is classified in "Real estate available and held for sale" on the Company's consolidated balance sheet as of December 31, 2016 and the gain was recorded in "Gain from discontinued operations" in the Company's consolidated statements of operations.

**Discontinued Operations**—The transactions described above involving the Company's GL business qualified for discontinued operations and the following table summarizes income from discontinued operations for the three and nine months ended September 30, 2017 and 2016 (\$ in thousands)<sup>(1)(2)</sup>:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenues	\$ —	\$ 4,614	\$ 6,430	\$ 13,600
Expenses	—	(893)	(1,491)	(2,666)
Income from discontinued operations	\$ —	\$ 3,721	\$ 4,939	\$ 10,934

(1) The transactions closed on April 14, 2017 and revenues, expenses and income from discontinued operations excludes the period from April 14, 2017 to September 30, 2017. Revenues primarily consisted of operating lease income and expenses primarily consisted of depreciation and amortization and real estate expense.

(2) For the nine months ended September 30, 2017, cash flows provided by operating activities and cash flows used in investing activities from discontinued operations was \$5.7 million and \$0.5 million, respectively. For the nine months ended September 30, 2016, cash flows provided by operating activities and cash flows used in investing activities from discontinued operations was \$12.9 million and \$5.6 million, respectively.

**Other Dispositions**—During the nine months ended September 30, 2017 and 2016, the Company sold residential condominiums for total net proceeds of \$21.8 million and \$74.9 million, respectively, and recorded income from sales of real estate totaling \$3.3 million and \$23.3 million, respectively. During the nine months ended September 30, 2017 and 2016, the Company received net proceeds related to net lease asset sales of \$61.7 million and \$108.5 million, respectively, resulting in gains of \$25.0 million and \$15.9 million, respectively. During the nine months ended September 30, 2016, the Company also sold commercial operating properties for net proceeds of \$229.1 million resulting in gains of \$49.2 million. The gains are recorded in "Income from sales of real estate" in the Company's consolidated statements of operations.

**Impairments**—During the nine months ended September 30, 2017, the Company recorded an impairment of \$4.4 million on a real estate asset held for sale due to shifting demand in the local condominium market along with a change in the Company's exit strategy and an impairment of \$0.6 million in connection with the sale of an outparcel located at a commercial operating property. During the nine months ended September 30, 2016, the Company recorded impairments of \$7.9 million comprised of \$3.0 million on a residential operating property resulting from a slowdown in the local condominium real estate market and \$4.9 million on the sale of net lease assets.

**Other Developments**—The Company identified properties that sustained damages associated with the recent hurricanes in the United States. The Company has insurance policies in place to cover damages in excess of the Company's deductibles. As of September 30, 2017, the Company has recorded approximately \$1.2 million to "Real estate expense" in the Company's consolidated statements of operations to cover expected losses at the properties.

**Tenant Reimbursements**—The Company receives reimbursements from tenants for certain facility operating expenses including common area costs, insurance, utilities and real estate taxes. Tenant expense reimbursements were \$6.1 million and \$17.0 million for the three and nine months ended September 30, 2017, respectively. Tenant expense reimbursements were \$6.2 million and \$18.4 million for the three and nine months ended September 30, 2016, respectively. These amounts are included in "Operating lease income" in the Company's consolidated statements of operations.

**Allowance for Doubtful Accounts**—As of September 30, 2017 and December 31, 2016, the allowance for doubtful accounts related to real estate tenant receivables was \$1.2 million and \$1.3 million, respectively, and the allowance for doubtful accounts related to deferred operating lease income was \$1.1 million and \$1.3 million as of September 30, 2017 and December 31, 2016,

**iStar Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
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respectively. These amounts are included in "Accrued interest and operating lease income receivable, net" and "Deferred operating lease income receivable, net," respectively, on the Company's consolidated balance sheets.

**Note 5—Land and Development**

The Company's land and development assets were comprised of the following (\$ in thousands):

	As of	
	September 30, 2017	December 31, 2016
Land and land development, at cost <sup>(1)</sup>	\$ 869,331	\$ 952,051
Less: accumulated depreciation	(7,824)	(6,486)
<b>Total land and development, net</b>	<b>\$ 861,507</b>	<b>\$ 945,565</b>

(1) During the nine months September 30, 2017, the Company funded capital expenditures on land and development assets of \$85.0 million.

**Dispositions**—During the nine months ended September 30, 2017, the Company sold one land parcel totaling 1,250 acres (see following paragraph) and residential lots and units and recognized land development revenue of \$178.7 million from its land and development portfolio. During the nine months ended September 30, 2016, the Company sold residential lots and units and recognized land development revenue of \$74.4 million from its land and development portfolio. During the nine months ended September 30, 2017 and 2016, the Company recognized land development cost of sales of \$165.9 million and \$50.8 million, respectively, from its land and development portfolio.

In connection with the resolution of litigation involving a dispute over the purchase and sale of approximately 1,250 acres of land in Prince George's County, Maryland ("Bevard"), during the nine months ended September 30, 2017, the Company recognized \$114.0 million of land development revenue and \$106.3 million of land development cost of sales (refer to Note 11). In 2016, the Company acquired an additional 10.7% interest in Bevard for \$10.8 million and owned 95.7% of Bevard at the time of resolution.

**Impairments**—During the nine months ended September 30, 2017, the Company recorded an impairment of \$10.1 million on a land asset due to a change in the Company's exit strategy. During the nine months ended September 30, 2016, the Company recorded an impairment of \$3.8 million equal to the carrying value on a land asset resulting from a change in business strategy.

**Redeemable Noncontrolling Interest**—The Company has a majority interest in a strategic venture that provides the third party minority partner an option to redeem their interest at fair value. The Company has reflected the partner's noncontrolling interest in this venture as a component of redeemable noncontrolling interest within its consolidated balance sheets. Changes in fair value are being accreted over the term from the date of issuance of the redemption option to the earliest redemption date using the interest method. As of September 30, 2017 and December 31, 2016, this interest had a carrying value of zero and \$1.3 million, respectively. As of September 30, 2017 and December 31, 2016, this interest did not have a redemption value.

**iStar Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
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**Note 6—Loans Receivable and Other Lending Investments, net**

The following is a summary of the Company's loans receivable and other lending investments by class (\$ in thousands):

<b>Type of Investment</b>	<b>As of</b>	
	<b>September 30, 2017</b>	<b>December 31, 2016</b>
Senior mortgages	\$ 594,081	\$ 940,738
Corporate/Partnership loans	495,066	490,389
Subordinate mortgages	9,335	24,941
Total gross carrying value of loans	1,098,482	1,456,068
Reserves for loan losses	(76,189)	(85,545)
Total loans receivable, net	1,022,293	1,370,523
Other lending investments—securities	87,149	79,916
Total loans receivable and other lending investments, net	<u>\$ 1,109,442</u>	<u>\$ 1,450,439</u>

**Reserve for Loan Losses**—Changes in the Company's reserve for loan losses were as follows (\$ in thousands):

	<b>For the Three Months Ended September 30,</b>		<b>For the Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>	<b>2017</b>	<b>2016</b>
<b>Reserve for loan losses at beginning of period</b>	\$ 78,789	\$ 110,371	\$ 85,545	\$ 108,165
(Recovery of) provision for loan losses <sup>(1)</sup>	(2,600)	(14,955)	(8,128)	(12,749)
Charge-offs	—	—	(1,228)	—
<b>Reserve for loan losses at end of period</b>	<u>\$ 76,189</u>	<u>\$ 95,416</u>	<u>\$ 76,189</u>	<u>\$ 95,416</u>

(1) For the three and nine months ended September 30, 2016, the provision for loan losses includes recoveries of previously recorded asset-specific loan loss reserves of \$11.7 million.

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**Notes to Consolidated Financial Statements (Continued)**
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The Company's recorded investment in loans (comprised of a loan's carrying value plus accrued interest) and the associated reserve for loan losses were as follows (\$ in thousands):

	<b>Individually Evaluated for Impairment<sup>(1)</sup></b>	<b>Collectively Evaluated for Impairment<sup>(2)</sup></b>	<b>Total</b>
<b>As of September 30, 2017</b>			
Loans	\$ 238,155	\$ 865,953	\$ 1,104,108
Less: Reserve for loan losses	(60,989)	(15,200)	(76,189)
Total <sup>(3)</sup>	<u>\$ 177,166</u>	<u>\$ 850,753</u>	<u>\$ 1,027,919</u>
<b>As of December 31, 2016</b>			
Loans	\$ 253,941	\$ 1,209,062	\$ 1,463,003
Less: Reserve for loan losses	(62,245)	(23,300)	(85,545)
Total <sup>(3)</sup>	<u>\$ 191,696</u>	<u>\$ 1,185,762</u>	<u>\$ 1,377,458</u>

(1) The carrying value of these loans include unamortized discounts, premiums, deferred fees and costs totaling net discounts of \$0.7 million and \$0.4 million as of September 30, 2017 and December 31, 2016, respectively. The Company's loans individually evaluated for impairment primarily represent loans on non-accrual status and therefore, the unamortized amounts associated with these loans are not currently being amortized into income.

(2) The carrying value of these loans include unamortized discounts, premiums, deferred fees and costs totaling net premiums of \$6.2 million and \$1.9 million as of September 30, 2017 and December 31, 2016, respectively.

(3) The Company's recorded investment in loans as of September 30, 2017 and December 31, 2016 includes accrued interest of \$5.6 million and \$6.9 million, respectively, which are included in "Accrued interest and operating lease income receivable, net" on the Company's consolidated balance sheets. As of September 30, 2017 and December 31, 2016, the total excludes \$87.1 million and \$79.9 million, respectively, of securities that are evaluated for impairment under ASC 320.

**Credit Characteristics**—As part of the Company's process for monitoring the credit quality of its loans, it performs a quarterly loan portfolio assessment and assigns risk ratings to each of its performing loans. Risk ratings, which range from 1 (lower risk) to 5 (higher risk), are based on judgments, which are inherently uncertain, and there can be no assurance that actual performance will be similar to current expectation. The Company designates loans as non-performing at such time as: (1) the loan becomes 90 days delinquent; (2) the loan has a maturity default; or (3) management determines it is probable that we will be unable to collect all amounts due according to the contractual terms of the loan. All non-performing loans are placed on non-accrual status and income is only recognized in certain cases upon actual cash receipt.

The Company's recorded investment in performing loans, presented by class and by credit quality, as indicated by risk rating, was as follows (\$ in thousands):

	<b>As of September 30, 2017</b>		<b>As of December 31, 2016</b>	
	<b>Performing Loans</b>	<b>Weighted Average Risk Ratings</b>	<b>Performing Loans</b>	<b>Weighted Average Risk Ratings</b>
Senior mortgages	\$ 515,610	2.47	\$ 859,250	3.12
Corporate/Partnership loans	340,980	2.76	335,677	3.09
Subordinate mortgages	9,363	3.00	14,135	3.00
Total	<u>\$ 865,953</u>	2.59	<u>\$ 1,209,062</u>	3.11

**iStar Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(unaudited)**

The Company's recorded investment in loans, aged by payment status and presented by class, was as follows (\$ in thousands):

	Current	Less Than and Equal to 90 Days	Greater Than 90 Days <sup>(1)</sup>	Total Past Due	Total
<b>As of September 30, 2017</b>					
Senior mortgages	\$ 521,610	\$ —	\$ 75,732	\$ 75,732	\$ 597,342
Corporate/Partnership loans	340,980	—	156,423	156,423	497,403
Subordinate mortgages	9,363	—	—	—	9,363
<b>Total</b>	<b>\$ 871,953</b>	<b>\$ —</b>	<b>\$ 232,155</b>	<b>\$ 232,155</b>	<b>\$ 1,104,108</b>
<b>As of December 31, 2016</b>					
Senior mortgages	\$ 868,505	\$ —	\$ 76,677	\$ 76,677	\$ 945,182
Corporate/Partnership loans	335,677	—	157,146	157,146	492,823
Subordinate mortgages	24,998	—	—	—	24,998
<b>Total</b>	<b>\$ 1,229,180</b>	<b>\$ —</b>	<b>\$ 233,823</b>	<b>\$ 233,823</b>	<b>\$ 1,463,003</b>

(1) As of September 30, 2017, the Company had four loans, which were greater than 90 days delinquent, and were in various stages of resolution, including legal proceedings, environmental concerns and foreclosure-related proceedings, and ranged from 1.0 to 8.0 years outstanding. As of December 31, 2016, the Company had four loans, which were greater than 90 days delinquent, and were in various stages of resolution, including legal proceedings, environmental concerns and foreclosure-related proceedings, and ranged from 1.0 to 8.0 years outstanding.

**Impaired Loans**—The Company's recorded investment in impaired loans, presented by class, was as follows (\$ in thousands)<sup>(1)</sup>:

	As of September 30, 2017			As of December 31, 2016		
	Recorded Investment	Unpaid Principal Balance	Related Allowance	Recorded Investment	Unpaid Principal Balance	Related Allowance
<b>With no related allowance recorded:</b>						
Subordinate mortgages	\$ —	\$ —	\$ —	\$ 10,862	\$ 10,846	\$ —
Subtotal	—	—	—	10,862	10,846	—
<b>With an allowance recorded:</b>						
Senior mortgages	81,732	81,848	(48,518)	85,933	85,780	(49,774)
Corporate/Partnership loans	156,423	145,849	(12,471)	157,146	146,783	(12,471)
Subtotal	238,155	227,697	(60,989)	243,079	232,563	(62,245)
<b>Total:</b>						
Senior mortgages	81,732	81,848	(48,518)	85,933	85,780	(49,774)
Corporate/Partnership loans	156,423	145,849	(12,471)	157,146	146,783	(12,471)
Subordinate mortgages	—	—	—	10,862	10,846	—
<b>Total</b>	<b>\$ 238,155</b>	<b>\$ 227,697</b>	<b>\$ (60,989)</b>	<b>\$ 253,941</b>	<b>\$ 243,409</b>	<b>\$ (62,245)</b>

(1) All of the Company's non-accrual loans are considered impaired and included in the table above.

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**Notes to Consolidated Financial Statements (Continued)**  
**(unaudited)**

The Company's average recorded investment in impaired loans and interest income recognized, presented by class, were as follows (\$ in thousands):

	For the Three Months Ended September 30,				For the Nine Months Ended September 30,			
	2017		2016		2017		2016	
	Average Recorded Investment	Interest Income Recognized	Average Recorded Investment	Interest Income Recognized	Average Recorded Investment	Interest Income Recognized	Average Recorded Investment	Interest Income Recognized
<b>With no related allowance recorded:</b>								
Senior mortgages	\$ —	\$ —	\$ 4,608	\$ 114	\$ —	\$ —	\$ 4,575	\$ 226
Subordinate mortgages	5,501	385	11,567	—	8,227	385	5,784	—
Subtotal	5,501	385	16,175	114	8,227	385	10,359	226
<b>With an allowance recorded:</b>								
Senior mortgages	82,007	—	127,494	—	83,100	—	127,169	—
Corporate/Partnership loans	156,399	—	81,108	—	156,811	—	43,339	—
Subtotal	238,406	—	208,602	—	239,911	—	170,508	—
<b>Total:</b>								
Senior mortgages	82,007	—	132,102	114	83,100	—	131,744	226
Corporate/Partnership loans	156,399	—	81,108	—	156,811	—	43,339	—
Subordinate mortgages	5,501	385	11,567	—	8,227	385	5,784	—
Total	<u>\$ 243,907</u>	<u>\$ 385</u>	<u>\$ 224,777</u>	<u>\$ 114</u>	<u>\$ 248,138</u>	<u>\$ 385</u>	<u>\$ 180,867</u>	<u>\$ 226</u>

**Securities**—Other lending investments—securities include the following (\$ in thousands):

	Face Value	Amortized Cost Basis	Net Unrealized Gain (Loss)	Estimated Fair Value	Net Carrying Value
<b>As of September 30, 2017</b>					
Available-for-Sale Securities					
Municipal debt securities	\$ 21,230	\$ 21,230	\$ 875	\$ 22,105	\$ 22,105
Held-to-Maturity Securities					
Debt securities	65,007	65,044	1,158	66,202	65,044
Total	<u>\$ 86,237</u>	<u>\$ 86,274</u>	<u>\$ 2,033</u>	<u>\$ 88,307</u>	<u>\$ 87,149</u>
<b>As of December 31, 2016</b>					
Available-for-Sale Securities					
Municipal debt securities	\$ 21,240	\$ 21,240	\$ 426	\$ 21,666	\$ 21,666
Held-to-Maturity Securities					
Debt securities	58,454	58,250	2,753	61,003	58,250
Total	<u>\$ 79,694</u>	<u>\$ 79,490</u>	<u>\$ 3,179</u>	<u>\$ 82,669</u>	<u>\$ 79,916</u>

**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
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**Note 7—Other Investments**

The Company's other investments and its proportionate share of earnings from equity method investments were as follows (\$ in thousands):

	Carrying Value as of		Equity in Earnings			
			For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	September 30, 2017	December 31, 2016	2017	2016	2017	2016
Real estate equity investments						
iStar Net Lease I LLC ("Net Lease Venture")	\$ 110,153	\$ 92,669	\$ 962	\$ 723	\$ 2,975	\$ 2,613
Safety, Income & Growth Inc. ("SAFE") <sup>(1)</sup>	75,023	—	340	—	388	—
Marina Palms, LLC ("Marina Palms")	5,369	35,185	494	6,182	4,794	19,583
Other real estate equity investments <sup>(2)</sup>	79,768	53,202	55	16,289	4,304	43,187
Subtotal	270,313	181,056	1,851	23,194	12,461	65,383
Other strategic investments <sup>(3)</sup>	18,724	33,350	610	3,346	1,216	8,871
Total	\$ 289,037	\$ 214,406	\$ 2,461	\$ 26,540	\$ 13,677	\$ 74,254

(1) Equity in earnings is for the period from April 14, 2017 to September 30, 2017.

(2) In June 2016, a majority-owned consolidated subsidiary of the Company sold its interest in a real estate equity method investment for net proceeds of \$39.8 million and recognized a gain of \$31.5 million, of which \$10.1 million of the gain was attributable to the noncontrolling interest. In September 2016, the Company received a distribution from one of its real estate equity method investments and recognized equity in earnings during the three and nine months ended September 30, 2016 of \$15.8 million and \$11.6 million, respectively.

(3) In conjunction with the sale of the Company's interests in Oak Hill Advisors, L.P. in 2011, the Company retained a share of the carried interest related to various funds. During the three and nine months ended September 30, 2016, the Company recognized \$0.6 million and \$4.3 million, respectively, of carried interest income.

**Net Lease Venture**—In February 2014, the Company partnered with a sovereign wealth fund to form the Net Lease Venture to acquire and develop net lease assets and gave a right of first refusal to the Net Lease Venture on all new net lease investments. The Company has an equity interest in the Net Lease Venture of approximately 51.9%. The partners plan to contribute up to an aggregate \$500 million of equity to acquire and develop net lease assets over time. The Company is responsible for sourcing new opportunities and managing the venture and its assets in exchange for a promote and management fee. Several of the Company's senior executives whose time is substantially devoted to the Net Lease Venture own a total of 0.6% equity ownership in the venture via co-investment. These senior executives are also entitled to an amount equal to 50% of any promote payment received based on the 47.5% partner's interest. During the nine months ended September 30, 2017, the Net Lease Venture acquired industrial properties for \$59.0 million. During the nine months ended September 30, 2017, the Company sold a net lease asset for proceeds of \$6.2 million, which approximated its carrying value net of financing, to the Net Lease Venture and derecognized the associated \$18.9 million financing. During the nine months ended September 30, 2017, the Company made contributions of \$37.7 million to the Net Lease Venture and received distributions of \$23.7 million from the Net Lease Venture. During the nine months ended September 30, 2016, the Net Lease Venture acquired two office properties and the Company made contributions to the Net Lease Venture of \$35.6 million and received distributions of \$3.9 million.

As of September 30, 2017 and December 31, 2016, the venture's carrying value of total assets was \$635.1 million and \$511.3 million, respectively. During the three and nine months ended September 30, 2017, the Company recorded management fees of \$0.6 million and \$1.5 million, respectively, and \$0.4 million and \$1.2 million for the three and nine months ended September 30, 2016, respectively, from the Net Lease Venture which are included in "Other income" in the Company's consolidated statements of operations. This entity is not a VIE and the Company does not have controlling interest due to the substantive participating rights of its partner.

**Safety, Income & Growth Inc.**—The Company along with two institutional investors capitalized SIGI Acquisition, Inc. ("SIGI") on April 14, 2017 to acquire, manage and capitalize Ground Leases. The Company contributed \$55.5 million for an initial

**iStar Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)**

49% noncontrolling interest in SIGI and the two institutional investors contributed an aggregate \$57.5 million for an initial 51% controlling interest in SIGI. A wholly-owned subsidiary of the Company that held the Company's GL business and assets merged with and into SIGI on April 14, 2017 with SIGI surviving the merger and being renamed Safety, Income & Growth Inc. ("SAFE"). Through this merger and related transactions, the institutional investors acquired a controlling interest in the Company's GL business. The Company's carrying value of the GL assets was approximately \$161.1 million. Shortly before the Acquisition Transactions, the Company completed the \$227.0 million 2017 Secured Financing on its GL assets (refer to Note 10). The Company received all of the proceeds of the 2017 Secured Financing. The Company received an additional \$113.0 million of proceeds in the Acquisition Transactions, including \$55.5 million that the Company contributed to SAFE in its initial capitalization. As a result of the Acquisition Transactions, the Company deconsolidated the 12 properties and the associated 2017 Secured Financing. The Company accounted for this transaction as an in substance sale of real estate and recognized a gain of \$123.4 million, reflecting the aggregate gain less the fair value of the Company's retained interest in SAFE. The carrying value of the 12 properties are classified in "Real estate available and held for sale" on the Company's consolidated balance sheet as of December 31, 2016 and the gain was recorded in "Gain from discontinued operations" in the Company's consolidated statements of operations.

On June 27, 2017, SAFE completed its initial public offering (the "Offering") raising \$205.0 million in gross proceeds and concurrently completed a \$45.0 million private placement to the Company. In addition, the Company paid or accrued \$18.9 million in organization and offering costs of the up to \$25.0 million in organization and offering costs it has agreed to pay in connection with the Offering and concurrent private placement through September 30, 2017, including commissions payable to the underwriters and other offering expenses. The Company expensed the portion of offering costs that was attributable to other investors in "Other expense" in the Company's consolidated statements of operations and capitalized the portion of offering costs attributable to the Company's ownership interest in "Other investments" on the Company's consolidated balance sheets. Subsequent to the initial public offering, the Company purchased 1.3 million shares of SAFE's common stock for \$24.5 million, at an average cost of \$19.20 per share, pursuant to a 10b5-1 plan in accordance with Rules 10b5-1 and 10b-18 under the Securities and Exchange Act of 1934, as amended. As of September 30, 2017, the Company had utilized all of the availability authorized in the 10b5-1 Plan and owned approximately 34.6% of SAFE's common stock outstanding.

In addition, subsequent to SAFE's initial public offering, trusts established by Jay Sugarman, the Company's Chairman and Chief Executive Officer, and Geoffrey Jervis, the Company's Chief Operating Officer and Chief Financial Officer, purchased 26 thousand shares in the aggregate of SAFE's common stock for an aggregate \$0.5 million, at an average cost of \$19.20 per share, pursuant to a 10b5-1 plan in accordance with Rules 10b5-1 and 10b-18 under the Securities and Exchange Act of 1934, as amended. As of September 30, 2017, the trusts established by Jay Sugarman, the Company's Chairman and Chief Executive Officer, and Geoffrey Jervis, the Company's Chief Operating Officer and Chief Financial Officer, had utilized all of the availability authorized in the 10b5-1 Plan.

A wholly-owned subsidiary of the Company is the external manager of SAFE and is entitled to a management fee, payable solely in shares of SAFE's common stock, equal to the sum of 1.0% of SAFE's total equity up to \$2.5 billion and 0.75% of SAFE's total equity in excess of \$2.5 billion. The Company is not entitled to receive any performance or incentive compensation. The Company is also entitled to receive expense reimbursements, payable solely in shares of SAFE's common stock, for its personnel that perform certain legal, accounting, due diligence tasks and other services that third-party professionals or outside consultants otherwise would perform. The Company has agreed to waive both the management fee and certain of the expense reimbursements through June 30, 2018.

In August 2017, the Company committed to provide a \$24.0 million loan to the ground lessee of a ground lease originated at SAFE. The loan has an initial term of one year and will be used for the renovation of a medical office building in Atlanta, GA. \$5.1 million of the loan was funded as of September 30, 2017.

**Marina Palms**—As of September 30, 2017, the Company owned a 47.5% equity interest in Marina Palms, a 468 unit, two tower residential condominium development in North Miami Beach, Florida. The 234 unit north tower has one unit remaining for sale as of September 30, 2017. The 234 unit south tower is 85% sold or pre-sold (based on unit count) as of September 30, 2017. This entity is not a VIE and the Company does not have controlling interest due to shared control of the entity with its partner. As of September 30, 2017 and December 31, 2016, the venture's carrying value of total assets was \$43.5 million and \$201.8 million, respectively.

**Other real estate equity investments**—As of September 30, 2017, the Company's other real estate equity investments included equity interests in real estate ventures ranging from 20% to 95%, comprised of investments of \$21.8 million in operating



**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
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properties and \$57.9 million in land assets. As of December 31, 2016, the Company's other real estate equity investments included \$3.6 million in operating properties and \$49.6 million in land assets.

In December 2016, the Company sold a land and development asset to a newly formed unconsolidated entity in which the Company owns a 50.0% equity interest. This entity is a VIE and the Company does not have a controlling interest due to shared control of the entity with its partner. The Company and its partner each made a \$7.0 million contribution to the venture and the Company provided financing to the entity in the form of a \$27.0 million senior loan commitment, which had a carrying value of \$24.3 million and \$22.7 million as of September 30, 2017 and December 31, 2016, respectively, and is included in "Loans receivable and other lending investments, net" on the Company's consolidated balance sheets. During the three and nine months ended September 30, 2017, the Company recorded \$0.5 million and \$1.4 million of interest income, respectively, on the senior loan.

**Other strategic investments**—As of September 30, 2017, the Company also had investments in real estate related funds and other strategic investments in several other entities that were accounted for under the equity method or cost method. As of September 30, 2017 and December 31, 2016, the carrying value of the Company's cost method investments was \$0.8 million and \$1.4 million, respectively.

**Summarized investee financial information**—The following table presents the investee level summarized financial information of the Company's equity method investments, which were significant subsidiaries for the nine months ended September 30, 2017 and 2016 (\$ in thousands):

	Revenues	Expenses	Net Income Attributable to Parent Entities
<b>For the Nine Months Ended September 30, 2017</b>			
Marina Palms	\$ 37,668	\$ (24,209)	\$ 13,459
<b>For the Nine Months Ended September 30, 2016</b>			
Marina Palms	\$ 129,697	\$ (72,736)	\$ 56,961

**Note 8—Other Assets and Other Liabilities**

Deferred expenses and other assets, net, consist of the following items (\$ in thousands):

	As of	
	September 30, 2017	December 31, 2016
Intangible assets, net <sup>(1)</sup>	\$ 23,801	\$ 30,727
Other receivables <sup>(2)</sup>	45,321	52,820
Other assets	28,799	35,189
Restricted cash	21,690	25,883
Leasing costs, net <sup>(3)</sup>	10,303	11,802
Corporate furniture, fixtures and equipment, net <sup>(4)</sup>	4,806	5,691
Deferred expenses and other assets, net	<u>\$ 134,720</u>	<u>\$ 162,112</u>

(1) Intangible assets, net includes above market and in-place lease assets and lease incentives related to the acquisition of real estate assets. Accumulated amortization on intangible assets, net was \$34.1 million and \$31.9 million as of September 30, 2017 and December 31, 2016, respectively. The amortization of above market leases and lease incentive assets decreased operating lease income in the Company's consolidated statements of operations by \$0.5 million and \$2.0 million for the three and nine months ended September 30, 2017, respectively, and \$0.8 million and \$3.0 million for the three and nine months ended September 30, 2016, respectively. These intangible lease assets are amortized over the term of the lease. The amortization expense for in-place leases was \$0.3 million and \$1.5 million for the three and nine months ended September 30, 2017, respectively, and \$0.4 million and \$1.5 million for the three and nine months ended September 30, 2016, respectively. These amounts are included in "Depreciation and amortization" in the Company's consolidated statements of operations.

(2) As of September 30, 2017 and December 31, 2016, included \$26.0 million of receivables related to the construction and development of an amphitheater.

(3) Accumulated amortization of leasing costs was \$6.6 million and \$6.7 million as of September 30, 2017 and December 31, 2016, respectively.

(4) Accumulated depreciation on corporate furniture, fixtures and equipment was \$10.2 million and \$9.0 million as of September 30, 2017 and December 31, 2016, respectively.

**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
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Accounts payable, accrued expenses and other liabilities consist of the following items (\$ in thousands):

	<b>As of</b>	
	<b>September 30, 2017</b>	<b>December 31, 2016</b>
Redemption of Series E and Series F preferred stock payable <sup>(1)</sup>	\$ 240,000	\$ —
Series E and Series F preferred stock dividend payable <sup>(1)</sup>	1,830	—
Other liabilities <sup>(2)</sup>	78,000	75,993
Accrued expenses <sup>(3)</sup>	93,031	72,693
Accrued interest payable	45,612	54,033
Intangible liabilities, net <sup>(4)</sup>	7,901	8,851
<b>Accounts payable, accrued expenses and other liabilities</b>	<b>\$ 466,374</b>	<b>\$ 211,570</b>

(1) On September 19, 2017, the Company gave irrevocable notice to redeem all of its issued and outstanding Series E and Series F preferred stock, plus accrued and unpaid dividends to the redemption date, on October 20, 2017 (refer to Note 13).

(2) As of September 30, 2017 and December 31, 2016, other liabilities includes \$24.0 million related to profit sharing arrangements with developers for certain properties sold. As of September 30, 2017 and December 31, 2016, includes \$3.0 million and \$1.2 million, respectively, associated with "Real estate available and held for sale" on the Company's consolidated balance sheets. As of September 30, 2017 and December 31, 2016, other liabilities also includes \$7.1 million and \$8.5 million, respectively, related to tax increment financing bonds which were issued by government entities to fund development within two of the Company's land projects. The amount represents tax assessments associated with each project, which will decrease as the Company sells units.

(3) As of September 30, 2017 and December 31, 2016, accrued expenses includes \$2.6 million and \$1.7 million, respectively, associated with "Real estate available and held for sale" on the Company's consolidated balance sheets.

(4) Intangible liabilities, net includes below market lease liabilities related to the acquisition of real estate assets. Accumulated amortization on below market lease liabilities was \$7.6 million and \$6.4 million as of September 30, 2017 and December 31, 2016, respectively. The amortization of below market leases increased operating lease income in the Company's consolidated statements of operations by \$0.2 million and \$1.2 million for the three and nine months ended September 30, 2017, respectively, and \$0.3 million and \$0.9 million for the three and nine months ended September 30, 2016, respectively.

Deferred tax assets and liabilities of the Company's taxable REIT subsidiaries were as follows (\$ in thousands):

	<b>As of</b>	
	<b>September 30, 2017</b>	<b>December 31, 2016</b>
Deferred tax assets (liabilities)	\$ 90,883	\$ 66,498
Valuation allowance	(90,883)	(66,498)
<b>Net deferred tax assets (liabilities)</b>	<b>\$ —</b>	<b>\$ —</b>

**Note 9—Loan Participations Payable, net**

The Company's loan participations payable, net were as follows (\$ in thousands):

	<b>Carrying Value as of</b>	
	<b>September 30, 2017</b>	<b>December 31, 2016</b>
Loan participations payable <sup>(1)</sup>	\$ 122,846	\$ 160,251
Debt discounts and deferred financing costs, net	(357)	(930)
<b>Total loan participations payable, net</b>	<b>\$ 122,489</b>	<b>\$ 159,321</b>

(1) As of September 30, 2017, the Company had two loan participations payable with a weighted average interest rate of 6.2%. As of December 31, 2016, the Company had three loan participations payable with a weighted average interest rate of 4.8%.

Loan participations represent transfers of financial assets that did not meet the sales criteria established under ASC Topic 860 and are accounted for as loan participations payable, net. As of September 30, 2017 and December 31, 2016, the corresponding loan receivable balances were \$122.2 million and \$159.1 million, respectively, and are included in "Loans receivable and other lending investments, net" on the Company's consolidated balance sheets. The principal and interest due on these loan participations payable are paid from cash flows of the corresponding loans receivable, which serve as collateral for the participations.

**iStar Inc.**

**Notes to Consolidated Financial Statements (Continued)**

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**Note 10—Debt Obligations, net**

In September 2017, the Company completed a comprehensive set of capital markets transactions that addressed all parts of its capital structure, resulting in the Company having:

- repaid or refinanced all of the Company's 2017 and 2018 corporate debt maturities, leaving no corporate debt maturities until July 2019;
- extended its weighted average debt maturity by 1.5 years to 4.0 years;
- reduced annual expenses;
- lowered its cost of capital;
- established new banking relationships; and
- received upgrades to its corporate credit ratings from all three major ratings agencies.

**iStar Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
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The Company's debt obligations were as follows (\$ in thousands):

	Carrying Value as of		Stated Interest Rates	Scheduled Maturity Date
	September 30, 2017	December 31, 2016		
<b>Secured credit facilities and mortgages:</b>				
2015 \$325 Million Secured Revolving Credit Facility \$	—	\$ —	LIBOR + 2.50% <sup>(1)</sup>	September 2020
2016 Senior Secured Credit Facility	400,000	498,648	LIBOR + 3.00% <sup>(2)</sup>	October 2021
Mortgages collateralized by net lease assets	223,182	249,987	4.851% - 7.26% <sup>(3)</sup>	Various through 2026
<b>Total secured credit facilities and mortgages</b>	<b>623,182</b>	<b>748,635</b>		
<b>Unsecured notes:</b>				
5.85% senior notes	—	99,722	5.85%	March 2017
9.00% senior notes	—	275,000	9.00%	June 2017
4.00% senior notes <sup>(4)</sup>	550,000	550,000	4.00%	November 2017
7.125% senior notes <sup>(5)</sup>	300,000	300,000	7.125%	February 2018
4.875% senior notes <sup>(6)</sup>	300,000	300,000	4.875%	July 2018
5.00% senior notes <sup>(7)</sup>	770,000	770,000	5.00%	July 2019
6.50% senior notes <sup>(8)</sup>	275,000	275,000	6.50%	July 2021
6.00% senior notes <sup>(9)</sup>	375,000	—	6.00%	April 2022
4.625% senior notes <sup>(10)</sup>	400,000	—	4.625%	September 2020
5.25% senior notes <sup>(11)</sup>	400,000	—	5.25%	September 2022
3.125% senior convertible notes <sup>(12)</sup>	250,000	—	3.125%	September 2022
<b>Total unsecured notes</b>	<b>3,620,000</b>	<b>2,569,722</b>		
<b>Other debt obligations:</b>				
Trust preferred securities	100,000	100,000	LIBOR + 1.50%	October 2035
<b>Total debt obligations</b>	<b>4,343,182</b>	<b>3,418,357</b>		
Debt discounts and deferred financing costs, net	(64,228)	(28,449)		
<b>Total debt obligations, net<sup>(13)</sup></b>	<b>\$ 4,278,954</b>	<b>\$ 3,389,908</b>		

- (1) The loan bears interest at the Company's election of either (i) a base rate, which is the greater of (a) prime, (b) federal funds plus 0.5% or (c) LIBOR plus 1.0% and subject to a margin ranging from 1.25% to 1.75%, or (ii) LIBOR subject to a margin ranging from 2.25% to 2.75%. At maturity, the Company may convert outstanding borrowings to a one year term loan which matures in quarterly installments through October 2021.
- (2) The loan bears interest at the Company's election of either (i) a base rate, which is the greater of (a) prime, (b) federal funds plus 0.5% or (c) LIBOR plus 1.0% and subject to a margin of 2.00% or (ii) LIBOR subject to a margin of 3.00% with a minimum LIBOR rate of 0.75%.
- (3) As of September 30, 2017 and December 31, 2016, includes a loan with a floating rate of LIBOR plus 2.0%. As of September 30, 2017, the weighted average interest rate of these loans is 5.2%.
- (4) The Company prepaid these senior notes in October 2017 without penalty.
- (5) The Company prepaid these senior notes in October 2017 and incurred a make whole premium of \$5.25 million.
- (6) The Company prepaid these senior notes in October 2017 and incurred a make whole premium of \$3.66 million.
- (7) The Company can prepay these senior notes without penalty beginning July 1, 2018.
- (8) The Company can prepay these senior notes without penalty beginning July 1, 2020.
- (9) The Company can prepay these senior notes without penalty beginning April 1, 2021.
- (10) The Company can prepay these senior notes without penalty beginning June 15, 2020.
- (11) The Company can prepay these senior notes without penalty beginning September 15, 2021.
- (12) The Company's 3.125% senior convertible fixed rate notes due September 2022 ("3.125% Convertible Notes") are convertible at the option of the holders at a conversion rate of 64.36 shares per \$1,000 principal amount of 3.125% Convertible Notes, which equals a conversion price of \$15.54 per share, at any time prior to the close of business on the business day immediately preceding September 15, 2022. Upon conversion, the Company will pay or deliver, as the case may be, a combination of cash and shares of its common stock. As such, at issuance the Company valued the liability component at \$221.8 million, net of fees, and the equity component of the conversion feature at \$22.5 million, net of fees, and recorded the equity component in "Additional paid-in capital" on the Company's consolidated balance sheet.
- (13) The Company capitalized interest relating to development activities of \$2.1 million and \$6.1 million during the three and nine months ended September 30, 2017, respectively, and \$1.4 million and \$4.2 million during the three and nine months ended September 30, 2016, respectively.

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**Future Scheduled Maturities**—As of September 30, 2017, future scheduled maturities of outstanding debt obligations are as follows (\$ in thousands):

	Unsecured Debt	Secured Debt	Total
2017 (remaining three months)	\$ 550,000 <sup>(1)</sup>	\$ —	\$ 550,000
2018	600,000 <sup>(1)</sup>	9,523	609,523
2019	770,000	27,924	797,924
2020	400,000	—	400,000
2021	275,000	517,506	792,506
Thereafter	1,125,000	68,229	1,193,229
Total principal maturities	3,720,000	623,182	4,343,182
Unamortized discounts and deferred financing costs, net	(56,331)	(7,897)	(64,228)
Total debt obligations, net	\$ 3,663,669	\$ 615,285	\$ 4,278,954

(1) Subsequent to September 30, 2017, the Company repaid the \$550.0 million principal amount outstanding of the 4.0% senior unsecured notes due November 2017, the \$300.0 million principal amount outstanding of the 7.125% senior unsecured notes due February 2018 and the \$300.0 million principal amount outstanding of the 4.875% senior unsecured notes due July 2018.

**2017 Secured Financing**—In March 2017, the Company (through wholly-owned subsidiaries conducting the Company's GL business) entered into a \$227.0 million secured financing transaction (the "2017 Secured Financing") that accrued interest at 3.795% and matures in April 2027. The 2017 Secured Financing was collateralized by the 12 properties comprising the Company's GL business, including seven GLs and one master lease (covering the accounts of five properties). In connection with the 2017 Secured Financing, the Company incurred \$7.3 million of lender and third-party fees, substantially all of which was capitalized in "Debt obligations, net" on the Company's consolidated balance sheets. In April 2017, the Company derecognized the 2017 Secured Financing when third parties acquired a controlling interest in the Company's GL business (refer to Note 4).

The Company is providing a limited recourse guaranty and environmental indemnity under the 2017 Secured Financing that will remain in effect until SAFE has achieved either an equity market capitalization of at least \$500.0 million (inclusive of the initial portfolio that the Company contributed to SAFE) or a net worth of at least \$250.0 million (exclusive of the initial portfolio that the Company contributed to SAFE), and SAFE or another replacement guarantor provides similar guaranties and indemnities to the lenders. The management agreement with SAFE provides that SAFE may not terminate the management agreement unless a successor guarantor reasonably acceptable to the Company has agreed to replace the Company as guarantor and indemnitor or has provided the Company with a reasonably acceptable indemnity for any losses suffered by the Company as guarantor and indemnitor. SAFE has generally agreed to indemnify the Company for any amounts the Company is required to pay, or other losses the Company may suffer, under the limited recourse guaranty and environmental indemnity.

**2016 Secured Term Loan**—In December 2016, the Company arranged a \$170.0 million delayed draw secured term loan (the "2016 Secured Term Loan"). In March 2017, the Company allowed the 2016 Secured Term Loan to expire and replaced the 2016 Secured Term Loan with the 2017 Secured Financing. The 2016 Secured Term Loan was collateralized by the 12 properties that served as collateral for the 2017 Secured Financing.

**2016 Senior Secured Credit Facility**—In June 2016, the Company entered into a senior secured credit facility of \$450.0 million (the "2016 Senior Secured Credit Facility"). In August 2016, the Company upsized the facility to \$500.0 million. The initial \$450.0 million of the 2016 Senior Secured Credit Facility was issued at 99% of par and the upsize was issued at par. In January 2017, the Company repriced the 2016 Senior Secured Credit Facility to LIBOR plus 3.75% with a 1.00% LIBOR floor from LIBOR plus 4.50% with a 1.00% LIBOR floor. In September 2017, the Company reduced, repriced and extended the 2016 Senior Secured Credit Facility to \$400.0 million priced at LIBOR plus 3.00% with a 0.75% LIBOR floor and maturing in October 2021. These transactions resulted in an aggregate 1.50% reduction in price.

The 2016 Senior Secured Credit Facility is collateralized 1.25x by a first lien on a fixed pool of assets. Proceeds from principal repayments and sales of collateral are applied to amortize the 2016 Senior Secured Credit Facility. Proceeds received for interest, rent, lease payments and fee income are retained by the Company. The Company may also make optional prepayments, subject to prepayment fees, and is required to repay 0.25% of the principal amount on the first business day of each quarter.

**iStar Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)**

Proceeds from the 2016 Senior Secured Credit Facility, together with cash on hand, were primarily used to repay other secured debt. In connection with the 2016 Senior Secured Credit Facility, the Company incurred \$4.5 million of lender fees, substantially all of which was capitalized in "Debt obligations, net" on the Company's consolidated balance sheets. The Company also incurred \$6.2 million in third party fees, of which \$4.3 million was capitalized in "Debt obligations, net" on the Company's consolidated balance sheets and \$1.9 million was recognized in "Other expense" in the Company's consolidated statements of operations. In connection with the repricing of the 2016 Senior Secured Credit Facility in January 2017, the Company incurred an additional \$0.8 million in fees, substantially all of which was recognized in "Other expense" in the Company's consolidated statements of operations. In connection with the repricing of the 2016 Senior Secured Credit Facility in September 2017, the Company incurred an additional \$2.6 million in fees, of which \$1.5 million was recognized in "Other expense" in the Company's consolidated statements of operations and \$1.1 million was capitalized in "Debt obligations, net" on the Company's consolidated balance sheets.

During the three and nine months ended September 30, 2017, repayments of the 2016 Senior Secured Credit Facility resulted in losses on early extinguishment of debt of \$0.6 million and \$0.8 million, respectively.

**2015 Secured Revolving Credit Facility**—In March 2015, the Company entered into a secured revolving credit facility with a maximum capacity of \$250.0 million (the "2015 Secured Revolving Credit Facility"). In September 2017, the Company upsized the 2015 Secured Revolving Credit Facility to \$325.0 million, added additional lenders to the syndicate, extended the maturity date to September 2020 and made certain other changes. Borrowings under this credit facility bear interest at a floating rate indexed to one of several base rates plus a margin which adjusts upward or downward based upon the Company's corporate credit rating. An undrawn credit facility commitment fee ranges from 0.30% to 0.50%, based on corporate credit ratings each quarter. At maturity, the Company may convert outstanding borrowings to a one year term loan which matures in quarterly installments through September 2021. As of September 30, 2017, based on the Company's borrowing base of assets, the Company had \$325.0 million of borrowing capacity available under the 2015 Secured Revolving Credit Facility.

**Unsecured Notes**—In September 2017, the Company issued \$400.0 million principal amount of 4.625% senior unsecured notes due September 2020, \$400.0 million principal amount of 5.25% senior unsecured notes due September 2022 and \$250.0 million of 3.125% Convertible Notes due September 2022. The Company incurred approximately \$17.4 million dollars in fees related to these offerings, all of which was capitalized in "Debt obligations, net" on the Company's consolidated balance sheets. Subsequent to September 30, 2017, proceeds from these offerings, together with cash on hand, were used to repay in full the \$550.0 million principal amount outstanding of the 4.0% senior unsecured notes due November 2017, the \$300.0 million principal amount outstanding of the 7.125% senior unsecured notes due February 2018 and the \$300.0 million principal amount outstanding of the 4.875% senior unsecured notes due July 2018. In addition, subsequent to September 30, 2017, the initial purchasers of the 3.125% Convertible Notes exercised their option to purchase an additional \$37.5 million aggregate principal amount of the 3.125% Convertible Notes.

