

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

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **April 13, 2020 (April 10, 2020)**

AG Mortgage Investment Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of incorporation)

001-35151
(Commission File Number)

27-5254382
(IRS Employer Identification No.)

245 Park Avenue, 26th floor
New York, New York 10167
(Address of principal executive offices)

Registrant's telephone number, including area code: **(212) 692-2000**

Not Applicable
(Former Name or Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

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

Title of each class:	Trading Symbols:	Name of each exchange on which registered:
Common Stock, \$0.01 par value per share	MITT	New York Stock Exchange (NYSE)
8.25% Series A Cumulative Redeemable Preferred Stock	MITT PrA	New York Stock Exchange (NYSE)
8.00% Series B Cumulative Redeemable Preferred Stock	MITT PrB	New York Stock Exchange (NYSE)
8.000% Series C Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	MITT PrC	New York Stock Exchange (NYSE)

Item 1.01. Entry in a Material Definitive Agreement.**Forbearance Agreement**

On April 10, 2020, AG Mortgage Investment Trust, Inc. and certain of its affiliates (the “Company”) entered into a Forbearance Agreement (the “Forbearance Agreement”) with each of the following financing counterparties Bank of America, N.A., BofA Securities, Inc., Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse International, Barclays Capital Inc., Barclays Bank PLC, Société Générale S.A., Wells Fargo Bank, National Association, Wells Fargo Securities, LLC, Goldman Sachs Bank USA and Goldman, Sachs & Co. (each, a “Participating Counterparty,” and collectively, the “Participating Counterparties”). The Company’s aggregate outstanding financing arrangements with the Participating Counterparties included under the Forbearance Agreement are approximately \$750 million as of April 9, 2020, representing approximately 82% of the Company’s recourse financing arrangements outstanding as of the date of the Forbearance Agreement, exclusive of recourse financing arrangements relating to unsettled security sales, which are scheduled to settle Monday, April 13. The Company believes that it has good working relationships with certain other counterparties that are not participating in the Forbearance Agreement and is engaged in continuing discussions with those counterparties.

Capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Forbearance Agreement.

Pursuant to the terms of the Forbearance Agreement and related ancillary documents, subject to certain conditions, (i) each Participating Counterparty agrees to forbear from exercising any of its rights and remedies in respect of events of default and any and all other defaults under the applicable repurchase agreement with the Company until the earlier of (a) 6:30 p.m. Eastern Daylight Time on the first business day that is 15 calendar days after the Effective Date of the Forbearance Agreement or (b) the occurrence and continuance of a Triggering Event (the “Forbearance Period”) and (ii) the Company grants to the Collateral Agent, for the benefit of the Participating Counterparties in accordance with their respective Pro Rata Realized Losses, a security interest in and lien on all right, title or interest in or to all assets of the Company, including the proceeds of the Note (as defined below)(the “Collateral”). During the Forbearance Period, the Company shall have full power and authority to use cash Collateral in accordance with a cash budget set forth in a schedule to the Forbearance Agreement. Additionally, nothing contained in the Forbearance Agreement will prevent a Participating Counterparty from exercising any rights or remedies required by FINRA Rule 4210 as long as the applicable Participating Counterparty has exercised good faith efforts to obtain a waiver of, or an extension pursuant to, or to otherwise excuse compliance with, FINRA Rule 4210.

Wilmington Trust, National Association (the “Collateral Agent”) has been appointed as the Collateral Agent for the Participating Counterparties under the terms of that certain Security and Collateral Agency Agreement dated April 10, 2020 (the “Security Agreement”), entered into by the Company and the Participating Counterparties, for whom the Collateral Agent is acting as agent, simultaneously with the execution of Forbearance Agreement. The Security Agreement includes customary covenants and agreements from the Company with respect to the Collateral.

A “Triggering Event” under the Forbearance Agreement includes (i) failure of the Company to comply with the terms of the Forbearance Agreement or any of the Security Documents or the related Intercreditor Agreement entered into in relation to the Collateral; (ii) inaccuracy of representations and warranties made by the Company in the Forbearance Agreement; (iii) filing of a voluntary or involuntary bankruptcy petition with respect to the Company, and such petition is not controverted within 10 days or is not dismissed within fifteen (15) days after the filing thereof; (iv) appointment of a custodian, receiver, liquidator, trustee, monitor, sequestrator or similar official for the Company or all or any substantial part of its assets or properties; (v) the CMBX.NA.AAA.13 Index remains 20% below the level of such index as of the commencement of the Forbearance Period for three (3) consecutive trading days; (vi) the Company makes a dividend or other distribution on any preferred or common stock; (vii) the independent directors of the Company (other than independent directors of certain special purpose entity subsidiaries of the Company) receive compensation other than common stock; (viii) except as otherwise agreed to by the Participating Counterparties, the making of any payments to or liens or collateral granted for the benefit of any counterparty, including the Participating Counterparties (other than as expressly set forth in the Forbearance Agreement), or any lender or agent with respect to any material indebtedness of the Company; (ix) the exercise of remedies in connection with a Triggering Event by any Participating Counterparty; (x) payment by the Company to any repurchase agreement counterparty, including a Participating Counterparty or non-Participating Counterparty, other than as expressly set forth in the Forbearance Agreement; (xi) the threat or commencement of litigation by the Company against any Participating Counterparty (other than in connection with a breach of the Forbearance Agreement by a Participating Counterparty); (xii) the failure by the Company to take action’s within the Company’s control by April 15, 2020 to have the repo tracker turned “off” with respect to the assets subject to the repurchase agreements; (xiii) the failure by the Company to remit to the applicable Participating Counterparty income or proceeds received by the Company with respect to the assets subject to the repurchase agreements within one (1) business day of the receipt of such income or proceeds;

and (xiv) the Security Documents cease to create a valid and perfected first priority security interest in the Collateral after such perfection occurs in accordance with the terms of the Forbearance Agreement and Security Documents.

During the Forbearance Period, notwithstanding any terms of any applicable repurchase agreement to the contrary, the rate of interest or the pricing rate that shall accrue on any and all obligations of the Company owed to each Participating Counterparty under the applicable repurchase agreement shall be the greater of (a) the sum of (i) LIBOR (for a period of three months commencing on the date of the Forbearance Agreement and each three month anniversary of such date) and (ii) 2.50% and (b) 3.50%. Notwithstanding the foregoing, during the Forbearance Period, the obligations owing under such applicable repurchase agreements shall accrue at the rate of interest the related Participating Counterparty is entitled to charge thereunder (the “Contractual Rate”), but the obligation to pay the excess in the amount of interest accrued at the Contractual Rate over the amount of interest accrued at the Common Rate shall be deferred for each Participating Counterparty until, and shall be payable to such Participating Counterparty upon, the termination of the Forbearance Period.

During the Forbearance Period, notwithstanding any term in any repurchase agreement to the contrary, each Participating Counterparty agrees to extend the maturity dates of each of its repurchase agreements until the end of the Forbearance Period.

Subject to advance written notice to all Participating Counterparties, the Company and a Participating Counterparty may agree to optionally terminate a repurchase transaction in whole or part through the sale of all or a portion of the assets subject to such repurchase agreement, provided that (x) such sale shall be made on an arm’s length basis on customary market terms and (y) no such sale will result in such Participating Counterparty having a deficiency claim against the Company, unless such a sale resulting in a deficiency claim is approved by the Required Counterparties. During the Forbearance Period, all proceeds of any such termination (net of reasonable and customary expenses (if any) in connection with the applicable disposition) shall be remitted to and applied by the relevant Participating Counterparty as follows: (i) first, to the outstanding repurchase price in respect of the disposed applicable assets, (ii) second, to all other obligations owed under such applicable repurchase agreement, (iii) third, to all other obligations owed by the Companies to the relevant Participating Counterparty or its affiliates under any such applicable repurchase agreements, any other agreements or otherwise (regardless of whether the applicable Participating Counterparty or such affiliate has a contractual right to do so under the applicable repurchase agreement or any other agreement with any of the Companies), and (iv) fourth, any further proceeds shall be subject to the lien and security interest granted in the Forbearance Agreement. Further, all cash collateral that is held by any Participating Counterparty or any affiliate thereof in connection with any applicable repurchase agreement shall be applied by the relevant Participating Counterparty in accordance with the foregoing.

During the Forbearance Period, the Company, among other things, agrees (i) not to pay any (a) management fees to AG REIT Management, LLC (the “Manager”), or any of the Manager’s affiliates or (b) dividends with respect to its outstanding preferred stock or common stock; (ii) to compensate the Company’s independent directors solely with common stock (except with respect to independent directors of special purpose entity subsidiaries of the Company); (iii) in connection with a Non-Participating Counterparty’s agreement to waive, or forbear from exercising remedies with respect to a default or potential default under a repurchase agreement or similar agreement with such Non-Participating Counterparty, to provide (a) any benefit or consideration to such Non-Participating Counterparty that is more favorable than the consideration or benefits under the Forbearance Agreement or (b) to agree to any term or conditions with such Non-Participating Counterparty that is more favorable than the terms set forth in the Forbearance Agreement, to provide advance written notice to the Participating Counterparties of such consideration, benefit, terms or conditions and to extend to the Participating Counterparties the same favorable consideration, benefits, terms or conditions that may be provided to a non-Participating Counterparty; (iv) to cooperate fully with the Participating Counterparties and their respective agents and professionals with any financial review or appraisal of the business, assets or conditions of the Company, including responses to all reasonably requested information, at the expense of the Company; (v) to pay the reasonable and documented professional fees of the Participating Counterparties incurred in connection with the consideration of the Forbearance Agreement, including legal fees and fees and expenses of a financial advisor for the Participating Counterparties; (vi) not to make any draws upon, or otherwise access credit, including further sales or repurchases, including, without limitation, from affiliates, other than with respect to certain Excepted Agreements; (vii) that all funds, cash collateral, income and other proceeds under or in connection with any repurchase assets under a repurchase agreement shall be applied (a) first, to all accrued and unpaid interest, (b) second, to the outstanding principal amount owed to the Participating Counterparty (c) third, to all other obligations owed by the Company to the relevant Participating Counterparty, and (d) fourth, to the extent there are any further proceeds, as subject to the lien and security interest granted in the Forbearance Agreement; (viii) upon the reasonable request of any Participating Counterparty and at the Company’s expense, to make, execute, endorse, acknowledge, file, record, register and/or deliver such agreement or document and take such other actions to create, perfect, preserve or protect the security interest of the Collateral Agent on behalf of the Participating Counterparties; (ix) to notify each Participating Counterparty of the occurrence of any Triggering Event or event of default; (x) that New York Governor Andrew Cuomo’s Executive Order No. 202.9, “Continuing Temporary Suspension and Modification of Laws Relating to Disaster Emergency” is inapplicable to any of the Applicable Agreements and will not seek to assert a claim against any Participating Counterparty on the basis of such order; (xi) use good faith efforts to have all of the Security Documents fully executed, and to perfect the liens on the Collateral pursuant to the Security Documents, a

s soon as reasonably practical, and in no event later than ten (10) business days after the Effective Date; (xii) unless agree upon by the Required Counterparties, to not enter into any new repurchase agreements, forward transactions, hedging agreements, ISDA agreements, warehouse agreements, swap agreements, loan agreements or any new transaction under the repurchase agreements; (xiii) to make a good faith effort to undertake a deleveraging process and use its commercially reasonable efforts to accomplish such deleveraging; and (xiv) to release each Participating Counterparty and certain related parties from any claims existing or that arose prior to the time of the Forbearance Agreement. Neither the Company nor any Participating Counterparty waives any of the party's rights under the terms of the repurchase agreements or applicable law, including with respect to any bankruptcy proceedings.

Subordinated Debt

On April 10, 2020, the Company and certain of its subsidiaries issued a secured promissory note (the "Note") to the Manager evidencing a \$10 million loan made by the Manager to the Company. The obligations under the Note are guaranteed by the subsidiaries of the Company party to the Security Agreement. The Note is payable on the earlier to occur of (i) the full and indefeasible payment of the obligations of the Company arising under the repurchase agreements of the Participating Counterparties, and (ii) March 31, 2021 (the "Maturity Date"). The unpaid principal balance of the Note will accrue interest at a rate of 6.0% per annum. Interest on the Note shall be payable monthly in kind through the addition of such accrued monthly interest to the outstanding principal balance of the Note.

The Company's obligations under the Note are secured by a lien on all of the assets of the Company granted pursuant to a Security Agreement dated April 10, 2020 between the Company and the Participating Counterparties and the Manager (the "Subordinated Security Agreement"). The Manager has agreed to subordinate the obligations of the Company with respect to the Note and liens held by the Manager for the security of the performance of the Company's obligations under the Note to the Company's obligations to the Participating Counterparties and to the lien held by the Collateral Agent pursuant to an Intercreditor and Subordination Agreement by and among the Company, the Manager and the Collateral Agent.

The terms of the Note were unanimously approved by the independent members of the Board of Directors of the Company.

As previously reported, the Company has engaged Hunton Andrews Kurth LLP as legal counsel and FTI LLC as financial advisor in connection with its financings and related matters

Evercore has been engaged by the independent members of the Board to advise them in connection with a review of capital raising and strategic options for the Company. Fried Frank Harris Shriver & Jacobson LLP is serving as legal advisor to the independent members of the Board.

The foregoing descriptions of the Forbearance Agreement, Promissory Note, Security and Collateral Agency Agreement, Subordinated Security Agreement and Intercreditor and Subordination Agreement are not complete and are qualified in their entireties by the text of each instrument, which are attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5, respectively.

Item 7.01. Regulation FD Disclosure.

On April 13, 2020, the Company issued a press release, a copy of which is furnished as Exhibit 99.1 hereto and is incorporated herein by reference.