In March 2017, the Company issued \$375.0 million principal amount of 6.00% senior unsecured notes due April 2022. Proceeds from the offering were primarily used to repay in full the \$99.7 million principal amount outstanding of the 5.85% senior unsecured notes due March 2017 and repay in full the \$275.0 million principal amount outstanding of the 9.00% senior unsecured notes due June 2017 prior to maturity. In March 2016, the Company repaid its \$261.4 million principal amount outstanding of the 5.875% senior unsecured notes at maturity using available cash. In addition, the Company issued \$275.0 million principal amount of 6.50% senior unsecured notes due July 2021. Proceeds from the offering were primarily used to repay in full the \$265.0 million principal amount outstanding of the senior unsecured notes due July 2016 and repay \$5.0 million of the 2015 Secured Revolving Credit Facility.

During the nine months ended September 30, 2017, repayments of senior unsecured notes prior to maturity resulted in losses on early extinguishment of debt of \$3.1 million. During the three and nine months ended September 30, 2016, repayments of unsecured notes prior to maturity resulted in losses on early extinguishment of debt of \$0.1 million and \$0.4 million, respectively. These amounts are included in "Loss on early extinguishment of debt, net" in the Company's consolidated statements of operations.

In November 2016, in connection with the retirement of the Company's \$200.0 million principal amount of 3.0% senior unsecured convertible notes due November 2016, the Company converted \$9.6 million principal amount into 0.8 million shares of our common stock.

**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
**(unaudited)**

**Encumbered/Unencumbered Assets**—The carrying value of the Company's encumbered and unencumbered assets by asset type are as follows (\$ in thousands):

	As of			
	September 30, 2017		December 31, 2016	
	Encumbered Assets	Unencumbered Assets	Encumbered Assets	Unencumbered Assets
Real estate, net	\$ 841,570	\$ 482,292	\$ 881,212	\$ 506,062
Real estate available and held for sale	—	65,658	—	237,531
Land and development, net	25,100	836,407	35,165	910,400
Loans receivable and other lending investments, net <sup>(1)(2)</sup>	188,973	813,447	172,581	1,142,050
Other investments	—	289,037	—	214,406
Cash and other assets	—	2,145,713	—	590,299
<b>Total</b>	<b>\$ 1,055,643</b>	<b>\$ 4,632,554</b>	<b>\$ 1,088,958</b>	<b>\$ 3,600,748</b>

(1) As of September 30, 2017 and December 31, 2016, the amounts presented exclude general reserves for loan losses of \$15.2 million and \$23.3 million, respectively.

(2) As of September 30, 2017 and December 31, 2016, the amounts presented exclude loan participations of \$122.2 million and \$159.1 million, respectively.

**Debt Covenants**

The Company's outstanding unsecured debt securities contain corporate level covenants that include a covenant to maintain a ratio of unencumbered assets to unsecured indebtedness of at least 1.2x and a covenant not to incur additional indebtedness (except for incurrences of permitted debt), if on a pro forma basis, the Company's consolidated fixed charge coverage ratio, determined in accordance with the indentures governing the Company's debt securities, is 1.5x or lower. If any of the Company's covenants are breached and not cured within applicable cure periods, the breach could result in acceleration of its debt securities unless a waiver or modification is agreed upon with the requisite percentage of the bondholders. If the Company's ability to incur additional indebtedness under the fixed charge coverage ratio is limited, the Company is permitted to incur indebtedness for the purpose of refinancing existing indebtedness and for other permitted purposes under the indentures.

The Company's 2016 Senior Secured Credit Facility and the 2015 Secured Revolving Credit Facility contain certain covenants, including covenants relating to collateral coverage, dividend payments, restrictions on fundamental changes, transactions with affiliates, matters relating to the liens granted to the lenders and the delivery of information to the lenders. In particular, the 2016 Senior Secured Credit Facility requires the Company to maintain collateral coverage of at least 1.25x outstanding borrowings on the facility. The 2015 Secured Revolving Credit Facility is secured by a borrowing base of assets and requires the Company to maintain both collateral coverage of at least 1.5x outstanding borrowings on the facility and a consolidated ratio of cash flow to fixed charges of at least 1.5x. The 2015 Secured Revolving Credit Facility does not require that proceeds from the borrowing base be used to pay down outstanding borrowings provided the collateral coverage remains at least 1.5x outstanding borrowings on the facility. To satisfy this covenant, the Company has the option to pay down outstanding borrowings or substitute assets in the borrowing base. In addition, for so long as the Company maintains its qualification as a REIT, the 2016 Senior Secured Credit Facility and the 2015 Secured Revolving Credit Facility permit the Company to distribute 100% of its REIT taxable income on an annual basis (prior to deducting certain cumulative net operating loss ("NOL") carryforwards). The Company may not pay common dividends if it ceases to qualify as a REIT.

The Company's 2016 Senior Secured Credit Facility and the 2015 Secured Revolving Credit Facility contain cross default provisions that would allow the lenders to declare an event of default and accelerate the Company's indebtedness to them if the Company fails to pay amounts due in respect of its other recourse indebtedness in excess of specified thresholds or if the lenders under such other indebtedness are otherwise permitted to accelerate such indebtedness for any reason. The indentures governing the Company's unsecured public debt securities permit the bondholders to declare an event of default and accelerate the Company's indebtedness to them if the Company's other recourse indebtedness in excess of specified thresholds is not paid at final maturity or if such indebtedness is accelerated.

**iStar Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 11—Commitments and Contingencies**

**Unfunded Commitments**—The Company generally funds construction and development loans and build-outs of space in real estate assets over a period of time if and when the borrowers and tenants meet established milestones and other performance criteria. The Company refers to these arrangements as Performance-Based Commitments. In addition, the Company has committed to invest capital in several real estate funds and other ventures. These arrangements are referred to as Strategic Investments.

As of September 30, 2017, the maximum amount of fundings the Company may be required to make under each category, assuming all performance hurdles and milestones are met under the Performance-Based Commitments and that 100% of its capital committed to Strategic Investments is drawn down, are as follows (\$ in thousands):

	<b>Loans and Other Lending Investments<sup>(1)</sup></b>	<b>Real Estate</b>	<b>Other Investments</b>	<b>Total</b>
Performance-Based Commitments	\$ 317,091	\$ 6,136	\$ 50,933	\$ 374,160
Strategic Investments	—	—	45,642	45,642
<b>Total</b>	<b>\$ 317,091</b>	<b>\$ 6,136</b>	<b>\$ 96,575</b>	<b>\$ 419,802</b>

(1) Excludes \$115.3 million of commitments on loan participations sold that are not the obligation of the Company.

**Legal Proceedings**—The Company and/or one or more of its subsidiaries is party to various pending litigation matters that are considered ordinary routine litigation incidental to the Company's business as a finance and investment company focused on the commercial real estate industry, including loan foreclosure and foreclosure-related proceedings. In addition to such matters, the Company is a party to the following legal proceedings:

*U.S. Home Corporation ("Lennar") v. Settlers Crossing, LLC, et al. (United States District Court for the District of Maryland, Civil Action No. DKC 08-1863)*

This litigation involved a dispute over the purchase and sale of approximately 1,250 acres of land in Prince George's County, Maryland. Following a trial, in January 2015, the United States District Court for the District of Maryland (the District Court) entered judgment in favor of the Company, finding that the Company was entitled to specific performance of the purchase and sale agreement and awarding the Company the aggregate amount of: (i) the remaining unpaid purchase price; plus (ii) simple interest on the unpaid amount at a rate of 12% annually from 2008; plus (iii) real estate taxes paid by the Company; plus (iv) actual and reasonable attorneys' fees and costs incurred by the Company in connection with the litigation. Lennar appealed the District Court's judgment. On April 12, 2017, the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court in its entirety. Lennar's petition for rehearing *en banc* was summarily denied.

On April 21, 2017, the Company and Lennar completed the transfer of the land, pursuant to which the Company conveyed the land to Lennar and received net proceeds of \$234.1 million after payment of \$3.3 million in documentary transfer taxes, consisting of \$114.0 million of sales proceeds, \$121.8 million of interest and \$1.6 million of real estate tax reimbursements. The interest and real estate tax reimbursements are recorded in "Other income" in the Company's consolidated statements of operations. The amount of attorneys' fees and costs to be recovered by the Company will be determined through further proceedings before the District Court. The Company has applied for attorney's fees in excess of \$17.0 million. A portion of the net proceeds received by the Company has been paid to the third party which holds a 4.3% participation interest in all proceeds received by the Company.

Lennar has filed a petition for a writ of certiorari with the U.S. Supreme Court seeking review of two specific issues previously decided in the Company's favor by the lower courts. The Company filed a brief in opposition to the petition. There can be no assurance as to the outcome of Lennar's petition or, if it is accepted, any determination or redetermination by the U.S. Supreme Court affecting this matter.

On a quarterly basis, the Company evaluates developments in legal proceedings that could require a liability to be accrued and/or disclosed. Based on its current knowledge, and after consultation with legal counsel, the Company believes it is not a party to, nor are any of its properties the subject of, any pending legal proceeding that would have a material adverse effect on the Company's consolidated financial statements.



**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
**(unaudited)**
**Note 12—Derivatives**

The Company's use of derivative financial instruments is primarily limited to the utilization of interest rate swaps, interest rate caps and foreign exchange contracts. The principal objective of such financial instruments is to minimize the risks and/or costs associated with the Company's operating and financial structure and to manage its exposure to interest rates and foreign exchange rates. Derivatives not designated as hedges are not speculative and are used to manage the Company's exposure to interest rate movements, foreign exchange rate movements, and other identified risks, but may not meet the strict hedge accounting requirements.

The table below presents the fair value of the Company's derivative financial instruments as well as their classification on the consolidated balance sheets (\$ in thousands):

	Derivative Assets as of				Derivative Liabilities as of			
	September 30, 2017		December 31, 2016		September 30, 2017		December 31, 2016	
	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
<b>Derivatives Designated in Hedging Relationships</b>								
Foreign exchange contracts	N/A	\$ —	N/A	\$ —	Other Liabilities	\$ 18	Other Liabilities	\$ 8
Interest rate swaps	Other Assets	76	N/A	—	N/A	—	Other Liabilities	39
Total		<u>\$ 76</u>		<u>\$ —</u>		<u>\$ 18</u>		<u>\$ 47</u>
<b>Derivatives not Designated in Hedging Relationships</b>								
Foreign exchange contracts	N/A	\$ —	Other Assets	\$ 702	N/A	\$ —	N/A	\$ —
Interest rate cap	N/A	—	Other Assets	25	N/A	—	N/A	—
Total		<u>\$ —</u>		<u>\$ 727</u>		<u>\$ —</u>		<u>\$ —</u>

**iStar Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
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The tables below present the effect of the Company's derivative financial instruments in the consolidated statements of operations and the consolidated statements of comprehensive income (loss) (\$ in thousands):

Derivatives Designated in Hedging Relationships	Location of Gain (Loss) Recognized in Income	Amount of Gain (Loss) Recognized in Accumulated Other Comprehensive Income (Effective Portion)	Amount of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income into Earnings (Effective Portion)	Amount of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income into Earnings (Ineffective Portion)
<b>For the Three Months Ended September 30, 2017</b>				
Interest rate swaps	Interest Expense	15	(16)	N/A
Interest rate cap	Earnings from equity method investments	(2)	(2)	N/A
Interest rate swap	Earnings from equity method investments	(69)	(38)	N/A
Foreign exchange contracts	Earnings from equity method investments	(1)	—	N/A
<b>For the Three Months Ended September 30, 2016</b>				
Interest rate cap	Earnings from equity method investments	(1)	(1)	N/A
Interest rate swaps	Interest Expense	126	(19)	N/A
Interest rate swap	Earnings from equity method investments	124	(92)	N/A
Foreign exchange contracts	Earnings from equity method investments	(150)	—	N/A
<b>For the Nine Months Ended September 30, 2017</b>				
Interest rate swaps	Interest Expense	439	339	N/A
Interest rate cap	Earnings from equity method investments	(16)	(16)	N/A
Interest rate swap	Earnings from equity method investments	(85)	(188)	N/A
Foreign exchange contracts	Earnings from equity method investments	(371)	—	N/A
<b>For the Nine Months Ended September 30, 2016</b>				
Interest rate cap	Interest Expense	—	(185)	N/A
Interest rate cap	Earnings from equity method investments	(2)	—	N/A
Interest rate swaps	Interest Expense	(568)	(17)	N/A
Interest rate swap	Earnings from equity method investments	(500)	(284)	N/A
Foreign exchange contracts	Earnings from equity method investments	(199)	—	N/A

Derivatives not Designated in Hedging Relationships	Location of Gain (Loss) Recognized in Income	Amount of Gain (Loss) Recognized in Income			
		For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
		2017	2016	2017	2016
Interest rate cap	Other Expense	\$ —	\$ (4)	\$ 6	\$ (1,059)
Foreign exchange contracts	Other Expense	(199)	65	(970)	406

**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
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**Foreign Exchange Contracts**—The Company is exposed to fluctuations in foreign exchange rates on investments it holds in foreign entities. The Company uses foreign exchange contracts to hedge its exposure to changes in foreign exchange rates on its foreign investments. Foreign exchange contracts involve fixing the U.S. dollar ("USD") to the respective foreign currency exchange rate for delivery of a specified amount of foreign currency on a specified date. The foreign exchange contracts are typically cash settled in USD for their fair value at or close to their settlement date.

For derivatives designated as net investment hedges, the effective portion of changes in the fair value of the derivatives are reported in Accumulated Other Comprehensive Income as part of the cumulative translation adjustment. The ineffective portion of the change in fair value of the derivatives is recognized directly in earnings. Amounts are reclassified out of Accumulated Other Comprehensive Income into earnings when the hedged foreign entity is either sold or substantially liquidated. For derivatives not designated as net investment hedges, the changes in the fair value of the derivatives are reported in the Company's consolidated statements of operations within "Other Expense." As of September 30, 2017, the Company had the following outstanding foreign currency derivatives that were used to hedge its net investments in foreign operations that were designated (\$ and Rs in thousands):

Derivative Type	Notional Amount	Notional (USD Equivalent)	Maturity
Sells Indian rupee ("INR")/Buys USD Forward	Rs 350,000	\$ 5,339	October 2017

The Company marks its foreign investments each quarter based on current exchange rates and records the gain or loss through "Other expense" in its consolidated statements of operations for loan investments or "Accumulated other comprehensive income (loss)," on its consolidated balance sheets for net investments in foreign subsidiaries. The Company recorded net gains (losses) related to foreign investments of \$0.1 million and \$0.2 million during the three and nine months ended September 30, 2017, respectively, and \$0.1 million during the three and nine months ended September 30, 2016 in its consolidated statements of operations.

**Interest Rate Hedges**—For derivatives designated as cash flow hedges, the effective portion of changes in the fair value of the derivatives are reported in Accumulated Other Comprehensive Income (Loss). The ineffective portion of the change in fair value of the derivatives is recognized directly in the Company's consolidated statements of operations. For derivatives not designated as cash flow hedges, the changes in the fair value of the derivatives are reported in the Company's consolidated statements of operations within "Other Expense."

Over the next 12 months, the Company expects that \$0.1 million related to cash flow hedges will be reclassified from "Accumulated other comprehensive income (loss)" into earnings.

As of September 30, 2017, the Company had the following outstanding interest rate swap that was used to hedge its variable rate debt that was designated as a cash flow hedge (\$ in thousands):

Derivative Type	Notional Amount	Variable Rate	Fixed Rate	Effective Date	Maturity
Interest rate swap	\$ 25,977	LIBOR + 2.00%	3.47%	October 2012	November 2019

During the nine months ended September 30, 2017, the Company entered into and settled a rate lock swap in connection with the 2017 Secured Financing and a simultaneous rate lock swap with SAFE. As a result of the settlements, the Company initially recorded a \$0.4 million unrealized gain in "Accumulated other comprehensive income" on the Company's consolidated balance sheets and subsequently derecognized the gain when third parties acquired a controlling interest in the Company's GL business (refer to Note 4).

**Credit Risk-Related Contingent Features**—The Company has agreements with each of its derivative counterparties that contain a provision where if the Company either defaults or is capable of being declared in default on any of its indebtedness, then the Company could also be declared in default on its derivative obligations.

The Company reports derivative instruments on a gross basis in the consolidated financial statements. In connection with its foreign currency derivatives which were in a liability position as of September 30, 2017 and December 31, 2016, the Company has posted collateral of \$1.0 million and \$0.4 million, respectively, and is included in "Deferred expenses and other assets, net"

## iStar Inc.

## Notes to Consolidated Financial Statements (Continued)

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on the Company's consolidated balance sheets. The Company's net exposure under these contracts was zero as of September 30, 2017.

**Note 13—Equity**

**Preferred Stock**—The Company had the following series of Cumulative Redeemable and Convertible Perpetual Preferred Stock outstanding as of September 30, 2017:

Series	Shares Issued and Outstanding (in thousands)	Par Value	Cumulative Preferential Cash Dividends <sup>(1)(2)</sup>		
			Liquidation Preference <sup>(3)(4)</sup>	Rate per Annum	Equivalent to Fixed Annual Rate (per share)
D	4,000	\$ 0.001	\$ 25.00	8.00%	\$ 2.00
G	3,200	0.001	25.00	7.65%	1.91
I	5,000	0.001	25.00	7.50%	1.88
J (convertible)	4,000	0.001	50.00	4.50%	2.25
	<u>16,200</u>				

On September 19, 2017, the Company gave irrevocable notice to redeem all of its issued and outstanding Series E and Series F preferred stock on October 20, 2017. Each holder of Series E and Series F preferred stock received cash in the amount of the liquidation preference of \$25.00 per share, or \$240.0 million in the aggregate, plus accrued and unpaid dividends to the redemption date of \$0.191406 per Series E share and \$0.189583 per Series F share, or \$1.8 million in the aggregate. The total carrying value of the Series E and Series F preferred stock was \$223.7 million, net of discounts and fees, and was recorded in "Additional paid-in-capital" and "Preferred Stock Series D, E, F, G and I, liquidation preference \$25.00 per share" on the Company's consolidated balance sheet as of December 31, 2016. The remaining liquidation premium of \$16.3 million represents a return similar to a dividend to the holders of the Series E and Series F preferred stock and, as such, has been recorded in "Retained earnings (deficit)" on the Company's consolidated balance sheet as of September 30, 2017. As of September 30, 2017, the redemption and final dividend payable on the redemption of the Series E and Series F preferred stock are recorded in "Accounts payable, accrued expenses and other liabilities" on the Company's consolidated balance sheet.

**iStar Inc.**
**Notes to Consolidated Financial Statements (Continued)**
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The Company had the following series of Cumulative Redeemable and Convertible Perpetual Preferred Stock outstanding as of December 31, 2016:

Series	Shares Issued and Outstanding (in thousands)	Par Value	Cumulative Preferential Cash Dividends <sup>(1)(2)</sup>		
			Liquidation Preference <sup>(3)(4)</sup>	Rate per Annum	Equivalent to Fixed Annual Rate (per share)
D	4,000	\$ 0.001	\$25.00	8.000%	\$ 2.00
E	5,600	\$ 0.001	\$25.00	7.875%	\$ 1.97
F	4,000	\$ 0.001	\$25.00	7.8%	\$ 1.95
G	3,200	\$ 0.001	\$25.00	7.65%	\$ 1.91
I	5,000	\$ 0.001	\$25.00	7.50%	\$ 1.88
J (convertible)	4,000	\$ 0.001	\$50.00	4.50%	\$ 2.25
	<u>25,800</u>				

- (1) Holders of shares of the Series D, E, F, G, I and J preferred stock are entitled to receive dividends, when and as declared by the Company's Board of Directors, out of funds legally available for the payment of dividends. Dividends are cumulative from the date of original issue and are payable quarterly in arrears on or before the 15th day of each March, June, September and December or, if not a business day, the next succeeding business day. Any dividend payable on the preferred stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as of the close of business on the first day of the calendar month in which the applicable dividend payment date falls or on another date designated by the Company's Board of Directors for the payment of dividends that is not more than 30 nor less than 10 days prior to the dividend payment date.
- (2) The Company declared and paid dividends of \$6.0 million, \$8.3 million, \$5.9 million, \$4.6 million and \$7.0 million on its Series D, E, F, G and I Cumulative Redeemable Preferred Stock during the nine months ended September 30, 2017 and 2016, respectively (see paragraph below for additional dividends declared on Series E and Series F preferred stock). The Company declared and paid dividends of \$6.8 million on its Series J Convertible Perpetual Preferred Stock during the nine months ended September 30, 2017 and 2016. The character of the 2016 dividends was as follows: 47.30% was a capital gain distribution, of which 76.15% represents unrecaptured section 1250 gain and 23.85% long term capital gain, and 52.70% was ordinary income. There are no dividend arrearages on any of the preferred shares currently outstanding.
- (3) The Company may, at its option, redeem the Series E, F, G, and I Preferred Stock, in whole or in part, at any time and from time to time, for cash at a redemption price equal to 100% of the liquidation preference of \$25.00 per share, plus accrued and unpaid dividends, if any, to the redemption date.
- (4) Each share of the Series J Preferred Stock is convertible at the holder's option at any time, initially into 3.9087 shares of the Company's common stock (equal to an initial conversion price of approximately \$12.79 per share), subject to specified adjustments. The Company may not redeem the Series J Preferred Stock prior to March 15, 2018. On or after March 15, 2018, the Company may, at its option, redeem the Series J Preferred Stock, in whole or in part, at any time and from time to time, for cash at a redemption price equal to 100% of the liquidation preference of \$50.00 per share, plus accrued and unpaid dividends, if any, to the redemption date.

**Dividends**—To maintain its qualification as a REIT, the Company must annually distribute, at a minimum, an amount equal to 90% of its taxable income, excluding net capital gains, and must distribute 100% of its taxable income (including net capital gains) to eliminate corporate federal income taxes payable by the REIT. The Company has recorded NOLs and may record NOLs in the future, which may reduce its taxable income in future periods and lower or eliminate entirely the Company's obligation to pay dividends for such periods in order to maintain its REIT qualification. As of December 31, 2016, the Company had \$948.8 million of NOL carryforwards at the corporate REIT level that can generally be used to offset both ordinary taxable income and capital gain net income in future years. The NOL carryforwards will expire beginning in 2029 and through 2036 if unused. Because taxable income differs from cash flow from operations due to non-cash revenues and expenses (such as depreciation and certain asset impairments), in certain circumstances, the Company may generate operating cash flow in excess of its dividends, or alternatively, may need to make dividend payments in excess of operating cash flows. The 2016 Senior Secured Credit Facility and 2015 Secured Revolving Credit Facility permit the Company to distribute 100% of its REIT taxable income on an annual basis (prior to deducting certain cumulative NOL carryforwards), as long as the Company maintains its REIT qualification. The 2016 Senior Secured Credit Facility and 2015 Secured Revolving Credit Facility restrict the Company from paying any common dividends if it ceases to qualify as a REIT. The Company did not declare or pay any common stock dividends for the nine months ended September 30, 2017 and 2016.

**Stock Repurchase Program**—In February 2016, after having substantially utilized the remaining availability previously authorized, the Company's Board of Directors authorized a new \$50.0 million stock repurchase program. After having substantially utilized the availability authorized in February 2016, the Company's Board of Directors authorized an increase to the stock repurchase program to \$50.0 million, effective August 4, 2016. The program authorizes the repurchase of common stock from time to time in open market and privately negotiated purchases, including pursuant to one or more trading plans. In connection

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**Notes to Consolidated Financial Statements (Continued)**
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with the sale of the 3.125% Convertible Notes in September 2017 (refer to Note 10), the Company repurchased 4.0 million shares of its common stock for \$45.9 million at an average cost of \$11.51 per share in privately negotiated transactions with purchasers of the 3.125% Convertible Notes. During the nine months ended September 30, 2016, the Company repurchased 10.2 million shares of its outstanding common stock for \$98.4 million, at an average cost of \$9.67 per share. As of September 30, 2017, the Company had remaining authorization to repurchase up to \$4.1 million of common stock available to repurchase under its stock repurchase program.

**Accumulated Other Comprehensive Income (Loss)**—"Accumulated other comprehensive income (loss)" reflected in the Company's shareholders' equity is comprised of the following (\$ in thousands):

	As of	
	September 30, 2017	December 31, 2016
Unrealized gains on available-for-sale securities	\$ 599	\$ 149
Unrealized gains on cash flow hedges	230	27
Unrealized losses on cumulative translation adjustment	(4,659)	(4,394)
Accumulated other comprehensive income (loss)	\$ (3,830)	\$ (4,218)

**Note 14—Stock-Based Compensation Plans and Employee Benefits**

**Stock-Based Compensation**—The Company recorded stock-based compensation expense, including the effect of performance incentive plans (see below), of \$2.9 million and \$12.7 million for the three and nine months ended September 30, 2017, respectively, and \$1.4 million and \$7.6 million for the three and nine months ended September 30, 2016, respectively, in "General and administrative" in the Company's consolidated statements of operations. As of September 30, 2017, there was \$2.1 million of total unrecognized compensation cost related to all unvested restricted stock units ("Units") that are expected to be recognized over a weighted average remaining vesting/service period of 1.5 years.

**Performance Incentive Plans**—The Company's Performance Incentive Plan ("iPIP") is designed to provide, primarily to senior executives and select professionals engaged in the Company's investment activities, long-term compensation which has a direct relationship to the realized returns on investments included in the plan. The fair value of points is determined using a model that forecasts the Company's projected investment performance. iPIP is a liability-classified award which will be remeasured each reporting period at fair value until the awards are settled. The following is a summary of granted iPIP points.

- In May 2014, the Company granted 73 iPIP points in the initial 2013-2014 investment pool.
- In January 2015, the Company granted an additional 10 iPIP points in the 2013-2014 investment pool and 34 iPIP points in the 2015-2016 investment pool.
- In January 2016, the Company granted an additional 10 iPIP points in the 2013-2014 investment pool and an additional 40 iPIP points in the 2015-2016 investment pool.
- In June 2016, the Company granted an additional 2.5 iPIP points in the 2015-2016 investment pool.
- In February 2017, the Company granted an additional 5 iPIP points in the 2013-2014 investment pool, an additional 18 iPIP points in the 2015-2016 investment pool, and 44 iPIP points in the 2017-2018 investment pool.

As of September 30, 2017, 11.5 iPIP points from the 2013-2014 investment pool, 10.0 iPIP points from the 2015-2016 investment pool and 4.3 iPIP points from the 2017-2018 investment pool were forfeited.

As of September 30, 2017 and December 31, 2016, the Company had accrued compensation costs relating to iPIP of \$33.1 million and \$22.4 million, respectively, which are included in "Accounts payable, accrued expenses and other liabilities" on the Company's consolidated balance sheets.

**Long-Term Incentive Plan**—The Company's 2009 Long-Term Incentive Plan (the "2009 LTIP") is designed to provide incentive compensation for officers, key employees, directors and advisors of the Company. The 2009 LTIP provides for awards of stock options, shares of restricted stock, phantom shares, restricted stock units, dividend equivalent rights and other share-based

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performance awards. All awards under the 2009 LTIP are made at the discretion of the Company's Board of Directors or a committee of the Board of Directors. The Company's shareholders approved the 2009 LTIP in 2009 and approved the performance-based provisions of the 2009 LTIP, as amended, in 2014.

As of September 30, 2017, an aggregate of 3.3 million shares remain available for issuance pursuant to future awards under the Company's 2009 LTIP.

*Restricted Share Issuances*—During the nine months ended September 30, 2017, the Company granted 97,967 shares of common stock to certain employees under the 2009 LTIP as part of annual incentive awards that included a mix of cash and equity awards. The shares are fully-vested and 62,704 shares were issued net of statutory minimum required tax withholdings. The employees are restricted from selling these shares for up to 18 months from the date of grant.

*2017 Restricted Stock Unit Activity*—During the nine months ended September 30, 2017, the Company granted new stock-based compensation awards to certain employees in the form of long-term incentive awards, comprised of the following:

- 115,571 service-based Units granted on February 22, 2017, representing the right to receive an equivalent number of shares of the Company's common stock (after deducting shares for minimum required statutory withholdings) if and when the Units vest. The Units will cliff vest in one installment on December 31, 2019, if the employee remains employed by the Company on the vesting date, subject to certain accelerated vesting rights. Dividends will accrue as and when dividends are declared by the Company on shares of its common stock, but will not be paid unless and until the Units vest and are settled. As of September 30, 2017, 111,642 of such service-based Units were outstanding.

As of September 30, 2017, the Company had the following additional stock-based compensation awards outstanding:

- 60,000 service-based Units granted on June 15, 2016, representing the right to receive an equivalent number of shares of the Company's common stock (after deducting shares for minimum required statutory withholdings) if and when the Units vest. The Units will vest in equal annual installments over four years on each anniversary of the grant date, if the employee remains employed by the Company on the vesting date, subject to certain accelerated vesting rights. Upon vesting of these Units, the holder will receive shares of the Company's common stock in the amount of the vested Units, net of statutory minimum required tax withholdings. Dividends will accrue as and when dividends are declared by the Company on shares of its common stock, but will not be paid unless and until the Units vest and are settled.
- 104,026 service-based Units granted on January 29, 2016, representing the right to receive an equivalent number of shares of the Company's common stock (after deducting shares for minimum required statutory withholdings) if and when the Units vest. The Units will cliff vest in one installment on December 31, 2018, if the employee remains employed by the Company on the vesting date, subject to certain accelerated vesting rights. Dividends will accrue as and when dividends are declared by the Company on shares of its common stock, but will not be paid unless and until the Units vest and are settled.
- 37,514 target amount of performance-based Units granted on January 30, 2015, representing the right to receive an equivalent number of shares of the Company's common stock (after deducting shares for minimum required statutory withholdings) if and when the Units vest. The performance is based on the Company's TSR, measured over a performance period ending on December 31, 2017, which is the date the awards cliff vest. Vesting will range from 0% to 200% of the target amount of the awards, depending on the Company's TSR performance relative to the NAREIT All REITs Index (one-half of the target amount of the award) and the Russell 2000 Index (one-half of the target amount of the award) during the performance period. The Company, as well as any companies not included in each index at the beginning and end of the performance period, are excluded from calculation of the performance of such index. To the extent Units vest based on the Company's TSR performance, holders will receive an equivalent number of shares of common stock (after deducting shares for minimum required statutory withholdings), if the employee remains employed by the Company on the vesting date, subject to certain accelerated vesting rights. Dividends will accrue as and when dividends are declared by the Company on shares of its common stock, but will not be paid unless and until the Units vest and are settled. The fair values of the performance-based Units were determined by utilizing a Monte Carlo model to simulate a range of possible future stock prices for the Company's common stock. The assumptions used to estimate the fair value of these performance-based awards were 0.75% for risk-free interest rate and 28.14% for expected stock price volatility.
- 54,201 service-based Units granted on January 30, 2015, representing the right to receive an equivalent number of shares of the Company's common stock (after deducting shares for minimum required statutory withholdings) if and when the

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**Notes to Consolidated Financial Statements (Continued)**

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Units vest. The Units will cliff vest in one installment on December 31, 2017, if the employee remains employed by the Company on the vesting date, subject to certain accelerated vesting rights. Dividends will accrue as and when dividends are declared by the Company on shares of its common stock, but will not be paid unless and until the Units vest and are settled.

- 4,751 service-based Units granted on various dates, representing the right to receive an equivalent number of shares of the Company's common stock (after deducting shares for minimum required statutory withholdings) if and when the Units vest. The Units have an original vesting term of three years. Upon vesting of these Units, holders will receive shares of the Company's common stock in the amount of the vested Units, net of statutory minimum required tax withholdings. Dividends will accrue as and when dividends are declared by the Company on shares of its common stock, but will not be paid unless and until the Units vest and are settled.

**Directors' Awards**—During the nine months ended September 30, 2017, the Company awarded to non-employee Directors 56,817 restricted shares of common stock at a fair value per share of \$11.86 at the time of grant. The restricted shares have a vesting term of one year. As of September 30, 2017, a combined total of 317,664 CSEs and restricted shares of common stock granted to members of the Company's Board of Directors remained outstanding under the Company's Non-Employee Directors Deferral Plan, with an aggregate intrinsic value of \$3.7 million.

**401(k) Plan**—The Company made gross contributions of \$0.2 million and \$1.0 million for the three and nine months ended September 30, 2017 and \$0.1 million and \$0.9 million for the three and nine months ended September 30, 2016, respectively.

**Note 15—Earnings Per Share**

Earnings per share ("EPS") is calculated using the two-class method, which allocates earnings among common stock and participating securities to calculate EPS when an entity's capital structure includes either two or more classes of common stock or common stock and participating securities.



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**Notes to Consolidated Financial Statements (Continued)**  
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The following table presents a reconciliation of income (loss) from continuing operations used in the basic and diluted EPS calculations (\$ in thousands, except for per share data):

	<b>For the Three Months Ended September 30,</b>		<b>For the Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>	<b>2017</b>	<b>2016</b>
Income (loss) from continuing operations	\$ (23,029)	\$ 19,990	\$ 24,839	\$ 9,321
Income from sales of real estate	19,313	34,444	28,267	88,387
Net (income) loss attributable to noncontrolling interests	160	967	(4,450)	(6,915)
Preferred dividends	(12,830)	(12,830)	(38,490)	(38,490)
Preferred dividends declared and payable	(1,830)	—	(1,830)	—
Premium above book value on redemption of preferred stock	(16,314)	—	(16,314)	—
Income (loss) from continuing operations attributable to iStar Inc. and allocable to common shareholders and Participating Security Holders for basic earnings per common share <sup>(1)</sup>	<u>\$ (34,530)</u>	<u>\$ 42,571</u>	<u>\$ (7,978)</u>	<u>\$ 52,303</u>
Add: Effect of joint venture shares	—	3	—	5
Add: Effect of 1.50% senior convertible unsecured notes	—	1,123	—	3,400
Add: Effect of 3.00% senior convertible unsecured notes	—	1,785	—	5,346
Add: Effect of Series J convertible perpetual preferred stock	—	2,250	—	6,750
Income (loss) from continuing operations attributable to iStar Inc. and allocable to common shareholders and Participating Security Holders for diluted earnings per common share <sup>(1)</sup>	<u>\$ (34,530)</u>	<u>\$ 47,732</u>	<u>\$ (7,978)</u>	<u>\$ 67,804</u>

(1) For the nine months ended September 30, 2016, includes income from continuing operations allocable to Participating Security Holders of \$27 and \$21 on a basic and dilutive basis.

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**Notes to Consolidated Financial Statements (Continued)**  
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	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Earnings allocable to common shares:</b>				
<i>Numerator for basic earnings per share:</i>				
Income (loss) from continuing operations attributable to iStar Inc. and allocable to common shareholders	\$ (34,530)	\$ 42,571	\$ (7,978)	\$ 52,280
Income from discontinued operations	—	3,721	4,939	10,929
Gain from discontinued operations	—	—	123,418	—
Income tax expense from discontinued operations	—	—	(4,545)	—
Net income (loss) attributable to iStar Inc. and allocable to common shareholders	<u>\$ (34,530)</u>	<u>\$ 46,292</u>	<u>\$ 115,834</u>	<u>\$ 63,209</u>
<i>Numerator for diluted earnings per share:</i>				
Income (loss) from continuing operations attributable to iStar Inc. and allocable to common shareholders	\$ (34,530)	\$ 47,732	\$ (7,978)	\$ 67,786
Income from discontinued operations	—	3,721	4,939	10,931
Gain from discontinued operations	—	—	123,418	—
Income tax expense from discontinued operations	—	—	(4,545)	—
Net income (loss) attributable to iStar Inc. and allocable to common shareholders	<u>\$ (34,530)</u>	<u>\$ 51,453</u>	<u>\$ 115,834</u>	<u>\$ 78,717</u>
<i>Denominator for basic and diluted earnings per share:</i>				
Weighted average common shares outstanding for basic earnings per common share	71,713	71,210	71,972	74,074
Add: Effect of assumed shares issued under treasury stock method for restricted stock units	—	87	—	65
Add: Effect of joint venture shares	—	298	—	298
Add: Effect of 1.50% senior convertible unsecured notes	—	11,444	—	11,526
Add: Effect of 3.00% senior convertible unsecured notes	—	16,992	—	16,992
Add: Effect of series J convertible perpetual preferred stock	—	15,635	—	15,635
Weighted average common shares outstanding for diluted earnings per common share	<u>71,713</u>	<u>115,666</u>	<u>71,972</u>	<u>118,590</u>
<b>Basic earnings per common share:</b>				
Income (loss) from continuing operations attributable to iStar Inc. and allocable to common shareholders	\$ (0.48)	\$ 0.60	\$ (0.11)	\$ 0.70
Income from discontinued operations	—	0.05	0.07	0.15
Gain from discontinued operations	—	—	1.71	—
Income tax expense from discontinued operations	—	—	(0.06)	—
Net income (loss) attributable to iStar Inc. and allocable to common shareholders	<u>\$ (0.48)</u>	<u>\$ 0.65</u>	<u>\$ 1.61</u>	<u>\$ 0.85</u>

**iStar Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
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	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Diluted earnings per common share:</b>				
Income (loss) from continuing operations attributable to iStar Inc. and allocable to common shareholders	\$ (0.48)	\$ 0.41	\$ (0.11)	\$ 0.57
Income from discontinued operations	—	0.03	0.07	0.09
Gain from discontinued operations	—	—	1.71	—
Income tax expense from discontinued operations	—	—	(0.06)	—
Net income (loss) attributable to iStar Inc. and allocable to common shareholders	<u>\$ (0.48)</u>	<u>\$ 0.44</u>	<u>\$ 1.61</u>	<u>\$ 0.66</u>

The following shares were not included in the diluted EPS calculation because they were anti-dilutive (in thousands)<sup>(1)</sup>:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
Series J convertible perpetual preferred stock	15,635	—	15,635	—
Joint venture shares	298	—	298	—

(1) For the three and nine months ended September 30, 2017, the effect of 3 and 22 unvested time and performance-based Units were anti-dilutive, respectively. For the three and nine months ended September 30, 2016, the effect of 25 and 128 unvested time and performance-based Units were anti-dilutive, respectively. The Company will settle conversions of the 3.125% Convertible Notes by paying the conversion value in cash up to the original principal amount of the notes being converted and shares of common stock to the extent of any conversion premium. The amount of cash and shares of common stock, if any, due upon conversion will be based on a daily conversion value calculated for each trading day in a 40 consecutive day observation period. Based upon the conversion price of the 3.125% Convertible Notes, no shares of common stock would have been issuable upon conversion of the 3.125% Convertible Notes for the three and nine months ended September 30, 2017 and therefore the 3.125% Convertible Notes had no effect on diluted EPS for such periods.

**Note 16—Fair Values**

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The following fair value hierarchy prioritizes the inputs to be used in valuation techniques to measure fair value:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

Certain of the Company's assets and liabilities are recorded at fair value either on a recurring or non-recurring basis. Assets required to be marked-to-market and reported at fair value every reporting period are classified as being valued on a recurring basis. Assets not required to be recorded at fair value every period may be recorded at fair value if a specific provision or other impairment is recorded within the period to mark the carrying value of the asset to market as of the reporting date. Such assets are classified as being valued on a non-recurring basis.

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**Notes to Consolidated Financial Statements (Continued)**  
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The following fair value hierarchy table summarizes the Company's assets and liabilities recorded at fair value on a recurring and non-recurring basis by the above categories (\$ in thousands):

	Total	Fair Value Using		
		Quoted market prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
<b>As of September 30, 2017</b>				
Recurring basis:				
Derivative assets <sup>(1)</sup>	\$ 76	\$ —	\$ 76	\$ —
Derivative liabilities <sup>(1)</sup>	18	—	18	—
Available-for-sale securities <sup>(1)</sup>	22,105	—	—	22,105
<b>As of December 31, 2016</b>				
Recurring basis:				
Derivative assets <sup>(1)</sup>	\$ 727	\$ —	\$ 727	\$ —
Derivative liabilities <sup>(1)</sup>	47	—	47	—
Available-for-sale securities <sup>(1)</sup>	21,666	—	—	21,666
Non-recurring basis:				
Impaired loans <sup>(2)</sup>	7,200	—	—	7,200
Impaired real estate <sup>(3)</sup>	3,063	—	—	3,063

(1) The fair value of the Company's derivatives are based upon widely accepted valuation techniques utilized by a third-party specialist using observable inputs such as interest rates and contractual cash flow and are classified as Level 2. The fair value of the Company's available-for-sale securities are based upon unadjusted third-party broker quotes and are classified as Level 3.

(2) The Company recorded a provision for loan losses on one loan with a fair value of \$5.2 million using an appraisal based on market comparable sales. In addition, the Company recorded a recovery of loan losses on one loan with a fair value of \$2.0 million based on proceeds to be received.

(3) The Company recorded an impairment on one real estate asset with a fair value of \$3.1 million based on a discount rate of 11% using discounted cash flows over a two year sellout period.

The following table summarizes changes in Level 3 available-for-sale securities reported at fair value on the Company's consolidated balance sheets for the nine months ended September 30, 2017 and 2016 (\$ in thousands):

	2017	2016
Beginning balance	\$ 21,666	\$ 1,161
Purchases	—	4,366
Repayments	(10)	(10)
Unrealized gains recorded in other comprehensive income	449	263
Ending balance	\$ 22,105	\$ 5,780

**Fair values of financial instruments**—The Company's estimated fair values of its loans receivable and other lending investments and outstanding debt was \$1.1 billion and \$4.5 billion, respectively, as of September 30, 2017 and \$1.5 billion and \$3.6 billion, respectively, as of December 31, 2016. The Company determined that the significant inputs used to value its loans receivable and other lending investments and debt obligations fall within Level 3 of the fair value hierarchy. The carrying value of other financial instruments including cash and cash equivalents, restricted cash, accrued interest receivable and accounts payable, approximate the fair values of the instruments. Cash and cash equivalents and restricted cash values are considered Level 1 on the fair value hierarchy. The fair value of other financial instruments, including derivative assets and liabilities, is included in the fair value hierarchy table above.

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**Notes to Consolidated Financial Statements (Continued)**

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**Note 17—Segment Reporting**

The Company has determined that it has four reportable segments based on how management reviews and manages its business. These reportable segments include: Real Estate Finance, Net Lease, Operating Properties and Land and Development. The Real Estate Finance segment includes all of the Company's activities related to senior and mezzanine real estate loans and real estate related securities. The Net Lease segment includes the Company's activities and operations related to the ownership of properties generally leased to single corporate tenants. The Operating Properties segment includes the Company's activities and operations related to its commercial and residential properties. The Land and Development segment includes the Company's activities related to its developable land portfolio.