Exhibit 99.1 hereto is being furnished pursuant to Item 7.01, and the information contained therein shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.(d) *Exhibits.*

Exhibit No.	Description
<u>10.1</u>	<u>Forbearance Agreement dated April 10, 2020, by and among AG Mortgage Investment Trust, Inc. and certain of its affiliates and the Participating Counterparties listed on Schedule 1 thereto</u>
<u>10.2</u>	<u>Promissory Note dated April 10, 2020 from AG Mortgage Investment Trust, Inc. payable to AG REIT Management, LLC</u>
<u>10.3</u>	<u>Security and Collateral Agency Agreement dated April 10, 2020, by and among AG Mortgage Investment Trust, Inc. and certain of its subsidiaries and the Participating Counterparties, as set forth on Schedule 1 thereto, for whom Wilmington Trust, National Association is acting as agent</u>
<u>10.4</u>	<u>Subordinated Security Agreement dated April 10, 2020 among AG Mortgage Investment Trust, Inc. and AG REIT Management, LLC</u>
<u>10.5</u>	<u>Intercreditor and Subordination Agreement dated April 10, 2020 by and among AG Mortgage Investment Trust, Inc., AG REIT Management, LLC and Wilmington Trust, National Association as collateral agent.</u>
<u>99.1</u>	<u>Press Release, dated April 13, 2020</u>

Forward-Looking Statements

When used in this report or other written or oral communications, statements which are not historical in nature, including those containing words such as “will,” “believe,” “expect,” “anticipate,” “estimate,” “plan,” “continue,” “intend,” “could,” “would,” “should,” “may”, “expect” or similar expressions, are intended to identify “forward-looking statements” within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, and, as such, may involve known and unknown risks, uncertainties and assumptions. Statements regarding the following subjects, among others, may be forward-looking: our ability to accurately predict our outstanding indebtedness and the status of our ongoing discussions with our financing counterparties. Forward-looking statements are based on estimates, projections, beliefs and assumptions of management of the Company at the time of such statements and are not guarantees of future performance. Forward-looking statements involve risks and uncertainties in predicting future results and conditions. Actual results and outcomes could differ materially from those projected in these forward-looking statements due to a variety of factors, including, without limitation, changes in interest rates, changes in default rates, changes in the yield curve, changes in prepayment rates, the availability and terms of financing, changes in the market value of our assets, general economic conditions, conditions in the market for Non-Agency RMBS and CMBS securities, Excess MSRs and loans, our ability to predict and control costs, conditions in the real estate market, legislative and regulatory changes that could adversely affect the business of the Company, our ongoing negotiations with our repurchase financing counterparties and the Manager and the ongoing spread and economic effects of the novel coronavirus (COVID-19). Additional information concerning these and other risk factors are contained in the Company’s filings with the Securities and Exchange Commission (“SEC”), including our most recent Annual Report on Form 10-K and subsequent filings. All information in this current report on Form 8-K is as of April 13, 2020. The Company undertakes no duty to update any forward-looking statements to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based.

SIGNATURES

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

Date: April 13, 2020

AG MORTGAGE INVESTMENT TRUST, INC.

By: /s/ RAUL E. MORENO

Name: Raul E. Moreno

Title: General Counsel and Secretary

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT, dated as of April 10, 2020 (this “Agreement”), by and among AG Mortgage Investment Trust, Inc. and its undersigned affiliates, jointly and severally (each, a “Seller Entity,” and collectively, the “Companies”), and the buyer parties listed on Schedule 1 hereto (collectively, the “Participating Counterparties”), recites and provides as follows:

RECITALS

A. The Companies are party to various repurchase agreements and other related agreements with the Participating Counterparties, as well as certain other agreements with the Participating Counterparties, including those set forth on Schedule 2 (such agreements, collectively, the “Applicable Agreements”); provided, however, that the agreements identified as “JV Applicable Agreements” on Schedule 2 shall be Applicable Agreements only to the extent of the ownership interests of AG Mortgage Investment Trust, Inc. in the seller under such JV Applicable Agreement.

B. The Companies acknowledge and agree that various defaults and/or events of default exist or are likely to exist, or with the passage of time will or are likely to occur, under the terms of one or more of the Applicable Agreements with Participating Counterparties, including without limitation, on account of (i) the failure by one or more Seller Entities to make certain payments to the applicable Participating Counterparties under the Applicable Agreements related to margin calls, requests for payments, other payment provisions, financial covenants, or termination provisions, (ii) the failure by one or more Seller Entities to deliver certain notices to Participating Counterparties, and/or (iii) cross-default provisions under the Applicable Agreements (collectively, the “Acknowledged Events of Default”).

C. The Companies have requested that the Participating Counterparties forbear from exercising any and all rights and remedies under the Applicable Agreements or applicable law relating to any or all of the Acknowledged Events of Default, unless as otherwise provided in this Agreement.

D. The Participating Counterparties have agreed to forbear from exercising their rights and remedies with respect to the Acknowledged Events of Default solely during the Forbearance Period (as defined below) on the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises, mutual covenants, releases, and agreements herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Forbearance**. From and after the Effective Date (as defined below) and through the earlier of: (i) 6:30 p.m. Eastern Daylight Time on the first business day that is fifteen (15) calendar days after the Effective Date, and (ii) the occurrence and continuance of a Triggering Event (as defined herein) (the “Forbearance Period”), each of the Participating Counterparties shall and hereby agrees to forbear from exercising any of its rights or remedies, as applicable, under its respective

Applicable Agreements in respect of the Acknowledged Events of Default; provided that, without limiting and subject to the foregoing, each Participating Counterparty shall be permitted, during the Forbearance Period, to request, demand, or provide notice of margin, collateral or payments under the Applicable Agreements or applicable law; provided further that nothing contained herein will prevent a Participating Counterparty from exercising any such rights or remedies that are required by FINRA Rule 4210 as long as the applicable Participating Counterparty has exercised good faith efforts to obtain a waiver of, or an extension pursuant to, or to otherwise excuse compliance with, FINRA Rule 4210.

Except as expressly set forth in this Agreement, nothing contained in this Agreement shall be deemed to constitute a waiver of any Acknowledged Event of Default or any other default, event of default or termination event under any of the Applicable Agreements or an amendment, supplement or modification of any term or condition of any of the Applicable Agreements. Upon the termination of the Forbearance Period, the agreement of the Participating Counterparties to forbear as set forth in this Section 1 shall be void *ab initio* and immediately terminate without the requirement of any demand, presentment, protest, or notice of any kind (including any written notice of such termination or any obligation to provide notice of any default, event of default, termination event or exercise of remedies that may be required under the respective Applicable Agreements), all of which are hereby waived by the Companies. The Companies hereby acknowledge and agree that, upon the termination of the Forbearance Period, the Participating Counterparties that are party hereto may at any time, and from time to time, in their sole and absolute discretion, with respect to the Acknowledged Events of Default or any other default or event of default that may have occurred under the respective Applicable Agreements, exercise against any applicable Seller Entity (and its properties) any and all of their respective rights, remedies, powers and privileges under and in accordance with such Applicable Agreements, applicable law and/or equity, all of which rights, remedies, powers and privileges are fully reserved by each of the Participating Counterparties, and without regard to any grace or notice periods provided under such Applicable Agreements, all of which shall be deemed to have expired.

2. **Grant of Security Interest.** On the date hereof, as collateral security for the payment and performance of the Companies' respective obligations to the Participating Counterparties under the Applicable Agreements, but only if AG Mortgage Investment Trust, Inc. is a party to or a guarantor of or has otherwise provided credit support in connection with such Applicable Agreements, each of the Companies hereby grants to the Collateral Agent and its successors and assigns, for the benefit of the Participating Counterparties in accordance with their respective Pro Rata Realized Losses, a security interest in and lien on all right, title or interest in or to all assets of the Companies now owned or hereinafter acquire (the "Collateral"), in each case, as more fully set forth in the Security Documents in form and substance satisfactory to the Participating Counterparties; provided, however, that (i) during the Forbearance Period, the Companies shall have full power and authority to use cash Collateral in accordance with the budget annexed hereto as Schedule 3, subject to the variances set forth therein, and to make payments to professionals of Participating Counterparties regardless of whether such amounts are included in the budget, and (ii) upon the expiration of the Forbearance Period, the Collateral shall be subject to a customary carveout for professional fees and other wind-down expenses as set forth more particularly in Section 7.3(c) of the Security and Collateral Agency Agreement. For the avoidance of doubt, there shall be no diminution in the right

of any Participating Counterparty to the Collateral in the event such Participating Counterparty declines to extend its agreements in Section 1 at the end of the Forbearance Period.

3. **Conditions to Effectiveness.** This Agreement shall become effective as of the date (the “Effective Date”) on which the following conditions shall have been satisfied or waived in writing by the Participating Counterparties:

- (a) the execution of this Agreement by the Companies and each of the Required Counterparties, provided that, with respect to a Participating Counterparty that executes a counterpart of this Agreement after the Effective Date, this Agreement shall be effective as to such Participating Counterparty upon such execution by such Participating Counterparty;
- (b) each of the Security and Collateral Agency Agreement, and the Intercreditor Agreement shall be fully executed;
- (c) the security interests granted pursuant to Section 2 hereof shall have been perfected (in the case of any assets that can be perfected with a UCC filing) or are being perfected in accordance with the Security Documents;
- (d) no default or event of default has occurred and is continuing under the Applicable Agreements other than the Acknowledged Events of Default unless such default or event of default has been expressly and irrevocably waived by the applicable Participating Counterparty;
- (e) to the extent invoiced at least one business day prior to the Effective Date, the Companies shall have paid the reasonable fees and out-of-pocket expenses of counsel and other professional advisors to each Participating Counterparty;
- (f) immediately before and after giving effect to this Agreement, the representations and warranties of the Companies set forth in Sections 7 and 8 herein shall be true and correct in all material respects on and as of the Effective Date; and
- (g) AG Mortgage Investment Trust, Inc. shall have received \$10,000,000 in proceeds from the issuance of a subordinated note (which shall be subject to the Intercreditor Agreement) issued to AG REIT Management, LLC, and deposited such proceeds in a cash collateral account that shall constitute Collateral.

4. **Common Interest Rate.** During the Forbearance Period, notwithstanding any term in any Applicable Agreement to the contrary, the rate of interest or the pricing rate that shall accrue on any and all obligations of any Seller Entity owed to each Participating Counterparty under such Applicable Agreement shall be the greater of (a) the sum of (i) LIBOR (as defined below) (for an period of three months commencing on the date hereof and each three month anniversary of such date) and (ii) 2.50% and (b) 3.50%. Notwithstanding the first sentence of this Section 4, during the Forbearance Period, the obligations owing under such Applicable Agreement shall accrue at the rate of interest the related Participating Counterparty is entitled to charge thereunder (the “Contractual”

Rate”), but the obligation of the Seller Entities to pay the excess in the amount of interest accrued at the Contractual Rate over the amount of interest accrued at the Common Rate shall be deferred for each Participating Counterparty until, and shall be payable to such Participating Counterparty upon, the termination of the Forbearance Period.

5. **Agreement to Extend Maturity.** During the Forbearance Period, notwithstanding any term in any Applicable Agreement to the contrary, each Participating Counterparty agrees to extend the maturity dates of each of its Applicable Agreements until the end of the Forbearance Period. Each Participating Counterparty shall instruct the applicable prime brokerage to treat the terms of each of its Applicable Agreements as having been overridden as set forth in this Section 5.

6. **Dispositions of Collateral.** Subject to advance written notice to all Participating Counterparties, the Companies and a Participating Counterparty may agree to optionally terminate a transaction pursuant to an Applicable Agreement in whole or in part through a liquidation, close-out, optional termination or the sale of, in each case, all or a portion of the assets (including, without limitation, cash) subject to such Applicable Agreement (“Applicable Assets”), provided that with respect to such sales (x) such sale shall be made on an arm’s length basis by the Company on customary market terms (which may include sales to affiliates of the Companies or the Participating Counterparties and/or the credit bidding of assets by the Participating Counterparties) and (y) no such sale will result in such Participating Counterparty having a deficiency claim against any applicable Seller Entity, unless such a sale resulting in a deficiency claim is approved by the Required Counterparties. During the Forbearance Period, all proceeds of any such termination described above (net of reasonable and customary expenses (if any) in connection with the applicable disposition) shall be remitted to and applied by the relevant Participating Counterparty as follows: (i) first, to the outstanding repurchase price in respect of the disposed Applicable Assets, (ii) second, to all other obligations owed under such Applicable Agreement, (iii) third, to all other obligations owed by the Companies to the relevant Participating Counterparty or its affiliates under any such Applicable Agreements, any other agreements or otherwise (regardless of whether the applicable Participating Counterparty or such affiliate has a contractual right to do so under the Applicable Agreement or any other agreement with any of the Companies), and (iv) fourth, any further proceeds shall be subject to the lien and security interest granted in Section 2 of this Agreement. Further, all cash collateral that is held by any Participating Counterparty or any affiliate thereof in connection with any Applicable Agreement shall be applied by the relevant Participating Counterparty in accordance with the foregoing.

7. **Representations and Warranties by the Companies.** Each of the Companies hereby represents and warrants that each of the following statements is true, accurate and complete as of the date hereof:

- (a) Each of the Companies understands the temporary nature of the provisions of this Agreement and recognizes that no Participating Counterparty has any obligation to expand or extend any of the terms hereof;
- (b) The Companies own the unencumbered assets contemplated to be pledged to the Participating Counterparties free and clear of any lien, security, interest, charge or

encumbrance, other than any lien, security, interest or encumbrance created as a result of this Agreement;

- (c) There are no material agreements between the Companies and any other counterparties that have not been disclosed to the Participating Counterparties; and
- (d) The Companies have not received any notice of default under any Applicable Agreements and the Companies have not received any notice of default relating to any other indebtedness, except as specified in Schedule 4.

8. **Representations and Warranties by All Parties.** Each of the parties hereto hereby represents and warrants that each of the following statements is true, accurate and complete as to such party as of the date hereof:

- (a) Such party has carefully read and fully understood all of the terms and conditions of this Agreement;
- (b) Such party has consulted with, or had a full and fair opportunity to consult with, an attorney regarding the terms and conditions of this Agreement;
- (c) Such party has had a full and fair opportunity to participate in the drafting of this Agreement;
- (d) Such party is freely, voluntarily, knowingly, and intelligently entering into this Agreement;
- (e) In entering into this Agreement, such party has not relied upon any representation, warranty, covenant or agreement not expressly set forth herein or in its respective Applicable Agreement;
- (f) This Agreement has been duly authorized and validly executed and delivered by such party and constitutes each such party's legal, valid and binding obligation, enforceable in accordance with its terms;
- (g) Such party is executing this Agreement and agreeing to be bound on account of all Applicable Agreements to which it is a party; and
- (h) Such party is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has the full power and legal authority to execute this Agreement, consummate the transactions contemplated hereby, and perform its obligations hereunder.