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**Notes to Consolidated Financial Statements (Continued)**  
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The Company evaluates performance based on the following financial measures for each segment. The Company's segment information is as follows (\$ in thousands):

	Real Estate Finance	Net Lease	Operating Properties	Land and Development	Corporate/Other <sup>(1)</sup>	Company Total
<b>Three Months Ended September 30, 2017:</b>						
Operating lease income	\$ —	\$ 31,503	\$ 16,048	\$ 255	\$ —	\$ 47,806
Interest income	25,442	—	—	—	—	25,442
Other income	1,298	953	14,097	1,174	3,140	20,662
Land development revenue	—	—	—	25,962	—	25,962
Earnings from equity method investments	—	1,302	(399)	948	610	2,461
Income from sales of real estate	—	18,765	548	—	—	19,313
<b>Total revenue and other earnings</b>	<b>26,740</b>	<b>52,523</b>	<b>30,294</b>	<b>28,339</b>	<b>3,750</b>	<b>141,646</b>
Real estate expense	—	(4,423)	(23,185)	(8,672)	—	(36,280)
Land development cost of sales	—	—	—	(27,512)	—	(27,512)
Other expense	(261)	—	—	—	(2,443)	(2,704)
Allocated interest expense	(9,165)	(12,255)	(4,860)	(6,529)	(15,923)	(48,732)
Allocated general and administrative <sup>(2)</sup>	(3,334)	(4,315)	(1,866)	(3,706)	(4,800)	(18,021)
<b>Segment profit (loss)<sup>(3)</sup></b>	<b>\$ 13,980</b>	<b>\$ 31,530</b>	<b>\$ 383</b>	<b>\$ (18,080)</b>	<b>\$ (19,416)</b>	<b>\$ 8,397</b>
Other significant items:						
Recovery of loan losses	\$ (2,600)	\$ —	\$ —	\$ —	\$ —	\$ (2,600)
Impairment of assets	—	—	595	—	—	595
Depreciation and amortization	—	6,623	4,343	546	334	11,846
Capitalized expenditures	—	2,384	7,644	33,788	—	43,816
<b>Three Months Ended September 30, 2016:</b>						
Operating lease income	\$ —	\$ 32,287	\$ 14,407	\$ 106	\$ —	\$ 46,800
Interest income	32,258	—	—	—	—	32,258
Other income	1,052	412	10,793	658	527	13,442
Land development revenue	—	—	—	31,554	—	31,554
Earnings from equity method investments	—	723	630	21,841	3,346	26,540
Income from discontinued operations	—	3,721	—	—	—	3,721
Income from sales of real estate	—	6,629	27,815	—	—	34,444
<b>Total revenue and other earnings</b>	<b>33,310</b>	<b>43,772</b>	<b>53,645</b>	<b>54,159</b>	<b>3,873</b>	<b>188,759</b>
Real estate expense	—	(4,707)	(21,129)	(9,407)	—	(35,243)
Land development cost of sales	—	—	—	(22,004)	—	(22,004)
Other expense	(794)	—	—	—	(25)	(819)
Allocated interest expense	(14,544)	(16,330)	(5,110)	(9,013)	(10,108)	(55,105)
Allocated general and administrative <sup>(2)</sup>	(3,995)	(4,526)	(1,502)	(3,495)	(4,714)	(18,232)
<b>Segment profit (loss)<sup>(3)</sup></b>	<b>\$ 13,977</b>	<b>\$ 18,209</b>	<b>\$ 25,904</b>	<b>\$ 10,240</b>	<b>\$ (10,974)</b>	<b>\$ 57,356</b>
Other significant items:						
Recovery of loan losses	\$ (14,955)	\$ —	\$ —	\$ —	\$ —	\$ (14,955)
Impairment of assets	—	4,829	112	3,800	—	8,741
Depreciation and amortization	—	7,829	3,798	298	276	12,201
Capitalized expenditures	—	934	15,902	25,938	—	42,774

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**Notes to Consolidated Financial Statements (Continued)**  
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	Real Estate Finance	Net Lease	Operating Properties	Land and Development	Corporate/Other <sup>(1)</sup>	Company Total
<b>Nine Months Ended September 30, 2017:</b>						
Operating lease income	\$ —	\$ 93,606	\$ 47,977	\$ 572	\$ —	\$ 142,155
Interest income	83,145	—	—	—	—	83,145
Other income	1,854	2,009	37,720	125,430	5,024	172,037
Land development revenue	—	—	—	178,722	—	178,722
Earnings from equity method investments	—	3,363	702	8,396	1,216	13,677
Income from discontinued operations	—	4,939	—	—	—	4,939
Gain from discontinued operations	—	123,418	—	—	—	123,418
Income from sales of real estate	—	24,977	3,290	—	—	28,267
<b>Total revenue and other earnings</b>	<b>84,999</b>	<b>252,312</b>	<b>89,689</b>	<b>313,120</b>	<b>6,240</b>	<b>746,360</b>
Real estate expense	—	(13,062)	(67,356)	(26,136)	—	(106,554)
Land development cost of sales	—	—	—	(165,888)	—	(165,888)
Other expense	(1,263)	—	—	—	(19,586)	(20,849)
Allocated interest expense	(31,561)	(41,659)	(15,472)	(21,769)	(38,223)	(148,684)
Allocated general and administrative <sup>(2)</sup>	(11,621)	(14,878)	(5,985)	(12,636)	(15,497)	(60,617)
<b>Segment profit (loss)<sup>(3)</sup></b>	<b>\$ 40,554</b>	<b>\$ 182,713</b>	<b>\$ 876</b>	<b>\$ 86,691</b>	<b>\$ (67,066)</b>	<b>\$ 243,768</b>
Other significant non-cash items:						
Recovery of loan losses	\$ (8,128)	\$ —	\$ —	\$ —	\$ —	\$ (8,128)
Impairment of assets	—	219	5,009	10,064	—	15,292
Depreciation and amortization	—	21,662	13,305	1,337	993	37,297
Capitalized expenditures	—	4,071	24,210	90,666	—	118,947
<b>Nine Months Ended September 30, 2016:</b>						
Operating lease income	\$ —	\$ 95,636	\$ 51,317	\$ 317	\$ —	\$ 147,270
Interest income	99,877	—	—	—	—	99,877
Other income	2,672	924	25,351	2,889	3,243	35,079
Land development revenue	—	—	—	74,389	—	74,389
Earnings from equity method investments	—	2,613	31,564	31,189	8,888	74,254
Income from discontinued operations	—	10,934	—	—	—	10,934
Income from sales of real estate	—	15,896	72,491	—	—	88,387
<b>Total revenue and other earnings</b>	<b>102,549</b>	<b>126,003</b>	<b>180,723</b>	<b>108,784</b>	<b>12,131</b>	<b>530,190</b>
Real estate expense	—	(13,770)	(63,046)	(27,999)	—	(104,815)
Land development cost of sales	—	—	—	(50,842)	—	(50,842)
Other expense	(1,634)	—	—	—	(3,107)	(4,741)
Allocated interest expense	(43,877)	(49,030)	(17,579)	(26,040)	(31,647)	(168,173)
Allocated general and administrative <sup>(2)</sup>	(11,612)	(13,135)	(5,010)	(10,092)	(14,940)	(54,789)
<b>Segment profit (loss)<sup>(3)</sup></b>	<b>\$ 45,426</b>	<b>\$ 50,068</b>	<b>\$ 95,088</b>	<b>\$ (6,189)</b>	<b>\$ (37,563)</b>	<b>\$ 146,830</b>
Other significant non-cash items:						
Recovery of loan losses	\$ (12,749)	\$ —	\$ —	\$ —	\$ —	\$ (12,749)
Impairment of assets	—	4,829	3,124	3,800	—	11,753
Depreciation and amortization	—	23,857	14,103	997	824	39,781
Capitalized expenditures	—	3,410	44,145	92,212	—	139,767

**iStar Inc.**  
**Notes to Consolidated Financial Statements (Continued)**  
**(unaudited)**

	Real Estate Finance	Net Lease	Operating Properties	Land and Development	Corporate/Other <sup>(1)</sup>	Company Total
<b>As of September 30, 2017</b>						
Real estate						
Real estate, net	\$ —	\$ 844,493	\$ 479,369	\$ —	\$ —	\$ 1,323,862
Real estate available and held for sale	—	—	65,658	—	—	65,658
Total real estate	—	844,493	545,027	—	—	1,389,520
Land and development, net	—	—	—	861,507	—	861,507
Loans receivable and other lending investments, net	1,109,442	—	—	—	—	1,109,442
Other investments	—	185,176	21,828	63,308	18,725	289,037
Total portfolio assets	<u>\$ 1,109,442</u>	<u>\$ 1,029,669</u>	<u>\$ 566,855</u>	<u>\$ 924,815</u>	<u>\$ 18,725</u>	3,649,506
Cash and other assets						2,145,713
Total assets						<u>\$ 5,795,219</u>
<b>As of December 31, 2016</b>						
Real estate						
Real estate, net	\$ —	\$ 911,112	\$ 476,162	\$ —	\$ —	\$ 1,387,274
Real estate available and held for sale	—	155,051	82,480	—	—	237,531
Total real estate	—	1,066,163	558,642	—	—	1,624,805
Land and development, net	—	—	—	945,565	—	945,565
Loans receivable and other lending investments, net	1,450,439	—	—	—	—	1,450,439
Other investments	—	92,669	3,583	84,804	33,350	214,406
Total portfolio assets	<u>\$ 1,450,439</u>	<u>\$ 1,158,832</u>	<u>\$ 562,225</u>	<u>\$ 1,030,369</u>	<u>\$ 33,350</u>	4,235,215
Cash and other assets						590,299
Total assets						<u>\$ 4,825,514</u>

(1) Corporate/Other represents all corporate level and unallocated items including any intercompany eliminations necessary to reconcile to consolidated Company totals. This caption also includes the Company's joint venture investments and strategic investments that are not included in the other reportable segments above.

(2) General and administrative excludes stock-based compensation expense of \$2.9 million and \$12.7 million for the three and nine months ended September 30, 2017 respectively, and \$1.4 million and \$7.6 million for the three and nine months ended September 30, 2016, respectively.

(3) The following is a reconciliation of segment profit to net income (loss) (\$ in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
Segment profit	\$ 8,397	\$ 57,356	\$ 243,768	\$ 146,830
Less: Recovery of (provision for) loan losses	2,600	14,955	8,128	12,749
Less: Impairment of assets	(595)	(8,741)	(15,292)	(11,753)
Less: Stock-based compensation expense	(2,934)	(1,434)	(12,730)	(7,644)
Less: Depreciation and amortization	(11,846)	(12,201)	(37,297)	(39,781)
Less: Income tax (expense) benefit	1,278	8,256	(972)	9,859
Less: Income tax expense from discontinued operations	—	—	(4,545)	—
Less: Loss on early extinguishment of debt, net	(616)	(36)	(4,142)	(1,618)
Net income (loss)	<u>\$ (3,716)</u>	<u>\$ 58,155</u>	<u>\$ 176,918</u>	<u>\$ 108,642</u>



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

Certain statements in this report, other than purely historical information, including estimates, projections, statements relating to our business plans, objectives and expected operating results, and the assumptions upon which those statements are based, are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements are included with respect to, among other things, iStar Inc.'s (the "Company's") current business plan, business strategy, portfolio management, prospects and liquidity. These forward-looking statements generally are identified by the words "believe," "project," "expect," "anticipate," "estimate," "intend," "strategy," "plan," "may," "should," "will," "would," "will be," "will continue," "will likely result," and similar expressions. Forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results or outcomes to differ materially from those contained in the forward-looking statements. We undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise. In assessing all forward-looking statements, readers are urged to read carefully all cautionary statements contained in this Form 10-Q and the uncertainties and risks described in Item 1A—"Risk Factors" in our 2016 Annual Report, all of which could affect our future results of operations, financial condition and liquidity. For purposes of Management's Discussion and Analysis of Financial Condition and Results of Operations, the terms "we," "our" and "us" refer to iStar Inc. and its consolidated subsidiaries, unless the context indicates otherwise.

The discussion below should be read in conjunction with our consolidated financial statements and related notes in this quarterly report on Form 10-Q and our 2016 Annual Report. These historical financial statements may not be indicative of our future performance. We have reclassified certain items in our consolidated financial statements of prior periods to conform to our current financial statements presentation.

### **Introduction**

iStar Inc., doing business as "iStar," finances, invests in and develops real estate and real estate related projects as part of its fully-integrated investment platform. We also provide management services for our ground lease and net lease equity method investments. We have invested more than \$35 billion over the past two decades and are structured as a real estate investment trust ("REIT") with a diversified portfolio focused on larger assets located in major metropolitan markets. Our primary business segments are real estate finance, net lease, operating properties and land and development.

### **Executive Overview**

During the three months ended September 30, 2017, we received upgrades to our corporate credit ratings from all three major ratings agencies when we completed a transformative set of capital markets transactions designed to enhance our capital structure and improve our earnings profile. Our capital markets transactions will allow us to continue to focus on our net lease and real estate finance businesses to find selective investment opportunities in these core businesses. We also continue to make significant additional progress in monetizing our commercial and residential operating properties as well as our land portfolio. In our continuing effort to find untapped investment opportunities in real estate, we recently conceived and ultimately launched a new, publicly traded REIT focused exclusively on the ground lease ("GL") asset class.

### **Capital Markets Activity**

In September 2017, we completed a comprehensive set of capital markets transactions that addressed all parts of our capital structure, resulting in us having:

- repaid or refinanced all of our 2017 and 2018 corporate debt maturities, leaving no corporate debt maturities for the next 21 months;
- extended our weighted average debt maturity by 1.5 years to 4.0 years;
- reduced annual expenses underlying earnings by approximately \$37 million, or \$0.43 per diluted share;
- lowered our cost of capital by approximately 35 basis points;
- established new banking relationships;
- increased liquidity to pursue new investment opportunities; and
- received upgrades in our corporate credit ratings from all three major ratings agencies, which we expect will positively impact the marginal cost of our future borrowings and broaden our set of investment opportunities.

The table below summarizes the components, sources and uses of the capital markets transactions (in millions) (refer also to Liquidity and Capital Resources):

Uses	Amount	Sources	Amount
Repay 2016 Senior Secured Credit Facility	\$ 473	Amended 2016 Senior Secured Credit Facility	\$ 400
Repay 4.0% senior unsecured notes due November 2017 <sup>(1)</sup>	550	Issue 4.625% senior unsecured notes due September 2020	400
Repay 7.125% senior unsecured notes due February 2018 <sup>(1)</sup>	300	Issue 5.25% senior unsecured notes due September 2022	400
Repay 4.875% senior unsecured notes due July 2018 <sup>(1)</sup>	300	Issue 3.125% senior unsecured convertible notes due September 2022	250
Redeem 7.875% series E preferred stock <sup>(2)</sup>	140	Cash	510
Redeem 7.8% series F preferred stock <sup>(2)</sup>	100		
Repurchase common stock	46		
Fees, expenses, interest and dividends	51		
<b>Total uses</b>	<b>\$ 1,960</b>	<b>Total sources</b>	<b>\$ 1,960</b>

(1) We repaid the \$550.0 million principal amount outstanding of our 4.0% senior unsecured notes due November 2017, the \$300.0 million principal amount outstanding of our 7.125% senior unsecured notes due February 2018 and the \$300.0 million principal amount outstanding of our 4.875% senior unsecured notes due July 2018 in October 2017.

(2) We redeemed our Series E and Series F preferred stock at par in October 2017.

As of September 30, 2017, we had \$1.9 billion of cash, of which \$1.4 billion was used to repay senior unsecured notes and redeem preferred equity subsequent to quarter end, and the remainder of which we expect to use primarily to fund future investment activities. In addition, we have additional borrowing capacity of \$325.0 million at September 30, 2017.

#### *Safety, Income & Growth Inc.*

We believe that Safety, Income & Growth Inc. ("SAFE") is the first publicly-traded company formed primarily to acquire, own, manage, finance and capitalize ground leases. Ground leases generally represent ownership of the land underlying commercial real estate projects that is net leased by the fee owner of the land to the owners/operators of the real estate projects built thereon ("Ground Leases"). Ground Leases afford investors the opportunity for safe, growing income derived from (i) a Ground Lease's senior position in the commercial real estate capital structure; (ii) long-term leases with periodic contractual increases in rent; and (iii) growth in the value of the ground over time. Capital appreciation is realized when, at the end of the life of the lease, the commercial real estate property reverts back to the lessor, as landlord, and it is able to realize the value of the leasehold, which may be substantial. Ground Leases share similarities with triple net leases in that typically the lessor is not responsible for any operating or capital expenses over the life of the lease, making the management of a Ground Lease portfolio relatively simple, with limited working capital needs.

In April 2017, institutional investors acquired a controlling interest in our GL business through the merger of one of our subsidiaries and related transactions (the "Acquisition Transactions"). Our GL business was a component of our net lease segment and consisted of 12 properties subject to long-term net leases including seven GLs and one master lease (covering five properties). The acquiring entity was a newly formed unconsolidated entity named Safety, Income & Growth Inc. The carrying value of our GL assets was approximately \$161.1 million. Shortly before the Acquisition Transactions, we completed the \$227.0 million 2017 Secured Financing on our GL assets (refer to Note 10). We received all of the proceeds of the 2017 Secured Financing. We received an additional \$113.0 million of proceeds in the Acquisition Transactions, including \$55.5 million that we contributed to SAFE in its initial capitalization. As a result of the Acquisition Transactions, we deconsolidated the 12 properties and the associated 2017 Secured Financing. We account for our investment in SAFE as an equity method investment (refer to Note 7). We accounted for this transaction as an in substance sale of real estate and recognized a gain of \$123.4 million, reflecting the aggregate gain less the fair value of our retained interest in SAFE.

On June 27, 2017, SAFE completed its initial public offering raising \$205.0 million in gross proceeds and concurrently completed a \$45.0 million private placement to us, its largest shareholder. We paid organization and offering costs in connection with these transactions, including commissions payable to the underwriters and other offering expenses. As of September 30, 2017, we owned 34.6% of SAFE and our investment had a market value of \$117.4 million. In addition, one of our wholly-owned subsidiaries is the external manager of SAFE, our Chairman and Chief Executive Officer is a director and the Chairman and Chief Executive Officer of SAFE and our other executive officers hold similarly titled positions with SAFE.

## Bevard

In April 2017, we received a favorable judgment from the U.S. Court of Appeals for the Fourth Circuit, affirming a prior district court judgment relating to a dispute with Lennar over the purchase and sale of Bevard, a master planned community located in Maryland. On April 21, we conveyed the property to Lennar and received \$234.3 million of net proceeds after payment of \$3.3 million in documentary transfer taxes, comprised of the remaining purchase price of \$114.0 million and \$123.4 million of interest and real estate taxes, net of costs. We have applied for attorney's fees in excess of \$17.0 million. A portion of the net proceeds received by us has been paid to the third party which holds a 4.3% participation interest in all proceeds received by us.

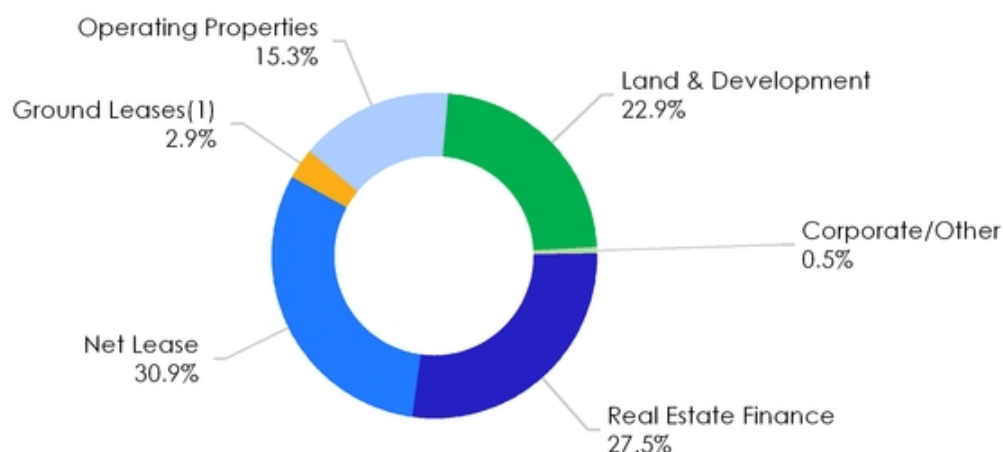
Lennar has filed a petition for a writ of certiorari with the U.S. Supreme Court seeking review of two specific issues previously decided in our favor by the lower courts. We have filed a brief in opposition to the petition. There can be no assurance as to the outcome of Lennar's petition or, if it is accepted, any determination or redetermination by the U.S. Supreme Court affecting this matter.

## Operating Results

During the three months ended September 30, 2017, three of our four business segments contributed positively to our earnings. We continue to work on repositioning or redeveloping our transitional operating properties and progressing on the entitlement and development of our land and development assets in order to maximize their value. We intend to continue these efforts, with the objective of increasing the contribution of these assets to our earnings in the future. For the three months ended September 30, 2017, we recorded a net loss allocable to common shareholders of \$34.5 million, compared to net income of \$46.3 million during the same period in the prior year. Adjusted income (loss) allocable to common shareholders for the three months ended September 30, 2017 was \$(3.6) million, compared to \$49.1 million during the same period in the prior year (see "Adjusted Income" for a reconciliation of adjusted income to net income).

## Portfolio Overview

As of September 30, 2017, based on carrying values gross of accumulated depreciation and general loan loss reserves, our \$4.1 billion investment portfolio has the following characteristics:



(1) Represents the market value of our equity method investment in SAFE.

As of September 30, 2017, based on carrying values gross of accumulated depreciation and general loan loss reserves, our total investment portfolio has the following property/collateral type and geographic characteristics (\$ in thousands):

Property/Collateral Types	Real Estate Finance	Net Lease	Operating Properties	Land & Development	Total	% of Total
Land and Development	\$ —	\$ —	\$ —	\$ 932,639	\$ 932,639	22.9%
Office / Industrial	46,157	719,364	122,868	—	888,389	21.8%
Entertainment / Leisure	—	484,117	—	—	484,117	11.9%
Mixed Use / Mixed Collateral	260,424	—	186,542	—	446,966	11.0%
Hotel	332,514	—	103,424	—	435,938	10.7%
Condominium	263,721	—	65,674	—	329,395	7.9%
Retail	26,029	57,348	136,859	—	220,236	5.4%
Other Property Types	195,797	—	8,761	—	204,558	5.0%
Ground Leases <sup>(1)</sup>	—	117,448	—	—	117,448	2.9%
Strategic Investments	—	—	—	—	18,725	0.5%
<b>Total</b>	<b>\$ 1,124,642</b>	<b>\$ 1,378,277</b>	<b>\$ 624,128</b>	<b>\$ 932,639</b>	<b>\$ 4,078,411</b>	<b>100.0%</b>

Geographic Region	Real Estate Finance	Net Lease	Operating Properties	Land & Development	Total	% of Total
Northeast	\$ 502,904	\$ 401,384	\$ 47,257	\$ 260,867	\$ 1,212,412	29.7%
West	63,971	296,348	51,772	368,088	780,179	19.1%
Southeast	180,265	252,787	148,881	121,103	703,036	17.2%
Southwest	79,341	161,341	244,544	22,412	507,638	12.4%
Central	204,068	79,392	76,962	31,500	391,922	9.6%
Mid-Atlantic	—	153,092	44,572	128,669	326,333	8.0%
Various <sup>(2)</sup>	94,093	33,933	10,140	—	138,166	3.5%
Strategic Investments <sup>(2)</sup>	—	—	—	—	18,725	0.5%
<b>Total</b>	<b>\$ 1,124,642</b>	<b>\$ 1,378,277</b>	<b>\$ 624,128</b>	<b>\$ 932,639</b>	<b>\$ 4,078,411</b>	<b>100.0%</b>

(1) Represents the market value of our equity method investment in SAFE.

(2) Combined, strategic investments and the various category include \$9.0 million of international assets.

### Real Estate Finance

Our real estate finance business targets sophisticated and innovative owner/operators of real estate and real estate related projects by providing one-stop capabilities that encompass financing alternatives ranging from full envelope senior loans to mezzanine and preferred equity capital positions. As of September 30, 2017, our real estate finance portfolio, including securities, totaled \$1.1 billion, gross of general loan loss reserves. The portfolio included \$860.3 million of performing loans with a weighted average maturity of 1.4 years.

The tables below summarize our loans and the reserves for loan losses associated with our loans (\$ in thousands):

<b>September 30, 2017</b>						
	<b>Number of Loans</b>	<b>Gross Carrying Value</b>	<b>Reserve for Loan Losses</b>	<b>Carrying Value</b>	<b>% of Total</b>	<b>Reserve for Loan Losses as a % of Gross Carrying Value</b>
Performing loans	35	\$ 860,327	\$ (15,200)	\$ 845,127	82.7%	1.8%
Non-performing loans	5	238,155	(60,989)	177,166	17.3%	25.6%
<b>Total</b>	<b>40</b>	<b>\$ 1,098,482</b>	<b>\$ (76,189)</b>	<b>\$ 1,022,293</b>	<b>100.0%</b>	<b>6.9%</b>

<b>December 31, 2016</b>						
	<b>Number of Loans</b>	<b>Gross Carrying Value</b>	<b>Reserve for Loan Losses</b>	<b>Carrying Value</b>	<b>% of Total</b>	<b>Reserve for Loan Losses as a % of Gross Carrying Value</b>
Performing loans	35	\$ 1,202,127	\$ (23,300)	\$ 1,178,827	86.0%	1.9%
Non-performing loans	6	253,941	(62,245)	191,696	14.0%	24.5%
<b>Total</b>	<b>41</b>	<b>\$ 1,456,068</b>	<b>\$ (85,545)</b>	<b>\$ 1,370,523</b>	<b>100.0%</b>	<b>5.9%</b>

*Performing Loans*—The table below summarizes our performing loans gross of reserves (\$ in thousands):

	<b>September 30, 2017</b>	<b>December 31, 2016</b>
Senior mortgages	\$ 512,349	\$ 854,805
Corporate/Partnership loans	338,643	333,244
Subordinate mortgages	9,335	14,078
<b>Total</b>	<b>\$ 860,327</b>	<b>\$ 1,202,127</b>
Weighted average LTV	61%	64%
Yield	10.1%	8.9%

*Non-Performing Loans*—We designate loans as non-performing at such time as: (1) the loan becomes 90 days delinquent; (2) the loan has a maturity default; or (3) management determines it is probable that we will be unable to collect all amounts due according to the contractual terms of the loan. All non-performing loans are placed on non-accrual status and income is only recognized in certain cases upon actual cash receipt. As of September 30, 2017, we had non-performing loans with an aggregate carrying value of \$177.2 million compared to non-performing loans with an aggregate carrying value of \$191.7 million as of December 31, 2016. We expect that our level of non-performing loans will fluctuate from period to period.

*Reserve for Loan Losses*—The reserve for loan losses was \$76.2 million as of September 30, 2017, or 6.9% of total loans, compared to \$85.5 million or 5.9% as of December 31, 2016. For the nine months ended September 30, 2017, the recovery of loan losses included a reduction in the general reserve of \$8.1 million due to an overall improvement in the risk ratings and a decrease in size of our loan portfolio. We expect that our level of reserve for loan losses will fluctuate from period to period. Due to the volatility of the commercial real estate market, the process of estimating collateral values and reserves requires the use of significant judgment. We currently believe there is adequate collateral and reserves to support the carrying values of the loans.

The reserve for loan losses includes an asset-specific component and a formula-based component. An asset-specific reserve is established for an impaired loan when the estimated fair value of the loan's collateral less costs to sell is lower than the carrying value of the loan. As of September 30, 2017, asset-specific reserves decreased to \$61.0 million compared to \$62.2 million as of December 31, 2016.

The formula-based general reserve is derived from estimated principal default probabilities and loss severities applied to groups of performing loans based upon risk ratings assigned to loans with similar risk characteristics during our quarterly loan portfolio assessment. During this assessment, we perform a comprehensive analysis of our loan portfolio and assign risk ratings to loans that incorporate management's current judgments and future expectations about their credit quality based on all known and relevant factors that may affect collectability. We consider, among other things, payment status, lien position, borrower financial resources and investment in collateral, collateral type, project economics and geographical location as well as national and regional

economic factors. This methodology results in loans being segmented by risk classification into risk rating categories that are associated with estimated probabilities of default and principal loss. We estimate loss rates based on historical realized losses experienced within our portfolio and take into account current economic conditions affecting the commercial real estate market when establishing appropriate time frames to evaluate loss experience.

The general reserve decreased to \$15.2 million or 1.8% of performing loans as of September 30, 2017, compared to \$23.3 million or 1.9% of performing loans as of December 31, 2016. The decrease was primarily attributable to an overall improvement in the risk ratings and a decrease in size of our loan portfolio.

#### Net Lease

Our net lease business seeks to create stable cash flows through long-term net leases primarily to single tenants on our properties. We target mission-critical facilities leased on a long-term basis to tenants, offering structured solutions that combine our capabilities in underwriting, lease structuring, asset management and build-to-suit construction. We invest in new net lease investments primarily through our Net Lease Venture, in which we hold a 51.9% interest. The Net Lease Venture has a right of first offer on any new net lease investments that we source. In February 2017, the Net Lease Venture's investment period was extended through February 1, 2018. The term of the Net Lease Venture extends through February 13, 2022, subject to two, one-year extension options at the discretion of the Company and its partner.

In April 2017, institutional investors acquired a controlling interest in our GL business through the merger of one of our subsidiaries and related transactions. Our GL business was a component of our net lease segment and consisted of 12 properties subject to long-term net leases including seven GLs and one master lease (covering five properties). As a result, we deconsolidated the 12 properties and associated liabilities and we began to record our investment in SAFE as an equity method investment.

On June 27, 2017, SAFE completed its initial public offering raising \$205.0 million in gross proceeds and concurrently completed a \$45.0 million private placement to us. Subsequent to the initial public offering, we purchased 1.3 million shares of SAFE's common stock for \$24.5 million at an average cost of \$19.20 per share. As of September 30, 2017, we owned approximately 34.6% of SAFE's common stock outstanding which had an estimated market value of \$117.4 million. In addition, a wholly-owned subsidiary of ours is the external manager of SAFE and our Chief Executive Officer is the Chairman of SAFE's board of directors.

As of September 30, 2017, our consolidated net lease portfolio totaled \$1.15 billion gross of \$306.2 million of accumulated depreciation. Our net lease portfolio including the carrying value of our equity method investments in SAFE and the Net Lease Venture totaled \$1.34 billion. The table below provides certain statistics for our net lease portfolio.

	Consolidated Real Estate	SAFE	Net Lease Venture
Ownership %	100.0%	34.6%	51.9%
Net book value (millions)	\$ 844	\$ 492	\$ 575
Accumulated depreciation (millions)	306	5	43
Gross carrying value (millions)	\$ 1,150	\$ 497	\$ 618
Occupancy	97.9%	100.0%	100.0%
Square footage (thousands)	11,486	3,849	4,005
Weighted average lease term (years)	11.0	66.5	14.3
Weighted average yield	8.9%	3.2%	8.5%

#### Operating Properties

As of September 30, 2017, our operating property portfolio, including equity method investments, totaled \$624.1 million, gross of \$57.3 million of accumulated depreciation, and was comprised of \$558.4 million of commercial and \$65.7 million of residential real estate properties.

#### Commercial Operating Properties

Our commercial operating properties represent a diverse pool of assets across a broad range of geographies and collateral types including office, retail and hotel properties. We generally seek to reposition our transitional properties with the objective of

maximizing their values through the infusion of capital and/or intensive asset management efforts resulting in value realization upon sale.

The table below provides certain statistics for our commercial operating property portfolio.

**Commercial Operating Property Statistics**

	(\$ in millions)					
	Stabilized Operating <sup>(1)</sup>		Transitional Operating <sup>(1)</sup>		Total	
	September 30, 2017	December 31, 2016	September 30, 2017	December 31, 2016	September 30, 2017	December 31, 2016
Gross book value (\$mm) <sup>(2)</sup>	\$ 401	\$ 337	\$ 157	\$ 189	\$ 558	\$ 526
Occupancy <sup>(3)</sup>	86%	86%	56%	54%	77%	74%
Yield	9.1%	8.5%	1.5%	1.5%	7.2%	5.5%

- (1) Stabilized commercial properties generally have occupancy levels above 80% and/or generate yields resulting in a sufficient return based upon the properties' risk profiles. Transitional commercial properties are generally those properties that do not meet these criteria.  
 (2) Gross carrying value represents carrying value gross of accumulated depreciation.  
 (3) Occupancy is as of September 30, 2017 and December 31, 2016.

**Residential Operating Properties**

As of September 30, 2017, our residential operating portfolio was comprised of 32 condominium units generally located within luxury projects in major U.S. cities. The table below provides certain statistics for our residential operating property portfolio (excluding fractional units).

**Residential Operating Property Statistics**

(\$ in millions)

	Nine Months Ended September 30,	
	2017	2016
Condominium units sold	16	80
Proceeds	\$ 21.4	\$ 73.3
Income from sales of real estate	\$ 3.3	\$ 23.3

## Land and Development

As of September 30, 2017, our land and development portfolio, gross of accumulated depreciation and including equity method investments, totaled \$932.6 million, with eight projects in production, eight in development and 13 in the pre-development phase. These projects are collectively entitled for approximately 13,000 lots and units. The following tables presents certain statistics for our land and development portfolio.

### Land and Development Portfolio Rollforward

(in millions)

#### Nine Months Ended September 30,

	2017		2016	
Beginning balance <sup>(1)</sup>	\$	945.6	\$	1,002.0
Asset sales <sup>(2)</sup>		(160.4)		(40.0)
Asset transfers in (out) <sup>(3)</sup>		—		(25.4)
Capital expenditures		91.7		92.2
Other		(15.4)		(6.7)
Ending balance <sup>(1)</sup>	\$	861.5	\$	1,022.1

(1) As of September 30, 2017 and December 31, 2016, excludes \$63.3 million and \$84.8 million, respectively, of equity method investments.

(2) Represents gross book value of the assets sold, rather than proceeds received.

(3) Assets transferred into land and development segment or out to another segment.

### Land and Development Statistics

(in millions)

#### Nine Months Ended September 30,

	2017		2016	
Land development revenue	\$	178.7	\$	74.4
Land development cost of sales		165.9		50.8
Gross margin	\$	12.8	\$	23.6
Earnings from land development equity method investments		8.4		31.2
Total	\$	21.2	\$	54.8



**Results of Operations for the Three Months Ended September 30, 2017 compared to the Three Months Ended September 30, 2016**

	For the Three Months Ended September 30,		\$ Change	% Change
	2017	2016		
	(in thousands)			
Operating lease income	\$ 47,806	\$ 46,800	\$ 1,006	2 %
Interest income	25,442	32,258	(6,816)	(21)%
Other income	20,662	13,442	7,220	54 %
Land development revenue	25,962	31,554	(5,592)	(18)%
<b>Total revenue</b>	<b>119,872</b>	<b>124,054</b>	<b>(4,182)</b>	<b>(3)%</b>
Interest expense	48,732	55,105	(6,373)	(12)%
Real estate expense	36,280	35,243	1,037	3 %
Land development cost of sales	27,512	22,004	5,508	25 %
Depreciation and amortization	11,846	12,201	(355)	(3)%
General and administrative	20,955	19,666	1,289	7 %
(Recovery of) provision for loan losses	(2,600)	(14,955)	12,355	(83)%
Impairment of assets	595	8,741	(8,146)	(93)%
Other expense	2,704	819	1,885	>100%
<b>Total costs and expenses</b>	<b>146,024</b>	<b>138,824</b>	<b>7,200</b>	<b>5 %</b>
Loss on early extinguishment of debt, net	(616)	(36)	(580)	>100%
Earnings from equity method investments	2,461	26,540	(24,079)	(91)%
Income tax (expense) benefit	1,278	8,256	(6,978)	(85)%
Income from discontinued operations	—	3,721	(3,721)	(100)%
Income from sales of real estate	19,313	34,444	(15,131)	(44)%
<b>Net (loss) income</b>	<b>\$ (3,716)</b>	<b>\$ 58,155</b>	<b>\$ (61,871)</b>	<b>&gt;(100)%</b>

**Revenue**—Operating lease income, which primarily includes income from net lease assets and commercial operating properties, increased to \$47.8 million during the three months ended September 30, 2017 from \$46.8 million for the same period in 2016.

Operating lease income from net lease assets decreased to \$31.5 million during the three months ended September 30, 2017 from \$32.3 million for the same period in 2016. The decrease was due to the sale of net lease assets since October 1, 2016. Operating lease income from same store net lease assets, defined as net lease assets we owned on or prior to July 1, 2016 and were in service through September 30, 2017, increased to \$31.4 million during the three months ended September 30, 2017 and \$30.1 million during the three months ended September 30, 2016. The increase was primarily due to an increase in rent per occupied square foot, which was \$11.18 for the three months ended September 30, 2017 and \$10.59 for the same period in 2016, and was partially offset by a decrease in the occupancy rate, which was 97.9% as of September 30, 2017 and 98.8% as of September 30, 2016.

Operating lease income from operating properties increased to \$16.0 million during the three months ended September 30, 2017 from \$14.4 million for the same period in 2016. The increase was primarily due to the execution of new leases. Operating lease income from same store commercial operating properties, defined as commercial operating properties, excluding hotels and marinas, which we owned on or prior to July 1, 2016 and were in service through September 30, 2017, increased to \$11.9 million during the three months ended September 30, 2017 as compared to \$11.6 million for the same period in 2016. The increase was due to an increase in occupancy rates, which were 75.8% as of September 30, 2017 and 71.0% as of September 30, 2016, partially offset by a decrease in rent per occupied square foot, which was \$24.72 for the three months ended September 30, 2017 and \$25.71 for the same period in 2016. Ancillary operating lease income from land and development assets was \$0.3 million and \$0.1 million during the three months ended September 30, 2017 and 2016, respectively.

Interest income decreased to \$25.4 million during the three months ended September 30, 2017 from \$32.3 million for the same period in 2016. The decrease was due primarily to a decrease in the average balance of our performing loans, which decreased

to \$981.0 million in 2017 from \$1.42 billion in 2016. The weighted average yield on our performing loans increased to 10.1% for the three months ended September 30, 2017 from 9.1% for the same period in 2016.

Other income increased to \$20.7 million during the three months ended September 30, 2017 from \$13.4 million for the same period in 2016. Other income during the three months ended September 30, 2017 consisted primarily of income from our hotel properties, other ancillary income from our operating properties and interest income on our cash. Other income during the three months ended September 30, 2016 consisted of primarily of income from our hotel properties and other ancillary income from our operating properties. The increase in other income in 2017 from 2016 was due primarily to an increase in income at our hotel properties and an increase in interest income earned on our cash.

**Land development revenue and cost of sales**—During the three months ended September 30, 2017, we sold residential lots and units and recognized land development revenue of \$26.0 million which had associated cost of sales of \$27.5 million. During the three months ended September 30, 2016, we sold residential lots and units and recognized land development revenue of \$31.6 million which had associated cost of sales of \$22.0 million.

**Costs and expenses**—Interest expense decreased to \$48.7 million during the three months ended September 30, 2017 from \$55.1 million for the same period in 2016 due to a decrease in the balance of our average outstanding debt, which decreased to \$3.71 billion for the three months ended September 30, 2017 from \$3.96 billion for the same period in 2016. Our weighted average cost of debt for the three months ended September 30, 2017 and 2016 was 5.4% and 5.6%, respectively.

Real estate expenses increased to \$36.3 million during the three months ended September 30, 2017 from \$35.2 million for the same period in 2016. The increase was due primarily to an increase in expenses at commercial operating properties, which increased to \$21.6 million in 2017 from \$18.9 million in 2016, primarily resulting from an increase in costs at our hotel properties and losses incurred at properties impacted by the recent hurricanes that hit the United States. This increase was offset by a decrease in carry costs and other expenses on our land assets, which decreased to \$8.7 million during the three months ended September 30, 2017 from \$9.4 million for the same period in 2016. Expenses for net lease assets decreased to \$4.4 million during the three months ended September 30, 2017 from \$4.7 million for the same period in 2016. Expenses from same store net lease assets was \$4.3 million and \$3.7 million, respectively, for the three months ended September 30, 2017 and 2016. Expenses from same store commercial operating properties, excluding hotels and marinas, was \$7.5 million and \$7.6 million for the three months ended September 30, 2017 and 2016, respectively. Expenses associated with residential operating properties decreased to \$1.6 million during the three months ended September 30, 2017 from \$2.2 million for the same period in 2016 due to the sale of residential units since September 30, 2016.

Depreciation and amortization decreased to \$11.8 million during the three months ended September 30, 2017 from \$12.2 million for the same period in 2016, primarily due to the sale of net lease and commercial operating properties in since October 1, 2016.

General and administrative expenses increased to \$21.0 million during the three months ended September 30, 2017 from \$19.7 million for the same period in 2016, primarily due to an increase in compensation expense related to performance incentive plans.

The net recovery of loan losses was \$2.6 million during the three months ended September 30, 2017 as compared to a net recovery of loan losses of \$15.0 million for the same period in 2016. The recovery of loan losses for the three months ended September 30, 2017 was due to a reduction in the general reserve due to an overall improvement in the risk ratings of our loan portfolio. The net recovery of loan losses for the three months ended September 30, 2016 included recoveries of specific reserves of \$11.7 million and a reduction in the general reserve of \$15.8 million, partially offset by a provision on one non-performing loan of \$12.5 million.

Impairment of assets was \$0.6 million during the three months ended September 30, 2017 and resulted from the sale of an outparcel of land located at a commercial operating property. During the three months ended September 30, 2016, we recorded an aggregate impairment of \$8.7 million from the sale of net lease assets and a change in business strategy on one land asset.

Other expense increased to \$2.7 million during the three months ended September 30, 2017 from \$0.8 million for the same period in 2016. The increase was primarily the result of costs incurred in connection with the repricing of our 2016 Senior Secured Credit Facility (refer to Note 10).

**Loss on early extinguishment of debt, net**—During the three months ended September 30, 2017, we incurred losses on early extinguishment of debt of \$0.6 million resulting from repayments of our 2016 Senior Secured Credit Facility. During the three months ended September 30, 2016, we incurred losses on the early extinguishment of debt of \$36 thousand related to repayments of secured facilities and unsecured notes prior to maturity.

**Earnings from equity method investments**—Earnings from equity method investments decreased to \$2.5 million during the three months ended September 30, 2017 from \$26.5 million for the same period in 2016. During the three months ended September 30, 2017, we recognized \$1.0 million related to operations at our Net Lease Venture, \$0.9 million from land development ventures and \$0.6 million was aggregate income from our remaining equity method investments. During the three months ended September 30, 2016, we recognized \$15.8 million of earnings primarily from the distribution of non-recourse financing proceeds at one of our land equity method investments, \$6.2 million related to sales activity on a land development venture, \$0.7 million related to operations at our Net Lease Venture and \$3.8 million was aggregate income from our remaining equity method investments.

**Income tax (expense) benefit**—An income tax benefit of \$1.3 million was recorded during the three months ended September 30, 2017 as compared to an income tax benefit of \$8.3 million for the same period in 2016. The income tax benefit for the three months ended September 30, 2017 primarily resulted from a taxable loss incurred and the deduction for dividends paid to preferred shareholders (refer to Note 13). The income tax benefit for the three months ended September 30, 2016 primarily related to taxable losses generated by sales of certain taxable REIT subsidiary ("TRS") properties.

**Discontinued Operations**—In April 2017, institutional investors acquired a controlling interest in our GL business through the merger of one of our subsidiaries and related transactions. We received total consideration of \$340.0 million, including \$113.0 million in cash, including \$55.5 million that we contributed to SAFE in its initial capitalization, and the proceeds from the \$227.0 million 2017 Secured Financing (refer to Note 10). Income from discontinued operations represents the operating results from the 12 properties comprising our GL business.

**Income from sales of real estate**—During the three months ended September 30, 2017, we recognized gains due to sales of net lease assets and residential condominiums of \$18.8 million and \$0.5 million, respectively. During the three months ended September 30, 2016, we recognized gains due to sales of commercial operating properties of \$23.4 million, net lease assets of \$6.6 million and residential condominiums of \$4.4 million.

**Results of Operations for the Nine Months Ended September 30, 2017 compared to the Nine Months Ended September 30, 2016**

	<b>For the Nine Months Ended September 30,</b>			
	<b>2017</b>	<b>2016</b>	<b>\$ Change</b>	<b>% Change</b>
	(in thousands)			
Operating lease income	\$ 142,155	\$ 147,270	\$ (5,115)	(3)%
Interest income	83,145	99,877	(16,732)	(17)%
Other income	172,037	35,079	136,958	>100%
Land development revenue	178,722	74,389	104,333	>100%
<b>Total revenue</b>	<b>576,059</b>	<b>356,615</b>	<b>219,444</b>	<b>62 %</b>
Interest expense	148,684	168,173	(19,489)	(12)%
Real estate expense	106,554	104,815	1,739	2 %
Land development cost of sales	165,888	50,842	115,046	>100%
Depreciation and amortization	37,297	39,781	(2,484)	(6)%
General and administrative	73,347	62,433	10,914	17 %
(Recovery of) provision for loan losses	(8,128)	(12,749)	4,621	(36)%
Impairment of assets	15,292	11,753	3,539	30 %
Other expense	20,849	4,741	16,108	>100%
<b>Total costs and expenses</b>	<b>559,783</b>	<b>429,789</b>	<b>129,994</b>	<b>30 %</b>
Loss on early extinguishment of debt, net	(4,142)	(1,618)	(2,524)	>100%
Earnings from equity method investments	13,677	74,254	(60,577)	(82)%
Income tax (expense) benefit	(972)	9,859	(10,831)	>(100)%
Income from discontinued operations	4,939	10,934	(5,995)	(55)%
Gain from discontinued operations	123,418	—	123,418	100 %
Income tax expense from discontinued operations	(4,545)	—	(4,545)	(100)%
Income from sales of real estate	28,267	88,387	(60,120)	(68)%
<b>Net income</b>	<b>\$ 176,918</b>	<b>\$ 108,642</b>	<b>\$ 68,276</b>	<b>63 %</b>

**Revenue**—Operating lease income, which primarily includes income from net lease assets and commercial operating properties, decreased to \$142.2 million during the nine months ended September 30, 2017 from \$147.3 million for the same period in 2016.

Operating lease income from net lease assets decreased to \$93.6 million during the nine months ended September 30, 2017 from \$95.6 million for the same period in 2016. The decrease was primarily due to the sale of net lease assets since October 1, 2016. Operating lease income from same store net lease assets, defined as net lease assets we owned on or prior to January 1, 2016 and were in service through September 30, 2017, increased to \$90.1 million during the nine months ended September 30, 2017 from \$88.6 million for the same period in 2016. This increase was primarily due to an increase in rent per occupied square foot to \$10.68 for the nine months ended September 30, 2017 from \$10.41 for the same period in 2016, partially offset by a decrease in the occupancy rate, which was 97.9% as of September 30, 2017 and 98.8% as of September 30, 2016.

Operating lease income from operating properties decreased to \$48.0 million during the nine months ended September 30, 2017 from \$51.3 million for the same period in 2016. The decrease was primarily due to commercial operating property sales since October 1, 2016, partially offset by the execution of new leases. Operating lease income from same store commercial operating properties, defined as commercial operating properties, excluding hotels and marinas, which we owned on or prior to January 1, 2016 and were in service through September 30, 2017, increased to \$35.3 million during the nine months ended September 30, 2017 as compared to \$34.2 million for the same period in 2016. This increase was primarily due to an increase in occupancy rates, which were 75.8% as of September 30, 2017 and 71.0% as of September 30, 2016, partially offset by a decrease in rent per occupied square foot, which was \$24.47 for the nine months ended September 30, 2017 and \$25.30 for the same period in 2016. Ancillary operating lease income from land and development assets was \$0.6 million and \$0.3 million during the nine months ended September 30, 2017 and 2016, respectively.

Interest income decreased to \$83.1 million during the nine months ended September 30, 2017 from \$99.9 million for the same period in 2016. The decrease was due primarily to a decrease in the average balance of our performing loans, which decreased to \$1.15 billion in 2017 from \$1.44 billion in 2016. The weighted average yield on our performing loans increased to 9.6% for the nine months ended September 30, 2017 from 8.9% for the same period in 2016.

Other income increased to \$172.0 million during the nine months ended September 30, 2017 from \$35.1 million for the same period in 2016. Other income during the nine months ended September 30, 2017 primarily consisted of interest income and real estate tax reimbursements resulting from the settlement of litigation involving a dispute over the purchase and sale of land (refer to Note 11), income from our hotel properties and other ancillary income from our operating properties. Other income during the nine months ended September 30, 2016 consisted of income from our hotel properties, loan prepayment fees and property tax refunds.

**Land development revenue and cost of sales**—During the nine months ended September 30, 2017, we sold residential lots and units and one land parcel totaling 1,250 acres and recognized land development revenue of \$178.7 million which had associated cost of sales of \$165.9 million. During the nine months ended September 30, 2016, we sold residential lots and units and recognized land development revenue of \$74.4 million which had associated cost of sales of \$50.8 million. The increase in 2017 from 2016 was primarily due to the resolution of litigation involving a dispute over the purchase and sale of the approximately 1,250 acres of land in Prince George's County, Maryland, which resulted in us recognizing \$114.0 million of land development revenue and \$106.3 million of land development cost of sales (refer to Note 11).

**Costs and expenses**—Interest expense decreased to \$148.7 million during the nine months ended September 30, 2017 from \$168.2 million for the same period in 2016 due to a decrease in the balance of our average outstanding debt, which decreased to \$3.67 billion for the nine months ended September 30, 2017 from \$4.09 billion for the same period in 2016. Our weighted average cost of debt for the nine months ended September 30, 2017 and 2016 was 5.6%.

Real estate expenses increased to \$106.6 million during the nine months ended September 30, 2017 from \$104.8 million for the same period in 2016. The increase was due to expenses for commercial operating properties, which increased to \$62.3 million during the nine months ended September 30, 2017 from \$56.1 million for the same period in 2016. This increase was primarily due to an increase in expenses at our hotel properties and losses incurred at properties impacted by the recent hurricanes that hit the United States, partially offset by property sales since October 1, 2016. This increase was partially offset by a decrease in carry costs and other expenses on our land assets, which decreased to \$26.1 million during the nine months ended September 30, 2017 from \$28.0 million for the same period in 2016. Expenses from same store commercial operating properties, excluding hotels and marinas, decreased to \$22.4 million from \$22.6 million for the same period in 2016. Expenses associated with residential operating properties decreased to \$5.1 million during the nine months ended September 30, 2017 from \$7.0 million for the same period in 2016 due to the sale of residential units since September 30, 2016. Expenses for net lease assets decreased to \$13.1 million during the nine months ended September 30, 2017 from \$13.8 million for the same period in 2016. Expenses from same store net lease assets was \$12.1 million and \$10.6 million, respectively, for the nine months ended September 30, 2017 and 2016.

Depreciation and amortization decreased to \$37.3 million during the nine months ended September 30, 2017 from \$39.8 million for the same period in 2016, primarily due to the sale of net lease and commercial operating properties in since October 1, 2016.

General and administrative expenses increased to \$73.3 million during the nine months ended September 30, 2017 from \$62.4 million for the same period in 2016, primarily due to an increase in compensation expense related to performance incentive plans.

The net recovery of loan losses was \$8.1 million during the nine months ended September 30, 2017 as compared to a net recovery of loan losses of \$12.7 million for the same period in 2016. The recovery of loan losses for the nine months ended September 30, 2017 resulted from a reduction in the general reserve due to an overall improvement in the risk ratings of our loan portfolio. Included in the net recovery for the nine months ended September 30, 2016 were recoveries of specific reserves of \$11.7 million and a reduction in the general reserve of \$14.8 million, partially offset by provisions on two non-performing loans of \$13.8 million.

Impairment of assets was \$15.3 million during the nine months ended September 30, 2017 and resulted primarily from an impairment on a land and development asset due to a change in our exit strategy and an impairment on a real estate asset held for sale due to shifting demand in the local condominium market along with a change in our exit strategy. During the nine months ended September 30, 2016, we recorded impairments of \$11.8 million comprised of \$3.8 million on a land asset resulting from a change in business strategy, \$3.0 million on a residential operating property resulting from unfavorable local market conditions and \$4.8 million on the sale of net lease assets.

Other expense increased to \$20.8 million during the nine months ended September 30, 2017 from \$4.7 million for the same period in 2016. The increase was primarily the result of paying organization and offering costs associated with the initial public offering of SAFE (refer to Note 7) and costs incurred in connection with the repricing of our 2016 Senior Secured Credit Facility (refer to Note 10) recorded during the nine months ended September 30, 2017.

**Loss on early extinguishment of debt, net**—During the nine months ended September 30, 2017, we incurred losses on early extinguishment of debt of \$4.1 million resulting from repayments of unsecured notes prior to maturity and the repricing of our 2016 Senior Secured Credit Facility. During the nine months ended September 30, 2016, we incurred losses on the early extinguishment of debt of \$1.6 million related to repayments of secured facilities and unsecured notes prior to maturity.

**Earnings from equity method investments**—Earnings from equity method investments decreased to \$13.7 million during the nine months ended September 30, 2017 from \$74.3 million for the same period in 2016. During the nine months ended September 30, 2017, we recognized \$3.8 million primarily from profit participations on a land development venture, \$4.8 million related to sales activity on a land development venture, \$3.0 million related to operations at our Net Lease Venture and \$2.1 million was aggregate income from our remaining equity method investments. During the nine months ended September 30, 2016, we recognized \$33.2 million primarily from the sale of an equity method investment in a commercial operating property, \$11.6 million of earnings primarily from the distribution of non-recourse financing proceeds at one of our land equity method investments, \$19.6 million related to sales activity on a land development venture, \$2.6 million related to operations at our Net Lease Venture and \$7.3 million was aggregate income from our remaining equity method investments.

**Income tax (expense) benefit**—An income tax expense of \$1.0 million was recorded during the nine months ended September 30, 2017 as compared to an income tax benefit of \$9.9 million for the same period in 2016. The income tax expense for the nine months ended September 30, 2017 primarily related to federal alternative minimum taxes on REIT taxable income generated by the settlement of litigation on the sale of a land parcel. The income tax benefit for the nine months ended September 30, 2016 primarily related to taxable losses generated by sales of certain TRS properties.

**Discontinued Operations**—During the nine months ended September 30, 2017, institutional investors acquired a controlling interest in our GL business through the merger of one of our subsidiaries and related transactions. We received total consideration of \$340.0 million, including \$113.0 million in cash, including \$55.5 million that we contributed to SAFE in its initial capitalization, and the proceeds from the \$227.0 million 2017 Secured Financing (refer to Note 10). We had a carrying value of approximately \$161.1 million in our GL assets and recognized a gain from discontinued operations of \$123.4 million, reflecting the aggregate gain less the fair value of our retained interest in SAFE. Income from discontinued operations represents the operating results from the 12 properties comprising our GL business.

**Income from sales of real estate**—During the nine months ended September 30, 2017, we recognized gains due to sales of net lease assets and residential operating properties of \$25.0 and \$3.3 million, respectively. During the nine months ended September 30, 2016, we recognized gains due to sales of commercial operating properties of \$49.2 million, residential condominiums of \$23.3 million and net lease assets of \$15.9 million.

## Adjusted Income

In addition to net income (loss) prepared in conformity with generally accepted accounting principles in the United States of America ("GAAP"), we use adjusted income, a non-GAAP financial measure, to measure our operating performance. Adjusted income is used internally as a supplemental performance measure adjusting for certain non-cash GAAP measures to give management a view of income more directly derived from current period activity. Adjusted income is calculated as net income (loss) allocable to common shareholders, prior to the effect of depreciation and amortization, provision for (recovery of) loan losses, impairment of assets, stock-based compensation expense, the non-cash portion of gain (loss) on early extinguishment of debt and is adjusted for the effect of gains or losses on charge-offs and dispositions on carrying value gross of loan loss reserves and impairments ("Adjusted Income"). In the third quarter 2017, we modified our presentation of Adjusted Income to exclude the effect of the amount of the liquidation preference that was recorded as a premium above book value on the redemption of preferred stock (refer to Note 13) and the imputed non-cash interest expense recognized for the conversion feature of our senior convertible notes (refer to Note 10).

Adjusted Income should be examined in conjunction with net income (loss) as shown in our consolidated statements of operations. Adjusted Income should not be considered as an alternative to net income (loss) (determined in accordance with GAAP), or to cash flows from operating activities (determined in accordance with GAAP), as a measure of our liquidity, nor is Adjusted Income indicative of funds available to fund our cash needs or available for distribution to shareholders. Rather, Adjusted Income is an additional measure we use to analyze our business performance because it excludes the effects of certain non-cash charges that we believe are not necessarily indicative of our operating performance while including the effect of gains or losses on investments when realized. It should be noted that our manner of calculating Adjusted Income may differ from the calculations of similarly-titled measures by other companies.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2017	2016	2017	2016
	(in thousands)			
<b>Adjusted Income</b>				
Net income (loss) allocable to common shareholders	\$ (34,530)	\$ 46,292	\$ 115,834	\$ 63,210
Add: Depreciation and amortization <sup>(1)</sup>	14,765	15,598	45,438	50,107
Add: (Recovery of) provision for loan losses	(2,600)	(14,955)	(8,128)	(12,749)
Add: Impairment of assets <sup>(2)</sup>	595	8,741	15,292	12,668
Add: Stock-based compensation expense	2,934	1,434	12,730	7,644
Add: Loss on early extinguishment of debt, net	616	36	1,392	1,618
Add: Non-cash interest expense on senior convertible notes	110	—	110	—
Add: Premium on redemption of preferred stock	16,314	—	16,314	—
Less: Losses on charge-offs and dispositions <sup>(3)</sup>	(1,779)	(8,039)	(15,906)	(12,602)
Less: Participating Security allocation	—	—	—	(21)
Adjusted income (loss) allocable to common shareholders	<u>\$ (3,575)</u>	<u>\$ 49,107</u>	<u>\$ 183,076</u>	<u>\$ 109,875</u>

(1) Depreciation and amortization also includes our proportionate share of depreciation and amortization expense for equity method investments and excludes the portion of depreciation and amortization expense allocable to noncontrolling interests.

(2) For the nine months ended September 30, 2016, impairment of assets includes impairments on equity method investments recorded in "Earnings from equity method investments" in our consolidated statements of operations.

(3) Represents the impact of charge-offs and dispositions realized during the period. These charge-offs and dispositions were on assets that were previously impaired for GAAP and reflected in net income but not Adjusted Income.



**Liquidity and Capital Resources**

During the three months ended September 30, 2017, we invested \$140.4 million associated with new investments, prior financing commitments as well as ongoing development during the quarter. Total investments included \$57.9 million in lending and other investments, \$34.5 million to develop our land and development assets and \$48.0 million of capital to reposition or redevelop our operating properties and invest in net lease assets. Also during the three months ended September 30, 2017, we generated \$247.0 million of proceeds from loan repayments and asset sales within our portfolio, comprised of \$137.7 million from real estate finance, \$7.3 million from operating properties, \$61.4 million from net lease assets, \$32.1 million from land and development assets and \$8.5 million from other investments. These amounts are inclusive of fundings and proceeds from both consolidated investments and our pro rata share from equity method investments.

The following table outlines our capital expenditures on real estate and land and development assets as reflected in our consolidated statements of cash flows, by segment (\$ in thousands):

	<b>For the Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>
Operating Properties	\$ 22,308	\$ 33,367
Net Lease	2,583	2,307
<b>Total capital expenditures on real estate assets</b>	<b>\$ 24,891</b>	<b>\$ 35,674</b>
Land and Development	\$ 84,966	\$ 58,961
<b>Total capital expenditures on land and development assets</b>	<b>\$ 84,966</b>	<b>\$ 58,961</b>

As of September 30, 2017, we had unrestricted cash of \$1.9 billion; however, we used approximately \$1.4 billion subsequent to September 30, 2017 to redeem several series of our unsecured notes and preferred stock, as discussed above under "Executive Overview." Our primary cash uses over the next 12 months are expected to be funding of investments, capital expenditures and funding ongoing business operations. Over the next 12 months, we currently expect to fund in the range of approximately \$175.0 million to \$225.0 million of capital expenditures within our portfolio. The majority of these amounts relate to our land and development and operating properties business segments and include multifamily and residential development activities which are expected to include approximately \$100.0 million in vertical construction. The amount spent will depend on the pace of our development activities as well as the extent to which we strategically partner with others to complete these projects. As of September 30, 2017, we also had approximately \$419.8 million of maximum unfunded commitments associated with our investments of which we expect to fund the majority of over the next two years, assuming borrowers and tenants meet all milestones, performance hurdles and all other conditions to fundings (see "Unfunded Commitments" below). Our capital sources to meet cash uses through the next 12 months and beyond will primarily be expected to include cash on hand, income from our portfolio, loan repayments from borrowers and proceeds from asset sales.

We cannot predict with certainty the specific transactions we will undertake to generate sufficient liquidity to meet our obligations as they come due. We will adjust our plans as appropriate in response to changes in our expectations and changes in market conditions. While economic trends have stabilized, it is not possible for us to predict whether these trends will continue or to quantify the impact of these or other trends on our financial results.



**Contractual Obligations**—The following table outlines the contractual obligations related to our long-term debt obligations, loan participations payable, operating lease obligations and accounts payable related to the redemption of our Series E and Series F preferred stock as of September 30, 2017 (refer to Note 10 to the consolidated financial statements).

	Amounts Due By Period					
	Total	Less Than 1 Year	1 - 3 Years	3 - 5 Years	5 - 10 Years	After 10 Years
(in thousands)						
<b>Long-Term Debt Obligations:</b>						
Unsecured notes <sup>(1)</sup>	\$ 3,620,000	\$ 1,150,000	\$ 1,170,000	\$ 1,300,000	\$ —	\$ —
Secured credit facilities	400,000	4,000	8,000	388,000	—	—
Mortgages	223,182	17,465	39,449	116,994	49,274	—
Trust preferred securities	100,000	—	—	—	—	100,000
Total principal maturities	4,343,182	1,171,465	1,217,449	1,804,994	49,274	100,000
<b>Interest Payable<sup>(2)</sup></b>	<b>663,822</b>	<b>198,333</b>	<b>273,116</b>	<b>153,470</b>	<b>15,176</b>	<b>23,727</b>
<b>Loan Participations Payable<sup>(3)</sup></b>	<b>122,846</b>	<b>115,243</b>	<b>7,603</b>	<b>—</b>	<b>—</b>	<b>—</b>
<b>Operating Lease Obligations</b>	<b>19,159</b>	<b>5,408</b>	<b>7,819</b>	<b>3,018</b>	<b>2,914</b>	<b>—</b>
<b>Accounts Payable<sup>(4)</sup></b>	<b>241,830</b>	<b>241,830</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>
<b>Total</b>	<b>\$ 5,390,839</b>	<b>\$ 1,732,279</b>	<b>\$ 1,505,987</b>	<b>\$ 1,961,482</b>	<b>\$ 67,364</b>	<b>\$ 123,727</b>

(1) Subsequent to September 30, 2017, we repaid the \$550.0 million principal amount outstanding of our 4.0% senior unsecured notes due November 2017, the \$300.0 million principal amount outstanding of our 7.125% senior unsecured notes due February 2018 and the \$300.0 million principal amount outstanding of our 4.875% senior unsecured notes due July 2018.

(2) Variable-rate debt assumes 1-month LIBOR of 1.23% and 3-month LIBOR of 1.34% that were in effect as of September 30, 2017. Interest payable includes \$36.3 million of aggregate interest payable on the \$550.0 million principal amount of 4.0% senior unsecured notes due November 2017, the \$300.0 million principal amount of 7.125% senior unsecured notes due February 2018 and the \$300.0 million principal amount of 4.875% senior unsecured notes due July 2018 that were all repaid in October 2018.

(3) Refer to Note 9 to the consolidated financial statements.

(4) On September 19, 2017, we gave irrevocable notice to redeem all of our issued and outstanding Series E and Series F preferred stock for the aggregate liquidation preference of \$240.0 million, plus accrued and unpaid dividends of \$1.8 million to the redemption date, on October 20, 2017 (refer to Note 13).

**2017 Secured Financing**—In March 2017, we (through wholly-owned subsidiaries conducting our GL business) entered into a \$227.0 million secured financing transaction (the "2017 Secured Financing") that accrued interest at 3.795% and matures in April 2027. The 2017 Secured Financing was collateralized by the 12 properties comprising our GL business, including seven GLs and one master lease (covering the accounts of five properties). In connection with the 2017 Secured Financing, we incurred \$7.3 million of lender and third-party fees, substantially all of which was capitalized in "Debt obligations, net" on our consolidated balance sheets. In April 2017, we derecognized the 2017 Secured Financing when third parties acquired a controlling interest in the Company's GL business (refer to Note 4).

**2016 Secured Term Loan**—In December 2016, we arranged a \$170.0 million delayed draw secured term loan (the "2016 Secured Term Loan"). In March 2017, we allowed the 2016 Secured Term Loan to expire and replaced the 2016 Secured Term Loan with the 2017 Secured Financing. The 2016 Secured Term Loan was collateralized by the 12 properties that served as collateral for the 2017 Secured Financing.

**2016 Senior Secured Credit Facility**—In June 2016, we entered into a senior secured credit facility of \$450.0 million (the "2016 Senior Secured Credit Facility"). In August 2016, we upsized the facility to \$500.0 million. The initial \$450.0 million of the 2016 Senior Secured Credit Facility was issued at 99% of par and the upside was issued at par. In January 2017, we repriced the 2016 Senior Secured Credit Facility to LIBOR plus 3.75% with a 1.00% LIBOR floor from LIBOR plus 4.50% with a 1.00% LIBOR floor. In September 2017, we downsized, repriced and extended the 2016 Senior Secured Credit Facility to \$400.0 million priced at LIBOR plus 3.00% with a 0.75% LIBOR floor and maturing in October 2021. These transactions resulted in an aggregate 1.50% reduction in price.

The 2016 Senior Secured Credit Facility is collateralized 1.25x by a first lien on a fixed pool of assets. Proceeds from principal repayments and sales of collateral are applied to amortize the 2016 Senior Secured Credit Facility. Proceeds received for interest, rent, lease payments and fee income are retained by us. We may also make optional prepayments, subject to prepayment fees, and are required to repay 0.25% of the principal amount on the first business day of each quarter.

**2015 Secured Revolving Credit Facility**—In March 2015, we entered into a secured revolving credit facility with a maximum capacity of \$250.0 million (the "2015 Secured Revolving Credit Facility"). In September 2017, we upsized the 2015 Secured Revolving Credit Facility to \$325.0 million, added additional lenders to the syndicate, extended the maturity date to September 2020 and made certain other changes. Borrowings under this credit facility bear interest at a floating rate indexed to one of several base rates plus a margin which adjusts upward or downward based upon our corporate credit rating. An undrawn credit facility commitment fee ranges from 0.30% to 0.50%, based on corporate credit ratings each quarter. At maturity, we may convert outstanding borrowings to a one-year term loan which matures in quarterly installments through September 2021. As of September 30, 2017, based on our borrowing base of assets, we had \$325.0 million of borrowing capacity available under the 2015 Secured Revolving Credit Facility.

**Unsecured Notes**—In September 2017, our corporate credit rating was upgraded by Moody's, S&P and Fitch and we issued \$400.0 million principal amount of 4.625% senior unsecured notes due September 2020, \$400.0 million principal amount of 5.25% senior unsecured notes due September 2022 and \$250.0 million of 3.125% Convertible Notes due September 2022. Subsequent to September 30, 2017, proceeds from these offerings, together with cash on hand, were used to repay in full the \$550.0 million principal amount outstanding of our 4.0% senior unsecured notes due November 2017, the \$300.0 million principal amount outstanding of our 7.125% senior unsecured notes due February 2018 and the \$300.0 million principal amount outstanding of our 4.875% senior unsecured notes due July 2018. In addition, subsequent to September 30, 2017, the initial purchasers of the 3.125% Convertible Notes exercised their option to purchase an additional \$37.5 million aggregate principal amount of the 3.125% Convertible Notes.

In March 2017, we issued \$375.0 million principal amount of 6.00% senior unsecured notes due April 2022. Proceeds from the offering were primarily used to repay in full the \$99.7 million principal amount outstanding of our 5.85% senior unsecured notes due March 2017 and repay in full the \$275.0 million principal amount outstanding of our 9.00% senior unsecured notes due June 2017. In March 2016, we repaid the \$261.4 million principal amount outstanding of our 5.875% senior unsecured notes at maturity using available cash. In addition, we issued \$275.0 million principal amount of 6.50% senior unsecured notes due July 2021. Proceeds from the offering were primarily used to repay in full the \$265.0 million principal amount outstanding of our senior unsecured notes due July 2016 and repay \$5.0 million of the 2015 Secured Revolving Credit Facility.

**Encumbered/Unencumbered Assets**—The carrying value of our encumbered and unencumbered assets by asset type are as follows (\$ in thousands):

	As of			
	September 30, 2017		December 31, 2016	
	Encumbered Assets	Unencumbered Assets	Encumbered Assets	Unencumbered Assets
Real estate, net	\$ 841,570	\$ 482,292	\$ 881,212	\$ 506,062
Real estate available and held for sale	—	65,658	—	237,531
Land and development, net	25,100	836,407	35,165	910,400
Loans receivable and other lending investments, net <sup>(1)(2)</sup>	188,973	813,447	172,581	1,142,050
Other investments	—	289,037	—	214,406
Cash and other assets	—	2,145,713	—	590,299
<b>Total</b>	<b>\$ 1,055,643</b>	<b>\$ 4,632,554</b>	<b>\$ 1,088,958</b>	<b>\$ 3,600,748</b>

(1) As of September 30, 2017 and December 31, 2016, the amounts presented exclude general reserves for loan losses of \$15.2 million and \$23.3 million, respectively.

(2) As of September 30, 2017 and December 31, 2016, the amounts presented exclude loan participations of \$122.2 million and \$159.1 million, respectively.

**Debt Covenants**—Our outstanding unsecured debt securities contain corporate level covenants that include a covenant to maintain a ratio of unencumbered assets to unsecured indebtedness of at least 1.2x and a covenant not to incur additional indebtedness (except for incurrences of permitted debt), if on a pro forma basis, our consolidated fixed charge coverage ratio, determined in accordance with the indentures governing our debt securities, is 1.5x or lower. If any of our covenants are breached and not cured within applicable cure periods, the breach could result in acceleration of our debt securities unless a waiver or modification is agreed upon with the requisite percentage of the bondholders. If our ability to incur additional indebtedness under the fixed charge coverage ratio is limited, we are permitted to incur indebtedness for the purpose of refinancing existing indebtedness and for other permitted purposes under the indentures.

The 2016 Senior Secured Credit Facility and the 2015 Secured Revolving Credit Facility contain certain covenants, including covenants relating to collateral coverage, dividend payments, restrictions on fundamental changes, transactions with affiliates, matters relating to the liens granted to the lenders and the delivery of information to the lenders. In particular, the 2016 Senior

Secured Credit Facility requires us to maintain collateral coverage of at least 1.25x outstanding borrowings on the facility. The 2015 Secured Revolving Credit Facility is secured by a borrowing base of assets and requires us to maintain both collateral coverage of at least 1.5x outstanding borrowings on the facility and a consolidated ratio of cash flow to fixed charges of at least 1.5x. The 2015 Secured Revolving Credit Facility does not require that proceeds from the borrowing base be used to pay down outstanding borrowings provided the collateral coverage remains at least 1.5x outstanding borrowings on the facility. To satisfy this covenant, we have the option to pay down outstanding borrowings or substitute assets in the borrowing base. In addition, for so long as we maintain our qualification as a REIT, the 2016 Senior Secured Credit Facility and the 2015 Secured Revolving Credit Facility permit us to distribute 100% of our REIT taxable income on an annual basis (prior to deducting certain cumulative NOL carryforwards).

**Derivatives**—Our use of derivative financial instruments is primarily limited to the utilization of interest rate swaps, interest rate caps or other instruments to manage interest rate risk exposure and foreign exchange contracts to manage our risk to changes in foreign currencies. Refer to Note 12 to the consolidated financial statements.

**Off-Balance Sheet Arrangements**—We are not dependent on the use of any off-balance sheet financing arrangements for liquidity. We have made investments in various unconsolidated ventures. Refer to Note 7 to the consolidated financial statements for further details of our unconsolidated investments. Our maximum exposure to loss from these investments is limited to the carrying value of our investments and any unfunded commitments (see below).

**Unfunded Commitments**—We generally fund construction and development loans and build-outs of space in net lease assets over a period of time if and when the borrowers and tenants meet established milestones and other performance criteria. We refer to these arrangements as Performance-Based Commitments. In addition, we have committed to invest capital in several real estate funds and other ventures. These arrangements are referred to as Strategic Investments. As of September 30, 2017, the maximum amounts of the fundings we may make under each category, assuming all performance hurdles and milestones are met under the Performance-Based Commitments and that 100% of our capital committed to Strategic Investments is drawn down, are as follows (in thousands):

	Loans and Other Lending Investments <sup>(1)</sup>	Real Estate	Other Investments	Total
Performance-Based Commitments	\$ 317,091	\$ 6,136	\$ 50,933	\$ 374,160
Strategic Investments	—	—	45,642	45,642
<b>Total</b>	<b>\$ 317,091</b>	<b>\$ 6,136</b>	<b>\$ 96,575</b>	<b>\$ 419,802</b>

(1) Excludes \$115.3 million of commitments on loan participations sold that are not our obligation.

**Stock Repurchase Program**—In February 2016, after having substantially utilized the remaining availability previously authorized, our Board of Directors authorized a new \$50.0 million stock repurchase program. After having substantially utilized the availability authorized in February 2016, our Board of Directors authorized an increase to the stock repurchase program to \$50.0 million, effective August 4, 2016. The program authorizes the repurchase of common stock from time to time in open market and privately negotiated purchases, including pursuant to one or more trading plans. In connection with the sale of the 3.125% Convertible Notes in September 2017 (refer to Note 10 in the consolidated financial statements), we repurchased 4.0 million shares of our common stock for \$45.9 million at an average cost of \$11.51 per share in privately negotiated transactions with purchasers of the 3.125% Convertible Notes. During the nine months ended September 30, 2016, we repurchased 10.2 million shares of our common stock for \$98.4 million, at an average cost of \$9.67 per share. As of September 30, 2017, we had remaining authorization to repurchase up to \$4.1 million of common stock under our stock repurchase program.

**Preferred Equity**—Subsequent to September 30, 2017, we redeemed our Series E and Series F preferred stock at par for the aggregate liquidation preference of \$240.0 million plus accrued and unpaid dividends in the amount of \$1.8 million to the redemption date (refer to Note 13 in the consolidated financial statements).

### Critical Accounting Estimates

The preparation of financial statements in accordance with GAAP requires management to make estimates and judgments in certain circumstances that affect amounts reported as assets, liabilities, revenues and expenses. We have established detailed policies and control procedures intended to ensure that valuation methods, including any judgments made as part of such methods, are well controlled, reviewed and applied consistently from period to period. We base our estimates on historical corporate and industry experience and various other assumptions that we believe to be appropriate under the circumstances. For all of these estimates, we caution that future events rarely develop exactly as forecasted, and, therefore, routinely require adjustment.

On January 1, 2017, we adopted Accounting Standards Update ("ASU") 2016-09, *Compensation - Stock Compensation, Improvements to Employee Share-Based Payment Accounting*, which simplified several aspects of the accounting for share-based payment transactions, including income tax, classification of awards as either equity or liabilities and classification on the statement of cash flows. The adoption did not have a material impact on our consolidated financial statements.

As of September 30, 2017, the remainder of our significant accounting policies, which are detailed in our 2016 Annual Report, have not changed materially.

**New Accounting Pronouncements**—For a discussion of the impact of new accounting pronouncements on our financial condition or results of operations, refer to Note 3 to the consolidated financial statements.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk****Market Risks**

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. In pursuing our business plan, the primary market risk to which we are exposed is interest rate risk. Our operating results will depend in part on the difference between the interest and related income earned on our assets and the interest expense incurred in connection with our interest-bearing liabilities. Changes in the general level of interest rates prevailing in the financial markets will affect the spread between our floating rate assets and liabilities subject to the net amount of floating rate assets/liabilities and the impact of interest rate floors and caps. Any significant compression of the spreads between interest-earning assets and interest-bearing liabilities could have a material adverse effect on us.

In the event of a significant rising interest rate environment or economic downturn, defaults could increase and cause us to incur additional credit losses which would adversely affect our liquidity and operating results. Such delinquencies or defaults would likely have a material adverse effect on the spreads between interest-earning assets and interest-bearing liabilities. In addition, an increase in interest rates could, among other things, reduce the value of our fixed-rate interest-bearing assets and our ability to realize gains from the sale of such assets.

Interest rates are highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political conditions, and other factors beyond our control. We monitor the spreads between our interest-earning assets and interest-bearing liabilities and may implement hedging strategies to limit the effects of changes in interest rates on our operations, including engaging in interest rate swaps, interest rate caps and other interest rate-related derivative contracts. Such strategies are designed to reduce our exposure, on specific transactions or on a portfolio basis, to changes in cash flows as a result of interest rate movements in the market. We do not enter into derivative contracts for speculative purposes or as a hedge against changes in our credit risk or the credit risk of our borrowers.

While a REIT may utilize derivative instruments to hedge interest rate risk on its liabilities incurred to acquire or carry real estate assets without generating non-qualifying income, use of derivatives for other purposes will generate non-qualified income for REIT income test purposes. This includes hedging asset related risks such as credit and interest rate exposure on our loan assets. As a result our ability to hedge these types of risks is limited. There can be no assurance that our profitability will not be materially adversely affected during any period as a result of changing interest rates.

The following table quantifies the potential changes in annual net income, assuming no change in our interest earning assets or interest bearing liabilities, should interest rates increase by 10, 50 or 100 basis points or decrease by 10 basis points, assuming no change in the shape of the yield curve (i.e., relative interest rates). The base interest rate scenario assumes the one-month LIBOR rate of 1.23% as of September 30, 2017. Actual results could differ significantly from those estimated in the table.

**Estimated Change in Net Income**

(\$ in thousands)

<b>Change in Interest Rates</b>	<b>Net Income<sup>(1)</sup></b>
-10 Basis Points	\$ (2,048)
Base Interest Rate	—
+10 Basis Points	2,048
+50 Basis Points	10,242
+100 Basis Points	20,483

(1) We have an overall net variable-rate asset position, which results in an increase in net income when rates increase and a decrease in net income when rates decrease. As of September 30, 2017, \$451.5 million of our floating rate loans have a cumulative weighted average interest rate floor of 0.3% and \$522.8 million of our floating rate debt has a cumulative weighted average interest rate floor of 0.7%.

**Item 4. Controls and Procedures**

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. The Company has formed a disclosure committee that is responsible for considering the materiality of information and determining the disclosure obligations of the Company on a timely basis. The disclosure committee reports directly to the Company's Chief Executive Officer and Chief Financial Officer.

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the disclosure committee and other members of management, including its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b) or Rule 15d-15. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to provide reasonable assurance that the information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (ii) accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding disclosure.

There have been no changes during the last fiscal quarter in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Notwithstanding the foregoing, a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that it will detect or uncover failures within the Company to disclose material information otherwise required to be set forth in the Company's periodic reports.

**PART II. OTHER INFORMATION****Item 1. Legal Proceedings**

The Company and/or one or more of its subsidiaries is party to various pending litigation matters that are considered ordinary routine litigation incidental to its real estate and real estate related business activities, including loan foreclosure and foreclosure-related proceedings. In addition to such matters, the Company is a party to the following legal proceedings:

*U.S. Home Corporation ("Lennar") v. Settlers Crossing, LLC, et al. (United States District Court for the District of Maryland, Civil Action No. DKC 08-1863)*

This litigation involved a dispute over the purchase and sale of approximately 1,250 acres of land in Prince George's County, Maryland. Following a trial, in January 2015, the United States District Court for the District of Maryland (the District Court) entered judgment in favor of the Company, finding that the Company was entitled to specific performance of the purchase and sale agreement and awarding the Company the aggregate amount of: (i) the remaining unpaid purchase price; plus (ii) simple interest on the unpaid amount at a rate of 12% annually from 2008; plus (iii) real estate taxes paid by the Company; plus (iv) actual and reasonable attorneys' fees and costs incurred by the Company in connection with the litigation. Lennar appealed the District Court's judgment. On April 12, 2017, the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court in its entirety. Lennar's petition for rehearing *en banc* was summarily denied.

On April 21, 2017, we and Lennar completed the transfer of the land, pursuant to which we conveyed the land to Lennar and received net proceeds of \$234.1 million after payment of \$3.3 million in documentary transfer taxes, consisting of \$114.0 million of sales proceeds, \$121.8 million of interest and \$1.6 million of real estate tax reimbursements. The amount of attorneys' fees and costs to be recovered by us will be determined through further proceedings before the District Court. We have applied for attorney's fees in excess of \$17.0 million. A portion of the net proceeds received by us has been paid to the third party which holds a 4.3% participation interest in all proceeds received by us.

Lennar has filed a petition for a writ of certiorari with the U.S. Supreme Court seeking review of two specific issues previously decided in our favor by the lower courts. We have filed a brief in opposition to the petition. There can be no assurance as to the outcome of Lennar's petition or, if it is accepted, any determination or redetermination by the U.S. Supreme Court affecting this matter.

**Item 1a. Risk Factors**

There were no material changes from the risk factors previously disclosed in the Company's 2016 Annual Report.

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

The following table sets forth the information with respect to purchases made by or on behalf of the Company of its common stock during the three months ended September 30, 2017.

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of a Publicly Announced Plan	Maximum Dollar Value of Shares that May Yet be Purchased Under the Plans <sup>(1)</sup>
July 1 to July 31	—	\$ —	—	\$ 50,000,000
August 1 to August 31	—	\$ —	—	\$ 50,000,000
September 1 to September 30	3,990,300	\$ 11.51	3,990,300	\$ 4,071,647

(1) In August 2016, the Company's Board of Directors authorized an increase to \$50.0 million in the stock repurchase program. The program authorizes the repurchase of common stock from time to time in open market and privately negotiated purchases, including pursuant to one or more trading plans. There is no fixed expiration date to this stock repurchase program.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits****INDEX TO EXHIBITS****Exhibit  
Number****Document Description**

10.1	<a href="#">\$325 million Amended and Restated Credit Agreement, dated as of September 27, 2017, among iStar Inc., the Banks listed therein and JPMorgan Chase Bank, N.A., as administrative agent</a>
31.0	<a href="#">Certifications pursuant to Section 302 of the Sarbanes-Oxley Act.</a>
32.0	<a href="#">Certifications pursuant to Section 906 of the Sarbanes-Oxley Act.</a>
101*	The following financial information from the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2017 is formatted in XBRL ("eXtensible Business Reporting Language"): (i) the Consolidated Balance Sheets as of September 30, 2017 (unaudited) and December 31, 2016, (ii) the Consolidated Statements of Operations (unaudited) for the three and nine months ended September 30, 2017 and 2016, (iii) the Consolidated Statements of Comprehensive Income (Loss) (unaudited) for the three and nine months ended September 30, 2017 and 2016, (iv) the Consolidated Statements of Changes in Equity (unaudited) for the nine months ended September 30, 2017 and 2016, (v) the Consolidated Statements of Cash Flows (unaudited) for the nine months ended September 30, 2017 and 2016 and (vi) the Notes to the Consolidated Financial Statements (unaudited).

\* In accordance with Rule 406T of Regulation S-T, the XBRL related information in Exhibit 101 is deemed not filed or part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of section 18 of the Exchange Act of 1934 and otherwise is not subject to liability under these sections.

**SIGNATURES**

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

Date: November 2, 2017

iStar Inc.  
*Registrant*

/s/ JAY SUGARMAN

---

Jay Sugarman  
*Chairman of the Board of Directors and Chief  
Executive Officer (principal executive officer)*

Date: November 2, 2017

iStar Inc.  
*Registrant*

/s/ GEOFFREY G. JERVIS

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Geoffrey G. Jervis  
*Chief Operating Officer and Chief Financial Officer (principal financial  
and accounting officer)*



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\$325,000,000

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of September 27, 2017

among

iSTAR INC.,

THE BANKS LISTED HEREIN,

and

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

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J.P. MORGAN SECURITIES LLC,

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

and

BARCLAYS BANK PLC,

as Joint Lead Arrangers and Joint Bookrunners

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## AMENDED AND RESTATED CREDIT AGREEMENT

AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") dated as of September 27, 2017, among iSTAR INC., formerly known as iSTAR FINANCIAL INC. (the "Borrower"), the BANKS listed on the signature pages hereof or otherwise from time to time parties hereto hereby, JPMORGAN CHASE BANK, N.A., as the Administrative Agent.

### WITNESSETH

WHEREAS, the Borrower, the Banks and the Administrative Agent are parties to the Credit Agreement dated as of March 27, 2015 (as heretofore amended, supplemented or otherwise modified, the "Existing Credit Agreement");

WHEREAS, the Borrower has requested that the Banks, among other things, extend the maturity date of the Existing Credit Agreement; and

WHEREAS, the Banks are willing to do so on the terms and conditions set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend and restate the Existing Credit Agreement in its entirety as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1. Definitions. The following terms, as used herein, have the following meanings:

"Administrative Agent" means JPMorgan Chase Bank, N.A., in its capacity as the administrative agent hereunder, and its permitted successors in such capacity in accordance with the terms of this Agreement.

"Administrative Questionnaire" means with respect to each Bank, an administrative questionnaire in the form prepared by the Administrative Agent and submitted to the Administrative Agent (with a copy to the Borrower) duly completed by such Bank.

"Affiliate", as applied to any Person, means any other Person that directly or indirectly controls, is controlled by, or is under common control with, that Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to vote ten percent (10.0%) or more of the equity securities having voting power for the election of directors of such Person or otherwise to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting equity securities or by contract or otherwise.

"Affiliate Subordination Agreement" means an Amended and Restated Affiliate Subordination Agreement substantially in the form of Exhibit A pursuant to which intercompany obligations and advances owed by the Borrower are subordinated to the Obligations.

"Agents" means, collectively, the Administrative Agent and the Arrangers.

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“Agreement” means this Amended and Restated Credit Agreement as the same may from time to time hereafter be amended, restated, supplemented or otherwise modified.

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

“Applicable Advance Rate” means as of any date of determination as to any Borrowing Base Asset:

(i) 65%, if the relevant BPO with respect to such Borrowing Base Asset is less than 24 months old as of such date of determination, or if the Borrower is within the 90-day grace period for delivery of a new BPO provided in Section 5.1(k);

(ii) 60%, if the relevant BPO with respect to such Borrowing Base Asset is 24 months old or older as of such date of determination;

(iii) irrespective of the foregoing clauses (i) and (ii), 50% for any Credit Tenant Lease Asset if (x) the vacancy rate with respect to such Credit Tenant Lease Asset is greater than 20% as of such date of determination, (y) the weighted average remaining lease term with respect to such Credit Tenant Lease Asset is less than two (2) years as of such date of determination or (z) the Borrower is not receiving any income from such Credit Tenant Lease Asset as of such date of determination but such Credit Tenant Lease Asset has not become a Non-Cash Flow Tenant Lease Asset as of such date of determination;

(iv) irrespective of the foregoing clauses (i), (ii) and (iii), 0%, if such Credit Tenant Lease Asset is a Non-Cash Flow Credit Tenant Lease Asset; and

(v) irrespective of the foregoing clauses (i) and (ii), for any Construction Loan, (A) if the relevant BPO is less than 24 months old as of such date of determination, or if the Borrower is within the 135-day grace period for delivery of a new BPO provided in Section 5.1(k), (x) if the LTC is less than or equal to 40%, (I) 60%, if such Construction Loan is wholly-owned by a Pledged Subsidiary and (II) 55%, if such Construction Loan is partially-owned by a Pledged Subsidiary and (y) if the LTC is greater than 40%, (I) 50%, if such Construction Loan is wholly-owned by a Pledged Subsidiary and (II) 45%, if such Construction Loan is partially-owned by a Pledged Subsidiary and (B) 45%, if the relevant BPO with respect to such Construction Loan is 24 months old or older as of such date of determination.

provided that, if on any date of determination any Borrowing Base Asset meets the requirements for an Applicable Advance Rate based upon the foregoing criteria that is different than the Applicable Advance Rate as of the immediately preceding date of determination, such different Applicable Advance Rate shall apply.

“Applicable Lending Office” means with respect to any Bank, (i) in the case of its Base Rate Loans, its Domestic Lending Office and (ii) in the case of its Eurodollar Loans, its Eurodollar Lending Office.

“Applicable Margin” means with respect to each Loan, the respective percentages per annum determined, at any time, based on the range into which the Credit Rating then falls, in accordance with the table set forth below. Any change in the Credit Rating causing it to move to a different range on the table shall effect an immediate change in the Applicable Margin. In the event that the Borrower has

two (2) or more Credit Ratings that are not equivalent, the Applicable Margin shall be determined by (A) if the difference between such Credit Ratings is one ratings category, the Applicable Margin shall be the rate per annum that would be applicable if the higher of the Credit Ratings were used, and (B) if the difference between such Credit Ratings is two or more ratings categories, the Applicable Margin shall be the rate per annum that would be applicable if the median of the applicable Credit Ratings were used. In the event that the Borrower has only one (1) Credit Rating, the Applicable Margin shall be determined by such Credit Rating. In the event that the Borrower does not have a Credit Rating, the Applicable Margin shall be the highest percentage per annum set forth on the table below. On the Closing Date, the Credit Rating of the Borrower is BB-/B1/BB-.

<b>Range of the Borrower's Credit Rating (S&amp;P/Moody's/Fitch Ratings)</b>	<b>Applicable Margin for Base Rate Loans (% per annum)</b>	<b>Applicable Margin for Eurodollar Loans (% per annum)</b>
≥BB/Ba2/BB	1.25%	2.25%
≥BB-/Ba3/BB-	1.50%	2.50%
≤B+/B1/B+	1.75%	2.75%

“Arrangers” means J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Barclays Bank PLC, in their respective capacities as Joint Lead Arranger and Joint Bookrunner hereunder.

“Assignee” has the meaning set forth in Section 9.6(c).

“Assignment and Assumption” means an Assignment and Assumption, in substantially the form of Exhibit H hereto.

“Available Commitment” means as to any Bank at any time, an amount equal to the excess, if any, of (a) such Bank’s Commitment then in effect over (b) such Bank’s Revolving Loans then outstanding.

“Average Utilization” means for any period, an amount, expressed as a percentage, equal to (a) the daily average Total Revolving Loans for such period divided by (b) the daily average Total Commitments for such period.

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

“Bail-In Legislation” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Event” means with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person 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 Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Banks” means each entity listed on the signature pages hereof as a “Bank”, each Assignee which becomes a Bank pursuant to Section 9.6(c), and their respective successors. For purposes of this Agreement, none of J.P. Morgan Securities LLC or Merrill Lynch, Pierce, Fenner & Smith Incorporated, shall constitute a “Bank”.

“Base Rate” means, for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus ½ of 1% and (c) the Eurodollar Rate on such day (or, if such day is not a Business Day, the next preceding Business Day) for a deposit in Dollars with a maturity of one month plus 1.0%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or such Eurodollar Rate shall be effective as of the opening of business on the day of such change in the Prime Rate, the Federal Funds Rate or such Eurodollar Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 8.1 hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Base Rate Borrowing” means a Borrowing in Dollars the interest on which is calculated by reference to the Base Rate in accordance with the provisions of this Agreement.

“Base Rate Loan” means a Loan in Dollars to be made by a Bank the interest on which is calculated by reference to the Base Rate in accordance with the provisions of this Agreement.

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

“Book Value” means, as to any asset as of any date of determination, the book value of such asset at the end of the most recently ended fiscal quarter as determined in accordance with GAAP, provided that depreciation shall be added back to such book value with respect to Credit Tenant Lease Assets, but such book value with respect to all assets shall be net of any asset specific reserves and impairments.