9. **Covenants by the Companies.** The Companies hereby covenant that, during the Forbearance Period:

- (a) no management fees shall be paid by any Company to Angelo Gordon, L.P. or its affiliates and no dividend or other distribution shall be made on any preferred or common stock of any Seller Entity;
- (b) the independent directors of any Seller Entity shall be paid only with common stock in such Seller Entity, except with respect to Independent Directors of special purpose entity Seller Entity subsidiaries of AG Mortgage Investment Trust, Inc.;
- (c) in connection with a Non-Participating Counterparty's agreement to waive, or forbear from exercising remedies with respect to, a default or potential default under a repurchase agreement or similar agreement with such Non-Participating Counterparty, if any of the Companies agrees (x) to provide any benefit or consideration to such Non-Participating Counterparty that is more favorable than the consideration or benefits offered hereunder (including, without limitation, the benefit of a forbearance period of shorter duration than the Forbearance Period and the payment of any fees in connection with such waiver or forbearance) or (y) to any terms or conditions with such Non-Participating Counterparty that are more favorable than the terms set forth in this Agreement, (i) the Companies shall provide advance written notice to the Participating Counterparties of such consideration, benefit, terms or conditions and (ii) such consideration, benefit, terms or condition shall be deemed incorporated herein and each of the Participating Counterparties shall be provided with such consideration or benefit on the same terms as such Non-Participating Counterparty, without the need of any further action on the part of any party, except that the Companies shall take such actions as may be necessary or reasonably requested by any Participating Counterparty to perfect the rights of the Participating Counterparties in and to such benefits;
- (d) the Companies shall cooperate fully with the Participating Counterparties and their respective agents and professionals (legal and financial), including in connection with any financial review or appraisal of the businesses, assets or financial condition of the Companies, to provide the Participating Counterparties and their respective agents and professionals with all reasonably requested information, in all cases at the expense of the Companies. Without limiting the foregoing, (i) upon the request of any Participating Counterparty, and subject to compliance with the confidentiality provisions included in such Applicable Agreement, the Companies shall grant such Participating Counterparty and its respective professionals (including, without limitation, its lawyers, accountants, appraisers and financial advisors) reasonable access to, and shall as promptly as practical schedule meetings and conference calls with, management personnel and any financial advisors or restructuring consultants retained by the Companies, (ii) the Companies shall on or prior to the Effective Date have created a data room with outstanding principal balance and asset information in a form acceptable to the Participating Counterparties, including loan tapes and CUSIP numbers for all outstanding transactions and (iii) the Companies' financial advisor shall furnish the Participating Counterparties with daily reporting of all transactions entered into by the Companies on the previous business day, including

new contracts, cash inflows and outflows, asset sales (including pricing information), and any settlements or accommodations, whether or not they are permitted hereunder;

- (e) the Companies shall pay the reasonable and documented professional fees and expenses, including legal fees, of each Participating Counterparty incurred in connection with the consideration of the forbearance provided for herein (including any diligence and analysis in respect thereof) and the negotiation and execution of this Agreement and any extension or modification thereof, including fees and expenses of a financial advisor for the Participating Counterparties;
- (f) the Companies shall make no draws upon or otherwise access extensions of credit, including any further sales or repurchases, including, without limitation, from affiliates, except with respect to the agreements set forth in Schedule 5 hereto concerning the assets identified in Schedule 5;
- (g) all funds, cash collateral, income and other proceeds under or in connection with any Applicable Agreement and/or any Applicable Assets thereunder (including any such income or other proceeds that are in the possession of the applicable Participating Counterparties on the date hereof and/or would otherwise be required to be paid to the Companies pursuant to such Applicable Agreement) shall be applied by the relevant Participating Counterparty as follows: (i) first, to all accrued and unpaid interest (including pricing differential) owed under such Applicable Agreement, (ii) second, to reduce the outstanding principal amount (including any repurchase price) owed to such Participating Counterparty under such Applicable Agreement (notwithstanding any principal repayment schedule in the Applicable Agreement to the contrary), (iii) third, to all other obligations owed by the Companies to the relevant Participating Counterparty or its affiliates under such Applicable Agreement, any other agreement or otherwise (regardless of whether the applicable Participating Counterparty or such affiliate has a contractual right to do so under the Applicable Agreements or any other agreement with any of the Companies), and (iv) fourth, any further proceeds shall be subject to the lien and security interest granted in Section 2 of this Agreement; provided, however, for the avoidance of doubt, that during the Forbearance Period payments of interest (including price differential), principal, and other obligations shall be made from income and other proceeds in accordance with the foregoing and not based on any due dates, schedules, or other timing set forth in the Applicable Agreements;
- (h) upon the reasonable request of any Participating Counterparty and at the Companies' expense, shall make, execute, endorse, acknowledge, file, record, register and/or deliver such agreements, documents, instruments and further assurances (including, without limitation, financing statements under the Uniform Commercial Code of the State of New York) and take such other actions as may be reasonably appropriate or advisable to create, perfect, preserve or protect the security interest of the Collateral Agent on behalf of the Participating Counterparties granted in Section 2 of this Agreement;

- (i) the Companies shall promptly notify each Participating Counterparty of the occurrence of any Triggering Event and in any event no later than one business day following the occurrence thereof (or, in the case of a Triggering Event described in clauses (iii) (solely with respect to a voluntary filing), (viii) or (xii) of the definition of “Triggering Event,” one business day prior to such expected filing or payment), which notice shall state that such Triggering Event occurred and set forth, in reasonable detail, the facts and circumstances that gave rise to such Triggering Event;
- (j) the Companies shall promptly notify each Participating Counterparty and in any event no later than one business day after receipt, of any default, event of default, termination notices, enforcement notices, calculation statements, and related notices and correspondences received by the Companies in connection with any repurchase agreements with Non-Participating Counterparties or any material indebtedness of the Companies;

- (k) the Companies acknowledge and agree that New York Governor Andrew Cuomo's Executive Order No. 202.9, "Continuing Temporary Suspension and Modification of Laws Relating to Disaster Emergency" is inapplicable to any of the Applicable Agreements, and that the Companies will not seek to challenge or assert a claim against any Participating Counterparty on the basis of such executive order;
- (l) the Companies shall provide notice to all Participating Counterparties promptly, and no later than one business day after, (i) the exercise of remedies in connection with a Triggering Event by any Participating Counterparty; or (ii) the termination of any forbearance or standstill or similar agreement by any Non-Participating Counterparty to any repurchase agreement, swap agreement or other derivative contract with any of the Companies;
- (m) the Companies shall use good faith efforts to have all of the Security Documents fully executed, and to perfect the liens on the Collateral pursuant to the Security Documents, as soon as reasonably practicable, and in no event later than ten (10) business days after the Effective Date;
- (n) unless otherwise agreed upon by the Required Counterparties, each Seller Entity shall not enter into any new repurchase agreements, forward transaction agreements, hedging agreements, ISDA agreements, warehouse agreements, swap agreements, loan agreements, and other related agreements or any transactions thereunder or any new transactions under an Applicable Agreement or any other similar agreement, or grant any liens upon its assets on account of the foregoing or incur any other indebtedness of the Companies; and
- (o) immediately upon the effectiveness of this Agreement, the Companies shall make a good faith effort to undertake a deleveraging process and use its commercially reasonable efforts to accomplish such deleveraging.

10. **Releases.** Upon execution of this Agreement by each of the Companies and each of the Participating Counterparties, the Companies, on behalf of themselves and their successors or assigns (collectively, the "Releasing Parties") releases, waives and forever discharges (and further agrees not to allege, claim or pursue) any and all claims, rights, causes of action, counterclaims or defenses of any kind whatsoever whether in law, equity or otherwise (including, without limitation, any claims relating to (i) the making or administration of transactions under the Applicable Agreements (including any acts or omissions in respect of margin calls, related valuations, and notice requirements), including, without limitation, any such claims and defenses based on fraud, mistake, duress, usury or misrepresentation, or any other claim based on so-called "lender liability" theories, (ii) any covenants, agreements, duties or obligations set forth in the Applicable Agreements, (iii) increased financing costs, interest or other carrying costs, (iv) penalties, lost profits or loss of business opportunity, (vi) legal, accounting and other administrative or professional fees and expenses and incidental, consequential and punitive damages payable to third parties, (vii) damages to business reputation, (viii) any claims arising under 11 U.S.C. §§ 541-550 or any claims for avoidance or recovery under any other federal, state or foreign law equivalent, or (ix) any claims arising from any actual or alleged decline in the value of any Applicable Assets during the

Forbearance Period) which any of the Releasing Parties might otherwise have or may have against the Participating Counterparties, their present or former subsidiaries and affiliates or any of the foregoing's officers directors, employees, attorneys or other representatives or agents (collectively, the "Releasees") in each case on account of any conduct, condition, act, omission, event, contract, liability, obligation, demand, covenant, promise, indebtedness, claim, right, cause of action, suit, damage, defense, judgment, circumstance or matter of any kind whatsoever which existed, arose or occurred at any time prior to the date of this Agreement relating to the Applicable Agreements, this Agreement and/or the transactions contemplated thereby or hereby (any of the foregoing, a "Claim"). Each of the Releasing Parties expressly acknowledges and agrees, with respect to the Claims, that it waives, to the fullest extent permitted by applicable law, any and all provisions, rights, and benefits conferred by any applicable U.S. federal or state law, or any principle of U.S. common law, that would otherwise limit a release or discharge of any unknown Claims pursuant to this paragraph. Furthermore, each of the Releasing Parties hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released and/or discharged by the Releasing Parties pursuant to paragraph. Except as provided for in Section 11 with respect to a Participating Counterparty that breaches this Agreement, the foregoing release, covenant and waivers of this paragraph shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby or the termination of the Applicable Agreements, this Agreement or any provision thereof.

11. **Remedies for Breach by Participating Counterparty.** Any Participating Counterparty that fails to comply with any material term of this Agreement during the Forbearance Period (a "Non-Complying Counterparty"), which failure remains uncured for a period of two (2) business days following such Participating Counterparty's receipt of written notice of such non-compliance, and which failure to comply has been determined by a final, non-appealable order of a court of competent jurisdiction shall (i) be deemed immediately to have forfeited its right to the security interest in or lien on the Collateral and (ii) no longer be deemed a Releasee (and the release provided to such Participating Counterparty and its related Releasees shall defease retroactively and be of no force or effect whatsoever). For the avoidance of doubt, a Participating Counterparty's exercise of any rights or remedies following the Forbearance Period shall not be deemed a breach of this Agreement. For the avoidance of doubt, no Participating Counterparty shall be deemed a Non-Complying Counterparty solely by virtue of such Participating Counterparty failing to extend its agreements under Section 1 at the end of the Forbearance Period.

12. **No Waiver of Rights or Remedies.** The Participating Counterparties and the Companies agree that other than as expressly set forth herein, nothing in this Agreement or the performance by the parties of their respective obligations hereunder constitutes or shall be deemed to constitute a waiver of any of the parties' rights or remedies under the terms of such Applicable Agreement or applicable law, all of which are hereby reserved, including without limitation, (i) any rights that the Participating Counterparties may have to charge interest at a post-default rate under the terms of such Applicable Agreement, and (ii) any rights or remedies in connection with any bankruptcy proceedings in respect of a Seller Entity (to which this Agreement shall not apply). Except as expressly set forth in this Agreement, this Agreement is not intended to be, and shall not be deemed or construed to be, an amendment, supplement, modification, cure, satisfaction,

reinstatement, novation, or release of the Applicable Agreements or any indebtedness incurred thereunder or evidenced thereby. The parties further agree that the running of all statutes of limitation and the doctrine of laches applicable to all claims or causes of action that the Participating Counterparties may be entitled to take or bring in order to enforce their rights and remedies against the Seller Entities are, to the fullest extent permitted by law, tolled and suspended during the Forbearance Period. This Agreement is limited in nature and nothing herein shall be deemed to establish a custom or course of dealing between any Participating Counterparty and any Seller Entity. Except as set forth in Section 11 hereof, in no event shall this Agreement extinguish the obligations for the payment of money outstanding under any Applicable Agreement or discharge or release any collateral or other security therefor.

13. **Safe Harbor.** Each of the parties hereto intend (i) for this Agreement to qualify for the safe harbor treatment provided by the Bankruptcy Code and for each of the Participating Counterparties to be entitled to all of the rights, benefits and protections afforded to Persons under the Bankruptcy Code with respect to a “repurchase agreement” as defined in Section 101(47) of the Bankruptcy Code, a “securities contract” as defined in Section 741(7) of the Bankruptcy Code and a “master netting agreement” as defined in Section 101(38A) of the Bankruptcy Code, and that all payments made under or pursuant to this Agreement are deemed “margin payments” or “settlement payments,” as defined in Section 101 of the Bankruptcy Code, (ii) for the grant of a security interest contemplated in Section 2 of this Agreement to also be a “repurchase agreement” as defined in Section 101(47)(v) of the Bankruptcy Code, “securities contract” as defined in Section 741(7)(A)(xi) of the Bankruptcy Code and a “master netting agreement” as defined in Section 101(38A) of the Bankruptcy Code, and (iii) that each Participating Counterparty (for so long as such Participating Counterparty is a “financial institution,” “financial participant” or other entity listed in Section 555, 559, 561, 362(b)(6), 362(b)(7) or 362(b)(27) of the Bankruptcy Code) shall be entitled to, without limitation, the liquidation, termination, acceleration, netting, set-off, and non-avoidability rights afforded to parties such as such Participating Counterparty to “repurchase agreements” pursuant to Sections 559, 362(b)(7) and 546(f) of the Bankruptcy Code, “securities contracts” pursuant to Sections 555, 362(b)(6) and 546(e) of the Bankruptcy Code and “master netting agreements” pursuant to Sections 561, 362(b)(27) and 546(j) of the Bankruptcy Code. The parties hereto further acknowledge and agree that if any Participating Counterparty is an “insured depository institution,” as such term is defined in the Federal Deposit Insurance Act, as amended (“FDIA”), then this Agreement hereunder is a “qualified financial contract,” as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to this Agreement would render such definition inapplicable). The parties hereto further acknowledge and agree that this Agreement constitutes a “netting contract” as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and each payment entitlement and payment obligation under any Transaction shall constitute a “covered contractual payment entitlement” or “covered contractual payment obligation,” respectively, as defined in and subject to FDICIA (except insofar as a party is not a “financial institution” as that term is defined in FDICIA). The parties agree that the terms of Section 1 and Section 2 and the related defined terms of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org), are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a “Covered

Agreement,” each party that is a Covered Entity shall be deemed a “Covered Entity” and each party (whether or not it is a Covered Entity) shall be deemed a “Counterparty Entity” with respect to each other party that is a Covered Entity. For purposes of the foregoing sentence “Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

14. **No Admissions Concerning Non-Participating Counterparties.** Nothing in this Agreement, or in connection with negotiating, entering into, or performing obligations under this Agreement, shall constitute an admission by any of the Companies with respect to any repurchase agreements or any related agreements with any Non-Participating Counterparties.

15. **Governing Law; Jurisdiction; Waiver of Jury Trial.**

- (a) This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York, notwithstanding its conflict of laws principles or any other rule, regulation or principle that would result in the application of any other state’s law.
- (b) EACH PARTY HERETO HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, STATE OF NEW YORK AND APPELLATE COURTS FROM EITHER OF THEM AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS.
- (c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

16. **Entire Agreement.** This Agreement, together with all Applicable Agreements to which the parties are bound and the Security Documents constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings relating to any Acknowledged Events of Default.

17. **Modifications.** No part or provision of this Agreement may be changed, modified, waived, discharged or terminated except by mutual written agreement of all of the parties hereto. Except as so mutually agreed, the Companies agree that, during the Forbearance Period, they will not permit any party hereto to be relieved of any of its obligations hereunder or take any similar action that would have a comparable effect.

18. **Defined Terms.** The definitions set forth in this Agreement are for convenience only and shall have no bearing on the characterization of any agreement or qualification of any agreement for the protections afforded in 11 U.S.C. §§ 362, 546, 555-561.

19. **Successors and Assigns.** This Agreement shall inure to the benefit of and bind each of the parties and their respective successors and assigns.

20. **Headings.** The headings used in this Agreement are for convenience only and will not be deemed to limit, amplify or modify, the terms of this Agreement.

21. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument, and the words “executed,” “signed,” “signature,” and words of like import as used above and elsewhere in this Agreement or in any other certificate, agreement or document related to this transaction shall may include, in addition to manually executed signatures, images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf”, “tif” or “jpg”) and other electronic signatures (including, without limitation, any electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

22. **Certain Definitions.**

- (a) **“Collateral Agent”** shall mean Wilmington Trust as collateral agent for the Participating Counterparties, or such other collateral agent as agreed by the Companies and the Participating Counterparties.
- (b) **“Intercreditor Agreement”** shall mean that certain Intercreditor and Subordination Agreement dated as of the date hereof among the Wilmington Trust as the Senior

Collateral Agent, AG REIT Management, LLC as Subordinated Lender and AG Mortgage Investment Trust, Inc., on behalf of itself and the Seller Entities.

- (c) “LIBOR” shall mean the 1-month London interbank offered rate as administered by ICE Benchmark Administration as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (the “LIBO Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such interest period; provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.
- (d) “Non-Participating Counterparties” shall mean counterparties under repurchase agreements and other related agreements similar in nature to the Applicable Agreements with any one or more of the Companies, other than the Participating Counterparties.
- (e) “Pro Rata Realized Losses” shall mean for each Participating Counterparty a fraction the numerator of which is an amount equal to such Participating Counterparty’s realized losses and the denominator of which is the sum of all Participating Counterparties’ realized losses, in each case, calculated upon the close-out of all of the transactions under the applicable Applicable Agreements (with realized losses being determined in each instance (after giving effect to the netting and setoff of any cash collateral or other margin held by such Participating Counterparty) by either (i) a disposition (including a Participating Counterparty’s buying in) of the related Applicable Assets within 30 days following the expiration of the Forbearance Period and in accordance with such Applicable Agreement or (ii) agreement of the Companies, in consultation with the Required Counterparties).
- (f) “Required Counterparties” shall mean the Participating Counterparties listed on Schedule 6 hereto.
- (g) “Security and Collateral Agency Agreement” shall mean that certain Security and Collateral Agency Agreement dated as of the date hereof among the Companies, Wilmington Trust, National Association, as agent for the Participating Counterparties, and the Participating Counterparties, which is annexed hereto as Exhibit A.
- (h) “Security Documents” shall mean the Security and Collateral Agency Agreement, and any custodial, account and other agreements necessary to perfect the liens granted in the Security and Collateral Agency Agreement, each in form and substance satisfactory to the Participating Counterparties.
- (i) “Triggering Event” shall mean any of the following:
 - (i) the failure of any Company to comply with any term, condition, or covenant set forth in this Agreement or any of the Security Documents or the Intercreditor Agreement;

- (ii) the inaccuracy of any representation or warranty made by the Companies herein in any material respect on or as of the date made;
- (iii) the filing of a voluntary bankruptcy with respect to any of the Companies, or the filing of an involuntary bankruptcy petition (other than an involuntary bankruptcy petition filed by any of the Participating Counterparties) with respect to any of the Companies and the petition is not controverted within 10 days or is not dismissed within 15 days after the filing thereof;
- (iv) a custodian, receiver, liquidator, trustee, monitor, sequestrator or similar official is appointed out of court with respect to any Seller Entity, or with respect to all or any substantial part of the assets or properties of the Seller Entities;
- (v) the CMBX.NA.AAA.13 Index has remained 20% below the level of the CMBX.NA.AAA.13 Index as of the commencement of the Forbearance Period for three (3) consecutive trading days;
- (vi) any of the Seller Entities shall make a dividend or other distribution on any preferred or common stock;
- (vii) the independent directors of any Seller Entity shall receive compensation other than common stock in such Seller Entity, except with respect to Independent Directors of special purpose entity Seller Entity subsidiaries of AG Mortgage Investment Trust, Inc.;
- (viii) except as agreed to by the Participating Counterparties, any payments shall be made to or liens or collateral granted for the benefit of any repurchase agreement, forward transaction agreement, hedging agreement, ISDA agreement, warehouse agreement, swap agreement, or loan agreement counterparty, including without limitation the Participating Counterparties (other than as expressly set forth in this Agreement) or to any agent or lender with respect to any material indebtedness of the Companies;
- (ix) the exercise of remedies in connection with a Triggering Event by any Participating Counterparty;
- (x) payment being made by the Companies to any repurchase agreement counterparty, including without limitation the Participating Counterparties and the Non-Participating Counterparties (other than as expressly set forth herein); provided that no Triggering Event shall be deemed to have occurred pursuant to the foregoing clause (viii) or (x) due to any Seller Entity complying with its obligations as lender, buyer or other type of financing provider under any financing, repurchase transaction or similar arrangement;

- (xi) the receipt by any of the Participating Counterparties from, or the publication by, any of the Companies of any threat of litigation (other than in connection with a breach of this Agreement by a Participating Counterparty);
- (xii) the commencement of any lawsuit by any of the Companies against any Participating Counterparty arising out of or with respect to, or in connection with, any repurchase agreements, or any related agreements (other than in connection with a breach of this Agreement by a Participating Counterparty);
- (xiii) the failure by any Company to take the actions within such Company's control by April 15, 2020, to have the DTC repo tracker turned "off" with respect to assets subject to the relevant Applicable Agreements;
- (xiv) the failure of any Company to remit to the applicable Participating Counterparty income or proceeds received by such Company with respect to assets subject to the relevant Applicable Agreements within one (1) business day of actual notice to, or actual knowledge by, such Company of receipt of such income or proceeds; or
- (xv) the Security Documents cease to create a valid and perfected first priority security interest in the Collateral after such perfection occurs in accordance with the terms of this Agreement and the Security Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

SELLER ENTITIES:

AG MORTGAGE INVESTMENT TRUST, INC., as a Seller Entity

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT CMO, LLC, as a Seller Entity

By: **AG MIT, LLC,** its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.,** its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

By: **AG MIT, LLC,** as a Seller Entity

By: **AG MORTGAGE INVESTMENT TRUST, INC.,** its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

By: **GCAT 2020-23A, LLC,** as a Seller Entity

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: Authorized Signatory

By: **GCAT 2020-23B, LLC,** as a Seller Entity

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: Authorized Signatory

AG MIT INTERNATIONAL LLC, as a Seller Entity

By: **AG MIT, LLC**, its Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT CMO EC LLC, as a Seller Entity

By: **AG MIT RES LLC**, its Sole Member

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT RES LLC, as a Seller Entity

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT CREL III, LLC, as a Seller Entity

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT WFB1 2014 LLC, as a Seller Entity

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT ARC, LLC, as a Seller Entity

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT HC, L.L.C., as a Seller Entity

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT RPL TRS LLC, as a Seller Entity

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

BUYER ENTITIES:

BANK OF AMERICA, N.A.,
as a Participating Counterparty

By: /s/ Michael J. Berg
Name: Michael J Berg.
Title: Director

BOFA SECURITIES, INC.,
as a Participating Counterparty

By: /s/ Michael J. Berg
Name: Michael J Berg.
Title: Director

CREDIT SUISSE SECURITIES (USA) LLC,
as a Participating Counterparty

By: /s/ Margaret Dellafera
Name: Margaret Dellafera
Title: Authorized Signatory

CREDIT SUISSE AG, a company incorporated in Switzerland, acting through its
Cayman Islands Branch, as a Participating Counterparty

By: /s/ Margaret Dellafera
Name: Margaret Dellafera
Title: Authorized Signatory

By: /s/ Elie Chau
Name: Elie Chau
Title: Vice President

CREDIT SUISSE INTERNATIONAL,
as a Participating Counterparty

By: /s/ Jason O'Brien
Name: Jason O'Brien

Title: Managing Director

By: /s/ Masahi Washida

Name: Masahi Washida

BARCLAYS CAPITAL INC.,
as a Participating Counterparty

By: /s/ Robert Silverman

Name: Robert Silverman

Title: Managing Directoe

BARCLAYS BANK PLC,
as a Participating Counterparty

By: /s/ Robert Silverman

Name: Robert Silverman

Title: Managing Directoe

SOCIETE GENERALE S.A.,
as a Participating Counterparty

By: /s/ Julien Thinat

Name: Julian Thinat

Title: Authorized Signatory

WELLS FARGO BANK, N.A.,
as a Participating Counterparty

By: /s/ Kevin Graves

Name: Kevin Graves

Title: Director

WELLS FARGO SECURITIES, LLC,
as a Participating Counterparty

By: /s/ Kevin Graves

Name: Kevin Graves

Title: Director

GOLDMAN SACHS BANK USA,
as a Participating Counterparty

By: /s/ Rajiv Kamilla
Name: Rajiv Kamilla
Title: Authorized Signatory

GOLDMAN, SACHS & CO.,
as a Participating Counterparty

By: /s/ Rajiv Kamilla
Name: Rajiv Kamilla
Title: Authorized Signatory

SCHEDULE 1

Participating Counterparties

SCHEDULE 2

Applicable Agreements

SCHEDULE 3

Budget

SCHEDULE 4

Notices of Default

SCHEDULE 5

Excepted Agreements

SCHEDULE 6

Required Counterparties

EXHIBIT A

Security and Collateral Agency Agreement

THIS NOTE AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN SECTION 4 BELOW AND THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT (THE “INTERCREDITOR AGREEMENT”) DATED AS OF THE DATE HEREOF, AMONG THE NOTEHOLDER (AS DEFINED BELOW) WILMINGTON TRUST, NATIONAL ASSOCIATION AS AGENT FOR THE PARTICIPATING COUNTERPARTIES UNDER THE SECURITY AND COLLATERAL AGENCY AGREEMENT BY AND AMONG THE PARTICIPATING COUNTERPARTIES, THE BORROWER AND GUARANTORS (IN SUCH CAPACITY, THE “COLLATERAL AGENT”) TO THE OBLIGATIONS (INCLUDING INTEREST) OWED BY BORROWER AND THE GUARANTORS TO THE PARTICIPATING COUNTERPARTIES PURSUANT TO THE REPURCHASE AGREEMENTS (AS DEFINED BELOW); AND EACH HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE INTERCREDITOR AGREEMENT.

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR UNDER ANY STATE SECURITIES LAW AND MAY NOT BE PLEDGED, SOLD, ASSIGNED, OR TRANSFERRED UNLESS (I) A REGISTRATION STATEMENT WITH RESPECT THERETO IS EFFECTIVE UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND ANY APPLICABLE STATE SECURITIES LAW REQUIREMENTS HAVE BEEN MET OR (II) EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT AND THE REGISTRATION OR QUALIFICATION REQUIREMENTS OF APPLICABLE STATE SECURITIES LAWS ARE AVAILABLE.

\$10,000,000.00

AG MORTGAGE INVESTMENT TRUST, INC.

SECURED PROMISSORY NOTE

April 10, 2020

AG Mortgage Investment Trust, Inc., a Maryland corporation (the “Borrower”), for value received, hereby promises to pay to the order of AG REIT Management, LLC (the “Noteholder”) or its assigns, the sum of Ten Million Dollars and 00/100 (\$10,000,000.00) or such lesser amount as shall then be outstanding hereunder, together with all accrued and unpaid interest thereon as provided herein and all other amounts payable under this Note. The principal amount hereof and any unpaid accrued interest hereon, as set forth below, shall be due and payable on the earlier to occur of (i) the full and indefeasible payment of the obligations of the Borrower and the Guarantors arising under the Repurchase Agreements of Participating Counterparties listed on Schedule 2 (collectively, the “Repurchase Agreements”), complete copies of which have been provided to the Noteholder and (ii) March 31, 2021 (the “Maturity Date”). Payment for all amounts due hereunder shall be made by wire transfer in immediately available funds to the account or accounts designated by the Noteholder in writing to the Borrower.

This Note has been executed and delivered in exchange for the Noteholder’s delivery to the Borrower of \$10,000,000.

The following is a statement of the rights of the Noteholder and the conditions to which this Note is subject, and to which the Noteholder hereof, by the acceptance of this Note, agrees:

1. Definitions. As used in this Note, the following terms, unless the context otherwise requires, have the following meanings:

(i) “Borrower” has the meaning set forth above and shall include any corporation which shall succeed to or assume the obligations of AG Mortgage Investment Trust, Inc. under this Note;

(ii) “Collateral” has the meaning set forth in the Subordinated Security Agreement;

(iii) “Deposit Account Control Agreements” has the meaning set forth in the Subordinated Security Agreement;

(iv) “First Lien Security Agreement” means the Security and Collateral Agency Agreement by and among the Borrower and Guarantors, as Debtors, and the Collateral Agent, as agent for the Participating Counterparties, dated as of the date hereof and as the same may be amended from time to time hereafter.