“Borrower” has the meaning set forth in the preamble hereto.

“Borrowing” has the meaning set forth in Section 1.3. “Borrowed” shall have a correlative meaning.

“Borrowing Base” means, as of any date of determination, the sum of the Borrowing Base Value of each Borrowing Base Asset as of such date as determined by the most recent Borrowing Base Certificate and adjusted as reflected in the Monthly Certificate; provided that, the Borrowing Base shall be subject to the following adjustments:

- (i) no single Borrowing Base Asset (based on the Borrowing Base Value of such Borrowing Base Asset) shall comprise in excess of 25% of the Borrowing Base at the time such

asset is included as a Borrowing Base Asset (and any such excess shall be disregarded for purposes of determining the Borrowing Base);

(ii) the aggregate Borrowing Base Value of the three most valuable Borrowing Base Assets (based on the Borrowing Base Value of each such Borrowing Base Asset) shall not exceed 40% of the Borrowing Base at any one time (and any such excess shall be disregarded for purposes of determining the Borrowing Base);

(iii) the aggregate Borrowing Base Value of all Non-Cash Flow Credit Tenant Lease Assets shall not exceed 5% of the Borrowing Base at any one time (and any such excess shall be disregarded for purposes of determining the Borrowing Base);

(iv) the aggregate Borrowing Base Value of all Limited Term Credit Tenant Lease Assets shall not exceed 20% of the Borrowing Base at such date of determination (and any such excess shall be disregarded for purposes of determining the Borrowing Base);

(v) the aggregate Borrowing Base Value of (x) Credit Tenant Lease Assets (i) with a vacancy rate greater than 20% or (ii) with a weighted average remaining lease term of less than two (2) years in respect of the underlying leases with respect to such Credit Tenant Lease Asset as of such date of determination or (y) Borrowing Base Assets with respect to hospitality and healthcare related stabilized assets shall not, in the aggregate for all such assets described in the foregoing clauses (x) and (y), exceed 35% of the Borrowing Base at such date of determination (and any such excess shall be disregarded for purposes of determining the Borrowing Base);

(vi) at all times there shall be no less than ten (10) assets included as Borrowing Base Assets; and

(vii) the aggregate Borrowing Base Value of all Construction Loans shall not exceed 15% of the Borrowing Base at such date of determination (and any such excess shall be disregarded for purposes of determining the Borrowing Base).

“Borrowing Base Assets” means, as of any date of determination, the Eligible Loan Assets and Eligible Credit Tenant Lease Assets constituting Collateral and Covered Assets and included in the Borrowing Base Certificate delivered on the Closing Date pursuant to Section 3.1(o) and, thereafter, pursuant to Section 5.1(i).

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a senior financial officer of the Borrower, in substantially the form of Exhibit B.

“Borrowing Base Value” means, with respect to any Borrowing Base Asset as of any date of determination, the product of (x) the Applicable Advance Rate for such Borrowing Base Asset as of such date and (y) the Designated Valuation Amount of such Borrowing Base Asset as of such date; provided that, the Borrowing Base Value of any Borrowing Base Asset shall be recalculated upon a material amendment or extension of the underlying lease or loan of such Borrowing Base Asset (including, in the case of a Construction Loan, a material increase in the scope or budget in respect of the project that is the subject of such Construction Loan), or the execution of a new lease or loan with respect thereto and reflected in an updated BPO or subsequent Monthly Certificate or Borrowing Base Certificate, in each case delivered pursuant to Section 5.1.

“Borrowing Date” means any Business Day specified by the Borrower as a date on which the Borrower requests the relevant Banks to make Loans hereunder.

“BPO” means as to any Borrowing Base Asset, a broker’s price opinion, determined in accordance with standard market practices and upon reasonable assumptions, with respect to such Borrowing Base Asset provided by a BPO Broker.

“BPO Broker” shall mean HFF, Inc. and its affiliates, or such other broker reasonably acceptable to the Borrower and the Administrative Agent.

“BPO Value” means, as to any Borrowing Base Asset on any date of determination, the valuation of such Borrowing Base Asset at the time of inclusion thereof in the Borrowing Base as determined by the most recent BPO delivered in accordance with Section 5.1(k) with respect to such Borrowing Base Asset as of such date of determination; if the BPO Value of any Borrowing Base Asset is on any date of determination more than 100% of the Book Value of such Borrowing Base Asset, the BPO Value of such Borrowing Base Asset shall be the lower of such BPO Value and 110% of such Book Value.

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

“Capital Leases” as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee which, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Cash and Cash Equivalents” means (a) cash; (b) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by an agency thereof and backed by the full faith and credit of the United States, in each case maturing within one (1) year after the date of acquisition thereof; (c) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within ninety (90) days after the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from any two of S&P, Moody’s or Fitch (or, if at any time no two of the foregoing shall be rating such obligations, then from such other nationally recognized rating services acceptable to the Administrative Agent); (d) commercial paper (foreign and domestic) or master notes, other than commercial paper or master notes issued by the Borrower or any of its Affiliates, and, at the time of acquisition, having a long-term rating of at least A or the equivalent from S&P, Moody’s or Fitch and having a short-term rating of at least A-1, P-1 and F-1 from S&P, Moody’s and Fitch, respectively (or, if at any time neither S&P nor Moody’s nor Fitch shall be rating such obligations, then the highest rating from such other nationally recognized rating services acceptable to the Administrative Agent); (e) domestic and foreign certificates of deposit or domestic time deposits or foreign deposits or bankers’ acceptances (foreign or domestic) in Dollars that are issued by a bank (I) which has, at the time of acquisition, a long-term rating of at least A or the equivalent from S&P, Moody’s or Fitch and (II) if a domestic bank, which is a member of the Federal Deposit Insurance Corporation; (f) overnight securities repurchase agreements, or reverse repurchase agreements secured by any of the foregoing types of securities or debt instruments, provided that the collateral supporting such repurchase agreements shall have a value not less than 101% of the principal amount of the repurchase agreement plus accrued interest; and (g) money market funds invested in investments substantially all of which consist of the items described in clauses (a) through (f) foregoing.

“Change of Control” means the occurrence of the event or events set forth in Section 6.1(i) or Section 6.1(j).

“Closing Date” means the date on which the conditions set forth in Section 3.1 shall have been satisfied to the satisfaction of the Administrative Agent.

“Code” means the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“Collateral” means, at any time, all of the assets of the Borrower upon which a Lien is purported to be created by the Collateral Documents. As the context may require, “Collateral” also refers to Covered Assets. For the avoidance of doubt, no Excluded Asset shall constitute Collateral or a Covered Asset.

“Collateral and Covered Assets List” means the list of Collateral and Covered Assets as of the Closing Date and set forth on Schedule 1.1B as such list may be modified from time to time.

“Collateral Documents” means the Security Agreement, the Affiliate Subordination Agreement, the Negative Pledge Agreement and all other similar agreements and security documents hereafter delivered to the Administrative Agent granting a Lien on any property of the Borrower or a Covered Subsidiary to secure the obligations and liabilities of the Borrower under any Loan Document or providing rights and remedies in respect of the Collateral and the Covered Assets.

“Commitment” means with respect to each Bank (x) prior to the Revolving Termination Date, the obligation of such Bank to make Revolving Loans in an aggregate principal amount not to exceed the amount set forth on Schedule 1.1A next to the name of such Bank under the heading “Commitment” or in the Assignment and Assumption pursuant to which such Bank became a party hereto and (y) on Revolving Termination Date, subject to Section 2.2 and Section 3.3, the obligation of such Bank to convert all outstanding Revolving Loans made by such Bank as of such date into an equal principal amount of Term Loans and to extend the Maturity Date. The initial amount of the Total Commitments is \$325,000,000.

“Commitment Fee Rate” means the respective percentages per annum determined, at any time, based on the range into which the Credit Rating then falls, in accordance with the table set forth below. Any change in the Credit Rating causing it to move to a different range on the table shall effect an immediate change in the Commitment Fee Rate. In the event that the Borrower has two (2) or more Credit Ratings that are not equivalent, the Commitment Fee Rate shall be determined by (A) if the difference between such Credit Ratings is one ratings category, the Commitment Fee Rate shall be the rate per annum that would be applicable if the higher of the Credit Ratings were used, and (B) if the difference between such Credit Ratings is two or more ratings categories, the Commitment Fee Rate shall be the rate per annum that would be applicable if the median of the applicable Credit Ratings were used. In the event that the Borrower has only one (1) Credit Rating, the Commitment Fee Rate shall be determined by such Credit Rating. In the event that the Borrower does not have a Credit Rating, the Commitment Fee Rate shall be the highest percentage per annum set forth on the table below. On the Closing Date, the Credit Rating of the Borrower is BB-/B1/BB-.

Range of the Borrower’s Credit Rating (S&P/Moody’s/Fitch Ratings)	Commitment Fee Rate (% per annum)
≥BB/Ba2/BB	0.30%
≥BB-/Ba3/BB-	0.40%
≤B+/B1/B+	0.50%

“Consolidated Cash Flow” means as of any date of determination, for the period of four fiscal quarters ended on such date of determination on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) cash flows from operating activities of the Borrower and its Consolidated

Subsidiaries for such period, plus (b) repayments and collections of loans, plus (c) net proceeds from the sale/monetization of loans, real estate and other investments of the Borrower and its Consolidated Subsidiaries for such period, plus (d) distributions from other investments of the Borrower and its Consolidated Subsidiaries for such period, plus (e) cash interest payments paid on debt of the Borrower and its Consolidated Subsidiaries for such period, plus (f) Taxes paid in Cash by the Borrower and its Consolidated Subsidiaries for such period, in each case as reflected in the Borrower's consolidated statements of cash flow for such period in the form delivered pursuant to Section 5.1(a) and (b).

"Consolidated Coverage Ratio" means, for each date of determination set forth in Section 5.9(a), the ratio of (a) Consolidated Cash Flow as of such date of determination to (b) Consolidated Fixed Charges as of such date of determination.

"Consolidated Fixed Charges" means as of any date of determination, for the period of four fiscal quarters ended on such date of determination, the sum of (a) the total cash interest expense (including imputed interest expense attributable to Capital Leases) of the Borrower and its Consolidated Subsidiaries on all outstanding Indebtedness of the Borrower and its Consolidated Subsidiaries for such period (assuming for purposes of determining such interest expense that the Total Commitments have been fully Borrowed hereunder during such period) determined in accordance with GAAP and (b) total cash dividends on preferred units payable by the Borrower during such period.

"Consolidated Subsidiary" means at any date (i) any Covered Subsidiary and (ii) any other Subsidiary or other entity which is consolidated with the Borrower in accordance with GAAP.

"Consolidated Tangible Net Worth" means, at any time, the tangible net worth of the Borrower, on a consolidated basis, determined in accordance with GAAP.

"Construction Loan" means any loan made for the construction and development of real property owned by the borrower thereof and secured by a Mortgage on such real property the term of which loan shall not exceed five years.

"Contingent Obligation" as to any Person means, without duplication, (i) any contingent obligation of such Person required to be shown on such Person's balance sheet in accordance with GAAP which is not otherwise Indebtedness, and (ii) any obligation required to be disclosed in accordance with GAAP in the footnotes to such Person's financial statements, guaranteeing partially or in whole any Non-Recourse Indebtedness, lease, dividend or other obligation including guarantees of completion and guarantees of representations and warranties, provided, however, Contingent Obligations shall not include contractual indemnities (including, without limitation, any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets) and guarantees of non-monetary obligations (other than as described above) which have not yet been called on or quantified, of such Person or of any other Person. The amount of any Contingent Obligation described in clause (ii) shall be deemed to be (a) with respect to a guaranty of interest or interest and principal, or operating income guaranty, the Net Present Value of the sum of all payments required to be made thereunder (which in the case of an operating income guaranty shall be deemed to be equal to the debt service for the note secured thereby), through (i) in the case of an interest or interest and principal guaranty, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder), or (ii) in the case of an operating income guaranty, the date through which such guaranty will remain in effect, and (b) with respect to all guarantees not covered by the preceding clause (a), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent financial statements of the Borrower required to be delivered pursuant to Section 5.1 hereof.



Notwithstanding anything contained herein to the contrary, guarantees of completion shall not be deemed to be Contingent Obligations unless and until a claim for payment or performance has been made thereunder, at which time any such guaranty of completion shall be deemed to be a Contingent Obligation in an amount equal to any such claim. All matters constituting "Contingent Obligations" shall be calculated without duplication.

"Conversion Notice" has the meaning set forth in Section 2.2(a).

"Covered Assets" means, as of any date of determination, (a) the Loan Assets and the Credit Tenant Lease Assets directly owned by a Pledged Subsidiary and (b) interests in a Pledged Subsidiary owned by the Borrower, in each case listed on the Collateral and Covered Asset List.

"Covered Party" means (i) the Borrower and (ii) each Covered Subsidiary.

"Covered Subsidiary" means each (i) Pledged Subsidiary and (ii) Subsidiary of a Pledged Subsidiary set forth on Schedule 4.28.

"Credit Ratings" means the Borrower's corporate rating assigned by the Rating Agencies.

"Credit Tenant Lease Asset" means (a) for any such assets initially included in the Borrowing Base on the Closing Date, a property owned by the Covered Subsidiaries and identified on the Collateral and Covered Assets List on the Closing Date as a credit tenant lease asset, or (b) for any assets added to the Borrowing Base after the Closing Date, a property owned by a Pledged Subsidiary which is (i) leased to a governmental entity, (ii) leased to a tenant (or guaranteed by a Person) with an Investment Grade Rating, (iii) a property which, if unavailable to a tenant, would materially impair the continued operation of such tenant, including without limitation, a headquarters facility, distribution center, manufacturing facility, or a pool or class of multiple properties leased under a blanket lease or (iv) identified by the Borrower as a credit tenant lease asset in the ordinary course of business and consistent with its past practices.

"Default" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Rate" has the meaning set forth in Section 2.7(c).

"Defaulting Bank" means any Bank that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, or (ii) pay over to the Administrative Agent or the other Banks any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Bank notifies the Administrative Agent in writing that such failure is the result of such Bank's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent and the other Banks in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Bank's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a the Administrative Agent or applicable Bank, acting in good faith, to provide a certification in writing from an authorized officer of such Bank that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans under this Agreement, provided that such Bank shall cease to be a Defaulting Bank pursuant to this clause (c) upon the Administrative Agent or the applicable Bank's

receipt of such certification in form and substance satisfactory to it and the Administrative Agent, (d) has become the subject of a Bankruptcy Event, or (e) has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action.

“Designated Valuation Amount” means, as of any date of determination, as to any single asset included as a Borrowing Base Asset, the BPO Value of such Borrowing Base Asset as of such date of determination; provided that:

(i) if there is a write-down with respect to the Book Value of such asset or a specific reserve is taken with respect to such asset, the Designated Valuation Amount of such asset shall be the lesser of (x) the Book Value of such asset, after giving effect to such write-down or asset specific reserve, and (y) the BPO Value of such asset, after giving effect to such write-down and asset specific reserve;

(ii) the Designated Valuation Amount of a Loan Asset shall be the lesser of (x) the Book Value of such Loan Asset adjusted (but, in no event below zero) to reflect principal payments actually paid or prepaid on account of such Loan Assets as reflected on the most recent Monthly Certificate and (y) the BPO Value of such Loan Asset adjusted (but, in no event below zero) to reflect principal payments actually paid or prepaid on account of such Loan Assets as reflected on the most recent Monthly Certificate;

(iii) the Designated Valuation Amount of a Loan Asset that is included as a Borrowing Base Asset after the Closing Date and for which the Look-Through LTV is greater than 70% as of such date shall be reduced such that the Look-Through LTV is not greater than 70% after giving effect to such reduction;

(iv) the Designated Valuation Amount of a Borrowing Base Asset during the applicable grace period during which a BPO is required to be delivered pursuant to Section 5.1(k) shall be the Book Value until such BPO is delivered in accordance with Section 5.1(k); provided that, the Designated Valuation Amount of a Borrowing Base Asset for which a BPO has not been delivered within the applicable grace period required by Section 5.1(k) shall be zero;

(v) the Designated Valuation Amount of a Loan Asset that becomes a Non-Performing Loan Assets shall be zero;

(vi) the Designated Valuation Amount of any Borrowing Base Asset that is subject to a Lien that is not a Permitted Lien shall be zero; and

(vii) the Designated Valuation Amount of any Eligible Loan Asset that is a Construction Loan shall be adjusted to reflect any additional funds loaned to the applicable borrower and principal payments actually paid or prepaid by such borrower, in each case, on account of such Construction Loan, including scheduled repayments from sales proceeds received on the underlying real estate.

“Dollars” and “\$” means the lawful money of the United States.

“Domestic Lending Office” means, as to each Bank, its office located at its address in the United States set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Domestic Lending Office) or such other office as such Bank may hereafter designate as its Domestic Lending Office by notice to the Borrower and the Administrative Agent.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Credit Tenant Lease Asset” means the Credit Tenant Lease Assets, provided that:

(a) such Credit Tenant Lease Asset shall (i) as to any Credit Tenant Lease Asset added as a Covered Asset after the Closing Date, be wholly-owned by a Pledged Subsidiary and the underlying real property in respect of such Credit Tenant Lease Asset shall be owned in fee simple by such Pledged Subsidiary, (ii) have a vacancy rate of less than 20% as of the date such Credit Tenant Lease Asset is added as a Borrowing Base Asset, and (iii) as to any Credit Tenant Lease Asset added as a Covered Asset after the Closing Date, have one or more leases with a weighted average remaining lease term of not less than five (5) years as of the date such Credit Tenant Lease Asset is added as a Borrowing Base Asset;

(b) the real property underlying any such Credit Tenant Lease Asset shall not be subject to a Mortgage; and

(c) such Credit Tenant Lease Asset shall have been added to the Covered Assets in accordance with Section 2.18.

“Eligible Loan Assets” means the Loan Assets of any Pledged Subsidiary, including without limitation, Loan Assets with respect to hospitality and healthcare related stabilized assets and Construction Loans, provided that:

(a) any such Loan Asset shall be wholly-owned by a Pledged Subsidiary, except in the case of Construction Loans in which case participations in such Construction Loan shall be permitted;

(b) with respect to a Construction Loan, LTC shall be less than or equal to 70% and the construction project being financed by such Construction Loan shall be more than 50% complete in accordance with the terms of such Construction Loan;

(c) any such Loan Asset shall not be in respect of undeveloped land or transitional properties;

(d) any such Loan Asset shall not be contractually or structurally junior to or *pari passu* with any other loans, or secured by Mortgages that are junior to or *pari passu* with the Mortgages securing other loans encumbering shared collateral, unless such senior or *pari passu* loan is also a Borrowing Base Asset; and



(e) such Loan Assets shall have been added to the Covered Assets in accordance with Section 2.18.

“Environmental Affiliate” means any partnership, joint venture, trust or corporation in which an equity interest is owned directly or indirectly by the Borrower and, as a result of the ownership of such equity interest, the Borrower may become subject to liability for Environmental Claims against such partnership, joint venture, trust or corporation (or the property thereof).

“Environmental Claim” means, with respect to any Person, any notice, claim, demand or similar communication (written or oral) by any other Person alleging potential liability of such Person for investigatory costs, cleanup costs, governmental response costs, natural resources damage, property damages, personal injuries, fines or penalties arising out of, based on or resulting, directly or indirectly, from (i) the presence, or release into the environment, of any Materials of Environmental Concern at any location, whether or not owned by such Person or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

“Environmental Laws” means any and all federal, state, and local statutes, laws (including common law), judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, licenses, agreements and other governmental restrictions relating to protection of the environment or of human health or safety (as affected by exposure to harmful or deleterious substances).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

“ERISA Group” means the Borrower, any Subsidiary, and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all members of an “affiliated service group” which, together with the Borrower, or any Subsidiary, are treated as a single employer under Section 414 of the Code or Section 4001(b)(1) of ERISA. Any former member of the ERISA Group shall continue to be considered a member of the ERISA Group within the meaning of this definition with respect to the period such entity was a member of the ERISA Group.

“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.

“Eurocurrency Reserve Requirement” means, for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Federal Reserve Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

“Eurodollar Base Rate” means, with respect to any Eurodollar Loan for any Interest Period, a rate per annum equal to the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters Screen that displays such rate (or, in the event such rate does not appear on either of such Reuters pages, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected

by the Administrative Agent in its reasonable discretion; in each case, the “Screen Rate”) as of the Specified Time on the Quotation Day for such Interest Period; provided that if the Screen Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; provided, further, that if the Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to Dollars, then the Eurodollar Base Rate shall be the Interpolated Rate at such time (provided that if the Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement).

“Eurodollar Borrowing” has the meaning set forth in Section 1.3.

“Eurodollar Business Day” means any Business Day on which banks are open for dealings in deposits in Dollars in the London interbank market.

“Eurodollar Lending Office” means, as to each Bank, its office, branch or affiliate located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Eurodollar Lending Office) or such other office, branch or affiliate of such Bank as it may hereafter designate as its Eurodollar Lending Office by notice to the Borrower and the Administrative Agent.

“Eurodollar Loan” means a Loan in Dollars, the interest on which is calculated by reference to the Eurodollar Rate, made or to be made by a Bank in accordance with the applicable Notice of Borrowing.

“Eurodollar Rate” means with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula:

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirement}}$$

“Event of Default” has the meaning set forth in Section 6.1.

“Excluded Assets” means the assets owned by the Covered Subsidiaries as of the Closing Date identified on Schedule 1.ID, none of which shall be included as a Borrowing Base Asset or constitute a Covered Asset.

“Existing Credit Agreement” has the meaning set forth in the recitals hereto

“Facility Collateral Cash Flow” means, for any date of determination, the regularly scheduled amortization, interest and rent income from the Borrowing Base Assets included in the Borrowing Base as of the date of determination for the period of four fiscal quarters ended as of such date of determination; provided that, with respect to any Credit Tenant Lease Asset that was added as a Borrowing Base Asset since the end of such period and that has a lease term that begins on or after such date of determination, the Facility Collateral Cash Flow with respect to such Borrowing Base Asset shall equal, on a pro forma basis, the projected rental income therefrom for the period of four fiscal quarters commencing on such date of determination (or for each date of determination for the subsequent three quarters, for the three quarter, two quarter and one quarter period, respectively, after such date of determination).

“Facility Collateral Coverage Ratio” means, for each date of determination set forth in Section 5.9(b), the ratio of (a) Facility Collateral Cash Flow as of such date of determination to (b) Facility Interest Expense as of such date of determination.

“Facility Interest Expense” means, for any date of determination, the total cash interest expense (including Commitment Fees) of the Borrower payable with respect to the Loans for the period of four fiscal quarters ended as of such date of determination (assuming for purposes of determining such interest expense that the Total Commitments have been fully Borrowed hereunder during such period) determined in accordance with GAAP.

“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, any intergovernmental agreements related thereto, and any agreement entered into pursuant to Section 1471(b)(1) of the Code and any law, regulation, rule, promulgation, guidance notes, practices or official agreement implementing an official government agreement with respect to the foregoing.

“Federal Funds Rate” means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by JPMorgan Chase Bank, N.A. from three federal funds brokers of recognized standing selected by it; provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System as constituted from time to time.

“Fiscal Quarter” means a fiscal quarter of a Fiscal Year.

“Fiscal Year” means the fiscal year of the Borrower.

“Fitch” means Fitch Investor Services, Inc., or any successor thereto.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 5.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 5.1(a); provided, that (i) revenues, expenses, gains and losses that are included in results of discontinued operations because of the application of SFAS No. 144 will be treated as revenues, expenses, gains and losses from continuing operations. In the event that any “Accounting Change” (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Banks, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. “Accounting Changes” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or

pertaining to government, any securities exchange and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Group of Loans” means, at any time, a group of Loans consisting of (i) all Loans which are Base Rate Loans at such time, or (ii) all Eurodollar Loans having the same Interest Period at such time; provided that, if a Loan of any particular Bank is converted to or made as a Base Rate Loan pursuant to Section 8.2 or Section 8.5, such Loan shall be included in the same Group or Groups of Loans from time to time as it would have been in if it had not been so converted or made.

“Indebtedness” as applied to any Person, means, at any time, without duplication, (a) all indebtedness, obligations or other liabilities of such Person (i) for borrowed money (including construction loans) or evidenced by debt securities, debentures, acceptances, notes or other similar instruments, and any accrued interest, fees and charges relating thereto, (ii) under profit payment agreements or in respect of obligations to redeem, repurchase or exchange any Securities of such Person or to pay dividends in respect of any stock, (iii) with respect to letters of credit issued for such Person’s account, (iv) to pay the deferred purchase price of property or services, except accounts payable and accrued expenses arising in the ordinary course of business, (v) in respect of Capital Leases, (vi) which are Contingent Obligations or (vii) under warranties and indemnities; (b) all indebtedness, obligations or other liabilities of such Person or others secured by a Lien on any property of such Person, whether or not such indebtedness, obligations or liabilities are assumed by such Person, all as of such time (provided that the value of such indebtedness, obligations or liabilities shall be limited to the lesser of (x) the amount of such indebtedness, obligations or liabilities assumed by such Person and (y) the undepreciated book value of the property subject to such Lien, determined in accordance with GAAP, and less any impairment charge; (c) all indebtedness, obligations or other liabilities of such Person in respect of Interest Rate Contracts and foreign exchange contracts, net of liabilities owed to such Person by the counterparties thereon; (d) all preferred stock subject (upon the occurrence of any contingency or otherwise) to mandatory redemption; and (e) all contingent contractual obligations with respect to any of the foregoing.

“Indemnitee” has the meaning set forth in Section 9.3(b).

“Insolvency” means with respect to any Multiemployer Plan, the condition that such plan is insolvent within the meaning of Section 4245 of ERISA.

“Interest Period” means, with respect to each Eurodollar Borrowing, the period commencing on the date of such Borrowing specified in the Notice of Borrowing or on the date specified in the applicable Notice of Interest Rate Election and ending 1, 2, 3 or 6 months (or, if available to all Banks, one week) thereafter as the Borrower may elect in the applicable Notice of Interest Rate Election; provided, that:

(a) any Interest Period which would otherwise end on a day which is not a Eurodollar Business Day shall be extended to the next succeeding Eurodollar Business Day unless such Eurodollar Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Eurodollar Business Day;

(b) any Interest Period which begins on the last Eurodollar 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 Eurodollar Business Day of a calendar month; and

(c) no Interest Period may end later than the Maturity Date.

“Interest Rate Contracts” means, collectively, interest rate swap, collar, cap or similar agreements providing interest rate protection.

“Investment Affiliate” means any joint venture or Subsidiary, whose financial results are not consolidated under GAAP with the financial results of the Borrower on the consolidated financial statements of the Borrower.

“Interpolated Rate” means, at any time, the rate per annum (rounded to the same number of decimal places as the Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate (for the longest period for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate (for the shortest period for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, as of the Specified Time on the Quotation Day for such Interest Period. When determining the rate for a period which is less than the shortest period for which the Screen Rate is available, the Screen Rate for purposes of clause (a) above shall be deemed to be the overnight rate for Dollars determined by the Administrative Agent from such service as the Administrative Agent may select.

“Investment Grade Rating” means a rating for a Person’s senior long-term unsecured debt of BBB- or better from S&P, of Baa3 or better from Moody’s or of BBB- or better from Fitch. In the event that the Borrower receives Credit Ratings from S&P and Moody’s, and such Credit Ratings are not equivalent, the lower of such two (2) Credit Ratings shall be used to determine whether an Investment Grade Rating was achieved.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, or any other type of preferential arrangement, in each case that has the effect of creating a security interest in respect of such asset. For the purposes of this Agreement, the Borrower or any Consolidated Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Limited Term Credit Tenant Lease Asset” means a Credit Tenant Lease Asset that is a Borrowing Base Asset and for which the weighted average remaining lease term is greater than five (5) years but less than eight (8) years from the date such Credit Tenant Lease Asset is added.

“Loan” means the Revolving Loans until such time that such Loans are converted into Term Loans pursuant to Section 2.2 and Section 3.3 and the Term Loans.

“Loan Assets” means senior or subordinated loans that may be either fixed or variable rate, including, without limitation, first mortgages, second mortgages, mezzanine loans, repurchase agreements, participations in loans, interim facilities, corporate loans, debt securities, “B” notes and collateralized mortgage-backed securities.

“Loan Documents” means this Agreement, any Notes and each Collateral Document.

“Look-Through LTV” means, as to any Loan Asset as of any determination date, the ratio of (x) the sum of the principal amount of such Loan Asset (including all capitalized interest) plus the outstanding principal amount of all other loans (including all capitalized interest) that are *pari passu* or senior in right of payment (whether structurally or contractually) to such Loan Asset, or that are secured by *pari passu* or senior Mortgages with respect to common collateral to (y) the value of the common collateral as determined in good faith by the Borrower in accordance with its customary underwriting



standards consistently applied at the end of the most recently ended fiscal quarter as of such date of determination in accordance with GAAP, consistently applied.

“LTC” means, as to any Loan Asset that is a Construction Loan as of any determination date, the greater of (x) the ratio of (I) the sum of the principal amount of such Construction Loan (including all capitalized interest) to (II) the value of the collateral for such Construction Loan as determined pursuant to the most recently delivered BPO, and (y) the ratio of (I) the sum of the aggregate principal amount of the Construction Loan to (II) the aggregate cost of the construction project in respect of which such Construction Loan is provided as determined in good faith by the Borrower in accordance with its customary underwriting standards consistently applied and set forth in the most recently-delivered Borrowing Base Certificate or Monthly Certificate.

“Material Adverse Effect” means an effect resulting from any circumstance or event or series of circumstances or events, of whatever nature (but excluding general economic conditions), which does or would reasonably be expected to, materially and adversely impair (i) the ability of the Covered Parties, taken as a whole, to perform their respective obligations under the Loan Documents, or (ii) the ability of the Administrative Agent or the Banks to enforce the Loan Documents.

“Material Default” means (i) any Payment Default, (ii) any Default resulting from the Borrower’s failure to be in compliance with any covenant contained in Section 5.1(a), (b), (c), (d)(i) (provided that the officer of the Borrower that, in such case, has obtained knowledge of the applicable Default or Event of Default is any of the president, chief executive officer, chief financial officer or chief operating officer of the Borrower or any officer performing the customary duties of any such position), (i), (j) or (k), 5.8, 5.9, 5.10, 5.11, 5.15 or 5.18 or (iii) any other material Default as to which the Borrower shall have received written notice.

“Materials of Environmental Concern” means and includes any pollutants, contaminants, hazardous wastes, toxic and hazardous substances, asbestos, lead, petroleum and petroleum by-products, and any other substances regulated pursuant to, or that could give rise to liability under, Environmental Law.

“Maturity Date” means the date when all Obligations hereunder shall be due and payable, which shall be the Revolving Termination Date or, if the Revolving Loans are converted into Terms Loans subject to Sections 2.2 and 3.3, the Term Loan Maturity Date, unless in either case otherwise accelerated pursuant to the terms hereof.

“Monthly Certificate” has the meaning set forth in Section 5.1(j).

“Moody’s” means Moody’s Investors Services, Inc. or any successor thereto.

“Mortgage” means a mortgage, deed of trust, deed to secured debt or similar security interest.

“Multiemployer Plan” means at any time an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA, which is subject to Title IV of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions.

“Negative Pledge Agreement” means the Amended and Restated Negative Pledge Agreement, dated the date hereof, among the Covered Subsidiaries and the Administrative Agent, substantially in the form of Exhibit C, as the same may be amended, modified or supplemented from time to time.

“Net Present Value” means, as to a specified or ascertainable Dollar amount, the present value, as of the date of calculation of any such amount using a discount rate equal to the Base Rate in effect as of the date of such calculation.

“Non-Cash Flow Credit Tenant Lease Asset” means, as of any date of determination, a Credit Tenant Lease Asset for which no income is being generated as of such date of determination and no income has been generated for a period of six months or longer as of such date of determination.

“Non-Excluded Taxes” has the meaning set forth in Section 8.4(a).

“Non-Performing Loan Assets” means any Loan Asset classified as non-performing in accordance with the Borrower’s internal procedures, consistent with past practice.

“Non-Recourse Indebtedness” means Indebtedness with respect to which recourse for payment is limited to (i) specific assets related to a particular Property or group of Properties encumbered by a Lien securing such Indebtedness or (ii) for all purposes other than Section 6.1(e) hereof, any Subsidiary (so long as a Subsidiary is a partnership, there is no recourse to the Borrower as a general partner of such partnership); provided that if any portion of Indebtedness is so limited, then such portion shall constitute Non-Recourse Indebtedness and only the remainder of such Indebtedness shall constitute Recourse Debt; provided, further, however, that direct recourse to the Borrower for any such Indebtedness for fraud, misrepresentation, misapplication of cash, waste, Environmental Claims and liabilities and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financing of real estate shall not, by itself, prevent such Indebtedness from being characterized as Non-Recourse Indebtedness.

“Notes” means any promissory notes of the Borrower, substantially in the form of Exhibit D hereto, evidencing the obligation of the Borrower to repay the Loans, and “Note” means any one of such promissory notes issued hereunder.

“Notice of Borrowing” means a notice from the Borrower in accordance with Section 2.3 and substantially in the form attached of Exhibit E.

“Notice of Interest Rate Election” has the meaning set forth in Section 2.6.

“Obligations” means all obligations, liabilities, indemnity obligations and Indebtedness of every nature of the Borrower (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), from time to time owing to the Administrative Agent, any other Agent or any Bank under or in connection with the Loans under this Agreement or any other Loan Document.

“Other Taxes” has the meaning set forth in Section 8.4(b).

“Parent” means, with respect to any Bank, any Person controlling such Bank.

“Participant” has the meaning set forth in Section 9.6(b).

“Participant Register” has the meaning set forth in Section 9.6(b).

“Patriot Act” has the meaning set forth in Section 9.15.

“Payment Date” means (a) the first Business Day of each January, April, July and October and (b) the Maturity Date.

“Payment Default” means any Default resulting from the Borrower’s failure to pay any principal of any Loan hereunder, including any mandatory prepayment hereunder, or any interest due on any Loan or any fees or other amount payable hereunder.

“PBGC” means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“Permitted Liens” means:

(a) Liens for Taxes, assessments or other governmental charges not yet delinquent or which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted in accordance with the terms hereof;

(b) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar liens imposed by law, which are incurred in the ordinary course of business for sums not more than ninety (90) days delinquent or which are being contested in good faith in accordance with the terms hereof;

(c) utility deposits and other deposits or pledges to secure the performance of bids, trade contracts (other than for borrowed money), leases, purchase contracts, construction contracts, governmental contracts, statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(d) easements (including reciprocal easement agreements and utility agreements), rights-of-way, zoning restrictions, other covenants, reservations, encroachments, leases, licenses or similar charges or encumbrances (whether or not recorded) and all other items listed on any Schedule B to the Borrower’s owner’s title insurance policies, except in connection with any Indebtedness, for any of the Borrower’s Real Property Assets, so long as the foregoing do not interfere in any material respect with the use or ordinary conduct of the business of the Borrower and do not diminish in any material respect the value of the property to which such Permitted Lien is attached;

(e) (I) Liens and judgments which have been or will be bonded (and the Lien on any cash or securities serving as security for such bond) or released of record within forty-five (45) days after the date such Lien or judgment is entered or filed against the Borrower, or any other Covered Party, or (II) Liens which are being contested in good faith by appropriate proceedings for review and in respect of which there shall have been secured a subsisting stay of execution pending such appeal or proceedings and as to which the subject asset is not at risk of forfeiture;

(f) Liens created pursuant to the Collateral Documents in favor of the Administrative Agent for the benefit of the Secured Parties; and

(g) Liens in favor of the Borrower.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including, without limitation, a government or political subdivision or an agency or instrumentality thereof.



“Plan” means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group, (ii) has at any time within the preceding five years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group or (iii) to which any member of the ERISA Group has had liability within the previous five years.

“Pledged Subsidiary” means any Subsidiary of the Borrower the equity or other interests in which constitute Collateral pledged pursuant to the Collateral Documents and that owns, directly or indirectly, Covered Assets or any other Subsidiary that owns, directly or indirectly, Covered Assets.

“Prime Rate” the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A. in connection with extensions of credit to debtors).

“Pro Rata Share” means, for any Bank at any time, a fraction (expressed as a percentage), the numerator of which shall be the amount of such Bank’s Commitment and the denominator of which shall be the Total Commitments.

“Projections” means the projected cash flows of the Borrower and its Consolidated Subsidiaries, substantially in the form of Exhibit F hereto.

“Property” means, with respect to any Person, any real or personal property, building, facility, structure, equipment or unit, or other asset owned by such Person.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Rating Agencies” means, collectively, S&P, Moody’s and Fitch.

“Real Property Assets” means as to any Person as of any time, the real property assets (including, without limitation, interests in participating mortgages in which such Person’s interest therein is characterized as equity according to GAAP) owned directly or indirectly by such Person at such time.

“Recourse Debt” means Indebtedness other than Non-Recourse Indebtedness.

“REIT” means a real estate investment trust, as defined under Section 856 of the Code.

“Required Banks” means at any time Banks having or holding more than 50% of (i) prior to the conversion of the Revolving Loans into Term Loans in accordance with Section 2.2 and Section 3.3, the aggregate amount of the Total Commitments then in effect, and (ii) on or after such conversion, or any termination of the Total Commitments, the aggregate unpaid principal amount of the Loans then outstanding hereunder.

“Revolving Commitment Period” means the period from and including the Closing Date to the Revolving Termination Date.

“Revolving Loans” has the meaning set forth in Section 2.1(a).

“Revolving Termination Date” means September 27, 2020.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

“Safety” means Safety, Income and Growth, Inc., a Maryland corporation.

“Safety Management Agreement” means the Management Agreement, dated as of June 27, 2017, by and among Safety, Safety Income and Growth Operating Partnership LP, SFTY Manager LLC and iStar Inc., as the same may be amended from time to time.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Cuba, the Crimea region of the Ukraine, Iran, North Korea, Sudan and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom or (c) other relevant sanctions authority.

“Screen Rate” has the meaning set forth in the definition of “Eurodollar Base Rate.”

“Secured Parties” has the meaning set forth in the Security Agreement.

“Securities” means any stock, partnership interests, shares, shares of beneficial interest, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities,” or any certificates of interest, shares, or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing, and shall include Indebtedness which would be required to be included on the liabilities side of the balance sheet of the Borrower in accordance with GAAP, but shall not include any Cash and Cash Equivalents or any evidence of the Obligations.

“Security Agreement” means the Amended and Restated Security Agreement, dated the date hereof, made by the Borrower in favor of the Administrative Agent, substantially in the form of Exhibit G, as the same may be amended, modified or supplemented from time to time.

“Solvent” means that, when used with respect to any Person, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person

will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Specified Time” means 11:00 a.m., London time.

“Subsidiary” means any corporation, trust or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Borrower.

“Super Majority Banks” means at any time Banks having or holding more than 66 2/3% of (i) prior to the conversion of the Revolving Loans into Term Loans in accordance with Section 2.2 and Section 3.3, the aggregate amount of the Total Commitments then in effect, and (ii) on or after such conversion or any termination of the Total Commitments, if applicable, the aggregate unpaid principal amount of the Loans then outstanding hereunder.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan Maturity Date” means the first anniversary of the Revolving Termination Date.

“Term Loans” has the meaning set forth in Section 2.2(a).

“Termination Event” means (i) a “reportable event”, as such term is described in Section 4043 of ERISA (other than a “reportable event” for which notice to the PBGC has been waived by statute or regulation), or an event described in Section 4062(e) of ERISA, (ii) the withdrawal by any member of the ERISA Group from a Multiemployer Plan during a plan year in which it is a “substantial employer” (as defined in Section 4001(a)(2) of ERISA), or the incurrence of liability by any member of the ERISA Group under Section 4064 of ERISA upon the termination of a Multiemployer Plan, (iii) the filing of a notice of intent to terminate any Plan under Section 4041 of ERISA, other than in a standard termination within the meaning of Section 4041 of ERISA, or the treatment of a Plan amendment as a distress termination under Section 4041 of ERISA, (iv) the institution by the PBGC of proceedings to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or cause a trustee to be appointed to administer, any Plan, (v) any failure to make by its due date any required installment under Section 430(j) of the Code with respect to any Plan, any failure by the Borrower or any member of the ERISA Group to make any required contribution to any Multiemployer Plan, or any failure to satisfy the minimum funding standards (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, shall exist with respect to any Plan, any Lien in favor of the PBGC, a Plan, or a Multiemployer Plan shall arise on the assets of the Borrower or any member of the ERISA Group, or there shall be any determination that any Plan is or is expected to be in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (vi) ) the Borrower or any member of the ERISA Group shall, or in the reasonable opinion of the Required Banks is likely to, incur any liability in

connection with a withdrawal from any Plan in which it was a substantial employer, or the withdrawal from, termination, Insolvency of, or “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA) of, a Multiemployer Plan, (vi) a proceeding shall be instituted by a fiduciary of any Multiemployer Plan against any member of the ERISA Group, to enforce Section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within 30 days thereafter, (vii) the provision by the administrator of any Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA, (viii) the withdrawal by the Borrower or any member of the ERISA Group from any Plan with two or more contributing sponsors or the termination of any such Plan resulting in liability to any member of the ERISA Group pursuant to Section 4063 or 4064 of ERISA, (ix) receipt from the Internal Revenue Service of notice of the failure of any Plan (or any other employee benefit plan sponsored by the Borrower or any of its Subsidiaries which is intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such employee benefit plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code or (x) any other event or condition that might reasonably constitute grounds for the termination of, or the appointment of a trustee to administer, any Plan or the imposition of any liability or encumbrance or Lien on the Real Property Assets or any member of the ERISA Group under ERISA or the Code.

“Total Commitments” means at any time, the aggregate amount of the Commitments then in effect.

“Total Revolving Loans” means at any time, the aggregate amount of the Revolving Loans outstanding at such time.

“Uniform Commercial Code” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“United States” means the United States of America, including the fifty states and the District of Columbia.

“Weighted Average CTL Lease Term” means, as of any date of determination, the weighted average remaining lease term as of such date of determination for all Credit Tenant Lease Assets that are Borrowing Base Assets as of such date based on the Borrowing Base Value of such Credit Tenant Lease Assets.

“Write-Down and Conversion Powers” means, 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.

Section 1.2. Accounting Terms and Determinations. As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Borrower and its Consolidated Subsidiaries not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP (provided that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards

Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein.

Section 1.3. Types of Borrowings. The term "Borrowing" denotes the aggregation of Loans of one or more Banks to be made to the Borrower pursuant to Article II on the applicable Borrowing Date, all of which Loans are of the same type (subject to Article VIII) and, except in the case of Base Rate Loans, have the same Interest Period.

## ARTICLE II

### THE LOANS

Section 2.1. Revolving Commitments. (a) Each Bank severally agrees, on the terms and conditions set forth in this Agreement, to make revolving credit loans ("Revolving Loans") in Dollars to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which would not result in either (i) the Revolving Loans of such Bank exceeding the amount of such Bank's Commitment or (ii) the Total Revolving Loans exceeding the lesser of (x) the Total Commitments and (y) the Borrowing Base. During the Revolving Commitment Period the Borrower may use the Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof.

(b) The Revolving Loans may from time to time be (i) Eurodollar Loans or (ii) Base Rate Loans or (iii) a combination thereof, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.3 and Section 2.5.

(c) The Revolving Commitments shall terminate, and, subject to the right of the Borrower set forth in Section 2.2 and the conditions set forth in Section 3.3, the Borrower shall repay all outstanding Revolving Loans, on the Revolving Termination Date.

Section 2.2. Term Commitments. (a) The Borrower may request that all Revolving Loans outstanding on the Revolving Termination Date be converted into an equal principal amount of term loans ("Term Loans") on the Revolving Termination Date by delivering the Administrative Agent notice of such conversion no later than 10:00 a.m. five (5) Business Days prior to the Revolving Termination Date (the "Conversion Notice").

(b) In the event that Administrative Agent receives a timely Conversion Notice, each Bank severally agrees, on the terms and conditions set forth in this Agreement and without further action by any of the Banks, to convert such Bank's outstanding Revolving Loans into an equal principal amount of Term Loans on the Revolving Termination Date and to extend the Maturity Date from the Revolving Termination Date to the Term Loan Maturity Date.

(c) The Term Loans may from time to time be (i) Eurodollar Loans or (ii) Base Rate Loans or (iii) a combination thereof, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.3 and Section 2.5

(d) The Term Loans shall be repaid in equal quarterly installments of 25% of the original principal amount of Term Loans, payable at the end of each calendar quarter, commencing with the first such quarter ending after the Revolving Termination Date with the last such payment payable on the Term Loan Maturity Date.