(v) “Forbearance Agreement” means that certain Forbearance and Standstill Agreement, dated as of the date hereof, by and among the Borrower, the Guarantors, and the Participating Counterparties, as the same may be amended from time to time after the date hereof;

(vi) “Guarantors” means each party listed on Schedule 1;

(vii) “Noteholder,” when the context refers to a holder of this Note, shall mean the holder named in the first paragraph hereof and any person who shall at the time be the holder of this Note as a result of an assignment to, or endorsement in favor of, such person;

(viii) “Participating Counterparties” shall have the meaning set forth in the Forbearance Agreement;

(ix) “Subordinated Security Agreement” means the Security Agreement by and among the Borrower, Guarantors, and Noteholder, dated as of the date hereof and as the same may be amended from time to time hereafter; and

(x) “Uniform Commercial Code” shall mean the Uniform Commercial Code as adopted in the State of New York from time to time.

2. Interest. The unpaid principal balance of this Note shall accrue interest from the date of this Note until the payment in full of such principal balance at 6% per annum. Interest shall be payable monthly in kind through the addition of such accrued monthly interest to the outstanding principal balance of the Note. All accrued and unpaid interest shall be payable in full in cash on the Maturity Date.

3. Guarantee. Each Guarantor hereby agrees that it shall be jointly and severally liable for the entire principal balance of this Note, plus all accrued and unpaid interest thereon and all other amounts payable under this Note. Each Guarantor acknowledges and agrees that the guarantee provided for hereunder shall be construed as a continuing, absolute and unconditional guarantee of payment and performance and not of collection, without regard to any defense, set-off, or counterclaim that may be available to the Borrower or any other Guarantor or any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such other Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower or any other Guarantor.

4. Grant of Security Interest. To secure the prompt payment and performance of all obligations of the Borrower and the Guarantors to the Noteholder under this Note, the Borrower and each Guarantor hereby assigns, pledges and grants to the Noteholder a continuing security interest in and to and lien on all of its Collateral, whether now owned or existing or hereafter created, acquired or arising and wheresoever located, on the terms and conditions set forth in the Subordinated Security Agreement.

5. Priority of Obligations. The obligations of the Borrower and Guarantors under this Note are secured by the Collateral pursuant to the terms of the Subordinated Security Agreement. The obligations of the Borrower and Guarantors under this Note shall be senior obligations of such Borrower and each such Guarantor, subordinated solely to the Obligations (as defined in the First Lien Security Agreement) as set forth in the Intercreditor Agreement. No Borrower or Guarantor shall incur any obligation or indebtedness that is or purports to be senior to the obligations of the Borrower or any Guarantor under this Note other than the Obligations without the prior written consent of the Noteholder.

6. Covenants. The Borrower covenants and agrees that the \$10,000,000 received in exchange for this Note shall be deposited into an account or accounts that are or will be subject to the Deposit Account Control Agreements and constitute collateral subject to the First Lien Security Agreement and the Subordinated Security Agreement.

7. Events of Default. Subject to the Intercreditor Agreement, if any of the events specified in this Section 6 shall occur (herein individually referred to as an “Event of Default”), the Noteholder of the Note may, so long as such condition exists, declare the entire principal and unpaid accrued interest hereon immediately due and payable and exercise any or all other remedies available under the Subordinated Security Agreement or under applicable law, by notice in writing to the Borrower (provided that, in the case of an Event of Default under clause (iv) or (v) below, all such amounts shall automatically become immediately due and payable without the need for notice or any other action by the Noteholder:

(i) Failure by the Borrower or a Guarantor to pay when due any principal of or interest on this Note or any other amount payable hereunder, whether at maturity, by reason of notice of acceleration pursuant to the terms of this Note or otherwise;

(ii) The termination of the Forbearance Agreement;

(iii) Failure by the Borrower or a Guarantor to perform any covenant or agreement set forth in this Note;

(iv) The institution by the Borrower or a Guarantor of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to institution of bankruptcy or insolvency proceedings against it or the filing by it of a petition or answer or consent seeking reorganization or release under Title 11 of the United States Code (the “ Bankruptcy Code”) or any other applicable federal or state law, or the consent by it to the filing of any such petition or the appointment of a receiver, liquidator, assignee, trustee, or other similar official of a Borrower, or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the taking of corporate action by a Borrower in furtherance of any such action; or

(v) If, within 45 days after the commencement of an action against the Borrower or a Guarantor seeking any bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, such action shall not have been dismissed or otherwise resolved in favor of the Borrowers.

8. Prepayment. So long as any obligations to the Participating Counterparties remain outstanding under the Repurchase Agreements, unless consented to by the Participating Counterparties, neither the Borrower nor any Guarantor may prepay the principal amount of, or any accrued and unpaid interest with respect to, this Note .

9. Transfer. Subject to applicable law, this Note may be transferred by the Noteholder, in whole or in part, to any party upon written notice to the Borrower and delivery by the transferee or transferees of an acknowledgment and joinder to the Intercreditor Agreement. Any transfer in violation of the foregoing requirements shall be void *ab initio* and be of no force and effect.

10. Waiver and Amendment. No provision of this Note may be amended, waived, or modified without the written consent of the Noteholder, in its sole discretion. No failure or delay on the part of the Noteholder in the exercise of any power, right, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right, or privilege preclude other or further exercise thereof or of any other right, power, or privilege.

11. Joint and Several Obligation of the Borrower and Guarantors. The Borrower and each Guarantor agrees that it is jointly and severally, directly, and primarily liable to the Noteholder for the payment of the amount due under this Note and that such liability is independent of the duties, obligations, and liabilities of each other party. The Borrower and each Guarantor further acknowledges and agrees that the Noteholder may enforce this Note, including its rights to Collateral, and any other document contemplated hereby independently as to each Borrower or Guarantor and independently of any other remedy or security the Noteholder may have.

12. Waiver of Presentment, Demand, and Dishonor. The Borrower and each Guarantor hereby waives presentment for payment, protest, demand, notice of protest, notice of nonpayment and diligence with respect to this Note, and waives and renounces all rights to the benefits of any statute of limitations or any moratorium, appraisalment, or exemption now provided or that hereafter may be provided by any federal or applicable state statute, including but not limited to exemptions provided by or allowed under the Bankruptcy Code, both as to itself and as to all of its property, whether real or personal, against the enforcement and collection of the obligations hereunder and any and all extensions, renewals, and modifications hereof.

13. Notices. All notices, requests, consents, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, on the date of transmittal of services via telecopy to the party to whom notice is to be given (with a confirming copy delivered within 24 hours thereafter), or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or overnight mail via a nationally recognized courier providing a receipt for delivery and properly addressed at the respective addresses of the parties as set forth herein. Any party may change its address for purposes of this paragraph by giving notice of the new address to each of the other parties in the manner set forth above.

14. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, excluding that body of law relating to conflict of laws. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS NOTE MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS NOTE, EACH OF THE BORROWER AND THE GUARANTORS CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE

BORROWER AND THE GUARANTORS IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT. EACH OF THE BORROWER, THE GUARANTORS, AND THE NOTEHOLDER WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY SUCH PARTY AGAINST ANY OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE BORROWER, THE GUARANTORS, AND THE NOTEHOLDER AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY

15. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except where otherwise indicated, all references herein to Sections refer to Sections hereof.

16. Payment of Taxes. The Borrower will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery to the Noteholder of this Note.

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IN WITNESS WHEREOF, the Borrower and each Guarantor has caused this Note to be issued this 10th day of April, 2020.

AG MORTGAGE INVESTMENT TRUST, INC., as Borrower

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

AG MIT CMO, LLC, as a Guarantor

By: **AG MIT, LLC,** its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.,** its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

By: **AG MIT, LLC,** as a Guarantor

By: **AG MORTGAGE INVESTMENT TRUST, INC.,** its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

By: **GCAT 2020-23A, LLC,** as a Guarantor

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: Authorized Signatory

By: **GCAT 2020-23B, LLC,** as a Guarantor

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: Authorized Signatory

AG MIT INTERNATIONAL LLC, as a Guarantor

By: **AG MIT, LLC**, its Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT CMO EC LLC, as a Guarantor

By: **AG MIT RES LLC**, its Sole Member

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT RES LLC, as a Guarantor

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT CREL III, LLC, as a Guarantor

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT WFB1 2014 LLC, as a Guarantor

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT ARC, LLC, as a Guarantor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT HC, L.L.C., as a Guarantor

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT RPL TRS LLC, as a Guarantor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

Agreed and Acknowledged:

AG REIT Management, LLC, as Noteholder

By: Angelo, Gordon & Co., L.P., its
Member

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

Address:
Mr. Brian Sigman
Chief Financial Officer
Angelo, Gordon & Co. L.P.,
245 Park Avenue
New York, NY 10167
Email: bsigman@angelogordon.com

With a copy, which shall not constitute notice, to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Mark Volow
Email: mvolow@akingump.com

Schedule 1

Guarantors

AG MIT CMO, LLC

AG MIT, LLC

GCAI 2020-23A, LLC

GCAI 2020-23B, LLC

AG MIT International LLC

AG MIT CMO EC LLC

AG MIT RES LLC

AG MIT CREL III LLC

AG MIT WFB1 2014 LLC

AG MIT ARC, LLC

AG MIT HC, LLC

AG MITT RPL TRS LLC

Schedule 2

Repurchase Agreements

SECURITY AND COLLATERAL AGENCY AGREEMENT

THIS SECURITY AND COLLATERAL AGENCY AGREEMENT (the “**Agreement**”) dated as of April 10, 2020, is entered into by and among AG Mortgage Investment Trust, Inc. and the parties set forth on **Schedule 1** of this Agreement (each, a “**Debtor**”, and collectively, the “**Debtors**”), Wilmington Trust, National Association, as agent for the Participating Counterparties (as defined herein) (the “**Collateral Agent**”), and, solely as to Article 5 hereof, the Participating Counterparties, and acknowledged and consented to by the Participating Counterparties.

RECITALS:

A. Certain of the Debtors and the Participating Counterparties have entered into that certain Forbearance Agreement, dated as of the date hereof (as the same may be amended, extended, or otherwise modified from time to time, the “**Forbearance Agreement**”), pursuant to which the Participating Counterparties have agreed to forbear from exercising any remedies with respect to Acknowledged Events of Default (as defined in the Forbearance Agreement) for the duration of the Forbearance Period (as defined in the Forbearance Agreement).

B. As partial consideration for the agreement of the Participating Counterparties to enter into the Forbearance Agreement, the Debtors have agreed to grant (or cause to be granted) Liens to the Collateral Agent for the benefit of the Participating Counterparties to secure the obligations of certain of the Debtors to the Participating Counterparties under the Applicable Agreements (as defined in the Forbearance Agreement).

C. Each of the Debtors acknowledges and agrees that it has directly and indirectly benefited and will directly and indirectly benefit from the agreements set forth in the Forbearance Agreement and the other transactions evidenced by and contemplated in the Forbearance Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1 **Definitions**

Section 1.1 Definitions. As used in this Agreement, capitalized terms not otherwise defined herein have the meanings provided for such terms in the Forbearance Agreement. References to “Sections,” “subsections,” “Exhibits” and “Schedules” shall be to Sections, subsections, Exhibits and Schedules, respectively, of this Agreement unless otherwise specifically provided. All references to statutes and regulations shall include any amendments of the same and any successor statutes and regulations. References to particular sections of the UCC should be read to refer also to parallel sections of the Uniform Commercial Code as enacted in each state or other jurisdiction which may be applicable to the grant and perfection of the Liens held by the Collateral Agent pursuant to this Agreement.

The following terms have the meanings indicated below, all such definitions to be equally applicable to the singular and plural forms of the terms defined:

“Account” means any “account,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by such Debtor: (a) all rights of such Debtor to payment for goods sold or leased or services rendered, whether or not earned by performance, (b) all accounts receivable of such Debtor, (c) all rights of such Debtor to receive any payment of money or other form of consideration, (d) all security pledged, assigned or granted to or held by such Debtor to secure any of the foregoing, (e) all guaranties of, or indemnifications with respect to, any of the foregoing, and (f) all rights of such Debtor as an unpaid seller of goods or services, including, but not limited to, all rights of stoppage in transit, replevin, reclamation and resale.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of New York, New York or Wilmington, Delaware.

“Carve-Out” means all unpaid fees, costs, and disbursements of professionals retained by the Debtors that remain unpaid on the date of the Carve-Out Trigger Notice or that will be incurred after the date of the Carve-Out Trigger Notice in connection with the Debtors’ ongoing securities and other regulatory reporting obligations or wind-down of the Debtors, subject to the Carve-Out Cap.

“Carve-Out Cap” means \$7,500,000.

“Carve-Out Trigger Notice” means a written notice delivered by the Collateral Agent to the Debtors and to the depository bank or banks party to the Deposit Account Control Agreements at any time following the occurrence and during the continuance of an Event of Default (but only after the expiration of any applicable cure period) expressly stating that the Carve-Out has been triggered.

“Cash Collateral Account” has the meaning set forth in **Section 7.3(a)**.

“Chattel Paper” means any “chattel paper,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor, and shall include both electronic Chattel Paper and tangible Chattel Paper.

“Collateral” has the meaning specified in **Section 2.1** of this Agreement.

“Collateral Agent Fee” means the fee payable by the Debtors to the Collateral Agent in respect of the Collateral Agent performing its obligations under this Agreement, which may be set forth in a separate fee letter or fee schedule.

“Computer Records” means any computer records now owned or hereafter acquired by any Debtor.

“Deposit Account” shall mean a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property, securities accounts or accounts evidenced by an instrument.

“Document” means any “document,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by any Debtor, including, without limitation, all documents of title and all receipts covering, evidencing or representing goods now owned or hereafter acquired by a Debtor.

“Equipment” means any “equipment” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor.

“Event of Default” means (i) failure by a Debtor to comply with the covenants and terms of this Agreement, including the inaccuracy of any representation or warranty set forth herein, which failure, to the extent such failure is susceptible to remedy, shall have continued unremedied for two (2) Business Days following receipt of written notice from the Collateral Agent to the Debtors, (ii) failure by the Debtors to adhere to the Forbearance Budget, subject to the Permitted Variance, and (iii) the end of the Forbearance Period (as the same may be extended from time to time), including as a result of the occurrence of any other Triggering Event under the Forbearance Agreement (after giving effect to any cure period set forth therein), provided, however, that the term “Forbearance Period” as used herein shall be deemed to include the forbearance period under any subsequent forbearance agreement that is entered into by the Majority Participating Counterparties.

“Forbearance Budget” means the operating budget attached as Schedule 3 to the Forbearance Agreement.

“General Intangibles” means any “general intangibles,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by such Debtor: (a) all of such Debtor’s intellectual property; (b) all of such Debtor’s books, records, data, plans, manuals, computer software, computer tapes, computer disks, computer programs, source codes, object codes and all rights of such Debtor to retrieve data and other information from third parties; (c) all of such Debtor’s contract rights (including, without limitation, all of such Debtor’s right, title and interest in and to any amounts payable to it upon the termination, acceleration, liquidation or close-out of any Applicable Agreement or any other master netting agreement (as such terms are defined in Bankruptcy Code Section 101(38A)), but only after giving effect to any netting, offset and recoupment rights of the parties thereto pursuant to the terms thereof or of any other agreement), partnership interests, membership interests, joint venture interests, securities, deposit accounts, securities accounts and certificates of deposit; (d) all rights of such Debtor to payment under chattel paper, documents, instruments and similar agreements; (e) letters of credit, letters of credit rights supporting obligations and rights to payment for money or funds advanced or sold of such Debtor; (f) all tax refunds and tax refund claims of such Debtor; (g) all choses in action and causes of action of such Debtor (whether arising in contract, tort or otherwise and whether or not currently in litigation) and all judgments in favor of such Debtor; (h) all rights and claims of such Debtor under warranties and indemnities, (i) all health care receivables; and (j) all rights of such Debtor under any insurance, surety or similar contract or arrangement.

“Governmental Authority” shall mean any nation or government, any state, province or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or similar administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“Instrument” shall mean any “instrument,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by any Debtor, and, in any event, shall include all promissory notes (including without limitation, any intercompany notes held by such Debtor), drafts, bills of exchange and trade acceptances, whether now owned or hereafter acquired.

“Insurance Proceeds” shall have the meaning set forth in **Section 4.3** of this Agreement.

“Intellectual Property” shall mean patents, patent licenses, copyrights, copyright licenses, trademarks, trademark licenses, trade secrets, registrations, goodwill, franchises, permits, proprietary information, customer lists, designs, inventions, and all other intellectual property rights.

“Intercreditor Agreement” means that certain Intercreditor and Subordination Agreement entered into as of the date hereof by and among the Debtors, the Collateral Agent, and the Subordinated Noteholder, as the same may be amended from time to time after the date hereof.

“Inventory” means any “inventory,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor.

“Investment Property” means any “investment property,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor, and in any event, shall include without limitation all shares of stock and other equity, partnership or membership interests constituting securities, of the domestic subsidiaries of such Debtor from time to time owned or acquired by such Debtor in any manner (including, without limitation, the Pledged Shares), and the certificates and all dividends, cash, instruments, rights and other property from time to time received, receivable or otherwise distributed or distributable in respect of or in exchange for any or all of such shares, but excluding any shares of stock or other equity, partnership or membership interests in any foreign subsidiaries of such Debtor.

“Liens” shall mean any lien on or security interest in the Collateral.

“Majority Participating Counterparties” shall mean at any time, Participating Counterparties that are owed, in the aggregate, more than 50% of the then outstanding Obligations.

“Obligations” shall mean the obligations of any Debtor to a Participating Counterparty under a Applicable Agreement.

“Participating Counterparties” shall mean the Participating Counterparties party to the Forbearance Agreement, as set forth on Schedule 1 thereto.

“Permitted Liens” means (a) any lien securing the Subordinated Note subject to the Intercreditor Agreement, (b) any lien heretofore granted to a Participating Counterparty prior to the

date hereof under any Applicable Agreement, (c) and any customary lien in favor of the bank or banks party to the Deposit Account Control Agreements with respect to the Cash Collateral Accounts, and (d) the liens evidenced by the financing statements listed on ***Schedule 3.5***.

“Permitted Variance” means that the aggregate disbursements of the Debtors of cash in the Cash Collateral Account in any full two-week period shall not exceed one hundred twenty percent (120%) of the aggregate amount of projected disbursements for such two-week period as provided for in the Forbearance Budget. Any disbursement projected to be made in accordance with the Forbearance Budget in a particular week that is not made by the Debtors in such week may be made in a subsequent week or weeks, provided, however, that for purposes of calculating the Permitted Variance, such disbursement shall be treated as if it had been made in the week set forth in the Forbearance Budget.

“Pledged Shares” means the shares of capital stock or other equity, partnership or membership interests described on ***Schedule 1.2*** attached hereto and incorporated herein by reference, and all other shares of capital stock or other equity, partnership or membership interests (other than in an entity that is a foreign subsidiary) acquired by any Debtor after the date hereof.

“Proceeds” means any “proceeds,” as such term is defined in Article or Chapter 9 of the UCC and, in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to a Debtor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to a Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting, or purporting to act, for or on behalf of any Governmental Authority), and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

“Pro Rata Realized Losses” shall have the meaning set forth in the Forbearance Agreement.

“Responsible Officer” means, in the case of the Collateral Agent, any officer in the Corporate Trust Administration Department of the Collateral Agent with direct responsibility for the administration of the duties of the Collateral Agent and, with respect to a particular corporate trust matter, any other officer of the Collateral Agent to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Subordinated Note” means the Secured Promissory Note, dated as of the date hereof, made to the Subordinated Noteholder by AG Mortgage Investment Trust, Inc. in the principal amount of \$10,000,000, as such note may be increased from time to time.

“Subordinated Noteholder” means AG REIT Management, LLC and any successor or assignee of the Subordinated Note.

“UCC” or **“Uniform Commercial Code”** means the Uniform Commercial Code as in effect in the State of New York; provided, that if, by applicable law, the perfection or effect of perfection or non-perfection of the security interest created hereunder in any Collateral is governed by the Uniform Commercial Code as in effect on or after the date hereof in any other jurisdiction, “UCC”

means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or the effect of perfection or non-perfection.

ARTICLE 2

Security Interest

Section 2.1 Grant of Security Interest. As collateral security for the prompt payment and performance in full when due of the Obligations (whether at stated maturity, by acceleration or otherwise), each Debtor hereby pledges, assigns, transfers and conveys to the Collateral Agent for the benefit of the Participating Counterparties in accordance with their respective Pro Rata Realized Losses as collateral, and grants the Collateral Agent for the benefit of the Participating Counterparties a continuing Lien on and security interest in, all of such Debtor's right, title and interest in and to all of its assets, whether now owned or hereafter arising or acquired and wherever located, including (collectively, the "**Collateral**"):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all General Intangibles;
- (d) all Equipment and Inventory;
- (e) all Intellectual Property;
- (f) all Documents;
- (g) all Instruments;
- (h) all Pledged Shares;
- (i) all Deposit Accounts and any other cash collateral, deposit or securities accounts, including all cash collateral, deposit or securities accounts established or maintained pursuant to the terms of this Agreement or the Forbearance Agreement;
- (j) all Computer Records and Software, whether relating to the foregoing Collateral or otherwise, but in the case of such Software, subject to the rights of any non-affiliated licensee of software;
- (k) all Investment Property;
- (l) all other personal property; and
- (m) the Proceeds, in cash or otherwise, of any of the property described in the foregoing clauses (a) through (l) and all Liens, security, rights, remedies and claims of such Debtor with respect thereto (provided that the grant of a security interest in Proceeds set forth in this subsection (m) shall not be deemed to give the applicable Debtor

any right to dispose of any of the Collateral, except as expressly permitted pursuant to the terms of the Forbearance Agreement and this Agreement);

provided, however, that “Collateral” shall not include rights under or with respect to any General Intangible, license, permit or authorization to the extent any such General Intangible, Document, Instrument, license, permit or authorization, by its terms in effect on the date hereof or on the date of acquisition of such General Intangible, Document, Instrument, license, permit or authorization (and not entered into in contemplation thereof) or by law, prohibits the assignment of, or the granting of a lien on or security interest in the rights of a grantor thereunder or which would be invalid or unenforceable upon any such assignment or grant (the “**Restricted Assets**”); and provided, further, that (A) the Proceeds of any Restricted Asset shall be continue to be deemed to be “Collateral”, and (B) this provision shall not limit the grant of any Lien on or assignment of any Restricted Asset to the extent that the UCC or any other applicable law provides that such grant of Lien or assignment is effective irrespective of any prohibitions to such grant provided in any Restricted Asset (or the underlying documents related thereto).

Section 2.2 Priority of Liens and Debtors Remain Liable.

- (a) Notwithstanding anything herein to the contrary, the (x) Liens and security interests granted to the Collateral Agent pursuant to this Agreement shall be senior in all respects to the lien and security interest held by the Subordinated Noteholder (which shall be junior and subordinated in right of security to the Liens of the Collateral Agent) and (y) the payment obligations of the Debtor with respect to the Obligations shall be senior to the payment obligations of the Debtor with respect to the Subordinated Note (which shall be junior and subordinated in right of payment to the payment in full of the Obligations), each as set forth more fully in the Intercreditor Agreement
- (b) In the event any Debtor shall create any additional security interest upon any assets (other than the Collateral) to secure any obligations in respect of any other party, it shall concurrently grant a security interest to the Collateral Agent, for the benefit of the Participating Counterparties, upon such assets as security for the obligations under this Agreement and require that such other party enter into an agreement subordinating its lien on such asset to the Lien of the Collateral Agent. For the avoidance of doubt, any liens on Collateral granted hereunder subject to Permitted Liens held by a Participating Counterparty shall be subordinate to such Permitted Lien and the rights of the Collateral Agent with respect to such Collateral shall be limited to the right to receive any excess proceeds on such Collateral if and when sold or liquidated by the applicable Participating Counterparty.

Section 2.3 Financing Statements. Each Debtor hereby consents to the filing of a financing statement describing the Collateral covered thereby as “all assets of the Debtor, now owned or hereafter acquired and all products and proceeds thereof,” or such similar language as the Collateral Agent may deem appropriate.

ARTICLE 3
Representations and Warranties

To induce the Collateral Agent to enter into this Agreement on behalf of the Participating Counterparties and the Participating Counterparties to enter into the Forbearance Agreement, each Debtor represents and warrants to the Collateral Agent and the Participating Counterparties as follows, each such representation and warranty being a continuing representation and warranty, surviving until termination of this Agreement in accordance with the provisions of **Section 8.12** of this Agreement:

Section 3.1 Title. Such Debtor is, and with respect to Collateral acquired after the date hereof such Debtor will be, the legal and beneficial owner of the Collateral free and clear of any lien or security interest or other encumbrance, except for the Permitted Liens, provided that, other than the Lien established under this Agreement, no lien on or security interest in any Pledged Shares shall constitute a Permitted Lien.

Section 3.2 Change in Form or Jurisdiction; Successor by Merger; Location of Books and Records. As of the date hereof, each Debtor (a) is duly organized, validly existing, and in good standing, as a corporation (or other business organization) under the laws of (i) its jurisdiction of organization and (ii) all foreign jurisdictions where the failure to so qualify could reasonably be expected to result in a material adverse effect on the Debtors, taken as a whole; (b) is formed in the jurisdiction of organization and has the registration number and tax identification number set forth on ***Schedule 3.2*** attached hereto; (c) has not changed its respective corporate form or its jurisdiction of organization at any time during the five years immediately prior to the date hereof, except as set forth on such ***Schedule 3.2***; (d) except as set forth on such ***Schedule 3.2*** attached hereto, no Debtor has, at any time during the five years immediately prior to the date hereof, become the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise of any other Person, and (e) keeps true and accurate books and records regarding the Collateral (the “**Records**”) in the office indicated on such ***Schedule 3.2***.

Section 3.3 Representations and Warranties Regarding Deposit Accounts. As of the date hereof, all Deposit Accounts, including the Cash Collateral Account, or securities accounts of each Debtor are located at the banks and securities intermediaries specified on ***Schedule 3.3*** attached hereto which Schedule sets forth the true and correct name of each bank where such accounts are located, such bank’s address, the type of account and the account number.

Section 3.4 Pledged Shares.

- (a) **Duly Authorized and Validly Issued.** The Pledged Shares that are shares of a corporation have been duly authorized and validly issued and are fully paid and nonassessable, and the Pledged Shares that are membership interests or partnership units (if any) have been validly granted, under the laws of the jurisdiction of organization of the issuers thereof, and, to the extent applicable, are fully paid and nonassessable. No such membership or partnership interests constitute “securities” within the meaning of Article 8 of the UCC, and each Debtor covenants and agrees

not to allow any such membership or partnership interest to become “securities” for purposes of Article 8 of the UCC.

- (b) **Valid Title; No Liens; No Restrictions.** Each Debtor is the legal and beneficial owner of the applicable Pledged Shares, free and clear of any lien or security interest (other than the Liens created by this Agreement or Permitted Liens), and such Debtor has not otherwise sold, granted any option with respect to, assigned, transferred or otherwise disposed of any of its rights or interest in or to the Pledged Shares. None of the Pledged Shares is subject to any contractual or other restrictions upon the pledge or other transfer of such Pledged Shares, other than those imposed by securities laws generally. No issuer of Pledged Shares is party to any agreement granting “control” (as defined in Section 8-106 of the UCC) of such Debtor’s Pledged Shares to any third party other than as stated in the Intercreditor Agreement. All such Pledged Shares are held by each Debtor directly and not through any securities intermediary.
- (c) **Description of Pledged Shares; Ownership.** The Pledged Shares constitute the percentage of the issued and outstanding shares of stock, partnership units or membership interests of the issuers thereof indicated on ***Schedule 1.2*** (as the same may be amended from time to time) and such Schedule contains a description of all shares of capital stock, membership interests and other equity interests of or in any subsidiaries owned by such Debtor.

Section 3.5 Priority. As of the date hereof, other than as set forth on ***Schedule 3.5***, no financing statement, security agreement or other lien or security interest instrument covering all or any part of the Collateral (other than on account of Permitted Liens) is on file in any public office with respect to any outstanding obligation of such Debtor except (i) as may have been filed in favor of the Collateral Agent pursuant to this Agreement or (ii) as may have been filed by the Subordinated Noteholder.

Section 3.6 Perfection. Upon the filing of Uniform Commercial Code financing statements in the jurisdictions listed on ***Schedule 3.6*** attached hereto, the Lien in favor of the Collateral Agent for the benefit of the Participating Counterparties created herein will constitute a valid and perfected lien upon and security interest in the Collateral which may be perfected under the UCC by filing financing statements. Upon execution and delivery of a customary deposit account control agreement in respect of each Cash Collateral Account by the applicable Debtor, the applicable depository bank and the Collateral Agent, the Lien in favor of the Collateral Agent for the benefit of the Participating Counterparties in the Cash Collateral Accounts created herein will constitute a valid and perfected lien upon and security interest in such Cash Collateral Accounts.