Section 2.3. Procedures for Revolving Loan Borrowing. (a) The Borrower may borrow under the Commitments during the Revolving Commitment Period on any Business Day, provided that the Borrower shall give the Administrative Agent a Notice of Borrowing (which Notice of Borrowing must be received by the Administrative Agent prior to 10:00 a.m., New York City time, one (1) Business Day (in the case of Base Rate Loans) and three (3) Eurodollar Business Days' notice (in the case of Eurodollar Loans) prior to the requested Borrowing Date) requesting that the Banks make the Loans on the requested Borrowing Date and specifying:

- (i) the amount of Revolving Loans to be borrowed;
- (ii) the requested Borrowing Date;
- (iii) whether the Revolving Loans comprising such Borrowing are to be Base Rate Loans or Eurodollar Loans;
- (iv) in the case of a Eurodollar Borrowing, the duration of the Interest Period applicable thereto, subject to the provisions of the definition of Interest Period;
- (v) payment instructions for delivery of such Borrowing; and
- (vi) that no Default or Event of Default has occurred or is continuing.

(b) Each Borrowing of Revolving Loans shall be in an amount equal to (x) in the case of Base Rate Loans, \$1,000,000 or a whole multiple thereof (or, if the then aggregate Available Commitments are less than \$1,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof.

Section 2.4. Notice to Banks; Funding of Revolving Loans.

(a) Upon receipt of a Notice of Borrowing from the Borrower in accordance with Section 2.3 hereof, the Administrative Agent shall, on the date such Notice of Borrowing is received by the Administrative Agent, notify each applicable Bank of the contents thereof and of such Bank's Pro Rata Share of such Borrowing and of the interest rate applicable thereto and such Notice of Borrowing shall not thereafter be revocable by the Borrower, unless the Borrower shall pay any applicable expenses pursuant to Section 2.14.

(b) Not later than 12:00 p.m. (New York City time) on the requested Borrowing Date, each Bank shall (except as provided in subsection (c) of this Section 2.4) make available its Pro Rata Share of such Borrowing in Federal funds immediately available in New York, New York, to the Administrative Agent at its address referred to in Section 9.1.

(c) Unless the Administrative Agent shall have received notice from a Bank prior to the requested Borrowing Date that such Bank will not make available to the Administrative Agent such Bank's share of a Borrowing, the Administrative Agent may assume that such Bank has made such share available to the Administrative Agent on the requested Borrowing Date in accordance with this Section 2.4 and the Administrative Agent may, in reliance upon such assumption, but shall not be obligated to, make available to the Borrower on such date a corresponding amount on behalf of such Bank. If and to the extent that such Bank shall not have so made such share available to the Administrative Agent, such Bank agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, at the Federal Funds Rate, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent. If such Bank

shall repay to the Administrative Agent such corresponding amount, such amount so repaid shall constitute such Bank's Loan included in such Borrowing for purposes of this Agreement. If such Bank shall not pay to the Administrative Agent such corresponding amount after reasonable attempts are made by the Administrative Agent to collect such amounts from such Bank, the Borrower agrees to repay to the Administrative Agent forthwith on demand such corresponding amounts together with interest thereto, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at the interest rate applicable thereto one (1) Business Day after demand. Nothing contained in this Section 2.4(c) shall be deemed to reduce the Commitment of any Bank or in any way affect the rights of the Borrower with respect to a Defaulting Bank or the Administrative Agent. The failure of any Bank to make available to the Administrative Agent such Bank's share of any Borrowing in accordance with Section 2.4(b) hereof shall not relieve any other Bank of its obligations to fund its Commitment, in accordance with the provisions hereof.

(d) Subject to the provisions hereof, the Administrative Agent shall make available each Borrowing to the Borrower in Federal funds immediately available in accordance with, and on the date set forth in, the applicable Notice of Borrowing.

Section 2.5. Notes.

(a) Each Bank may, by notice to the Borrower and the Administrative Agent, request that each of its Loans be evidenced by a Note substantially the form of Exhibit D hereto. Upon the execution and delivery of any such Note, any existing Note payable to such Bank shall be returned to the Borrower and replaced or modified accordingly. Each reference in this Agreement to the "Note" of such Bank shall be deemed to refer to and include any or all of such Notes, as the context may require.

(b) Upon receipt of any Bank's Note pursuant to Section 3.1(a), the Administrative Agent shall forward such Note to such Bank. Such Bank shall record the date, amount, currency, type and maturity of each Loan made by it and the date and amount of each payment of principal made by the Borrower, with respect thereto, and may, if such Bank so elects in connection with any transfer or enforcement of its Note, endorse on the appropriate schedule appropriate notations to evidence the foregoing information with respect to each such Loan then outstanding; provided that the failure of such Bank to make any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under the Notes. Each Bank is hereby irrevocably authorized by the Borrower so to endorse its Note and to attach to and make a part of its Note a continuation of any such schedule as and when required.

(c) There shall be no more than fifteen (15) Eurodollar Group of Loans outstanding at any one time.

Section 2.6. Method of Electing Interest Rates. (a) The Loans included in each Borrowing shall bear interest initially at the type of rate specified by the Borrower in the applicable Notice of Borrowing. Thereafter, the Borrower may from time to time elect to change or continue the type of interest rate borne by each Group of Loans (subject in each case to the provisions of Article VIII), as follows:

(i) if such Loans are Base Rate Loans, the Borrower may elect to convert all or any portion of such Loans to Eurodollar Loans as of any Eurodollar Business Day;

(ii) if such Loans are Eurodollar Loans, the Borrower may elect to convert all or any portion of such Loans to Base Rate Loans and/or elect to continue all or any portion of such Loans as Eurodollar Loans for an additional Interest Period or additional Interest Periods, in each

case effective on the last day of the then current Interest Period applicable to such Loans, or on such other date designated by the Borrower in the Notice of Interest Rate Election, provided the Borrower shall pay any losses pursuant to Section 2.14.

Each such election shall be made by delivering a notice (a "Notice of Interest Rate Election") to the Administrative Agent at least three (3) Eurodollar Business Days prior to, but excluding, the effective date of the conversion or continuation selected in such notice. A Notice of Interest Rate Election may, if it so specifies, apply to only a portion of the aggregate principal amount of the relevant Group of Loans; provided that (i) such portion is allocated ratably among the Loans comprising such Group of Loans, (ii) the portion to which such Notice of Interest Rate Election applies, and the remaining portion to which it does not apply, are each in the minimum amounts required hereby, (iii) no Loan may be continued as, or converted into, a Eurodollar Loan when any Event of Default has occurred and is continuing, provided, however, that if and for so long as the Borrower shall have an Investment Grade Rating from S&P and Moody's, if the Borrower shall so request and the Required Banks shall so elect, then a Loan may be continued as, or converted into, a Eurodollar Loan when any Event of Default has occurred and is continuing, and (iv) no Interest Period shall extend beyond the Maturity Date.

(b) Each Notice of Interest Rate Election shall specify:

(i) the Group of Loans (or portion thereof) to which such notice applies;

(ii) the date on which the conversion or continuation selected in such notice is to be effective, which shall comply with the applicable clause of subsection (a) above;

(iii) if the Loans comprising such Group of Loans are to be converted, the new type of Loans and, if such new Loans are Eurodollar Loans, the duration of the initial Interest Period applicable thereto; and

(iv) if such Loans are to be continued as Eurodollar Loans for an additional Interest Period, the duration of such additional Interest Period.

Each Interest Period specified in a Notice of Interest Rate Election shall comply with the provisions of the definition of Interest Period.

(c) Upon receipt of a Notice of Interest Rate Election from the Borrower pursuant to subsection (a) above, the Administrative Agent shall notify each Bank with Loans affected thereby the same day as it receives such Notice of Interest Rate Election of the contents thereof and the interest rates determined pursuant thereto and such notice shall not thereafter be revocable by the Borrower. If the Borrower fails to deliver a timely Notice of Interest Rate Election to the Administrative Agent for any Group of Eurodollar Loans, such Loans shall be converted into Base Rate Loans on the last day of the then current Interest Period applicable thereto.

#### Section 2.7. Interest Rates.

(a) Each Base Rate Loan shall bear interest on the outstanding principal amount thereof, for each day from the date such Loan is made until the date it is repaid or converted into a Eurodollar Loan pursuant to Section 2.6, at a rate per annum equal to the sum of the Base Rate plus the Applicable Margin for Base Rate Loans for such day.

(b) Each Eurodollar Loan shall bear interest on the outstanding principal amount thereof, for each day during the Interest Period applicable thereto, at a rate per annum equal to the sum of



the Applicable Margin for Eurodollar Loans for such day plus the Eurodollar Rate applicable to such Interest Period.

(c) In the event that, and for so long as, any Event of Default shall have occurred and be continuing, any overdue principal amount of the Loans and, to the extent permitted under applicable law, overdue interest and fees in respect of all Loans, shall bear interest at the annual rate equal to the sum of the Base Rate and the Applicable Margin for Base Rate Loans and two percent (2%), or, if any Loan shall have been continued as, or converted into, a Eurodollar Loan, then, as to such Loan only, the sum of the Eurodollar Rate applicable to such Loan and the Applicable Margin for Eurodollar Loans, and two percent (2%) (collectively, the “Default Rate”).

(d) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder. The Administrative Agent shall give prompt notice to the Borrower and the Banks of each rate of interest so determined, and its determination thereof shall be conclusive in the absence of demonstrable error.

(e) Interest on all Loans bearing interest at the Base Rate shall be payable in arrears on each Payment Date. Interest on all Loans bearing interest based on the Eurodollar Rate shall be payable in arrears on the last day of the applicable Interest Period as to any such Loan having an Interest Period of three months or less and, as to any such Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period.

#### Section 2.8. Fees.

(a) Commitment Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Bank a commitment fee for the period from and including the date hereof to the last day of the Revolving Commitment Period, computed at the Commitment Fee Rate on the average daily amount of the Available Commitment of such Bank during the period for which payment is made, payable quarterly in arrears on each Payment Date, commencing on the first such date to occur after the date hereof.

(b) Upfront Fee; Other Fees. The Borrower agrees to pay to the Administrative Agent, for the account of each Bank, an upfront fee equal to 0.25% of the Commitment of such Bank, payable on the Closing Date. The Borrower agrees to pay to the Administrative Agent for its own account and the account of the Agents such fees as may from time to time be separately agreed upon among the Borrower and such Agents.

(c) Fees Non-Refundable. All fees set forth in this Section 2.8 shall be deemed to have been earned on the date payment is due in accordance with the provisions hereof and shall be non-refundable. The obligation of the Borrower to pay such fees in accordance with the provisions hereof shall be binding upon the Borrower and shall inure to the benefit of the Administrative Agent and the Banks regardless of whether any Loans are actually made.

Section 2.9. Maturity Date. All Loans (together with accrued interest thereon and all other Obligations) shall be due and payable on the Maturity Date.

#### Section 2.10. Optional Prepayments; Termination or Reduction of Commitments.

(a) The Borrower may, upon at least one (1) Business Day’s notice to the Administrative Agent (which notice shall be substantially in the form of Exhibit I hereto), prepay any

Group of Base Rate Loans, in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 or more, by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment. Each such optional prepayment shall be applied to prepay ratably the Loans of the several Banks included in such Group of Loans or Borrowing.

(b) The Borrower may, upon at least three (3) Eurodollar Business Days' notice to the Administrative Agent, given no later than 12:00 Noon (New York City time) (which notice shall be substantially in the form of Exhibit I hereto), prepay all, or from time to time in part in amounts aggregating \$5,000,000 or more, any Group of Eurodollar Loans as of the last day of the Interest Period applicable thereto. Except as provided in Article VIII, the Borrower may not prepay all or any portion of the principal amount of any Eurodollar Loan prior to the end of the Interest Period applicable thereto unless the Borrower shall also pay any applicable expenses pursuant to Section 2.14. Any such prepayment notice shall be given on or prior to the third (3<sup>rd</sup>) Eurodollar Business Day prior to, but excluding, the date of prepayment to the Administrative Agent. Each such optional prepayment shall be applied to prepay ratably the Loans of the Banks included in any Group of Eurodollar Loans.

(c) Any amount of Revolving Loans so prepaid pursuant to Section 2.10(a) or (b) may be reborrowed during the Revolving Commitment Period subject to the terms of this Agreement. Any amounts of Term Loans so prepaid pursuant to Section 2.10(a) or (b) may not be borrowed or reborrowed and the amount of each such prepayment of Term Loans shall be applied to reduce the then remaining installments of Term Loans described in Section 2.2(d) in direct order of maturity. Each prepayment of the Loans under this Section 2.10 shall be accompanied by accrued and unpaid interest thereon to the date of such prepayment on the amount so prepaid.

(d) The Borrower shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the Commitments or, from time to time, to reduce the amount of the Commitments; provided that no such termination or reduction of Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans made on the effective date thereof, the Total Revolving Loan would exceed the lesser of the Total Commitments and the Borrowing Base. Any such reduction shall be in an amount equal to \$5,000,000, or a whole multiple thereof, and shall reduce permanently the Commitments then in effect.

#### Section 2.11. Mandatory Prepayments of Loans.

(a) In the event and on such occasion (whether upon delivery of a Borrowing Base Certificate pursuant to Section 5.1(i), a Monthly Certificate pursuant to Section 5.1(j) or a BPO pursuant to Section 5.1(k) or any other circumstance) that (i) the Total Revolving Loans exceed the Total Commitments or (ii) the aggregate principal amount of the Loans exceed the Borrowing Base, the Borrower shall within 30 days after such occasion prepay the Loans in an aggregate amount equal to such excess or cause one or more additional Eligible Credit Tenant Lease Assets or Eligible Loan Assets to become Covered Assets in accordance with Section 2.18.

(b) Any prepayment of Loans pursuant to this Section 2.11 shall be made upon notice (which shall be irrevocable unless otherwise agreed by the Administrative Agent) delivered to the Administrative Agent no later than 12:00 Noon (New York City time), three (3) Eurodollar Business Days prior thereto, in the case of Eurodollar Loans, and no later than 12:00 Noon (New York City time), one (1) Business Day prior thereto, in the case of Base Loans, which notice shall specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans; provided, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.14. Upon receipt of any such notice the Administrative Agent shall promptly notify each Bank thereof. If any such notice is

given, the amount specified in such notice shall be due and payable on the date specified therein. The application of any mandatory prepayment pursuant to this Section 2.11 shall be made, first, to Base Rate Loans, and second, to Eurodollar Loans. Each prepayment of the Loans under this Section 2.11 shall be accompanied by accrued and unpaid interest thereon to the date of such prepayment on the amount so prepaid.

Section 2.12. General Provisions as to Payments.

(a) The Borrower shall make each payment of the principal of and interest on the Loans and fees hereunder, without set-off or counterclaim, by initiating a wire transfer not later than 12:00 Noon (New York City time) on the date when due, of Federal funds immediately available in New York, New York, to the Administrative Agent at its address referred to in Section 9.1, it being understood that written or facsimile notice by the Borrower to the Administrative Agent to make a payment from the funds in the Borrower's account maintained at the Administrative Agent shall constitute the making of such payment to the extent of such funds held in such account. The Administrative Agent will promptly (and in any event within one (1) Business Day after receipt thereof) distribute to each Bank its ratable share in accordance with the amount of such Bank's relevant outstanding Loans, of each such payment received by the Administrative Agent for the account of the Banks. If and to the extent that the Administrative Agent shall receive any such payment for the account of the Banks on or before 11:00 a.m. (New York City time) on any Business Day (or Eurodollar Business Day, as applicable), and the Administrative Agent shall not have distributed to any Bank its applicable share of such payment on such day, the Administrative Agent shall distribute such amount to such Bank together with interest thereon, for each day from the date such amount should have been distributed to such Bank until the date the Administrative Agent distributes such amount to such Bank, at the Federal Funds Rate. Whenever any payment of principal of, or interest on the Base Rate Loans or of fees shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. Whenever any payment of principal of, or interest on, the Eurodollar Loans shall be due on a day which is not a Eurodollar Business Day, the date for payment thereof shall be extended to the next succeeding Eurodollar Business Day unless such Eurodollar Business Day falls in another calendar month, in which case the date for payment thereof shall be the immediately preceding Eurodollar Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time.

(b) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Banks hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Bank on such due date an amount equal to the amount then due such Bank. If and to the extent that the Borrower shall not have so made such payment, each Bank shall repay to the Administrative Agent forthwith on demand such amount distributed to such Bank together with interest thereon, for each day from the date such amount is distributed to such Bank until the date such Bank repays such amount to the Administrative Agent, at the Federal Funds Rate.

Section 2.13. [Reserved].

Section 2.14. Funding Losses. If the Borrower makes any payment of principal with respect to any Eurodollar Loan (pursuant to Article II, Article VI or Article VIII or otherwise) on any day other than the last day of the Interest Period applicable thereto, or if the Borrower fails to borrow any Eurodollar Loans after notice has been given to any Bank in accordance with Section 2.4(a), or if the Borrower shall deliver a Notice of Interest Rate Election specifying that a Eurodollar Loan shall be converted on a date other than the first (1<sup>st</sup>) day of the then current Interest Period applicable thereto, the Borrower shall

reimburse each Bank within 15 days after certification by such Bank of such loss or expense (which shall be delivered by each such Bank to the Administrative Agent for delivery to the Borrower) for any resulting loss (based on interest only, exclusive of fees, if any) or expense incurred by it (or by an existing Participant in the related Loan), including, without limitation, any loss incurred in obtaining, liquidating or employing deposits from third parties, but excluding loss of margin for the period after any such payment or failure to borrow, provided that such Bank shall have delivered to the Administrative Agent and the Administrative Agent shall have delivered to the Borrower a certification as to the amount of such loss or expense, which certification shall set forth in reasonable detail the basis for and calculation of such loss or expense and shall be conclusive in the absence of demonstrable error.

Section 2.15. Computation of Interest and Fees. With respect to Base Rate Loans, the rate of interest on which is calculated based on the Prime Rate hereunder, interest thereon shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and paid for the actual number of days elapsed (including the first day but excluding the last day). All other interest and fees shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.16. Use of Proceeds. The Borrower shall use the proceeds of the Loans for general corporate purposes, including without limitation, the repayment of the Borrower's debt obligations, the acquisition of assets and to fund capital expenditures and general working capital needs of the Borrower, in each case, in accordance with and subject to the terms and conditions of this Agreement.

Section 2.17. Reserved.

Section 2.18. Collateral and Covered Assets.

(a) The Obligations shall, at all times, be secured by a perfected first priority security interest in the Collateral. The Covered Assets and the equity interests issued by Covered Subsidiaries, shall, at all times, be free and clear of all Liens except Liens permitted under Section 5.15.

(b) On the Closing Date, the Covered Assets shall consist of the assets listed on the Collateral and Covered Asset List delivered to the Administrative Agent pursuant to Section 3.1(r). Thereafter, the Borrower may add assets as Covered Assets and Borrowing Base Assets, subject to the limitations described in this Agreement, and withdraw or substitute (and the Administrative Agent shall be authorized to release liens thereon) any Covered Asset so long as (I) no Payment Default or Event of Default shall have occurred and be continuing, (II) the Facility Collateral Coverage Ratio as of the date of such proposed withdrawal or substitution is greater than 1.90 to 1.00, in the case of both clauses (I) and (II), after giving pro forma effect to such proposed withdrawal or substitution, (III) the inclusion of any new asset as a Covered Asset would not conflict with any of the terms of the debt documents governing any of the Borrower's material Indebtedness, and an officer of the Borrower shall certify as to the absence of any such conflict prior to or substantially contemporaneously with such inclusion, (IV) the Borrower shall have complied with Section 5.1(n), after giving effect thereto, (i) the Total Revolving Loans shall not exceed the lesser of (x) the Total Commitments and (y) the Borrowing Base as reflected in a Borrowing Base Certificate delivered on such date of inclusion which shall reflect the adjustments required pursuant to clause (vii) of the definition of Designated Valuation Amount and (V) the representations and warranties of the Covered Parties contained in the Loan Documents shall be true and correct in all material respects (or if qualified by "materiality," "material adverse effect" or similar language, in all respects (after giving effect to such qualification)) on and as of the date of such addition, withdrawal or substitution after giving effect thereto.

(c) An asset previously withdrawn as a Covered Asset pursuant to the terms hereof may be subsequently redesignated as a Covered Asset and a Borrowing Base Asset provided it satisfies the criteria described in this Agreement and subject to delivery of a BPO with respect to such asset in accordance with Section 5.1(k)(ii). The Borrower may also withdraw an asset as a Covered Asset (and the Administrative Agent shall be authorized to release liens thereon) at any time if the Borrowing Base Value of such asset is zero. Other than as set forth in this Section 2.18(b), an asset may not be withdrawn as a Covered Asset and the Covered Subsidiaries shall at all times own the Covered Assets. Such withdrawal, and where appropriate release of lien, shall be effected in accordance with Section 9.17 and the Collateral Documents.

(d) With respect to any addition of a Covered Asset, the Borrower shall promptly (i) execute and deliver to the Administrative Agent such amendments to the Security Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Banks, a perfected first priority security interest in the Capital Stock of the Subsidiary that owns such Covered Asset, (ii) deliver to the Administrative Agent (A) the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of such Subsidiary, and (B) the documents described in Section 3.1(g) as to such Subsidiary, (iii) cause such Subsidiary (A) to execute and deliver to the Administrative Agent an Acknowledgment and Consent in the form attached to the Security Agreement, (B) to become a party to the Negative Pledge Agreement, (C) to become party to the Affiliate Subordination Agreement, and (D) to take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Banks a perfected first priority security interest in the Collateral with respect to such new Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Security Agreement or by law or as may be requested by the Administrative Agent, (iv) satisfy the condition described in Section 3.1(j) as to such Subsidiary and (v) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) If at any time, there are less than ten (10) Borrowing Base Assets, the Borrower shall within 30 days after such occasion prepay the Loans to zero or cause one or more additional Eligible Credit Tenant Lease Assets or Eligible Loan Assets to become Covered Assets (and Borrowing Base Assets) in accordance with this Section 2.18 and no Loans shall be made, and the Borrower shall not request any Loans, until such time as there are ten (10) or more Borrowing Base Assets.

Section 2.19. Defaulting Bank. Notwithstanding any provision of this Agreement to the contrary, if any Bank becomes a Defaulting Bank, then the following provisions shall apply for so long as such Bank is a Defaulting Bank:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Bank pursuant to Section 2.8(a);

(b) the Commitment and Loans of such Defaulting Bank shall not be included in determining whether the Required Banks or Super Majority Banks have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.5); provided, that this clause (b) shall not apply to the vote of a Defaulting Bank in the case of an amendment, waiver or other modification requiring the consent of such Bank or each Bank affected thereby;

(c) the Borrower may, at its sole expense and effort, upon notice to such Defaulting Bank and the Administrative Agent, require such Defaulting Bank to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.6), all its Available



Commitments under this Agreement to an assignee that shall assume such obligations (which assignee may be another Bank, if a Bank accepts such assignment); provided that the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld; provided further that nothing contained in this clause (c) shall affect the obligations due to such Defaulting Bank; and

(d) the Administrative Agent may, in its sole discretion (notwithstanding any contrary provision of this Agreement), apply any amounts thereafter received by it from any Covered Party for the account of such Defaulting Bank to satisfy such Defaulting Bank's obligations hereunder until all such unsatisfied obligations are fully paid.

In the event that the Administrative Agent and the Borrower each agrees that a Defaulting Bank has adequately remedied all matters that caused such Bank to be a Defaulting Bank, then on such date such Bank shall purchase at par such of the Loans of the other Banks as the Administrative Agent shall determine may be necessary in order for such Bank to hold such Loans in accordance with its Pro Rata Share.

### ARTICLE III

#### CONDITIONS

Section 3.1. Closing. The Closing Date shall occur on the date when each of the following conditions is satisfied (or waived in writing by the Administrative Agent and the Banks), each document to be dated the Closing Date unless otherwise indicated:

(a) the Borrower as of the Closing Date shall have executed and delivered to the Administrative Agent a Note or Notes for the account of each Bank requesting the same dated the Closing Date and complying with the provisions of Section 2.5;

(b) the Borrower, the Administrative Agent and each of the Banks shall have executed and delivered to the Administrative Agent a duly executed original of this Agreement;

(c) the Borrower shall have executed and delivered to the Administrative Agent a duly executed original of the Security Agreement and each other Collateral Document and each issuer of equity interests pledged pursuant to the Security Agreement shall have executed and delivered to the Administrative Agent an Acknowledgment and Consent in the form attached to the Security Agreement;

(d) the Administrative Agent shall have received a duly executed Affiliate Subordination Agreement, duly executed by the Covered Parties;

(e) the Administrative Agent shall have received any certificates representing Pledged Stock described in the Security Agreement and required to be delivered thereunder as of the Closing Date and appropriate transfer documents with respect to any such certificates included in the Collateral as of the Closing Date, signed in blank by the Borrower or the other owner thereof and, each document (including, without limitation, any Uniform Commercial Code financing statement to be filed in the jurisdiction of organization of the Borrower) required by the Security Agreement or under law or reasonably requested by the Administrative Agent to be filed, registered, recorded or delivered in order to create or perfect the Liens intended to be created under the Security Agreement shall have been delivered to the Administrative Agent in proper form for filing, registration or recordation (if applicable);

(f) the Administrative Agent shall have received opinions of (i) Clifford Chance US LLP, special counsel for the Borrower, (ii) Geoffrey Dugan, Esq., in-house counsel for the Borrower, and (iii) Venable LLP, special Maryland counsel to the Borrower, each acceptable to the Administrative Agent, the Banks and their counsel;

(g) the Administrative Agent shall have received all documents the Administrative Agent may reasonably request relating to the existence of the Borrower and each other Covered Party as of the Closing Date, the authority for and the validity of this Agreement and the other Loan Documents, the incumbency of officers executing this Agreement and the other Loan Documents and any other matters relevant hereto, all in form and substance satisfactory to the Administrative Agent. Such documentation shall include, without limitation, the articles of incorporation, certificate of formation or similar organizational document of each such entity, as amended, modified or supplemented on or prior to the Closing Date, certified to be true, correct and complete by a senior officer of such entity as of the Closing Date, together with a good standing certificate as to each such entity from the Secretary of State (or the equivalent thereof) of its jurisdiction of organization, to be dated as of a date within ten Business Days from the Closing Date. Any such organizational documents of each Covered Subsidiary shall provide for, and require that there at all times be, a special director or member whose consent would be required for a bankruptcy filing by such Covered Subsidiary or for the transfer of any equity interests therein (other than the sale of such equity interests in a transaction permitted under the Loan Documents) and shall otherwise be satisfactory to the Administrative Agent;

(h) the Borrower shall have executed a solvency certificate reasonably acceptable to the Administrative Agent;

(i) the Administrative Agent shall have received all certificates, agreements and other documents and papers referred to in this Section 3.1 and the Notice of Borrowing referred to in Section 2.3, unless otherwise specified, in sufficient counterparts, satisfactory in form and substance to the Administrative Agent in its reasonable discretion;

(j) each Covered Party shall have taken all actions required to authorize the execution and delivery of (i) in the case of the Borrower, this Agreement and (ii) in the case of the Borrower and each other Covered Party, any other Loan Document to which it is a party and the performance thereof by the Borrower or such other Covered Party, as applicable;

(k) the Banks shall be satisfied that the Borrower is not subject to any present or contingent Environmental Claim which, if adversely determined, would reasonably be expected to have a Material Adverse Effect on the Borrower, and the Borrower shall have delivered to the Administrative Agent a certificate of a senior officer of the Borrower so stating;

(l) (i) the Administrative Agent shall have received, on or before the Closing Date, (x) for its and any other Bank's account, (A) all accrued and unpaid fees as of the Closing Date pursuant to Section 2.8 of the Existing Credit Agreement and (B) all fees due and payable pursuant to Section 2.8 on or before the Closing Date and (y) all other fees required to be paid and all expenses for which invoices have been presented and (ii) the reasonable and documented fees and expenses accrued through the Closing Date of Simpson Thacher & Bartlett LLP shall have been paid to Simpson Thacher & Bartlett LLP;

(m) the Borrower shall have delivered copies of all consents, licenses and approvals (subject to Section 4.3), if any, required in connection with the execution, delivery and performance by the Borrower or any other Covered Party, or the validity and enforceability, of the Loan Documents, or in

connection with any of the transactions contemplated thereby, and such consents, licenses and approvals shall be in full force and effect;

(n) no Default or Event of Default shall have occurred and be continuing before or immediately after giving effect to the transactions contemplated hereby;

(o) the Administrative Agent shall have received (x) the Collateral and Covered Assets List, which shall be in form and substance reasonably satisfactory to the Administrative Agent and (y) a Borrowing Base Certificate, dated as of the Closing Date and duly executed by a financial officer of the Borrower, reflecting a Borrowing Base as of the Closing Date of not less than \$325,000,000;

(p) the Borrower shall have delivered Projections which shall include (x) the Borrower's projected sources and uses of cash (and the timing thereof) through a date that is on or after the Term Loan Maturity Date and (y) that such sources are at all times sufficient for such uses;

(q) the representations and warranties of the Covered Parties contained in the Loan Documents shall be true and correct in all material respects (or if qualified by "materiality," "material adverse effect" or similar language, in all respects (after giving effect to such qualification)) on and as of the Closing Date both before and after giving effect to the transactions contemplated hereby;

(r) the Administrative Agent shall have received the results of a recent Lien search with respect to the Borrower and each other Covered Party and such search shall reveal no Liens on any of the Covered Assets or the Collateral except for Liens permitted by Section 5.15 and the Negative Pledge Agreement or discharged on or prior to the Closing Date pursuant to documentation satisfactory to the Administrative Agent; and

(s) any Bank that so reasonably requests (in writing) at least two Business Days prior to the Closing Date shall have received, through the Administrative Agent, all U.S.A. PATRIOT Act information required under Section 9.15.

Section 3.2. Borrowings. The obligation of any Bank to make a Revolving Loan is subject to the following conditions:

(a) after giving effect to such Borrowing on the applicable Borrowing Date, (i) the Total Revolving Loans shall not exceed the lesser of (x) the Total Commitments and (y) the Borrowing Base as reflected in a Borrowing Base Certificate delivered on such Borrowing Date which shall reflect the adjustments required pursuant to clause (vii) of the definition of Designated Valuation Amount;

(b) receipt by the Administrative Agent of a Notice of Borrowing as required by Section 2.3(a);

(c) there shall be not less than ten (10) Borrowing Base Assets;

(d) the representations and warranties of the Covered Parties contained in the Loan Documents shall be true and correct in all material respects (or if qualified by "materiality," "material adverse effect" or similar language, in all respects (after giving effect to such qualification)) on and as of the date of such Borrowing both before and after giving effect to the making of such Revolving Loans; and

(e) no Default or Event of Default shall have occurred and be continuing before or immediately after giving effect to the making of such Revolving Loans.



Each Borrowing by the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such Borrowing that the conditions contained in this Section 3.2 have been satisfied.

Section 3.3. Conditions to Conversion into Term Loan. The obligation of the Banks to convert the Revolving Loans into Term Loans and to extend the Maturity Date from the Revolving Termination Date to the Term Loan Maturity Date is subject to the following conditions:

- (a) receipt by the Administrative Agent of a Conversion Notice as required by Section 2.3(a);
- (b) the representations and warranties of the Covered Parties contained in the Loan Documents shall be true and correct in all material respects (or if qualified by “materiality,” “material adverse effect” or similar language, in all respects (after giving effect to such qualification)) on and as of the date of such conversion both before and after giving effect to the conversion of such Revolving Loans and extension of maturity;
- (c) no Default or Event of Default shall have occurred and be continuing before or immediately after giving effect to the conversion of such Revolving Loans and extension of maturity; and
- (d) after giving effect to such conversion of the Revolving Loans and the extension of maturity, the aggregate principal amount of the Term Loans shall not exceed the Borrowing Base as reflected in a Borrowing Base Certificate delivered on such date which shall reflect the adjustments required pursuant to clause (vii) of the definition of Designated Valuation Amount.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

In order to induce the Administrative Agent and each of the other Banks which is or may become a party to this Agreement to make the Revolving Loans and to convert the Revolving Loans into Term Loans, the Borrower makes the following representations and warranties as of the Closing Date, as of each Borrowing and, if applicable, as of the conversion of the Revolving Loans into Term Loans. Such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the other Loan Documents and the making of the Loans.

Section 4.1. Existence and Power. Each of the Borrower and each other Covered Party is a corporation, limited liability company or limited partnership, as applicable, duly organized or incorporated, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation and has all powers and all material governmental licenses, authorizations, consents and approvals required to own its property and assets and carry on its business as now conducted or as it presently proposes to conduct and has been duly qualified and is in good standing in every jurisdiction in which the failure to be so qualified and/or in good standing is likely to have a Material Adverse Effect.

Section 4.2. Power and Authority; Enforceable Obligation. Each of the Borrower and each other Covered Party has the requisite power and authority to execute, deliver and carry out the terms and provisions of each of the Loan Documents to which it is a party and has taken all necessary action, if any, to authorize the execution and delivery on its behalf and its performance of the Loan Documents to which it is a party. Each of the Borrower and each other Covered Party has duly executed and delivered each Loan Document to which it is a party in accordance with the terms of this Agreement, and each such Loan Document constitutes (or, upon execution and delivery thereof, will constitute) its legal, valid and binding

obligation, enforceable in accordance with the terms thereof, except as enforceability may be limited by applicable insolvency, bankruptcy or other similar laws affecting creditors rights generally, or general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

Section 4.3. No Violation. Neither the execution, delivery or performance by or on behalf of any Covered Party of the Loan Documents to which it is a party, nor compliance by any such Covered Party with the terms and provisions thereof nor the consummation of the transactions contemplated by such Loan Documents, (i) will contravene any applicable provision of any law, statute, rule, regulation, order, writ, injunction or decree of any court or governmental instrumentality, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (other than Liens created under the Collateral Documents) upon any of the property or assets of the Borrower or any of its Consolidated Subsidiaries pursuant to the terms of, any loan agreement, indenture, mortgage, deed of trust, or other agreement or other instrument to which the Borrower (or any partnership of which the Borrower is a partner) or any of its Consolidated Subsidiaries is a party or by which it or any of its property or assets is bound or to which it is subject, or (iii) will cause a default by any Covered Party under any organizational document of any Person in which such Covered Party has an interest, or cause a material default under such Person's agreement or certificate of limited partnership, the consequences of which conflict, contravention, breach or default under the foregoing clauses (i), (ii) or (iii) would (x) have a Material Adverse Effect (provided, however, that for purposes of determining whether the consequences of a conflict, contravention, breach or default under clause (ii) of this Section 4.3 would have a Material Adverse Effect, clause (ii) of the definition of the term "Material Adverse Effect" shall be modified to read as follows: "(ii) the ability of the Administrative Agent or the Banks to enforce the Loan Documents in a manner that materially and adversely affects the rights of the Administrative Agent or the Banks thereunder"), or (y) result in or require the creation or imposition of any Lien whatsoever upon any Collateral (except as contemplated herein).

Section 4.4. Financial Information.

(a) The consolidated financial statements of the Borrower and its Consolidated Subsidiaries as of December 31, 2016, and for the Fiscal Year then ended, reported on by PricewaterhouseCoopers LLP fairly presents, in conformity with GAAP, the consolidated financial position of the Borrower and its Consolidated Subsidiaries as of such date and the consolidated results of operations and cash flows for such Fiscal Year.

(b) The unaudited consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as at each of March 31, 2017 and June 30, 2017, and the related unaudited consolidated statements of income and cash flows for the three-month and six-month periods ended on such dates, present fairly the consolidated financial condition of the Borrower and its Consolidated Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the three-month and six-month periods then ended (subject to normal year-end audit adjustments).

(c) All such financial statements described above, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein).

(d) Since December 31, 2016, (i) nothing has occurred having a Material Adverse Effect, (ii) except (x) as set forth on Schedule 4.4(d) or in connection with the capitalization plans disclosed to the Agents and (y) for the incurrence of Loans hereunder on the Closing Date, the Borrower has not incurred any material Indebtedness or guaranteed any material Indebtedness on or before the Closing Date and (iii) except as set forth in Schedule 4.4(d) or in connection with the capitalization plans

disclosed to the Agents, the Borrower will not have incurred any material Indebtedness or guaranteed any material Indebtedness on or before the Closing Date.

(e) Schedule 4.4(d) sets forth the Indebtedness for borrowed money of each Covered Subsidiary outstanding on and as of the Closing Date.

(f) No Covered Subsidiary has incurred any Indebtedness or guaranteed any Indebtedness other than Non-Recourse Indebtedness in respect of the Excluded Assets and Indebtedness permitted by Section 5.14.

Section 4.5. Litigation. There is no action, suit or proceeding pending against, or to the knowledge of the Borrower threatened against or affecting, (i) the Borrower or any of its Consolidated Subsidiaries, (ii) the Loan Documents or any of the transactions contemplated by the Loan Documents or (iii) any of the assets of the Borrower or any of its Consolidated Subsidiaries, before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could, individually, or in the aggregate have a Material Adverse Effect or which in any manner draws into question the validity of this Agreement or the other Loan Documents.

Section 4.6. Compliance with ERISA. (a) Except as set forth on Schedule 4.6(a) attached hereto, neither the Borrower nor any other Covered Party is a member of or has entered into, maintained, contributed to, or been required to contribute to, or may incur any liability with respect to any Plan or Multiemployer Plan. Except as could not be reasonably expected to have a Material Adverse Effect individually or in the aggregate (i) there has been no filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standards with respect to any Plan; (ii) there has been no failure to make by its due date any required installment under Section 430(j) of the Code with respect to any Plan nor a failure by the Borrower nor any member of the ERISA Group to make any required contribution to a Multiemployer Plan; (iii) there has been no determination that any Plan is or is expected to be in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (iv) the present value of all accrued benefits under each Plan (determined based on the assumptions used by such Plans pursuant to Section 430(h) of the Code) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed by more than an immaterial amount the value of the assets of such Plan (as determined pursuant to Section 430(g) of the Code) allocable to such accrued benefits, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of ASC Topic 715-30) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than an immaterial amount the fair market value of the assets of all such underfunded Plans; (v) (A) each employee benefit plan maintained by the Borrower or any of its Subsidiaries or any Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such employee benefit plan or Plan is so qualified and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, (B) an application for a determination letter is currently pending before the Internal Revenue Service or (C) the Internal Revenue Service has issued a favorable opinion that the form of the plan document satisfies Section 401(a) of the Code and, to the knowledge of Borrower, nothing has occurred subsequent to the issuance of the determination letter or opinion letter which would cause such employee benefit plan or Plan to lose its qualified status; and (vi) no liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by any member of the ERISA Group other than in the ordinary course. The Borrower and its Subsidiaries have no contingent liabilities with respect to any post retirement benefits under a Welfare Plan, other than liability for continuation coverage described in article 6 of Title 1 of ERISA, and except as would not be reasonably expected to have a Material Adverse Effect. In the event that at any time after the Closing

Date, the Borrower or any other Covered Party shall sponsor or contribute to any other material Plan or Multiemployer Plan, the Borrower promptly shall notify the Administrative Agent thereof (and from and after such notice, Schedule 4.6(a) shall be deemed modified thereby).

(b) No assets of the Borrower or any other Covered Party constitute “assets” (within the meaning of ERISA or Section 4975 of the Code, including, but not limited to, 29 C.F.R. § 2510.3-101 or any successor regulation thereto) of an “employee benefit plan” within the meaning of Section 3(3) of ERISA that is subject to Title I of ERISA or a “plan” within the meaning of, and subject to, Section 4975(e)(1) of the Code. In addition to the prohibitions set forth in this Agreement and the other Loan Documents, and not in limitation thereof, the Borrower covenants and agrees that the Borrower shall not, and shall not permit any other Covered Party to, use any “assets” (within the meaning of ERISA or Section 4975 of the Code, including but not limited to 29 C.F.R. § 2510.3101) of an “employee benefit plan” within the meaning of Section 3(3) of ERISA that is subject to Title I of ERISA or a “plan” within the meaning of, and subject to, Section 4975(e)(1) of the Code to repay or secure the Note, the Loan, or the Obligations.

Section 4.7. Environmental. (a) The Borrower conducts reviews of the effect of Environmental Laws on the business, operations and properties of the Borrower and its Consolidated Subsidiaries when necessary in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently owned, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, and any actual or potential liabilities to third parties, including, without limitation, employees, and any related costs and expenses). On the basis of this review, the Borrower has reasonably concluded that such associated liabilities and costs, including, without limitation, the costs of compliance with Environmental Laws, are unlikely to have a Material Adverse Effect.

(b) Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (i) neither the Borrower nor any other Covered Party has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the facilities and properties owned, leased or operated by the Borrower or any other Covered Party (the “Properties”) or the business operated by the Borrower or any other Covered Party (the “Business”) that is not fully and finally resolved, (ii) to the Borrower’s actual knowledge, after due inquiry, no judicial proceeding or governmental or administrative action is pending or, to the Borrower’s actual knowledge, after due inquiry, threatened, under any Environmental Law to which the Borrower or any other Covered Party is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law or relating to Materials of Environmental Concern with respect to the Business; and (iii) to the Borrower’s actual knowledge, the Properties and all operations at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and there are no Materials of Environmental Concern at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business.

Section 4.8. Taxes. The Borrower and its Consolidated Subsidiaries have filed all U.S. federal income tax returns and all other material tax returns which are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by the Borrower, or any Consolidated Subsidiary, except (i) such taxes, if any, as are being contested in good faith by appropriate proceedings and are reserved against in accordance with GAAP or (ii) such tax returns or such taxes, the failure to file when due or to make payment when due and payable will not have, in the

aggregate, a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its Consolidated Subsidiaries in respect of taxes or other governmental charges are, in the opinion of the Borrower, adequate. No Tax lien (other than a Permitted Lien) has been filed, and, to the knowledge of Borrower and its Consolidated Subsidiaries, no claim is being asserted, with respect to any such Tax, fee or other charge.

Section 4.9. Full Disclosure. All information heretofore furnished by the Borrower or any other Covered Party to the Administrative Agent or any Bank for purposes of or in connection with this Agreement or any transaction contemplated hereby or thereby is, when taken as a whole, true and accurate in all material respects on the date as of which such information is stated or certified; provided that, with respect to projected financial information, the Borrower represents and warrants only that such information represents the Borrower's expectations regarding future performance, based upon historical information and reasonable assumptions, it being understood, however, that actual results may differ from the projected results described in the financial projections. The Borrower has disclosed to the Banks in writing any and all facts which have or may have (to the extent the Borrower can now reasonably foresee) a Material Adverse Effect.

Section 4.10. Solvency. (i) On the Closing Date and after giving effect to the transactions contemplated hereby and by the other Loan Documents occurring on the Closing Date and (ii) on each date that the Borrower provides additional Covered Assets or Collateral pursuant to Section 2.18 or otherwise, the Borrower and each other Covered Party, taken as a whole, are Solvent.

Section 4.11. Use of Proceeds. All proceeds of the Loans will be used by the Borrower only in accordance with the provisions hereof. Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of regulations T, U, or X of the Federal Reserve Board.

Section 4.12. Governmental Approvals. No order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with the execution, delivery and performance by the Borrower or any other Covered Party of any Loan Document to which it is a party or the consummation of any of the transactions contemplated thereby other than those that have already been duly made or obtained and remain in full force and effect or those which, if not made or obtained, would not have a Material Adverse Effect.

Section 4.13. Investment Company Act. Neither the Borrower nor any other Covered Party is (x) an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended, or (y) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 4.14. Principal Offices. As of the Closing Date, the principal office, chief executive office and principal place of business of each Covered Party is 1114 Avenue of the Americas, New York, NY 10036.

Section 4.15. REIT Status. As of the date hereof, the Borrower is qualified as a REIT.

Section 4.16. Intellectual Property. The Borrower and each other Covered Party has obtained and holds in full force and effect all patents, trademarks, servicemarks, trade names, domain names, copyrights and other intellectual property rights, free from burdensome restrictions, which are necessary for the operation of its business as presently conducted, the impairment of which is likely to have a Material Adverse Effect.



Section 4.17. Judgments. As of the Closing Date, there are no final, non-appealable judgments or decrees in an aggregate amount of \$50,000,000 or more entered by a court or courts of competent jurisdiction against the Borrower, any other Covered Party or any Consolidated Subsidiary or, to the extent such judgment would be recourse to the Borrower, any other Covered Party or any Consolidated Subsidiary, any other Person (other than, in each case, judgments as to which, and only to the extent, a reputable insurance company has acknowledged coverage of such claim in writing or which have been paid or stayed).

Section 4.18. No Default. No Event of Default or, to the best of the Borrower's knowledge, Default exists under or with respect to any Loan Document and neither the Borrower nor any other Covered Party is in default in any material respect beyond any applicable grace period under or with respect to any other material agreement, instrument or undertaking to which it is a party or by which it or any of its property is bound in any respect, the existence of which default is likely to result in a Material Adverse Effect.

Section 4.19. Licenses, etc. Each Covered Party has obtained and does hold in full force and effect, all franchises, licenses, permits, certificates, authorizations, qualifications, accreditation, easements, rights of way and other consents and approvals which are necessary for the operation of its businesses as presently conducted, the absence of which is likely to have a Material Adverse Effect.