ARTICLE 4

Covenants

Each Debtor covenants and agrees with the Collateral Agent, until termination of this Agreement in accordance with the provisions of **Section 8.12** hereof, as follows:

Section 4.1 Covenants Regarding Certain Kinds of Collateral.

- (a) **Promissory Notes and Tangible Chattel Paper.** If Debtors, now or at any time hereafter, collectively hold or acquire any promissory notes or tangible Chattel Paper for which the principal amount thereof or the obligations evidenced thereunder are, in the aggregate, in excess of \$100,000, the applicable Debtors shall promptly endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably specify, and cause all such Chattel Paper to bear a legend reasonably acceptable to the Collateral Agent indicating that the Collateral Agent has a security interest in such Chattel Paper.
- (b) **Electronic Chattel Paper and Transferable Records.** If Debtors, now or at any time hereafter, collectively hold or acquire an interest in any electronic Chattel Paper or any “transferable record,” as that term is defined in the federal Electronic Signatures in Global and National Commerce Act, or in the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, which interest is worth, in the aggregate, in excess of \$100,000, the applicable Debtors shall promptly take such action as the Collateral Agent may reasonably request to vest in the Collateral Agent control, under Section 9-105 of the UCC, of such electronic chattel paper or control under the federal Electronic Signatures in Global and National Commerce Act, or the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.
- (c) **Letter-of-Credit Rights.** If Debtors, now or at any time hereafter, collectively are or become beneficiaries under letters of credit, with an aggregate face amount in excess of \$100,000, the applicable Debtors shall promptly notify the Collateral Agent in a writing signed by the Debtors of the particulars thereof and, at the written request of the Collateral Agent, the applicable Debtors shall, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either arrange (i) for the issuer and any confirmer of such letters of credit to consent to an assignment to the Collateral Agent of the proceeds of the letters of credit or (ii) for the Collateral Agent to become the transferee beneficiary of the letters of credit, together with, in each case, any such other actions as reasonably requested by the Collateral Agent in writing to perfect its Lien in such letter of credit rights. The applicable Debtor shall retain the proceeds of the applicable letters of credit until an Event of Default hereunder has occurred and is continuing whereupon the proceeds are to be delivered to the Collateral Agent.
- (d) **Reserved.**
- (e) **Pledged Shares.** All certificates or certified instruments representing or evidencing the Pledged Shares or any Debtor’s rights therein shall be delivered to the Collateral Agent promptly upon such Debtor’s gaining any rights therein, in suitable form for transfer by delivery or accompanied by duly executed stock powers or instruments

of transfer or assignments in blank, all in form and substance reasonably acceptable to the Collateral Agent.

(f) Accounts and Contracts. Each Debtor shall, in accordance with its usual business practices in effect from time to time, endeavor to collect or cause to be collected from each account debtor under its Accounts, as and when due, any and all amounts owing under such Accounts. So long as no Event of Default has occurred and is continuing and except as otherwise provided in **Section 7.3**, each Debtor shall have the right to collect and receive payments on its Accounts, and to use and expend the same in the normal course of business in accordance with the Forbearance Budget.

(g) Deposit Accounts. Each Debtor agrees to promptly notify the Collateral Agent in writing of all Deposit Accounts, cash collateral accounts or investments accounts opened by such Debtor after the date hereof, and such Debtor shall take all commercially reasonable actions to execute and deliver an account control agreement (in form and substance reasonably satisfactory to the Collateral Agent) to perfect the Lien granted hereunder over each of such Deposit Accounts, cash collateral accounts or securities accounts disclosed on **Schedule 3.3** or opened after the date hereof.

Section 4.2 Encumbrances. No Debtor shall create, permit or suffer to exist, and each Debtor shall defend the Collateral against any lien on or security interest in (other than the Permitted Liens) or any restriction upon the pledge or other transfer thereof, and shall defend such Debtor's title to and other rights in the Collateral and the Collateral Agent's pledge and collateral assignment of and Lien on the Collateral against the claims and demands of all other Persons.

Section 4.3 Disposition of Collateral. No Debtor shall enter into or consummate any transfer or other disposition of Collateral to a non-Debtor third party without the written consent of the Collateral Agent, acting at the direction of the Majority Participating Counterparties in accordance with **Section 5.2**.

Section 4.4 Insurance. The Collateral pledged by any Debtor or the Debtors will be insured (but solely to the extent such Collateral is insured as of the date hereof) with insurance coverage provided by financially sound and reputable insurance companies in such amounts and of such types as are customarily carried by companies similar in size and nature. In the case of all such insurance policies, each such Debtor shall designate the Collateral Agent as lender loss payee and such policies shall provide that any loss be payable to the Collateral Agent, as lender loss payee, as its interests may appear. Further, upon the request of the Collateral Agent, each such Debtor shall deliver certificates evidencing such policies, including all endorsements thereon and those required hereunder, to the Collateral Agent; and each such Debtor assigns to the Collateral Agent, as additional security hereunder, all its rights to receive proceeds of insurance with respect to the Collateral. All such insurance shall, by its terms, provide that the applicable carrier shall, prior to any cancellation before the expiration date thereof, mail written notice to the Collateral Agent of such cancellation in accordance with such carrier's standard policies and procedures. Each Debtor further shall provide the Collateral Agent, upon written request, with evidence reasonably satisfactory to the Collateral Agent that each such Debtor is at all times in compliance with this paragraph. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may, at its option acting at

the direction of the Participating Counterparties in accordance with Section 5.2, act as each such Debtor's attorney-in-fact in obtaining, adjusting, settling and compromising such insurance and endorsing any drafts. Upon such Debtor's failure to maintain insurance coverage on the Collateral to the extent it exists on the date hereof, the Collateral Agent may, at its option acting at the direction of the Participating Counterparties in accordance with Section 5.2, procure such insurance and its costs therefor shall be charged to such Debtor, payable on demand. All proceeds payable to any Debtor of any insurance on the Collateral (the "**Insurance Proceeds**") shall be paid to the Collateral Agent for the benefit of the Participating Counterparties.

Section 4.5 Corporate Changes; Books and Records; Inspection Rights. Each Debtor shall not change its respective name, identity, corporate structure or jurisdiction of organization, or identification number in any manner that might make any financing statement filed in connection with this Agreement seriously misleading within the meaning of Section 9-506 of the UCC unless such Debtor shall have given the Collateral Agent thirty (30) days prior written notice with respect to any change in such Debtor's corporate structure, jurisdiction of organization, name or identity and shall have taken all action deemed reasonably necessary by the Collateral Agent under the circumstances to protect its Liens and the perfection and priority thereof, (b) each Debtor shall keep the Records at the location specified on **Schedule 3.2** as the location of such books and records or as otherwise specified in writing to the Collateral Agent and (c) the Debtors shall permit the Collateral Agent and its agents and representatives to conduct inspections, discussion and audits of the Collateral during the Debtors' normal business hours and without interrupting the conduct of the Debtors' businesses.

Section 4.6 Covenants Regarding Pledged Shares.

(a) Voting Rights and Distributions.

- (i)** So long as no Event of Default hereunder shall have occurred and be continuing (both before and after giving effect to any of the actions or other matters described in clauses (A) or (B) of this subparagraph):
 - (A)** Each Debtor shall be entitled to exercise any and all voting and other consensual rights (including, without limitation, the right to give consents, waivers and ratifications) pertaining to any of the Pledged Shares or any part thereof; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken without the prior written consent of the Collateral Agent which would violate any provision of this Agreement or the Forbearance Agreement; and
 - (B)** Such Debtor shall be entitled to receive and retain any and all dividends, distributions and interest paid in respect of any of the Pledged Shares and to use and expend the same in the normal course of business in accordance with the Forbearance Budget.

- (ii) Upon the direction from the Majority Participating Counterparties to exercise remedies with respect to the Collateral delivered in accordance with **Section 5.2**:
- (A) The Collateral Agent may, upon providing simultaneous written notice to such Debtor, transfer to, or register in the name of, the Collateral Agent or any of its nominees any or all of the Pledged Shares and the Proceeds thereof (in cash or otherwise) held by the Collateral Agent hereunder, and the Collateral Agent or its nominee may thereafter, after delivery of written notice to such Debtor, exercise all voting and corporate rights at any meeting of any corporation issuing any of the Pledged Shares and any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Shares as if the Collateral Agent were the absolute owner thereof, including, without limitation, the right to exchange, at its discretion, any and all of the Pledged Shares upon the merger, consolidation, reorganization, recapitalization or other readjustment of any corporation issuing any of such Pledged Shares or upon the exercise by any such issuer or the Collateral Agent of any right, privilege or option pertaining to any of the Pledged Shares and, in connection therewith, to deposit and deliver any and all of the Pledged Shares with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent may determine, all without liability except to account for property actually received by it; but the Collateral Agent shall have no duty to exercise any of the aforesaid rights, privileges or options, and the Collateral Agent shall not be responsible for any failure to do so or delay in so doing.
- (B) All rights of such Debtor to exercise the voting and other rights which it would otherwise be entitled to exercise pursuant to **Section 4.6(a)(i)(A)** and to receive the dividends, interest and other distributions which it would otherwise be authorized to receive and retain pursuant to **Section 4.6(a)(i)(B)** shall be suspended until such Event of Default shall no longer exist, and all such rights shall, until such Event of Default shall no longer exist, thereupon become vested in the Collateral Agent which shall thereupon have the sole right to exercise such voting and other rights and to receive, hold and dispose of dividends, interest and other distributions.
- (C) All dividends, interest and other distributions which are received by such Debtor shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Debtor and shall be forthwith paid over to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement).

- (D) Such Debtor shall execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies and other instruments as the Collateral Agent may reasonably request for the purpose of enabling the Collateral Agent to exercise the voting and other rights which it is entitled to exercise pursuant to this **Section 4.6(a)(ii)** and to receive the dividends, interest and other distributions which it is entitled to receive and retain pursuant to this **Section 4.6(a)(ii)**. The foregoing shall not in any way limit the Collateral Agent's power and authority granted pursuant to the other provisions of this Agreement.

- (b) **Possession; Reasonable Care.** The Collateral Agent shall have the right to hold in its possession all Pledged Shares pledged, assigned or transferred hereunder and from time to time constituting a portion of the Collateral. The Collateral Agent may appoint one or more agents (which in no case shall be a Debtor or an affiliate of a Debtor) to hold physical custody, for the account of the Collateral Agent, of any or all of the Collateral. Absent gross negligence, the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords to its own property, it being understood that the Collateral Agent shall not have any responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters, or (ii) taking any necessary steps to preserve rights against any parties with respect to any Collateral. Following the occurrence and continuance of an Event of Default, the Collateral Agent shall be entitled to take ownership of the Pledged Shares in accordance with the UCC and the Forbearance Agreement.

Section 4.7 New Subsidiaries; Additional Collateral.

- (a) Each Person which becomes a subsidiary of a Debtor subsequent to the date hereof shall execute a joinder to the Forbearance Agreement and deliver such joinders or security agreements or other pledge documents to ensure that the assets of such subsidiary are pledged as Collateral for security of the full and prompt payment of the Obligations.
- (b) Each Debtor agrees that, except with the written consent of the Collateral Agent, it will not permit any domestic subsidiary (whether now existing or formed after the date hereof) to issue to such Debtor or any of such Debtor's other subsidiaries any shares of stock, membership interests, partnership units, notes or other securities or instruments (including without limitation the Pledged Shares) in addition to or in substitution for any of the Collateral, unless, concurrently with each issuance thereof, any and all such shares of stock, membership interests, partnership units, notes or instruments are encumbered in favor of the Collateral Agent under this Agreement

or otherwise (it being understood and agreed that all such shares of stock, membership interests, partnership units, notes or instruments issued to such Debtor shall, without further action by such Debtor or the Collateral Agent, be automatically encumbered by this Agreement as Pledged Shares)

Section 4.8 Further Assurances.

- (a) At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of the Debtors, each Debtor shall promptly execute and deliver all such further agreements, documents and instruments and take such further action as the Collateral Agent may reasonably deem necessary or appropriate to (i) preserve, ensure the priority, effectiveness and validity of and perfect the Collateral Agent's security interest in and pledge and collateral assignment of the Collateral (including causing the Collateral Agent's name to be noted as Collateral Agent on any certificate of title for a titled good if such notation is a condition of the Collateral Agent's ability to enforce its security interest in such Collateral), unless such actions are specifically waived under the terms of this Agreement and the Forbearance Agreement, (ii) carry out the provisions and purposes of this Agreement and (iii) enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any of the Collateral. Except as otherwise expressly permitted by the terms of this Agreement and except for Permitted Liens, each Debtor agrees to maintain and preserve the Collateral Agent's security interest in and pledge and collateral assignment of the Collateral hereunder and the priority thereof.
- (b) Each Debtor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto that (i) indicate any or all of the Collateral upon which the Debtors have granted a Lien, and (ii) provide any other information required by Part 5 of Article 9 of the UCC, including organizational information and in the case of a fixture filing or a filing for Collateral consisting of as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Each Debtor agrees to furnish to the Collateral Agent, promptly upon its written request, any such information required by the preceding paragraph at such Debtor's sole cost and expense.

Section 4.9 Priority of Liens. Notwithstanding anything in this Agreement to the contrary, and as provided in the Intercreditor Agreement, (x) the liens securing the Subordinated Note shall be subordinated in priority to the Liens created hereunder and (y) the payment obligations of the Debtors with respect to the Subordinated Note shall be subordinated in right of payment to the Obligations.