Section 4.20. Compliance with Law. To the Borrower's knowledge, each Covered Party and each of its assets are in compliance in all respects with all laws, rules, regulations, orders, judgments, writs and decrees, the failure to comply with which is likely to have a Material Adverse Effect.

Section 4.21. No Burdensome Restrictions. Except as may have been disclosed by the Borrower in writing to the Banks prior to the Closing Date or that would otherwise be permitted under the Loan Documents, neither the Borrower nor any other Covered Party is a party to any agreement or instrument or subject to any other obligation or any charter or corporate or partnership restriction, as the case may be, which, individually or in the aggregate, is likely to have a Material Adverse Effect.

Section 4.22. Brokers' Fees. Neither the Borrower nor any other Covered Party has dealt with any broker or finder with respect to the transactions contemplated by this Agreement or otherwise in connection with this Agreement, and neither the Borrower nor any other Covered Party has done any act, had any negotiations or conversation, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by the Borrower or any other Covered Party of any brokerage fee, charge, commission or other compensation to any party with respect to the transactions contemplated by the Loan Documents, other than the fees payable to the Administrative Agent and the Banks, and certain other Persons as previously disclosed to the Administrative Agent.

Section 4.23. Labor Matters. Except as disclosed on Schedule 4.6(a), there are no collective bargaining agreements covering the employees of the Borrower or any other Covered Party, and neither the Borrower nor any other Covered Party has suffered any material strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

Section 4.24. Insurance. Each of the Borrower and each other Covered Party currently maintains 100% replacement cost insurance coverage (subject to customary deductibles) in respect of each of its Real Property Assets, as well as commercial general liability insurance (including, without limitation, "builders' risk" where applicable) against claims for personal, and bodily injury and/or death, to one or more persons, or property damage, as well as workers' compensation insurance, in each case with respect to liability and casualty insurance with insurers having an A.M. Best policyholders' rating of not less than A-/VII at the time of issuance or extension of any such coverage policy in amounts no less

than customarily carried by owners of properties similar to, and in the same locations as, the Covered Parties' Real Property Assets; provided, however, that the foregoing A.M. Best policyholders' rating requirement shall not be required for (a) such insurance as tenants of Credit Tenant Lease Assets are permitted or required pursuant to applicable leases to obtain or maintain and (b) liability and casualty insurance policies issued after the Closing Date on Real Property Assets constituting not more than 5.0% of all Real Property Assets owned by the Covered Parties with insurers having an A.M. Best policyholders' rating of less than A-/VII, but not less than B++/VII.

Section 4.25. Organizational Documents. The documents delivered pursuant to Section 3.1(g) constitute, as of the Closing Date, all of the organizational documents (together with all amendments and modifications thereof) of the Borrower and each Covered Party. The Borrower represents that it has delivered to the Administrative Agent true, correct and complete copies of each such document.

Section 4.26. Unencumbered Assets. As of the Closing Date after giving effect to the transactions contemplated hereby, the Borrower shall be in compliance with the covenants with respect to the Borrower's maintenance of its unencumbered assets under the documentation governing its other Indebtedness for borrowed money.

Section 4.27. Ownership of Property; Liens. The Borrower owns the Collateral purported to be owned by it (and in the case of Credit Tenant Lease Assets, fee title to the underlying real property in respect thereof) and each other Covered Party directly and wholly owns the Covered Assets purported to be owned by it, as applicable, in each case as set forth in the Collateral and Covered Asset List, except as set forth on Schedule 4.27, and none of the Collateral or Covered Assets is subject to any Lien except as permitted by Section 5.15.

Section 4.28. Covered Parties. (a) Schedule 4.28 sets forth the full legal name and jurisdiction of incorporation or organization of each Covered Party and, as to each such Covered Subsidiary, the percentage of each class of equity interests owned by the Borrower or any Covered Party and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than, in respect of the Borrower only, stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any equity interests of the Borrower or any other Covered Party, except as permitted by the Loan Documents.

Section 4.29. Security Documents. The Security Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Agents and the Banks, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Security Agreement, when certificates representing such Pledged Stock, if any, are delivered to the Administrative Agent, and in the case of the other Collateral described in the Security Agreement, when financing statements and other filings specified on Schedule 4.29 in appropriate form are filed in the offices specified on Schedule 4.29, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Borrower in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Lien.

Section 4.30. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and directors, and to the knowledge of the Borrower its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Borrower being designated as a Sanctioned Person. None of (a)

the Borrower, any Subsidiary or to the knowledge of the Borrower or such Subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Loan, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

Section 4.31. EEA Financial Institutions. No Covered Party is an EEA Financial Institution.

## ARTICLE V

### AFFIRMATIVE AND NEGATIVE COVENANTS

The Borrower covenants and agrees that, so long as any of the Obligations remain unpaid:

Section 5.1. Information. The Borrower shall deliver to the Administrative Agent and each of the Banks (or post to Intralinks or another similar electronic system acceptable to the Administrative Agent), provided such information is not otherwise publicly available:

(a) as soon as available and in any event within five (5) Business Days after the same is required to be filed with the Securities and Exchange Commission (but in no event later than 95 days after the end of each Fiscal Year of the Borrower) a consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of operations and consolidated statements of cash flow for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year (if available), all reported in a manner acceptable to the Securities and Exchange Commission on the Borrower's Form 10-K and reported on by PricewaterhouseCoopers LLP or other independent public accountants of nationally recognized standing;

(b) (i) as soon as available and in any event within five (5) Business Days after the same is required to be filed with the Securities and Exchange Commission (but in no event later than 50 days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower), a consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such Fiscal Quarter and the related consolidated statements of operations and consolidated statements of cash flow for such quarter and for the portion of the Borrower's Fiscal Year ended at the end of such Fiscal Quarter, all reported in the form provided to the Securities and Exchange Commission on the Borrower's Form 10-Q, together with (ii) such other information reasonably requested by the Administrative Agent or any Bank;

(c) simultaneously with the delivery of each set of financial statements referred to in clauses (a) and (b) above, (I) a certificate of a financial officer of the Borrower (i) setting forth in reasonable detail the calculations required to establish whether the Borrower was in compliance with the requirements of Section 5.9 on the date of such financial statements and (ii) certifying (x) that such financial statements fairly present the financial condition and the results of operations of the Borrower and its Consolidated Subsidiaries on the dates and for the periods indicated, on the basis of GAAP, subject, in the case of interim financial statements, to normally recurring year-end adjustments, and (y) that such officer has reviewed the terms of the Loan Documents and has made, or caused to be made under his or her supervision, a review in reasonable detail of the business and condition of the Borrower and its Consolidated Subsidiaries during the period beginning on the date through which the last such review was made pursuant to this Section 5.1(c) (or, in the case of the first certification pursuant to this Section 5.1(c), the Closing Date) and ending on a date not more than ten (10) Business Days prior to, but excluding, the date of such delivery and that (1) on the basis of such financial statements and such review of the Loan Documents, no Event of Default existed under Section 6.1(b) with respect to Section 5.9 at or



as of the date of such financial statements, and (2) on the basis of such review of the Loan Documents and the business and condition of the Borrower and its Consolidated Subsidiaries, to the best knowledge of such officer, as of the last day of the period covered by such certificate no Default or Event of Default under any other provision of Section 6.1 occurred and is continuing or, if any such Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and, the action the Borrower proposes to take in respect thereof (and such certificate shall set forth the calculations required to establish the matters described in clause (1) above) and (II) updated Projections for the next successive four-quarter period;

(d) (i) within five (5) Business Days after any officer of any Covered Party obtains knowledge of any Default or Event of Default, if such Default or Event of Default is then continuing, a certificate of the chief financial officer, or other executive officer of the Borrower, setting forth the details thereof and the action which the Borrower is taking or proposes to take with respect thereto; and (ii) promptly and in any event within five (5) Business Days after any Covered Party obtains knowledge thereof, notice of (x) any litigation or governmental proceeding pending or threatened against the Borrower or any Consolidated Subsidiary or its directly or indirectly owned Real Property Assets as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, is likely to individually or in the aggregate, result in a Material Adverse Effect, and (y) any other event, act or condition which is likely to result in a Material Adverse Effect;

(e) promptly upon the mailing thereof to the shareholders of the Borrower generally, copies of all proxy statements or any other materials so mailed;

(f) promptly and in any event within thirty (30) days, if and when any member of the ERISA Group (i) gives or is required to give notice to the PBGC of any "reportable event" (as defined in Section 4043 of ERISA) with respect to any Plan which might constitute grounds for a termination of such Plan under Title IV of ERISA, or knows that the plan administrator of any Plan has given or is required to give notice of any such reportable event, a copy of the notice of such reportable event given or required to be given to the PBGC; (ii) receives notice of complete or partial withdrawal liability under Title IV of ERISA or notice that any Multiemployer Plan is Insolvent or has been terminated, a copy of such notice; (iii) receives notice from the PBGC under Title IV of ERISA of an intent to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or appoint a trustee to administer any Plan, a copy of such notice; (iv) applies for a waiver of the minimum funding standard under Section 412 of the Code, a copy of such application; (v) gives notice of intent to terminate any Plan under Section 4041(c) of ERISA, a copy of such notice and other information filed with the PBGC; (vi) gives notice of withdrawal from any Plan pursuant to Section 4063 of ERISA, a copy of such notice; or (vii) fails to make any payment or contribution to any Plan or Multiemployer Plan or makes any amendment to any Plan which has resulted or could result in the imposition of a Lien or the posting of a bond or other security, in each case to the extent any occurrence covered by any of clauses (i) through (vii) above, would reasonably be expected to result in a Material Adverse Effect. In the event notice is required pursuant to this Section 5.1(f), the Borrower shall provide a certificate of the chief financial officer or the chief accounting officer of the Borrower setting forth details as to such occurrence and action, if any, which the Borrower or applicable member of the ERISA Group is required or proposes to take;

(g) promptly and in any event within ten (10) days after any Covered Party obtains actual knowledge of any of the following events, a certificate of the Borrower, executed by an officer of the Borrower, specifying the nature of such condition, and the Borrower's or, if the Borrower has actual knowledge thereof, the Environmental Affiliate's proposed initial response thereto: (i) the receipt by the Borrower, or any of the Environmental Affiliates of any communication (written or oral), whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Borrower, or any of

the Environmental Affiliates, is not in compliance with applicable Environmental Laws, and such noncompliance would reasonably be expected to have a Material Adverse Effect, (ii) the existence of any Environmental Claim pending against the Borrower or any Environmental Affiliate and such Environmental Claim would reasonably be expected to have a Material Adverse Effect or (iii) any release, emission, discharge or disposal of any Material of Environmental Concern that would reasonably be expected to form the basis of any Environmental Claim against the Borrower or any Environmental Affiliate or would reasonably be expected to interfere with the Borrower's Business or the fair saleable value or use of any of its Properties, which in any such event would reasonably be expected to have a Material Adverse Effect;

(h) promptly and in any event within five (5) Business Days after receipt of any notices or correspondence from any company or agent for any company providing insurance coverage to the Borrower or any other Covered Party relating to any loss which is likely to result in a Material Adverse Effect, copies of such notices and correspondence;

(i) as soon as available and in any event within fifteen (15) Business Days after the end of each fiscal quarter, commencing with the first fiscal quarter following the Closing Date, a Borrowing Base Certificate duly executed by a financial officer of the Borrower setting forth in reasonable detail the calculation of the Borrowing Base as at the end of such quarter, based upon the best available information at such time as certified by a financial officer of the Borrower;

(j) as soon as available and in any event (A) on or before the fifteenth day of each calendar month in respect of the immediately prior calendar month (other than a month in which a Borrowing Base Certificate is required to be delivered pursuant to Section 5.1(i)) a certificate from an financial officer of the Borrower (a "Monthly Certificate") specifying (i) any adjustments in the Borrowing Base Value of any Borrowing Base Asset that is not reflected in the most recent Borrowing Base Certificate, as a result of (x) any principal payments actually paid or prepaid on account of any Loan Assets (excluding any scheduled amortization payments actually paid) and (y) any Borrowing Base Asset becoming a Non-Performing Loan Asset or a Non-Cash Flow Credit Tenant Lease Asset and (ii) the resulting aggregate amount of the Borrowing Base and (B) within three Business Days after obtaining knowledge thereof, notice of any event giving rise to the requirement of a prepayment, or addition of Covered Assets, pursuant to Section 2.11;

(k) (i) as soon as available and in any event within 90 days after the Closing Date in the case of Covered Assets other than Construction Loans (or 135 days after the Closing Date, in the case of Construction Loans), a BPO for such Covered Asset as of the Closing Date, (ii) as soon as available and in any event within 90 days after an asset (other than Construction Loans) is added as a Covered Asset after the Closing Date (or, in the case of Construction Loans, 135 days after such Construction Loan is added as a Covered Asset after the Closing Date), a BPO for such Covered Asset (including delivering a BPO with respect to an asset that was previously withdrawn as a Covered Asset but is now added back), (iii) as soon as available and in any event within 90 days after a Covered Asset other than Construction Loans (or, in the case of Construction Loans, 135 days after such Construction Loan) has a write-down in Book Value that results in such Book Value being less than 80% of the Book Value for such Covered Asset as of the later of (x) the date such asset became a Covered Asset and (y) the date of delivery of the most recent BPO with respect to such Covered Asset, a new BPO for such Covered Asset and (iv) at any time at the Borrower's request, deliver an updated BPO for any Covered Asset;

(l) from time to time such additional information regarding any of the Collateral, Covered Assets or the financial condition or operations or investments of the Borrower and its Subsidiaries, in each case, as the Administrative Agent, at the request of any Bank, may reasonably request in writing, so long as disclosure of such information could not result in a violation of, or expose

the Borrower or its Subsidiaries to any material liability under, any applicable law, statute, ordinance or regulation or any agreements with unaffiliated third parties that are binding on the Borrower or any of its Subsidiaries or on any Property of any of them;

(m) promptly and in any event within ten (10) days after the Borrower obtains actual knowledge that it has failed to qualify as a REIT under the applicable provisions of the Code; and

(n) at the time the Borrower adds, withdraws or substitutes a Covered Asset or Collateral pursuant to Section 2.18, a revised Collateral and Covered Assets List, an updated Borrowing Base Certificate and an updated Schedule 4.28.

Section 5.2. Payment of Obligations. The Borrower and its Consolidated Subsidiaries will pay and discharge, at or before maturity, all their respective material obligations and liabilities including, without limitation, any such material obligations (a) pursuant to any agreement by which it or any of its properties is bound and (b) in respect of federal, state and other taxes, in each case where the failure to so pay or discharge such obligations or liabilities is likely to result in a Material Adverse Effect, and will maintain in accordance with GAAP, appropriate reserves for the accrual of any of the same.

Section 5.3. Maintenance of Property; Insurance; Leases.

(a) The Borrower shall keep, and shall cause each Consolidated Subsidiary to keep, all property useful and necessary in its business, including without limitation each of its Real Property Assets (for so long as the same constitutes a Real Property Asset), in good repair, working order and condition, ordinary wear and tear excepted, in each case where the failure to so maintain and repair will have a Material Adverse Effect.

(b) The Borrower shall maintain, or cause to be maintained, insurance described in Section 4.24 hereof with insurers meeting the qualifications described therein, which insurance shall in any event not provide for less coverage than insurance customarily carried by owners of properties similar to, and in the same locations as, the Covered Parties' Real Property Assets. The Borrower shall deliver to the Administrative Agent (i) upon the reasonable request of the Administrative Agent from time to time certificates of insurers evidencing the insurance carried, (ii) within five (5) days of receipt of notice from any insurer a copy of any notice of cancellation or material change in coverage required by Section 4.24 from that existing on the date of this Agreement and (iii) forthwith, notice of any cancellation or nonrenewal (without replacement) of coverage by the Borrower or any other Covered Party.

Section 5.4. Maintenance of Existence. The Borrower shall and shall cause each of its Consolidated Subsidiaries to preserve, renew and keep in full force and effect, its corporate existence and its rights, privileges and franchises necessary for the normal conduct of its business unless the failure to maintain such existence (other than the existence of the Borrower), rights, privileges and franchises does not have a Material Adverse Effect.

Section 5.5. Compliance with Laws. The Borrower shall, and shall cause its Consolidated Subsidiaries to, comply in all material respects with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities (including, without limitation, Environmental Laws, and all zoning and building codes with respect to its Real Property Assets and ERISA and the rules and regulations thereunder and all federal securities laws) except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or where the failure to do so will not have a Material Adverse Effect or expose the Administrative Agent or Banks to any material liability therefor.

Section 5.6. Inspection of Property, Books and Records. The Borrower shall, and shall cause each of its Consolidated Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities in conformity with GAAP, modified as required by this Agreement and applicable law; and shall permit representatives of any Bank, at such Bank's expense, or upon the occurrence and during the continuance of any Event of Default, at the Borrower's expense (but subject to the reimbursement limitations in Section 9.3), so long as disclosure of such information could not result in a violation of, or expose the Borrower or any of its Subsidiaries to any material liability under, any applicable law, ordinance or regulation or any agreements with unaffiliated third parties that are binding on the Borrower or any of its Subsidiaries, to examine and make abstracts from any of its books and records and to discuss its affairs, finances and accounts with its officers and independent public accountants, all at such reasonable times during normal business hours, upon reasonable prior notice and as often as may reasonably be desired. Upon the occurrence and during the continuance of any Event of Default, representatives of any Bank permitted to review such books or engage in such discussions shall include consultants, accountants, auditors and any other representatives that any Bank deems necessary in connection with any workout or proposed workout of the Loans.

Section 5.7. Existence. The Borrower shall do or cause to be done, all things necessary to preserve and keep in full force and effect its and its Consolidated Subsidiaries' existence and its patents, trademarks, servicemarks, domain names, tradenames, copyrights, franchises, licenses, permits, certificates, authorizations, qualifications, accreditation, easements, rights of way and other rights, consents and approvals the nonexistence of which is likely to have a Material Adverse Effect.

Section 5.8. Independent Director. The board of directors, board of managers, or other equivalent governing body of each Covered Subsidiary that is a Pledged Subsidiary or owns a Covered Asset shall include at least one special, independent director or member (or equivalent thereof), pursuant to documentation satisfactory to the Administrative Agent, whose consent shall be required for (i) any bankruptcy or insolvency filing by the relevant Covered Subsidiary, as the case may be, (ii) the transfer of any membership or other equity interests therein (other than the sale or other transfer of such membership or equity interests in a transaction permitted under the Loan Documents) and (iii) encumbering any asset owned by such Covered Subsidiary, other than an Excluded Asset, with a real property mortgage or deed of trust, as applicable, or a security agreement, pledge agreement or any similar agreement creating a Lien in respect thereof, except as permitted under the Loan Documents (including as a result of any consent, amendment, waiver or other modification obtained in accordance with the terms of the Loan Documents).

Section 5.9. Financial Covenants.

(a) Consolidated Coverage Ratio. As of the last day of each fiscal quarter, the Consolidated Coverage Ratio shall be equal to or greater than 1.50 to 1.00.

(b) Facility Collateral Coverage Ratio. As of the last day of each fiscal quarter, the Facility Collateral Coverage Ratio shall be equal to or greater than 1.50 to 1.00.

(c) Weighted Average CTL Lease Term. As of the last day of each fiscal quarter, the Weighted Average CTL Lease Term shall be greater than or equal to five (5) years.

Section 5.10. Restricted Payments. The Borrower shall not, and shall not permit its Subsidiaries to, pay any dividends; provided that, (w) in any Fiscal Year in which the Borrower is qualified as a REIT, the Borrower may pay dividends in an amount, as determined on an aggregate annual basis as of the end of any such Fiscal Year, not to exceed 100% of the Borrower's REIT taxable income for such Fiscal Year calculated prior to deducting (A) accumulated net operating losses of the Borrower as of December 31,

2016 and (B) dividends paid or payable by the Borrower, (x) any Subsidiary of the Borrower may pay dividends to the Borrower or to any other Subsidiary of the Borrower and to its other equityholders on a ratable basis, (y) so long as no Material Default or Event of Default is continuing, the Borrower may pay dividends to holders of its preferred equity in an aggregate amount in any Fiscal Year not to exceed the stated dividend amount payable pursuant to the terms of such preferred equity, and (z) so long as no Default or Event of Default is continuing, the Borrower may distribute or pay dividends in the form of Real Property Assets or Loan Assets (or Securities in an entity substantially all of whose assets constitutes such Loan Assets or ownership interests in such Real Property Assets) to its equity holders on a ratable basis, so long as such Loan Assets, Real Property Assets or Securities are not Collateral, Covered Assets or equity interests in a Pledged Subsidiary or Covered Subsidiary.

(b) The Borrower shall not, and shall not permit its Subsidiaries to, make any prepayments, repurchases or redemptions of unsecured Indebtedness of the Borrower or any Subsidiary (including any unsecured Indebtedness convertible into capital stock of the Borrower), Indebtedness for borrowed money of the Borrower or any Subsidiary that is subordinated to the Obligations or preferred or common stock of the Borrower or any Subsidiary except to the extent funded with or exchanged for (i) income or payments received in respect of, or proceeds from the sale, refinancing or maturity of, assets not constituting Collateral or a Covered Asset, (ii) interest, fee or rental income in respect of any assets (including assets constituting part of the Collateral or Covered Assets) or (iii) equity or Indebtedness issued by the Borrower or the proceeds thereof.

Section 5.11. Restriction on Fundamental Changes. (a) The Borrower shall not, and shall not permit any other Covered Party to, enter into any merger or consolidation without obtaining the prior written consent thereto of the Required Banks, unless (i) in the case of any such merger or consolidation involving (x) the Borrower, the Borrower is the surviving entity (regardless of whether a Covered Subsidiary is involved) and (y) any other Covered Subsidiary, a Covered Subsidiary is the surviving entity (which surviving entity must be a Pledged Subsidiary if a Pledged Subsidiary is involved) and (ii) in each case, the same will not result in the occurrence of a Material Default or an Event of Default. The Borrower shall not, and, except in connection with a merger or consolidation permitted in the preceding sentence, shall not permit any other Covered Subsidiary to, liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), discontinue its business or convey, lease, sell, transfer or otherwise dispose of, in one transaction or series of transactions, all or substantially all of its business or property, whether now or hereafter acquired, other than to the Borrower or to any Covered Subsidiary (and if involving a Pledged Subsidiary or the assets of a Covered Subsidiary, to another Pledged Subsidiary) or in connection with any sale of all or substantially all of its assets or any payment or prepayment in full or other monetization in full of its assets. Nothing in this Agreement shall limit or restrict any Covered Party to sell, pledge, mortgage or transfer any Excluded Asset, except as set forth in Sections 5.14 and 5.15.

(b) The Borrower shall not, and shall not permit any other Covered Party to, amend its articles of incorporation, bylaws, or other organizational documents such that the provisions thereof would violate Section 5.8 or permit any action prohibited by Section 5.18 or, otherwise, in any manner that would be materially adverse to the Banks without the Required Banks' consent.

Section 5.12. Changes in Business. The Borrower's primary business shall not be substantially different from that conducted by the Borrower on the Closing Date and shall include ownership and management of Credit Tenant Lease Assets, Loan Assets and Real Property Assets. The Borrower shall carry on its business operations through the Borrower and its Consolidated Subsidiaries and its Investment Affiliates.



Section 5.13. Borrower Status. The Borrower shall at all times remain a publicly traded company listed for trading on the New York Stock Exchange (or another nationally recognized stock exchange (for the avoidance of doubt, the NASDAQ stock quotation system or any successor thereto shall be considered a nationally recognized exchange)).

Section 5.14. Other Indebtedness. (a) The Borrower shall not permit any Covered Subsidiary to create, incur, assume or suffer to exist any Indebtedness other than Indebtedness of the Covered Subsidiaries existing on the Closing Date and set forth on Schedule 4.4(d), obligations under warranties and indemnities incurred in the ordinary course of business, and Non-Recourse Indebtedness in respect of Excluded Assets.

(b) The Borrower shall not consent to or vote in favor of (and shall not permit any Subsidiary to consent to or vote in favor of) the incurrence of any Indebtedness by any Covered Party (other than Indebtedness permitted under Section 5.14(a)).

Section 5.15. Liens. (a) The Borrower shall not, nor shall it permit any Subsidiary to, create, incur, assume or suffer to exist any Lien upon any item of Collateral or Covered Assets, except for Permitted Liens.

(b) The Borrower shall not consent to or vote in favor of (and shall not permit any Subsidiary to consent to or vote in favor of) the incurrence of any Liens on any assets of any Covered Party, except for Permitted Liens and Liens on Excluded Assets in respect of Non-Recourse Indebtedness.

Section 5.16. [Reserved].

Section 5.17. Restrictive Agreements. The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Person or any of its subsidiaries to create, incur or permit to exist any Lien upon the Collateral, provided that the foregoing clause (a) shall not apply to restrictions and conditions imposed by law or by any Loan Document or (b) the ability of any other Covered Party (other than the Borrower) to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Covered Party or to guarantee Indebtedness of the Borrower or any other Covered Party; provided that the foregoing shall not apply to restrictions and conditions imposed by law, by any Loan Document, by the Borrower's existing or future public note Indebtedness or credit agreements governing Indebtedness for borrowed money.

Section 5.18. Limitation on Activities of the Covered Parties. The Borrower shall not permit any other Covered Party (other than the Borrower) to (a) (i) conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any business or operations other than ownership of Covered Assets, Excluded Assets and anything incidental thereto, (ii) own any assets other than Covered Asset, Excluded Assets or any assets incidental thereto, or (iii) take any action, or conduct its affairs in a manner, that could reasonably be expected to result in the separate existence of such Covered Party being ignored, or the assets and liabilities of such Covered Party being substantively consolidated with those of the Borrower or any Subsidiary thereof in a bankruptcy, reorganization or other insolvency proceeding or (b) incur, create, assume or suffer to exist any Indebtedness or other liabilities or financial obligations, except (i) Indebtedness permitted pursuant to Section 5.14(a), (ii) nonconsensual obligations imposed by operation of law, (iii) obligations with respect to its equity interests to the extent in compliance with Section 5.8, not prohibited by this Section 5.18 or, otherwise, materially adverse to the Banks, (iv) obligations (other than Indebtedness) in the ordinary course of business in the operation of its assets and

(v) the statutory liability of any general partner for the liabilities of the limited partnership in which it is a general partner.

Section 5.19. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) in the case of a Covered Party (other than the Borrower), in transactions between or among such Covered Parties not involving any other Affiliate (but if such transactions involving the transfer of assets, such transfers shall be subject to the Liens granted pursuant to the Collateral Documents), (c) in the case of the Borrower or any Subsidiary which is not a Covered Party, in transactions between or among the Borrower and such Subsidiaries not involving any other Affiliate, (d) any payment of dividends, other restricted payments or other transactions permitted by Section 5.11, (e) transactions pursuant to the Safety Management Agreement and (f) transactions between the Borrower and Safety that are approved by at least a majority of their respective independent directors so long as, (x) such transactions are otherwise permitted under this Agreement, (y) no material Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such transaction and (z) the Borrower shall be in pro forma compliance with the covenants set forth in Section 5.19 after giving effect to such transaction.

Section 5.20. Corporate Ratings. The Borrower shall obtain affirmation of its corporate ratings from S&P and Moody's within 60 days after the Closing Date, which corporate ratings shall be equal to or higher than B+ from S&P and B2 from Moody's.

Section 5.21. Anti-Corruption Laws and Sanctions. The Borrower shall (a) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions and (b) not request or use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

## ARTICLE VI

### DEFAULTS

Section 6.1. Events of Default. An "Event of Default" shall have occurred if one or more of the following events shall have occurred and be continuing:

(a) the Borrower shall fail to (i) pay when due any principal of any Loan, or (ii) the Borrower shall fail to pay when due interest on any Loan or any fees or any other amount payable to the Administrative Agent or the Banks hereunder and the same shall continue for a period of five (5) days after the same becomes due; or

(b) the Borrower shall fail to observe or perform any covenant contained in Section 2.11, 2.16, 2.18, Section 5.1(d)(i), 5.1(i), 5.1(j), 5.1(k), 5.4, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.17, 5.18, 5.19, 5.20 or 5.21 and, (i) solely in the case of any failure to comply with Section 5.9(b) and Section 5.9(c), such failure shall continue unremedied for a period of thirty (30) days (it being understood that any such failure to comply with (x) Section 5.9(b) may be remedied by a prepayment of the Loans or adding assets as Covered Assets pursuant to Section 2.18 prior to or during such 30-day period so long as after giving effect to any such prepayment or addition of Covered Asset the Borrower is in pro forma compliance with Section 5.9(b) and (y) Section 5.9(c) may be remedied by adding or withdrawing Credit Tenant Lease Assets as Covered Assets pursuant to Section 2.18 prior to or during such period so long as after giving effect to any such addition or withdrawal of Credit Tenant Lease Assets the Borrower is in pro forma compliance with Section 5.9(c)) and (ii) solely in the case of any failure to comply with Section 5.1(d)(i), such failure shall continue unremedied for a period of 10 days; or

(c) the Borrower or any Covered Party shall fail to observe or perform any covenant or agreement contained in this Agreement or any other Loan Document (other than those covered by clause (a), (b), (e), (f), (g), (h), (i), (l) or (n) of this Section 6.1) for 30 days after written notice thereof has been given to the Borrower by the Administrative Agent; or if such default is of such a nature that it cannot with reasonable effort be completely remedied within said period of thirty (30) days such additional period of time as may be reasonably necessary to cure same, provided the Borrower commences such cure within said thirty (30) day period and diligently prosecutes same, until completion, but in no event shall such extended period exceed ninety (90) days; or

(d) any representation, warranty, certification or statement that is made by the Borrower in this Agreement or by the Borrower or any other Covered Party in any other Loan Document to which it is a party or that is contained in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Loan Document, shall prove to have been incorrect in any material respect when made (or deemed made); or

(e) the Borrower or any Subsidiary shall default in the payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) of any amount owing in respect of any Recourse Debt (other than the Obligations) for which the aggregate outstanding principal amounts exceed \$75,000,000 and such default shall continue beyond the giving of any required notice and the expiration of any applicable grace period and such default has not been waived, in writing, by the holder of any such Recourse Debt; or the Borrower or any Subsidiary shall default in the performance or observance of any obligation or condition with respect to any such Recourse Debt or any other event shall occur or condition exist beyond the giving of any required notice and the expiration of any applicable grace period, in each case if the effect of such default, event or condition is to accelerate the maturity of any such indebtedness or to permit (without any further requirement of notice or lapse of time) the holder or holders thereof, or any trustee or agent for such holders, to accelerate the maturity of any such indebtedness; or

(f) (i) the Borrower or (ii) any Subsidiary of the Borrower or any Investment Affiliate of the Borrower to which, either individually or in the aggregate, \$100,000,000 or more of the Borrower's Consolidated Tangible Net Worth is attributable, or (iii) a Pledged Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action to authorize any of the foregoing; or



(g) an involuntary case or other proceeding shall be commenced against (i) the Borrower, (ii) any Subsidiary of the Borrower or any Investment Affiliate of the Borrower to which, either individually or in the aggregate, \$100,000,000 or more of the Borrower's Consolidated Tangible Net Worth is attributable, or (iii) any Pledged Subsidiary seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of ninety (90) days; or an order for relief shall be entered against the Borrower, any such Subsidiary of the Borrower, any such Investment Affiliate or any such Pledged Subsidiary under the federal bankruptcy laws as now or hereafter in effect; or

(h) one or more final, non-appealable judgments or decrees in an aggregate amount of \$75,000,000 or more shall be entered by a court or courts of competent jurisdiction against the Borrower or any Subsidiary of the Borrower (other than any judgment as to which, and only to the extent, a reputable insurance company has acknowledged coverage of such claim in writing), and (i) any such judgments or decrees shall not be stayed, discharged, paid, bonded or vacated within ninety (90) days or (ii) enforcement proceedings shall be commenced by any creditor on any such judgments or decrees; or

(i) there shall be a replacement of a majority of the Board of Directors of the Borrower over a two-year period from the directors who constituted the Board of Directors of the Borrower at the beginning of such period, and such replacement shall not have been approved by a vote of at least a majority of the Board of Directors of the Borrower then still in office who were either members of such Board of Directors at the beginning of such period or whose election as a member of such Board of Directors was previously so approved; or

(j) any Person or "group" (as such term is defined in applicable federal securities laws and regulations) shall become the owner, directly or indirectly, beneficially or of record, of shares representing more than forty percent (40%) of the aggregate ordinary voting power represented by the issued and outstanding common shares of the Borrower; or

(k) if any Termination Event with respect to a Plan or Multiemployer Plan shall occur as a result of which Termination Event or Events any member of the ERISA Group has incurred or may incur any liability to the PBGC or any other Person and the sum (determined as of the date of occurrence of such Termination Event) of the insufficiency of such Plan or Multiemployer Plan and the insufficiency of any and all other Plans and Multiemployer Plans with respect to which such a Termination Event shall occur and be continuing (or, in the case of a Multiple Employer Plan with respect to which a Termination Event described in clause (ii) of the definition of Termination Event shall occur and be continuing and in the case of a liability with respect to a Termination Event which is or could be a liability of the Borrower rather than a liability of the Plan, the liability of the Borrower) is equal to or greater than \$50,000,000 and which the Required Banks reasonably determine will have a Material Adverse Effect; or

(l) if, any member of the ERISA Group shall commit a failure described in Section 303(k)(1) of ERISA or Section 430(k)(1) of the Code and the amount of the lien determined under Section 303(k)(3) of ERISA or Section 430(k)(3) of the Code that could reasonably be expected to be imposed on any member of the ERISA Group or their assets in respect of such failure shall be equal to or greater than \$50,000,000 and which the Required Banks reasonably determine will have a Material Adverse Effect; or

(m) any assets of the Borrower shall constitute "plan assets" (within the meaning of Section 3(42) of ERISA or Section 4975 of the Code, including but not limited to 29 C.F.R. § 2510.3-101

or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA and subject to Title I of ERISA or a "plan" within the meaning of, and subject to, Section 4975(e)(1) of the Code; or

(n) at any time, for any reason the Borrower repudiates in writing its payment obligations under any Loan Document or any Covered Party repudiates in writing its negative pledge obligations under the Negative Pledge Agreement or any other Loan Document; or

(o) this Agreement or any Collateral Document shall not, for any reason, be in full force and effect (or any Covered Party shall so assert), or any security interest purported to be created by any of the Collateral Documents shall not be a valid, enforceable and perfected security interest having the priority required by the Collateral Documents (or any Covered Party shall so assert) (other than (i) pursuant to the terms of this Agreement or any other Loan Document (including any release pursuant to the terms hereof or thereof) or (ii) as a result of acts or omissions by the Administrative Agent); or

(p) at any time Borrower shall fail to directly or indirectly own and control 100% of the outstanding equity interests in any Covered Subsidiary at any time such Covered Subsidiary owns Covered Assets.

Section 6.2. Rights and Remedies. (a) Upon the occurrence of any Event of Default described in Section 6.1(f) or Section 6.1(g), the Commitments shall immediately terminate and the unpaid principal amount of, and any and all accrued interest on, the Loans and any and all accrued fees and other Obligations hereunder shall automatically become immediately due and payable, with all additional interest from time to time accrued thereon and without presentation, demand, or protest or other requirements of any kind (including, without limitation, valuation and appraisal, diligence, presentment, notice of intent to demand or accelerate and notice of acceleration), all of which are hereby expressly waived by the Borrower for itself; and upon the occurrence and during the continuance of any other Event of Default, the Administrative Agent, following consultation with the Banks, may (and upon the demand of the Required Banks shall), by written notice to the Borrower, in addition to the exercise of all of the rights and remedies permitted the Administrative Agent, and the Banks at law or equity or under any of the other Loan Documents, declare that the Commitments are terminated and declare the unpaid principal amount of and any and all accrued and unpaid interest on the Loans and any and all accrued fees and other Obligations hereunder to be, and the same shall thereupon be, immediately due and payable with all additional interest from time to time accrued thereon and (except as otherwise provided in the Loan Documents) without presentation, demand, or protest or other requirements of any kind (including, without limitation, valuation and appraisal, diligence, presentment, notice of intent to demand or accelerate and notice of acceleration), all of which are hereby expressly waived by the Borrower for itself.

(b) Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, the Administrative Agent and the Banks each agree that any exercise or enforcement of the rights and remedies granted to the Administrative Agent or the Banks under this Agreement or any other Loan Document or at law or in equity with respect to this Agreement or any other Loan Documents shall be commenced and maintained solely by the Administrative Agent, in each case on behalf of the Administrative Agent, any other Agent and/or the Banks. The Administrative Agent shall act at the direction of the Required Banks in connection with the exercise of any and all remedies at law, in equity or under any of the Loan Documents or, if the Required Banks are unable to reach agreement after being afforded reasonable notice and opportunity to consent, then, from and after an Event of Default, the Administrative Agent may pursue such rights and remedies as it may determine.

Section 6.3. Notice of Default. The Administrative Agent shall give notice to the Borrower under Section 6.1(b), Section 6.1(c) and Section 6.1(d) promptly upon being requested to do so by the

Required Banks and shall thereupon notify all the Banks thereof. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (other than nonpayment of principal of or interest on the Loans) unless the Administrative Agent has received notice in writing from a Bank or the Borrower referring to this Agreement or the other Loan Documents, describing such event or condition. Should the Administrative Agent receive notice of the occurrence of a Default or Event of Default expressly stating that such notice is a notice of a Default or Event of Default, or should the Administrative Agent send the Borrower a notice of Default or Event of Default, the Administrative Agent shall promptly give notice thereof to each Bank.

Section 6.4. Distribution of Proceeds after Default. Notwithstanding anything contained herein to the contrary, from and after the occurrence and during the continuance of an Event of Default, to the extent proceeds are received by the Administrative Agent, such proceeds shall be distributed to the Banks pro rata in accordance with the unpaid principal amount of the Loans (giving effect to any participations granted therein pursuant to Section 9.6).

## ARTICLE VII

### THE AGENTS; CERTAIN MATTERS RELATING TO THE BANKS

Section 7.1. Appointment and Authorization. Each Bank irrevocably appoints and authorizes the Administrative Agent to take such action as agent on its behalf, including execution of the other Loan Documents, and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof or thereof, together with all such powers as are reasonably incidental thereto. Except as set forth in Section 7.8 hereof, the provisions of this Article VII are solely for the benefit of the Administrative Agent, the other Agents and the Banks, and the Borrower shall not have any rights to rely on or enforce any of the provisions hereof. In performing its functions and duties under this Agreement and the other Loan Documents, the Administrative Agent shall act solely as an agent of the Banks and shall not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for the Borrower or any other Covered Party. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Agents shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Bank, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agents.

Section 7.2. Administrative Agency and Affiliates. JPMorgan Chase Bank, N.A. has the same rights and powers under this Agreement as any other Bank and may exercise or refrain from exercising the same as though it were not the Administrative Agent and JPMorgan Chase Bank, N.A. and each of its affiliates, may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or affiliate of the foregoing as if they were not the Administrative Agent hereunder, and the term "Bank" and "Banks" shall include JPMorgan Chase Bank, N.A. in its individual capacity.

Section 7.3. Action by Agents.

(a) The obligations of each of the Agents hereunder are only those expressly set forth herein. Without limiting the generality of the foregoing, each of the Agents shall not be required to take any action with respect to any Default or Event of Default, except as expressly provided in Article VI. The duties of each Agent shall be administrative in nature. Subject to the provisions of Section 7.1, Section 7.5 and Section 7.6, each Agent shall administer the Loans in the same manner as each administers its own loans. Without limiting the generality of the foregoing, (a) the Administrative Agent 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) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Banks, (c) except for notices, reports and other documents expressly required to be furnished to the Banks by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Covered Party or any affiliate of the Covered Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, advisors, attorneys in fact or affiliates and (d) the Administrative Agent shall not be required to take any action that (in its opinion or the opinion of its counsel) exposes it to personal liability or which is contrary to the Loan Documents or applicable law.

(b) The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys in fact (including without limitation, a custodian to administer the Collateral) and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care. In furtherance of the foregoing, each Bank hereby authorizes the Administrative Agent to enter into such documents and instruments as it deems reasonably necessary to implement its duties under this Agreement and the other Loan Documents.

Section 7.4. Consultation with Experts. As between any Agent on the one hand and the Banks on the other hand, such Agent may consult with legal counsel (who may be counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 7.5. Liability of Agents. As between each Agent on the one hand and the Banks on the other hand, none of the Agents nor any of their affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or not taken by it in connection herewith (i) with the consent or at the request of the Required Banks or (ii) in the absence of its own gross negligence or willful misconduct. As between each Agent on the one hand and the Banks on the other hand, none of the Agents nor any of their respective directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement, warranty or representation made in connection with this Agreement, any other Loan Document, or any Borrowing hereunder; (ii) the performance or observance of any of the covenants or agreements of the Borrower or any other Covered Party, (iii) the satisfaction of any condition specified in Article III, except receipt of items required to be delivered to such Agent, or (iv) the validity, effectiveness or genuineness of this Agreement, the other Loan Documents or any other instrument or writing furnished in connection herewith. As between each Agent on the one hand and the Banks on the other hand, none of the Agents shall incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, telex, email message, facsimile or similar writing) believed by it to be genuine or to be signed by the proper party or parties. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice from a Bank or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, teletype or email message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and



other experts selected by the Administrative Agent. The 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 that by its terms must be fulfilled to the satisfaction of a Bank, the Administrative Agent may presume that such condition is satisfactory to such Bank unless the Administrative Agent shall have received notice to the contrary from such Bank prior to the applicable extension of credit or other action.

Section 7.6. Indemnification. Each Bank shall, ratably in accordance with its Commitments or Loans, as applicable, outstanding, indemnify the Agents and their affiliates and their respective directors, officers, agents, advisors and employees (to the extent not reimbursed by the Borrower) against any cost, expense (including, without limitation, counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitee's gross negligence or willful misconduct) that such indemnitee may suffer or incur in connection with its duties as Agent under this Agreement, the other Loan Documents or any action taken or omitted by such indemnitee hereunder. In the event that any Agent shall, subsequent to its receipt of indemnification payment(s) from Banks in accordance with this section, recoup any amount from the Borrower, or any other party liable therefor in connection with such indemnification, such Agent shall reimburse the Banks which previously made the payment(s) pro rata, based upon the actual amounts which were theretofore paid by each Bank. Each Agent shall reimburse such Banks so entitled to reimbursement within two (2) Business Days of its receipt of such funds from the Borrower or such other party liable therefor. In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by a Bank, an indemnitee or any other Person, whether or not an indemnitee is otherwise a party thereto. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 7.7. Credit Decision. Each Bank acknowledges that it has, independently and without reliance upon any Agent or any other Bank, 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 Bank also acknowledges that it will, independently and without reliance upon any Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under this Agreement.

Section 7.8. Successor Agent. The Administrative Agent may resign at any time by giving notice thereof to the Banks and the Borrower. Upon any such resignation, the Required Banks shall have the right to appoint a successor Administrative Agent, which successor Administrative Agent shall, provided no Event of Default has occurred and is then continuing, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed by the Required Banks and approved by the Borrower, and shall have accepted such appointment, within 10 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may (but shall not be required to), on behalf of the Banks, appoint a successor Administrative Agent which shall be the Administrative Agent, who shall act until the Required Banks shall appoint an Administrative Agent. Any appointment of a successor Administrative Agent by Required Banks or the retiring Administrative Agent, pursuant to the preceding sentence shall, provided no Event of Default has occurred and is then continuing, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed. If no successor Administrative Agent has accepted appointment as Administrative Agent by the date that is 10 days following a retiring Administrative Agent's notice of resignation (and no successor agent has been appointed as successor Administrative Agent by the retiring Administrative Agent), the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Banks shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Banks appoint a successor agent as provided for above. Upon the acceptance of its appointment

as the Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Administrative Agent and the retiring Administrative Agent, shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder, the provisions of this Article shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent. Such resignation or removal shall take effect upon the acceptance of appointment by a successor Administrative Agent in accordance with the provisions of this Section 7.8.

Section 7.9. Exculpation of BPO Broker. Each Bank acknowledges and agrees, for the benefit of the Agents, the Borrower and each of the BPO Brokers and each of their respective affiliates and each of their respective partners, directors, officers, employees, agents, counsel, auditors, advisors and other representatives (collectively, the "Representatives"), as follows:

(a) Each BPO Broker prepared its respective BPO relying primarily on information provided by the Borrower, and neither any BPO Broker nor any Agent is responsible or liable for any inaccuracy or omission in the information provided to the BPO Brokers by the Borrower. None of the BPO Brokers or Agents has made or makes any express or implied representation or warranty as to the accuracy or completeness of such information.

(b) None of the BPO Brokers or Agents has any obligation to engage in any further diligence regarding the information provided to it by the Borrower or to obtain any additional information for purposes of the BPO Brokers preparing their respective BPOs.

(c) None of the BPO Brokers or Agents has engaged an auditor to perform an audit or review of the financial statements of the Borrower, and none of the BPO Brokers or Agents is providing any assurance of the accuracy of the information in such financial statements.

(d) There is no assurance that the BPOs will accurately predict the actual future performance and/or operations of any asset and/or property reviewed for purposes of the BPOs.

(e) No Agent shall be responsible or liable for the preparation or the contents of the BPOs or such Bank's use of the BPOs, and such Bank agrees that such Bank will not bring or assert any claim, suit or action against any Agent or any of its Representatives with respect to, or arising out of, the BPOs or such Bank's use thereof.

Section 7.10. Proofs of Claim. In case of the pendency of any proceeding under any federal, state or foreign bankruptcy, insolvency, receivership or similar law or any other judicial proceeding relative to any Covered Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the 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 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 Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Banks and the Administrative Agent hereunder) 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 Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent hereunder. Nothing in this Section 7.10 shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Bank to authorize the Administrative Agent to vote in respect of the claim of any Bank in any such proceeding.

## ARTICLE VIII

### CHANGE IN CIRCUMSTANCES

Section 8.1. **Basis for Determining Interest Rate Inadequate or Unfair.** (a) If on or prior to the first day of any Interest Period for any Eurodollar Borrowing (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurodollar Base Rate or the Eurodollar Rate, as applicable (including, without limitation, because the Screen Rate is not available or published on a current basis), for Dollars and such Interest Period or that deposits in Dollars are not being offered in the relevant market for such Interest Period or (ii) the Administrative Agent or the Required Banks determine in good faith that the Eurodollar Rate for such Interest Period will not adequately reflect the cost to the Banks or the Required Banks, as the case may be, of making, funding or maintaining such Eurodollar Borrowing for such Interest Period, the Administrative Agent shall forthwith give notice thereof to the Borrower and the Banks, whereupon until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, the obligations of the Banks to make, continue, or convert Loans into, Eurodollar Loans in Dollars shall be suspended. In such event, unless the Borrower notifies the Administrative Agent on or before the second (2<sup>nd</sup>) Eurodollar Business Day before, but excluding, the date of any Eurodollar Borrowing for which a Notice of Borrowing has previously been given that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in paragraph (a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in paragraph (a)(i) have not arisen but the supervisor for the administrator of the Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 9.5, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Banks, a written notice from the Required Banks stating that such Required Banks object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 8.1(b), only to the extent the Screen Rate for Dollars and such Interest Period is not available or published at such time on a current basis), (x) any Notice of Interest Rate Election that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (y) if any Notice of Borrowing requests a Eurodollar Borrowing, such



Borrowing shall be made as an Base Rate Borrowing; provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 8.2. Illegality. If, on or after the date of this Agreement, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Bank (or its Eurodollar Lending Office) with any request or directive (whether or not having the force of law) made after the Closing Date of any such authority, central bank or comparable agency shall make it unlawful for any Bank (or its Eurodollar Lending Office) to make, maintain or fund its Eurodollar Loans in a particular currency, the Administrative Agent shall forthwith give notice thereof to the other Banks and the Borrower, whereupon until such Bank notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Bank in the case of the event described above to make Eurodollar Loans in such currency, shall be suspended. With respect to Eurodollar Loans, before giving any notice to the Administrative Agent pursuant to this Section 8.2, such Bank shall designate a different Eurodollar Lending Office if such designation will avoid the need for giving such notice and will not, in the reasonable judgment of such Bank, be otherwise commercially disadvantageous to such Bank.

If at any time, it shall be unlawful for any Bank to make, maintain or fund any of its Eurodollar Loans, the Borrower shall have the right, upon five (5) Business Days' notice to the Administrative Agent, to either (x) cause a bank, reasonably acceptable to the Administrative Agent, to offer to purchase the Loans of such Bank for an amount equal to such Bank's outstanding Loans, together with accrued and unpaid interest and fees thereon and all other amounts due to such Bank are concurrently therewith paid in full to such Bank, and to become a Bank hereunder, or obtain the agreement of one or more existing Banks to offer to purchase the Loans of such Bank for such amount, which offer such Bank is hereby required to accept, or (y) to repay in full all Loans then outstanding of such Bank, together with interest due thereon and any and all fees and other amounts due hereunder.

Section 8.3. Increased Cost and Reduced Return.

(a) If, on or after the date hereof, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Bank (or its Applicable Lending Office) with any request or directive (whether or not having the force of law) made after the Closing Date of any such authority, central bank or comparable agency, (i) shall subject any Bank to any tax on its capital reserves (or any similar tax) with respect to this Agreement or any Eurodollar Loan made by it (except for Non-Excluded Taxes and Other Taxes covered by Section 8.4 and changes in the rate of tax on the overall net income or profits of such Bank); (ii) shall impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System (but excluding with respect to any Eurodollar Loan any such requirement reflected in an applicable Eurodollar Reserve Percentage)), special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Bank (or its Applicable Lending Office) or (iii) shall impose on any Bank (or its Applicable Lending Office) or on the interbank market any other condition materially more burdensome in nature, extent or consequence than those in existence as of the date hereof affecting such Bank's Eurodollar Loans or its obligation to make Eurodollar Loans, and the result of any of the foregoing is to increase the cost to such Bank (or its Applicable Lending Office) of making or maintaining any Eurodollar Loan, or to reduce the amount of any sum received or receivable by such Bank (or its Applicable Lending Office) under this Agreement or under its Note with respect to such Eurodollar Loans, by an amount reasonable determined by such Bank

to be material, then, within 15 days after demand by such Bank (with a copy to the Administrative Agent), the Borrower shall pay to such Bank such additional amount or amounts (based upon a reasonable allocation thereof by such Bank to the Eurodollar Loans made by such Bank hereunder) as will compensate such Bank for such increased cost or reduction to the extent such Bank generally imposes such additional amounts on other borrowers of such Bank in similar circumstances; provided however, that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be deemed to be a change in law, regardless of the date enacted, adopted or issued.

(b) If any Bank shall have reasonably determined that, after the date hereof, the adoption of any applicable law, rule or regulation regarding capital or liquidity requirements, or any change in any such law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital or liquidity requirements (whether or not having the force of law) made after the Closing Date of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of such Bank (or its Parent) as a consequence of such Bank's obligations hereunder to a level below that which such Bank (or its Parent) could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount reasonably deemed by such Bank to be material, then from time to time, within 15 days after demand by such Bank (with a copy to the Administrative Agent), the Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank (or its Parent) for such reduction to the extent such Bank generally imposes such additional amounts on other borrowers of such Bank in similar circumstances.

(c) Notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a change in law, regardless of the date enacted, adopted, issued or implemented.

(d) Each Bank will promptly notify the Borrower and the Administrative Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle such Bank to compensation pursuant to this Section and will designate a different Applicable Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the reasonable judgment of such Bank, be otherwise disadvantageous to such Bank. Notwithstanding the foregoing, if such Bank shall fail to notify the Borrower of any such event within ninety (90) days following the end of the month during which such event occurred, then the Borrower's liability for any amounts described in this Section incurred by such Bank as a result of such event shall be limited to those attributable to the period occurring subsequent to the ninetieth (90<sup>th</sup>) day prior to, but excluding, the date upon which such Bank actually notified the Borrower of the occurrence of such event. A certificate of any Bank claiming compensation under this Section and setting forth a reasonably detailed calculation of the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of demonstrable error. In determining such amount, such Bank may use any reasonable averaging and attribution methods.

(e) If at any time, any Bank has demanded compensation pursuant to this Section 8.3, the Borrower shall have the right, upon five (5) Business Day's notice to the Administrative Agent to either (x) in accordance with Section 9.6(c), cause an Assignee to offer to purchase the Loans of such Bank for an amount equal to such Bank's outstanding Loans plus accrued interest, fees and other amounts

due to such Bank, and to become a Bank hereunder, or to obtain the agreement of one or more existing Banks to offer to purchase the Loans of such Bank for such amount, which offer such Bank is hereby required to accept, or (y) to repay in full all Loans then outstanding of such Bank, together with interest and all other amounts due thereon.

Section 8.4. Taxes.

(a) Any and all payments made by or on behalf of the Borrower to or for the account of any Bank or the Administrative Agent hereunder or under any other Loan Document shall be made free and clear of and without deduction for or on account of any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (i) in the case of each Bank and the Administrative Agent, taxes imposed on its income, and franchise taxes imposed on it, by (A) the jurisdiction under the laws of which such Bank or the Administrative Agent (as the case may be) is organized or any political subdivision thereof, (B) in the case of each Bank, the jurisdiction of such Bank's Applicable Lending Office or any political subdivision thereof or (C) any other jurisdiction (or any political subdivision thereof) as a result of a present or former connection between such Bank or the Administrative Agent and such other jurisdiction, except to the extent that such connection would not have arisen but for entering into the transactions contemplated hereby and (ii) U.S. federal withholding taxes imposed under FATCA (all such non-excluded taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Non-Excluded Taxes"); provided that, if any Non-Excluded Taxes are required to be deducted from or in respect of any sum payable hereunder or under any other Loan Document, as determined in good faith by the applicable withholding agent, (w) the sum payable by the Borrower shall be increased as necessary so that after making all required deductions of Non-Excluded Taxes (including, without limitation, deductions applicable to additional sums payable under this Section 8.4) such Bank or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (x) the Borrower shall make or cause to be made all required deductions, (y) the Borrower shall pay or cause to be paid the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law and (z) the Borrower shall furnish to the Administrative Agent, at its address referred to in Section 9.1, the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrower agrees to pay any present or future stamp or documentary taxes and any other excise or property taxes, or charges or similar levies which arise from any payment made hereunder or under any other Loan Document or from the execution or delivery of, or otherwise with respect to, this Agreement or any other Loan Document (hereinafter referred to as "Other Taxes").

(c) The Borrower agrees to indemnify each Bank and the Administrative Agent for the full amount of Non-Excluded Taxes or Other Taxes (including, without limitation, any Non-Excluded Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 8.4) payable or paid by such Bank or the Administrative Agent (as the case may be) and any liability for penalties and interest arising therefrom or with respect thereto, whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant jurisdiction. This indemnification shall be made within 15 days from the date such Bank or the Administrative Agent (as the case may be) makes demand therefor.

(d) Each Bank that is a United States person for U.S. federal income tax purposes, on or prior to the date of its execution and delivery of this Agreement in the case of each Bank listed on the signature pages hereof and on or prior to the date on which it becomes a Bank in the case of each other Bank (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), shall provide the Borrower and the Administrative Agent with two duly completed copies of

Internal Revenue Service Form W-9 or any successor form prescribed by the Internal Revenue Service and shall provide the Borrower and the Administrative Agent with two further copies of any such form on or before the date any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered to the Borrower and the Administrative Agent. Each Bank that is not a United States person for U.S. federal income tax purposes, on or prior to the date of its execution and delivery of this Agreement in the case of each Bank listed on the signature pages hereof and on or prior to the date on which it becomes a Bank in the case of each other Bank (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), shall provide the Borrower and the Administrative Agent with two duly completed copies of an Internal Revenue Service Form W-8BENE, W-8ECI, or W-8IMY as applicable to such Bank, or any successor form prescribed by the Internal Revenue Service, and shall provide the Borrower and the Administrative Agent with two further copies of any such form on or before the date that any such form expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent. A Bank that provides copies of the Internal Revenue Service Form W-8BENE and that is legally entitled to claim the portfolio interest exemption pursuant to Section 881(c) of the Code, shall further provide the Borrower and the Administrative Agent with, together with such Internal Revenue Service Form W-8BENE, a written confirmation of its entitlement to such exemption substantially in the form of Exhibit J. To the extent that it is legally entitled to do so, a Bank shall properly claim that such Bank is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of, or eliminates, withholding tax on payments of interest hereunder. A Bank that is not a United States person and that grants a participating interest in a Loan or Commitment to any other Person shall provide, in addition to its own forms specified above, the Borrower and the Administrative Agent with two duly completed copies of the Internal Revenue Service form applicable to such other Person, each under the cover of an Internal Revenue Service Form W-8IMY and a withholding statement prepared in the manner prescribed by the Internal Revenue Service, or such other forms and/or certificates evidencing such Participant's entitlement to any exemption from, or reduction in the rate of U.S. withholding tax, and shall provide the Borrower and the Administrative Agent with two further copies of any such forms and statements on or before the date any such forms or statements expire or become obsolete and after the occurrence of any event requiring a change in the most recent form or statement previously delivered to the Borrower and the Administrative Agent. Each Bank that is not a United States person for U.S. federal income tax purposes shall deliver to the Borrower and the Administrative Agent any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made. If a Bank fails to timely and properly provide or update such forms or statements (unless such failure is due to a change in treaty, law or regulation occurring subsequently to the time such Bank first becomes a party to this Agreement) or if the form or statement provided by a Bank at the time such Bank first becomes a party to this Agreement indicates a United States withholding tax rate in excess of zero, then backup withholding or withholding tax resulting from the foregoing shall be considered excluded from "Non-Excluded Taxes" as defined in Section 8.4(a), except to the extent that, in the case of United States withholding tax, such Bank's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower or its Consolidated Subsidiary with respect to such United States withholding tax. Notwithstanding any other provision of this paragraph (d)(i), no Bank shall be required to deliver any form, statement, certificate or supplementary documentation pursuant to this paragraph (d)(i) that such Bank is not legally able to deliver.

(e) Upon reasonable demand by, and at the expense of, the Borrower or the Administrative Agent to any Bank, the Bank shall deliver to the Borrower and the Administrative Agent, or to such government or taxing authority as the Borrower or the Administrative Agent may reasonably



direct, any form or document that may be required or reasonably requested in writing in order to allow a payment to be made hereunder or under any other Loan Document without any deduction or withholding for or on account of any Non-Excluded Taxes or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to the Borrower or the Administrative Agent making such demand and to be executed and to be delivered with any reasonably required certification.

(f) If a payment made to a Bank under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Bank 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 Bank shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Bank has complied with such Bank's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) For any period with respect to which a Bank has failed to provide the Borrower and the Administrative Agent with the appropriate form pursuant to (and to the extent required by) paragraph (d)(i) (unless such failure is due to a change in treaty, law or regulation occurring subsequent to the date on which a form originally was required to be provided), such Bank shall not be entitled to indemnification under Section 8.4(c) with respect to Non-Excluded Taxes imposed by the United States, to the extent that such Non-Excluded Taxes would not have been imposed but for such Bank's failure to provide such form; provided, however, that should a Bank, which is otherwise exempt from or subject to a reduced rate of withholding tax, become subject to Non-Excluded Taxes because of its failure to deliver a form required hereunder, the Borrower shall take such steps as such Bank shall reasonably request to assist such Bank to recover such taxes so long as the Borrower shall incur no cost or liability as a result thereof.

(h) If the Borrower is required to pay additional amounts to or for the account of any Bank pursuant to this Section 8.4, then such Bank will, if requested in writing by the Borrower, use reasonable efforts to change the jurisdiction of its Applicable Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the reasonable judgment of such Bank, will not subject such Bank to any unreimbursed cost or expense and is not otherwise disadvantageous to such Bank; provided, that nothing in this Section 8.4(h) shall affect or postpone any of the obligations of the Borrower or the rights of any Bank pursuant to this Section 8.4. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Bank in connection with any such change.

(i) If at any time, any Bank has demanded compensation pursuant to Section 8.3 or Section 8.4 or the obligation of such Bank to make Eurodollar Loans has been suspended pursuant to Section 8.2, in any such case, the Borrower shall have the right, upon five (5) Business Day's notice to the Administrative Agent to either (x) in accordance with Section 9.6(c), cause an Assignee to offer to purchase the Commitments of such Bank for an amount equal to such Bank's outstanding Loans plus accrued interest, fees and other amounts due to such Bank, and to become a Bank hereunder, or to obtain the agreement of one or more existing Banks to offer to purchase the Commitments of such Bank for such

amount, which offer such Bank is hereby required to accept, or (y) to repay in full all Loans then outstanding of such Bank, together with interest and all other amounts due thereon; provided that (i) any replacement of a Bank under this paragraph does not conflict with any organizational or governing documents of any Person and any law, treaty rule or regulation applicable to or binding upon such Person or any of its property, (ii) prior to any replacement under this paragraph, such Bank shall have taken no action under Section 8.4(h) so as to eliminate the continued need for payments of amounts owing pursuant to Section 8.3 or 8.4, (iii) the replacement financial institution shall be reasonably satisfactory to the Administrative Agent, (iv) the replaced Bank shall be obligated to make such replacement in accordance with the provisions of Section 9.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (v) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 8.3 or 8.4, as the case may be, and (vi) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Bank shall have against the replaced Bank.

(j) Each Bank shall severally indemnify the Administrative Agent for the full amount of any taxes, duties, levies, imposts, deductions, charges or withholdings imposed by any taxation authority or other authority, that are attributable to (i) such Bank (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Non-Excluded Taxes or Other Taxes and without limiting the obligation of the Borrower to do so) or (ii) such Bank's failure to comply with the provisions of Section 9.6(b) relating to the maintenance of a Participant Register and, in either case, that are payable or paid by the Administrative Agent, together with all interest, penalties, reasonable costs and expenses arising therefrom or with respect thereto, as determined by the Administrative Agent in good faith. A certificate as to the amount of such payment or liability delivered to any Bank by the Administrative Agent shall be conclusive absent manifest error. Each Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Bank under any Loan Document or otherwise payable by the Administrative Agent to the Bank from any other source against any amount due to the Administrative Agent under this paragraph (j).

(k) If a Bank or the Administrative Agent determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 8.4, it shall pay to the Borrower within five (5) Business Days an amount equal to such refund (but only to the extent of indemnity payments made, or Non-Excluded Taxes paid, by the Borrower under this Section 8.4 with respect to the Non-Excluded Taxes giving rise to such refund), net of all out-of-pocket expenses of such Bank or the Administrative Agent and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower, upon the request of such Bank or the Administrative Agent, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Bank or the Administrative Agent in the event such Bank or the Administrative Agent is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require any Bank or the Administrative Agent to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other person. Notwithstanding anything to the contrary, in no event will any Bank or the Administrative Agent be required to pay any amount to the Borrower the payment of which would place such Bank or the Administrative Agent in a less favorable net after tax position than it would have been in if the Non-Excluded Taxes giving rise to such refund had never been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Non-Excluded Taxes had never been paid.

(l) Each party's obligations under this Section 8.4 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Bank,

the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under the Loan Documents.

Section 8.5. Base Rate Loans Substituted for Affected Eurodollar Loans. If (i) the obligation of any Bank to make Eurodollar Loans has been suspended pursuant to Section 8.2 or (ii) any Bank has demanded compensation under Section 8.3 or Section 8.4 with respect to its Eurodollar Loans and the Borrower shall, by at least five Business Days' prior notice to such Bank through the Administrative Agent, have elected that the provisions of this Section shall apply to such Bank, then, unless and until such Bank notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist:

(a) the Borrower shall be deemed to have delivered a Notice of Interest Rate Election with respect to such affected Eurodollar Loans and thereafter all Loans which would otherwise be continued or converted by such Bank to the Borrower as Eurodollar Loans shall be made instead as Base Rate Loans; and

(b) after each of its Eurodollar Loans has been repaid, all payments of principal which would otherwise be applied to repay such Eurodollar Loans shall be applied to repay its Base Rate Loans instead; and

(c) the Borrower will not be required to make any payment which would otherwise be required by Section 2.14 with respect to such Eurodollar Loans converted to Base Rate Loans pursuant to clause (a) above.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1. Notices. All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, facsimile transmission followed by telephonic confirmation or similar writing) and shall be given to such party: (x) in the case of the Borrower and the Administrative Agent, at its address or facsimile number set forth on Exhibit K attached hereto with duplicate copies thereof, in the case of the Borrower, to the Borrower, at its address set forth on the signature page hereof, to its General Counsel and Chief Financial Officer, (y) in the case of any Bank, at its address or facsimile number set forth in its Administrative Questionnaire or (z) in the case of any party, such other address or facsimile number and/or email address as such party may hereafter specify for the purpose by notice to the Administrative Agent and the Borrower. Each such notice, request or other communication shall be effective (i) if given by telex or facsimile transmission, when such facsimile is transmitted to the facsimile number specified in this Section and the appropriate answerback or facsimile confirmation is received, and if not received during the recipient's normal business hours, shall be deemed received at the opening of its next Business Day, (ii) if given by certified registered mail, return receipt requested, with first class postage prepaid, addressed as aforesaid, upon receipt or refusal to accept delivery, (iii) if given by a nationally recognized overnight carrier, 24 hours after such communication is deposited with such carrier with postage prepaid for next day delivery, or (iv) if given by any other means, when delivered at the address specified in this Section; provided that notices to the Administrative Agent under Article II or Article VIII shall not be effective until actually received.

Section 9.2. No Waivers. No failure or delay by the Administrative Agent or any Bank in exercising any right, power or privilege hereunder or under any Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of



any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 9.3. Expenses; Indemnification.

(a) The Borrower shall pay within thirty (30) days after written notice from the Administrative Agent, (i) for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable and documented fees and disbursements of counsel to the Administrative Agent and (ii) if an Event of Default occurs, all reasonable out-of-pocket expenses incurred by the Administrative Agent and each Bank, including, without limitation, reasonable and invoiced fees and disbursements of counsel for the Administrative Agent and each of the Banks, in connection with the enforcement of the Loan Documents and the instruments referred to therein and such Event of Default and collection, bankruptcy, insolvency and other enforcement proceedings resulting therefrom (provided, however, that the attorneys' fees and disbursements for which the Borrower is obligated under this subsection (a)(ii) shall be limited to the reasonable and invoiced non-duplicative fees and disbursements of (A) counsel for the Administrative Agent, and (B) counsel for all of the Banks as a group; and provided, further, that all other costs and expenses for which the Borrower is obligated under this subsection (a)(ii) shall be limited to the reasonable and invoiced non-duplicative costs and expenses of the Administrative Agent). For purposes of this subsection (a)(ii), (1) counsel for the Administrative Agent shall mean a single outside law firm representing the Administrative Agent and (2) counsel for all of the Banks as a group shall mean a single outside law firm representing such Banks as a group (which law firm may or may not be the same law firm representing the Administrative Agent).

(b) The Borrower agrees to indemnify each Agent and each Bank, their respective affiliates and the respective directors, officers, agents and employees of the foregoing (each an "Indemnitee") and hold each Indemnitee harmless from and against any and all liabilities, losses, damages, costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by such Indemnitee in connection with any investigative, administrative or judicial proceeding that may at any time (including, without limitation, at any time following the payment of the Obligations) be asserted against any Indemnitee, as a result of, or arising out of, or in any way related to or by reason of, (i) any of the transactions contemplated by the Loan Documents or the execution, delivery or performance of any Loan Document, (ii) any violation by the Borrower or the Environmental Affiliates of any applicable Environmental Law, (iii) any Environmental Claim arising out of the management, use, control, ownership or operation of property or assets by the Borrower or any of the Environmental Affiliates, including, without limitation, all on-site and off-site activities of the Borrower or any Environmental Affiliate involving Materials of Environmental Concern, or (iv) the breach of any environmental representation or warranty set forth herein, but excluding those liabilities, losses, damages, costs and expenses (a) for which such Indemnitee has been compensated pursuant to the terms of this Agreement or that are excluded under Section 8.3, (b) incurred solely by reason of the gross negligence or willful misconduct of such Indemnitee as determined by a final judgment of a court of competent jurisdiction, (c) arising from any violation of Environmental Law relating to a Property, which violation is caused by the act or omission of such Indemnitee after such Indemnitee takes possession of such Property or (d) owing by such Indemnitee to any third party based upon contractual obligations of such Indemnitee owing to such third party which are not expressly set forth in the Loan Documents. In addition, the indemnification set forth in this Section 9.3(b) in favor of any director, officer, agent or employee of any Agent or any Bank shall be solely in their respective capacities as such director, officer, agent or employee. The Borrower's obligations under this Section shall survive the termination of this Agreement and the payment of the Obligations. Without limitation of

the other provisions of this Section 9.3, the Borrower shall indemnify and hold each of the Agents and the Banks free and harmless from and against all loss, costs (including reasonable and documented attorneys' fees and expenses), expenses, taxes, and damages (including consequential damages) that the Agents and the Banks may suffer or incur by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA or the Code necessary in the Administrative Agent's reasonable judgment by reason of the inaccuracy of the representations and warranties, or a breach of the provisions, set forth in Section 4.6(a). In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, any of the Borrower's equity holders or creditors, an Indemnitee or any other Person, whether or not an Indemnitee is otherwise a party thereto.

Section 9.4. Sharing of Set-Offs. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Bank is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other indebtedness at any time held or owing by such Bank (including, without limitation, by branches, agencies and Affiliates of such Bank wherever located) to or for the credit or the account of the Borrower against and on account of the Obligations of the Borrower then due and payable to such Bank under this Agreement or under any of the other Loan Documents, including, without limitation, all interests in Obligations purchased by such Bank; provided that if any Defaulting Bank shall exercise any such right of set-off, (i) all amounts so set-off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of this Agreement and, pending such payment, shall be segregated by such Defaulting Bank from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Banks and (ii) the Defaulting Banks shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Bank as to which it exercised such right of set-off. Each Bank agrees that if it shall, by exercising any right of set-off or counterclaim or otherwise, receive payment of a proportion of the aggregate amount of principal and interest due with respect to any Loan made by it, which is greater than the proportion received by any other Bank with respect to such due amount, the Bank receiving such proportionately greater payment shall purchase such participations in the Loans made by the other Banks, and such other adjustments shall be made, as may be required so that all such payments of principal and interest with respect to the Loans made by the Banks shall be shared by the Banks pro rata; provided that, but subject to the proviso in the first sentence of this Section 9.4, nothing in this Section shall impair the right of any Bank to exercise any right of set-off or counterclaim it may have to any deposits not received in connection with the Loans and to apply the amount subject to such exercise to the payment of indebtedness of the Borrower other than its indebtedness under the Loans. The Borrower agrees, to the fullest extent it may effectively do so under applicable law, that any holder of a participation in a Loan, whether or not acquired pursuant to the foregoing arrangements, may exercise rights of set-off or counterclaim and other rights with respect to such participation as fully as if such holder of a participation were a direct creditor of the Borrower in the amount of such participation. Notwithstanding anything to the contrary contained herein, any Bank may, by separate agreement with the Borrower, waive its right to set off contained herein or granted by law and any such written waiver shall be effective against such Bank under this Section 9.4.

Section 9.5. Amendments and Waivers. (a) Any provision of this Agreement or the Notes or other Loan Documents may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Borrower and the Required Banks (and, if the rights or duties of the Administrative Agent in its capacity as the Administrative Agent are affected thereby, by the Administrative Agent); provided that no amendment or waiver with respect to this Agreement, the Notes or any other Loan

Document shall, unless signed by (x) each Bank directly affected thereby, (i) reduce the principal of or, subject to Section 8.1(b), rate of interest on any Loan or any fees hereunder, (ii) postpone, whether through forbearance or otherwise, the date fixed for any payment of principal of or interest on any Loan or any fees hereunder or for any reduction or termination of any Commitments, (iii) reduce the percentage specified in the definition of "Required Banks" or "Super Majority Banks" or otherwise change the aggregate unpaid principal amount of the Loans, or the number of Banks, which shall be required for the Banks or any of them to take any action under this Section or any other provision of this Agreement or any Collateral Document, (iv) release all or a substantial portion of the Collateral under the Collateral Documents (except as expressly permitted by the Collateral Documents or this Agreement), (v) modify the provisions of this Section 9.5, (vi) increase, extend or restate the Commitments of any Bank or subject any Bank to any additional obligation hereunder, or (vii) amend, modify or waive the definition of "Pro Rata Share" or any other provision that provides for the ratable or pro rata nature of disbursements by or payments to Banks, (y) each Bank, amend, modify or waive any provision of Sections 2.10 and Section 2.11, and (z) the Super Majority Banks, amend, modify or waive the definition of "Borrowing Base" or any component thereof or definition used therein if such amendment, modification or waiver is has the effect of increasing the Borrowing Base.

(b) The Administrative Agent may, but shall have no obligation to, with the concurrence of any Bank, execute amendments, modifications, waivers or consents on behalf of such Bank. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Covered Party in any case shall entitle any Covered Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9.5 shall be binding upon each Bank at the time outstanding, each future Bank and, if signed by a Covered Party, on such Covered Party.

Section 9.6. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that (i) the Borrower may not assign or otherwise transfer any of its rights under this Agreement or the other Loan Documents without the prior written consent of all Banks and the Administrative Agent and (ii) a Bank may not assign or otherwise transfer any of its interest under this Agreement except as permitted in subsection (b) and (c) of this Section 9.6.

(b) Prior to the occurrence of an Event of Default, any Bank may at any time, grant to a then existing Bank or any Affiliate thereof, one or more banks, finance companies, insurance companies or other financial institutions or trusts (a "Participant") participating interests in any or all of its Commitments or Loans. After the occurrence and during the continuance of an Event of Default, any Bank may at any time grant to any Person in any amount (also a "Participant"), participating interests in any or all of its Loans. Any participation made during the continuation of an Event of Default shall not be affected by the subsequent cure of such Event of Default. In the event of any such grant by a Bank of a participating interest to a Participant, whether or not upon notice to the Borrower and the Administrative Agent, such Bank shall remain responsible for the performance of its obligations hereunder, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement. Any agreement pursuant to which any Bank may grant such a participating interest shall provide that such Bank shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided that such participation agreement may provide that such Bank will not agree to any modification, amendment or waiver of this Agreement described in

Section 9.5(a)(x) or (y) without the consent of the Participant. The Borrower agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Article VIII with respect to its participating interest (it being understood that the documentation required under Section 8.4(d) shall be delivered to the participating Bank) to the same extent as if it were a Bank and had acquired its interest by assignment pursuant to paragraph (c) of this Section 9.6; provided that such Participant (i) agrees to be subject to the provisions of Section 8.3 and Section 8.4 as if it were an assignee under paragraph (c) of this Section and (ii) shall not be entitled to receive any greater payment under Section 8.3 or Section 8.4, with respect to any participation, than its participating Bank would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from an adoption of or any change in any requirement, interpretation or application of law or compliance by any Bank with any request or directive (whether or not having the force of law) from any central bank or relevant authority made subsequent to the Closing Date that occurs after the Participant acquired the applicable participation. Each Bank that grants participating interests in any or all of its Commitments or Loans, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a register on which it enters the name and address of each Participant and principal amount of the Commitment or Loan and interest owing to each Participant (the "Participant Register"); provided that no Bank shall have any obligations to disclose all or any portion of the Participant Register to any Person, except to the extent that such disclosure is necessary to establish that such Loan is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive, and the Borrower, the Administrative Agent and the Banks shall treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary.

(c) (i) Subject to the conditions set forth in paragraph (c)(ii) below, any Bank may assign to one or more assignees (each, an "Assignee"), other than a natural person, the Borrower or any of the Borrower's Affiliates or Subsidiaries, any Defaulting Bank or any of its Subsidiaries, all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments or Loans at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld and provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof), provided that no consent of the Borrower shall be required for an assignment to a Bank, an affiliate of a Bank, an Approved Fund (as defined below) or, if an Event of Default has occurred and is continuing, any other Person; and

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Loan to a Bank, an affiliate of a Bank, an Approved Fund or an assignment to the Borrower as contemplated by Section 2.13.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Bank, an affiliate of a Bank or an Approved Fund or an assignment of the entire remaining amount of the assigning Bank's Commitments or Loans, the amount of the Commitments or Loans of the assigning Bank subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 (which shall be calculated as necessary to include any concurrent assignments by the assignor to an affiliate, or an Approved Fund, of the



assignee) unless each of the Borrower and the Administrative Agent otherwise consents, provided that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Bank and its affiliates or Approved Funds, if any;

(B) (1) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (other than in the case of an assignment to the Borrower as contemplated by Section 2.13) and (2) the assigning Bank shall have paid in full any amounts owing by it to the Administrative Agent; and

(C) the Assignee, if it shall not be a Bank, shall deliver to the Administrative Agent an administrative questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.6, "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Bank, (b) an affiliate of a Bank or (c) an entity or an affiliate of an entity that administers or manages a Bank.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (c)(iv) below, from and after the effective date specified in each Assignment and Assumption the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Bank under this Agreement, and the assigning Bank 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 Bank's rights and obligations under this Agreement, such Bank shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 8.3, 8.4 and 9.3). Any assignment or transfer by a Bank of rights or obligations under this Agreement that does not comply with this Section 9.6 shall be treated for purposes of this Agreement as a sale by such Bank of a participation in such rights and obligations in accordance with paragraph (b) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower and permitting access thereto to the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Banks and each of their Assignees, and principal amount of the Loans and interest owing to, each Bank pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Banks shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Bank hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Bank and an Assignee, the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Bank hereunder), the processing and recordation fee referred to in

paragraph (c)(ii)(B) of this Section and any written consent to such assignment required by paragraph (c)(i) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(d) Any Bank may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank. No such assignment shall release the transferor Bank from its obligations hereunder.

(e) No Assignee, Participant or other transferee of any Bank's rights shall be entitled to receive any greater payment under Section 8.3 or Section 8.4 than such Bank would have been entitled to receive with respect to the rights transferred, unless such transfer is made (i) with the Borrower's prior written consent, (ii) by reason of the provisions of Section 8.2, Section 8.3 or Section 8.4 requiring such Bank to designate a different Applicable Lending Office under certain circumstances or (iii) at a time when the circumstances giving rise to such greater payment did not exist.

Section 9.7. Governing Law; Submission to Jurisdiction; Judgment Currency. (a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

(b) Any legal action or proceeding with respect to this Agreement or any other Loan Document and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of New York or of the United States of America for the Southern District of New York, in each case, which are located in New York County, and, by execution and delivery of this Agreement, the Borrower hereby accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and appellate courts from any thereof. The Borrower irrevocably consents, for itself, to the service of process out of any of the aforementioned courts in any such action or proceeding by the hand delivery, or mailing of copies thereof by registered or certified mail, postage prepaid, to the Borrower at its address for notice as provided under Section 9.1 hereof. The Borrower hereby, for itself, irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Loan Document brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of the Administrative Agent to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Borrower in any other jurisdiction.

(c) If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in one currency into another currency, the parties hereto agree, to the fullest extent that they may effectively do so under applicable law, that the rate of exchange used shall be the spot rate at which in accordance with normal banking procedures the first currency could be purchased in New York City with such other currency by the person obtaining such judgment on the Business Day preceding that on which final judgment is given.

(d) The parties agree, to the fullest extent that they may effectively do so under applicable law, that the obligations of the Borrower to make payments in any currency of the principal of and interest on the Loans of the Borrower and any other amounts due from the Borrower hereunder to the Administrative Agent as provided herein (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with Section 9.7(c)), in any



currency other than the relevant currency, except to the extent that such tender or recovery shall result in the actual receipt by the Administrative Agent at its relevant office on behalf of the Banks of the full amount of the relevant currency expressed to be payable in respect of the principal of and interest on the Loans and all other amounts due hereunder (it being assumed for purposes of this clause (i) that the Administrative Agent will convert any amount tendered or recovered into the relevant currency on the date of such tender or recovery), (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the relevant currency the amount, if any, by which such actual receipt shall fall short of the full amount of the relevant currency so expressed to be payable and (iii) shall not be affected by an unrelated judgment being obtained for any other sum due under this Agreement.

Section 9.8. Counterparts; Integration; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective upon receipt by the Administrative Agent and the Borrower of counterparts hereof signed by each of the parties hereto. Delivery of an executed signature page of this Agreement by email or facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

Section 9.9. WAIVER OF JURY TRIAL. EACH OF THE BORROWER, THE AGENTS AND THE BANKS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 9.10. Survival. All indemnities set forth herein shall survive the execution and delivery of this Agreement and the other Loan Documents and the making and repayment of the Loans hereunder.

Section 9.11. Domicile of Loans. Subject to the provisions of Article VIII, each Bank may transfer and carry its Loans at, to or for the account of any domestic or foreign branch office, subsidiary or affiliate of such Bank.

Section 9.12. Limitation of Liability. No claim may be made by the Borrower or any other Person acting by or through the Borrower against any Agent or any Bank or the affiliates, directors, officers, employees, attorneys or agent of any of them for any punitive, consequential, special or exemplary damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or by the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 9.13. Recourse Obligation. This Agreement and the Obligations hereunder are fully recourse to the Borrower. Notwithstanding the foregoing, no recourse under or upon any obligation, covenant, or agreement contained in this Agreement shall be had against any officer, director, shareholder or employee of the Borrower except in the event of fraud or misappropriation of funds on the part of such officer, director, shareholder or employee.

Section 9.14. Confidentiality.

Each of the Agents and the Banks understands that some of the information furnished to it pursuant to this Agreement and the other Loan Documents may be received by it prior to the time that

such information shall have been made public, and each of the Agents and the Banks hereby agrees that it will keep all Information (as defined below) received by it confidential except that each Agent and each Bank shall be permitted to disclose Information (i) only to its Affiliates and such of its and its Affiliates' respective officers, directors, employees, agents, auditors and buyers as need to know such information in connection with this Agreement or any other Loan Document and who will be advised of the confidential nature of such Information; (ii) to any other party to this Agreement; (iii) to a proposed Assignee or Participant in accordance with Section 9.6 hereof or to a counterparty or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations hereunder, provided such Person agrees in writing to keep such Information confidential on terms substantially similar to this Section 9.14; (iv) to the extent required by applicable law and regulations or by any subpoena or other legal process; (v) to the extent requested by any bank regulatory authority or other regulatory authority or self-regulatory organization; (vi) to the extent such information becomes publicly available other than as a result of a breach of this Agreement; (vii) to the extent the Borrower shall have consented to such disclosure or (viii) in connection with any legal or other enforcement proceeding in connection with any Loan Document or any of the transaction contemplated thereby. For the purposes of this Section, "Information" means all information received from the Borrower or its officers, directors, employees, agents, auditors, lawyers and Affiliates relating to the Borrower or any of its Subsidiaries or Affiliates (including Investment Affiliates) or any of their respective businesses other than any such information that is available to the Administrative Agent or any Bank on a non-confidential basis prior to disclosure by the Borrower and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential provided further, however, that all financial information delivered in connection with this Agreement and the other Loan Documents is deemed to be and shall be treated as confidential. In the event of any required disclosure of Information, any Person required to maintain the confidentiality of such Information as provided in this Section 9.14 agrees to use reasonable efforts to inform the Borrower as promptly as practicable of the circumstances and the Information required to be disclosed to the extent not prohibited by applicable law.

Section 9.15. USA Patriot Act. Each Bank hereby notifies the 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 "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Bank to identify the Borrower in accordance with the Patriot Act.

Section 9.16. Acknowledgements. The Borrower hereby (a) acknowledges that (i) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and that the Covered Parties have consulted their own accounting, regulatory and tax advisors to the extent the Covered Parties have deemed appropriate in the negotiation, execution and delivery of this Agreement and the other Loan Documents; (ii) none of the Agents or any Bank has any fiduciary, advisory or agency relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Agents and Banks, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; (iii) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Banks or among the Borrower or any other Covered Parties and the Banks; (iv) the Agents and the Banks on the one hand, and the Covered Parties, on the other hand, have an arm's length business relationship that does not directly or indirectly give rise to, nor do the Covered Parties rely on, any fiduciary duty to the Covered Parties or their affiliates on the part of the Agents or the Banks; (v) each Agent and Bank has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by it and the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Covered Parties, any of their affiliates or any other Person;

(vi) none of the Agents or Banks has any obligation to the Covered Parties or their affiliates with respect to the transactions contemplated by this Agreement or the other Loan Documents except those obligations expressly set forth herein or therein or in any other express writing executed and delivered by such Agent or Bank and the Covered Parties or any such affiliate; and (vii) the Covered Parties are capable of evaluating and understanding, and the Covered Parties understand and accept, the terms, risks and conditions of the transactions contemplated by this Agreement and the other Loan Documents; and (b) waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent or any other Agent or Bank with respect to any breach or alleged breach of agency or fiduciary duty.

Section 9.17. Releases of Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Bank (without requirement of notice to or consent of any Bank except as expressly required by Section 9.5) to take any action requested by the Borrower (i) having the effect of releasing any Collateral (A) to the extent necessary to permit consummation of any transaction permitted by any Loan Document or that has been consented to in accordance with Section 9.5 or (B) under the circumstances described in paragraph (b) below and (ii) having the effect of confirming that a Covered Subsidiary or Covered Asset are no longer subject to the terms of this Agreement or the Collateral Documents and no longer constitute a "Covered Subsidiary" or "Covered Asset" as defined.

(b) At such time as the Loans and the other Obligations under the Loan Documents shall have been paid in full and the Commitments have been terminated, the Collateral shall be released from the Liens created by the Collateral Documents, and the Collateral Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Covered Party under the Collateral Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

Section 9.18. No Novation. The amendment and restatement of the Existing Credit Agreement shall not extinguish the obligations outstanding under the Existing Credit Agreement, the Collateral Documents or the other Loan Documents or discharge or release the lien or priority of the Collateral Documents or the other Loan Documents. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement, the Collateral Documents, the other Loan Documents or instruments securing the same or the other Loan Documents, which shall remain in full force and effect, except to any extent modified hereby or by instruments executed concurrently herewith. Nothing implied in this Agreement, the Collateral Documents, the other Loan Documents or in any other document contemplated hereby or thereby shall be construed as a release or other discharge of any of Borrower or any other Covered Party from any of its obligations and liabilities as a "Borrower," or "Covered Party," under the Agreement, the Collateral Documents or the other Loan Documents, except to any extent modified hereby or by instruments executed concurrently herewith or therewith. Each of this Agreement, the Collateral Documents and the other Loan Documents shall remain in full force and effect, until (as applicable) and except to any extent modified hereby or in connection herewith.

Section 9.19. Acknowledgement and Consent to Bail-In of EEA 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 EEA 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 an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 9.20. Certain ERISA Matters

(a) Each Bank (x) represents and warrants, as of the date such Person became a Bank party hereto, to, and (y) covenants, from the date such Person became a Bank party hereto to the date such Person ceases being a Bank party hereto, for the benefit of, the Administrative Agent and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Covered Party, that at least one of the following is and will be true:

(i) such Bank 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 Benefit Plans in connection with the Loans or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Bank’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Bank 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 Bank 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 Bank, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Bank’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Bank.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Bank or such Bank has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Bank further (x) represents and warrants, as of the date such Person became a Bank party hereto, to, and (y) covenants, from the date such Person became a Bank party hereto to the date such Person ceases being a Bank party hereto, for the benefit of, the Administrative Agent and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Covered Party, that:

(i) none of the Administrative Agent or any Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Bank (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Bank with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Bank 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 Obligations),

(iv) the Person making the investment decision on behalf of such Bank 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

(v) no fee or other compensation is being paid directly to the Administrative Agent or any Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Commitments or this Agreement.

(c) The Administrative Agent and each Arranger hereby informs the Banks 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 Bank 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

iSTAR INC.,  
as the Borrower

By: /s/Authorized Signatory

[iStar Amended and Restated Credit Agreement]

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JPMORGAN CHASE BANK, N.A.,  
as the Administrative Agent and a Bank

By: /s/Authorized Signatory

[iStar Amended and Restated Credit Agreement]

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BANK OF AMERICA, N.A.,  
as a Bank

By: /s/Authorized Signatory

[iStar Amended and Restated Credit Agreement]

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BARCLAYS BANK PLC,  
as a Bank

By: /s/Authorized Signatory

[iStar Amended and Restated Credit Agreement]

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MORGAN STANLEY SENIOR FUNDING, INC.,  
as a Bank

By: /s/Authorized Signatory

[iStar Amended and Restated Credit Agreement]

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## CERTIFICATION

I, Jay Sugarman, certify that:

1. I have reviewed this quarterly report on Form 10-Q of iStar 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: November 2, 2017

By: /s/ JAY SUGARMAN

Name: Jay Sugarman

Title: *Chief Executive Officer*



## CERTIFICATION

I, Geoffrey G. Jervis, certify that:

1. I have reviewed this quarterly report on Form 10-Q of iStar 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: November 2, 2017

/s/ GEOFFREY G. JERVIS

By:

Name: Geoffrey G. Jervis

Title: *Chief Financial Officer (principal financial and accounting officer)*

**Certification of Chief Executive Officer****Pursuant to Section 906 of The Sarbanes-Oxley Act of 2002**

The undersigned, the Chief Executive Officer of iStar Inc. (the "Company"), hereby certifies on the date hereof, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of The Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 (the "Form 10-Q"), filed concurrently herewith by the Company, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 2, 2017

By: /s/ JAY SUGARMAN

Name: Jay Sugarman

Title: *Chief Executive Officer*

**Certification of Chief Financial Officer**  
**Pursuant to Section 906 of The Sarbanes-Oxley Act of 2002**

The undersigned, the Chief Financial Officer of iStar Inc. (the "Company"), hereby certifies on the date hereof, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of The Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 (the "Form 10-Q"), filed concurrently herewith by the Company, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 2, 2017

By: /s/ GEOFFREY G. JERVIS

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Name: Geoffrey G. Jervis  
Title: *Chief Financial Officer (principal financial and accounting officer)*