ARTICLE 5

Appointment of Collateral Agent as Agent

Section 5.1 Appointment of Collateral Agent as Agent. Each Participating Counterparty irrevocably appoints and authorizes the Collateral Agent to act on behalf of such

Participating Counterparty under this Agreement and the Forbearance Agreement and to exercise such powers hereunder and thereunder as are specifically delegated to the Collateral Agent by the terms hereof and thereof, together with such powers as may be reasonably incidental thereto, including without limitation the power to execute or authorize the execution of financing or similar statements or notices, and other documents. In performing its functions and duties under this Agreement, the Collateral Agent shall act solely as agent of the Participating Counterparties and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Debtor. Each Participating Counterparty, subject to the terms and conditions of this Agreement, grants the Collateral Agent full power and authority as attorney-in-fact to institute and maintain actions, suits or proceedings for the collection and enforcement of any rights under this Agreement or the Collateral and to file such proofs of debt or other documents as may be necessary to have the claims of the Participating Counterparties allowed in any proceeding relative to any Debtor, or their respective creditors or affecting their respective properties, and to take such other actions which the Collateral Agent considers to be necessary or desirable for the protection, collection and enforcement of the Applicable Agreements, this Agreement or the Forbearance Agreement. The Collateral Agent and the Participating Counterparties acknowledge and agree that any proceeds of Collateral collected or received by the Collateral Agent shall be held by the Collateral Agent for the benefit of the Participating Counterparties and shall be distributed to such Participating Counterparties only upon the determination of each Participating Counterparty's Pro Rata Realized Losses in accordance with the Forbearance Agreement.

Section 5.2 Scope of Collateral Agent's Duties. The Collateral Agent shall have no duties or responsibilities except those expressly set forth herein, and shall not, by reason of this Agreement or otherwise, have a fiduciary relationship with any Participating Counterparty (and no implied covenants or other obligations shall be read into this Agreement against the Collateral Agent). None of the Collateral Agent, its Affiliates or any of their respective directors, officers, employees or agents shall be liable to any Debtor for any action taken or omitted to be taken by it or them under this Agreement or any document executed pursuant hereto or incidental to the Collateral Agent's duties hereunder, or in connection herewith or therewith with the consent or at the request of such Debtor (except for its or their own willful misconduct or gross negligence). Except as otherwise expressly provided that the Collateral Agent shall take any action, assert such rights, and pursue remedies available to it under this Agreement or in the Forbearance Agreement and subject to the terms hereof (including Section 6.7) without written direction of the Majority Participating Counterparties, the Collateral Agent will only take such action, assert such rights and pursue such remedies under this Agreement and the Forbearance Agreement as directed in writing by the Majority Participating Counterparties; provided, however, that the Collateral Agent shall not be required to act or omit to act if, in the reasonable judgment of the Collateral Agent, such action or omission may expose the Collateral Agent to personal liability for which the Collateral Agent has not been satisfactorily indemnified hereunder or is contrary to this Agreement, any of the Applicable Agreements, the Forbearance Agreement, or applicable law. The Participating Counterparties agree to be bound by actions taken by the Collateral Agent at the written direction of the Majority Participating Counterparties and agree that in taking any such action (or refusing to act), the Collateral Agent shall be fully protected, indemnified, and held harmless pursuant to the terms hereof. Any direction from the Majority Participating Counterparties shall include such certifications of fact as reasonably requested by the Collateral Agent, including a certification that

the directing parties constitute the Majority Participating Counterparties at such time. Each of the Participating Counterparties hereby directs the Collateral Agent to execute the Intercreditor Agreement on the date hereof and, on and after the date hereof, to execute the Deposit Account Control Agreements, any securities or collateral account control agreement with respect to an account or accounts listed on ***Schedule 3.3***, and all acknowledgment agreements and other documents or instruments entered into with custodians, servicers, or trustees with respect to the Liens granted in this Agreement presented to the Collateral Agent by counsel to the Debtors.

Section 5.3 Collateral Matters. The Collateral Agent is authorized on behalf of all the Participating Counterparties, without the necessity of any notice to or further consent from the Participating Counterparties, from time to time to take any action with respect to any Collateral or the Collateral Documents which may be necessary to perfect and maintain a perfected security interest in and Liens upon the Collateral granted pursuant to the Forbearance Agreement. The Participating Counterparties irrevocably authorize the Collateral Agent, in its reasonable discretion, to release or terminate any Lien granted to or held by the Collateral Agent upon any Collateral (a) upon the full repayment of all Obligations payable under all of the Applicable Agreements; (b) constituting property (including, without limitation, Equity Interests in any Person) sold or to be sold or disposed of as part of or in connection with any disposition (whether by sale, by merger or by any other form of transaction and including the property of any subsidiary that is disposed of as permitted hereby) permitted in accordance with the terms of this Agreement or otherwise consented to by the Participating Counterparties; (c) constituting property in which a Debtor owned no interest at the time the Lien was granted or at any time thereafter; or (d) if otherwise approved, authorized or ratified in writing by the Participating Counterparties.

Section 5.4 Turnover. In the event that any Participating Counterparty is in possession of any proceeds described in clause (iv) of Section 6 of the Forbearance Agreement, such proceeds shall constitute Collateral and be held by such Participating Counterparty in trust for the benefit of, and shall be paid forthwith over and delivered to the Collateral Agent, for application to the Obligations in accordance with **Section 7.5** of this Agreement.

ARTICLE 6

Rights of the Collateral Agent

Section 6.1 Power of Attorney. Each Debtor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the name of such Debtor or in its own name, to take, after the occurrence and during the continuance of an Event of Default, any and all actions, and to execute any and all documents and instruments which the Collateral Agent at any time and from time to time deems reasonably necessary, to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, such Debtor hereby gives the Collateral Agent the power and right on behalf of such Debtor and in its own name to do any of the following after the occurrence and during the continuance of an Event of Default, without notice to or the consent of such Debtor:

- (a) to demand, sue for, collect or receive, in the name of such Debtor or in its own name, any money or property at any time payable or receivable on account of or in exchange

for any of the Collateral and, in connection therewith, endorse checks, notes, drafts, acceptances, money orders, documents of title or any other instruments for the payment of money under the Collateral or any policy of insurance;

- (b) to pay or discharge taxes, liens or security interests (other than Permitted Liens) or other encumbrances levied or placed on or threatened against the Collateral;
- (c) (i) to direct account debtors and any other parties liable for any payment under any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Participating Counterparties; (ii) to receive payment of and receipt for any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (iii) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, proxies, stock powers, verifications and notices in connection with accounts and other documents relating to the Collateral; (iv) to commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (v) to defend any suit, action or proceeding brought against such Debtor with respect to any Collateral; (vi) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Collateral Agent may deem appropriate; (vii) to exchange any of the Collateral for other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms as the Collateral Agent may determine; (viii) to add or release any guarantor, indorser, surety or other party to any of the Collateral; (ix) to renew, extend or otherwise change the terms and conditions of any of the Collateral; (x) to make, settle, compromise or adjust any claim under or pertaining to any of the Collateral (including claims under any policy of insurance); and (xi) to sell, transfer, pledge, convey, make any agreement with respect to, or otherwise deal with, any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Collateral Agent's option and such Debtor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve, maintain, or realize upon the Collateral and the Collateral Agent's security interest therein.

This power of attorney is a power coupled with an interest and shall be irrevocable. The Collateral Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Collateral Agent in this Agreement, and shall not be liable for any failure to do so or any delay in doing so. This power of attorney is conferred on the Collateral Agent solely to protect, preserve, maintain and realize upon its security interest in the Collateral. The Collateral Agent shall not be responsible for any decline in the value of the Collateral and shall not be required to take any steps to preserve rights against prior parties or to protect, preserve or maintain any Lien securing the Collateral.

Section 6.2 Setoff. Each Participating Counterparty shall have setoff rights to the extent set forth in Section 6 of the Forbearance Agreement.

Section 6.3 Assignment by the Collateral Agent. The Collateral Agent shall only transfer all or any portion of its rights and obligations as Collateral Agent under this Agreement to any other Person to the extent consented to in writing by the Majority Participating Counterparties.

Section 6.4 Performance by the Collateral Agent. If any Debtor shall fail to perform any covenant or agreement contained in this Agreement, the Collateral Agent may (but shall not be obligated to) perform or attempt to perform such covenant or agreement on behalf of the Debtors, in which case the Collateral Agent shall exercise good faith and make diligent efforts to give Debtors prompt prior written notice of such performance or attempted performance. In such event, the Debtors shall, at the request of the Collateral Agent, promptly pay any reasonable amount expended by the Collateral Agent in connection with such performance or attempted performance to the Collateral Agent. Notwithstanding the foregoing, it is expressly agreed that the Collateral Agent shall not have any liability or responsibility for the performance (or non-performance) of any obligation of the Debtors under this Agreement.

Section 6.5 Certain Costs and Expenses. The Collateral Agent Fee shall be payable to the Collateral Agent by the Debtors. The Debtors shall pay or reimburse the Collateral Agent within thirty (30) Business Days after demand for all reasonable costs and expenses (including reasonable attorneys' and paralegal fees) incurred by it in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement and the Forbearance Agreement. The agreements in this Section 6.5 shall survive the payment in full of the Obligations. Notwithstanding the foregoing, the reimbursement of any fees and expenses incurred by the Participating Counterparties shall be governed by the terms and conditions of the Forbearance Agreement.

Section 6.6 Indemnification. The Debtors shall indemnify, defend and hold the Collateral Agent and each Participating Counterparty and each of their respective officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "Indemnified Person") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including reasonable attorneys' and paralegal fees) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnified Person in any way relating to or arising out of this Agreement (including reasonable attorneys' fees and paralegal fees and expenses incurred in enforcing its indemnification rights hereunder) or any document relating to or arising out of or referred to in this Agreement, the Forbearance Agreement, the Applicable Agreements or the transactions contemplated hereby, or any action taken or omitted by any such Indemnified Person under or in connection with any of the foregoing, including with respect to any investigation, litigation or proceeding (including any bankruptcy proceeding or appellate proceeding) related to or arising out of this Agreement, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided, that the Debtors shall have no obligation under this Section 6.6 to any Indemnified Person with respect to Indemnified Liabilities to the extent resulting from the gross negligence or willful misconduct of such Indemnified Person (as determined by a court of competent

jurisdiction in a final and non-appealable judgment). The agreements in this **Section 6.6** shall survive payment of all other Obligations.

Section 6.7 Rights, Protections, and Immunities.

- (a)** The Collateral Agent may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct (in each case, as agreed to by the Collateral Agent or as otherwise determined by a court of competent jurisdiction), except that:
 - (i)** the Collateral Agent shall not be liable for any error of judgment made in good faith by an officer of the Collateral Agent unless it is proved that the Collateral Agent was grossly negligent in ascertaining the pertinent facts, as agreed to by the Collateral Agent or as otherwise determined by a court of competent jurisdiction;
 - (ii)** the Collateral Agent shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to this Agreement and the Forbearance Agreement; and
 - (iii)** anything in this Agreement to the contrary notwithstanding, and to the fullest extent permissible by law, in no event shall the Collateral Agent be liable for special, punitive, consequential or indirect damages of any kind whatsoever (including, among other things, lost profits), even if the Collateral Agent, or any of its directors, officers, agents, or employees, has been advised of the likelihood of such loss or damage and regardless of the form of action.
- (b)** The Collateral Agent shall not be liable for interest on any money received by it.
- (c)** Money held in trust by the Collateral Agent need not be segregated from other funds except to the extent required by law or the terms of this Agreement or the Forbearance Agreement.
- (d)** No provision of this Agreement shall require the Collateral Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, unless repayment of such funds or indemnity satisfactory to the Collateral Agent shall have been received by the Collateral Agent.
- (e)** Every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Collateral Agent shall be subject to the provisions of this **Section 6.7** and to the provisions of the Forbearance Agreement.
- (f)** The Collateral Agent shall (i) not be charged with knowledge of any Event of Default or be required to act based on any other event unless written notice of such event shall have been given to a Responsible Officer of the Collateral Agent by the Majority

Participating Counterparties in accordance with the provisions of this Agreement and the Forbearance Agreement and (ii) have no duty to take any action to determine whether any such Event of Default has occurred. Publicly available information by itself shall not constitute actual or constructive knowledge unless a Responsible Officer shall have actual knowledge or has received written notice of such publicly available information. For purposes of determining the Collateral Agent's responsibility and liability hereunder, whenever reference is made in this Agreement to any event (including, but not limited to, an Event of Default), such reference shall be construed to refer only to such event of which the Collateral Agent has received notice as described in this Section.

- (g) In no event shall the Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, pandemic, quarantine, shelter-in-place orders issued by a Government Authority, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, provided such failure or delay in performance could not have been prevented by the taking of commercially reasonable precautions such as the implementation and execution of disaster recovery plans. The Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to prevent any failure or delay in performance and to resume performance as soon as practicable under the circumstances.
- (h) The Collateral Agent shall have no responsibility or liability for or with respect to (i) the legality, validity or enforceability of any collateral document or the Collateral, (ii) the preparation, filing or accuracy of any financing statement or continuation statement, or (iii) the perfection or priority of any interest of the Collateral Agent in the Collateral, or the monitoring or maintenance of any such perfection or priority.
- (i) Any permissive or discretionary right of the Collateral Agent under this Agreement shall not be construed as a duty of the Collateral Agent, as applicable.
- (j) The Collateral Agent shall not be under any obligation to take any action in the performance of its respective duties hereunder that would be in violation of applicable law.
- (k) The Collateral Agent is hereby authorized and directed to enter into this Agreement, the Deposit Account Control Agreements and the Intercreditor Agreement. The Collateral Agent shall have no obligation or duty to exercise any right or obligation of the Collateral Agent under any other document unless provided with written direction to do so by the Majority Participating Counterparties.
- (l) Except as expressly provided herein, the Collateral Agent shall not have any obligation to see to the payment or discharge of any liens (other than the liens created hereunder) upon the Collateral, or to see to the application of any amounts secured

thereby (other than as directed by the Participating Counterparties) or to the delivery or transfer to any Person of any property released from any such lien, or to give notice to or make demand upon any mortgagor, mortgagee, trustor, beneficiary or other Person for the delivery or transfer of any such property.

- (m) The Collateral Agent shall not be accountable to any Person for the use or application of any deposited monies or of any property or securities or the proceeds thereof that shall be released or withdrawn in accordance with the provisions hereof or of any property or securities or the proceeds thereof that shall be released from any lien created hereunder in accordance with the provisions hereof, and the Collateral Agent shall not have any liability for the acts of other parties that are not in accordance with the provisions hereof.
- (n) The Collateral Agent shall not be liable for failing to comply with its obligations under this Agreement or any related document in so far as the performance of such obligations is dependent upon the timely receipt of instructions and/or other information from any other Person which are not received or not received by the time required.
- (o) The Collateral Agent may accept and reasonably rely on all accounting, records and work of any Person provided to it by or on behalf of the Debtors or the Participating Counterparties without audit, and the Collateral Agent shall have no liability for the acts or omissions of any Persons. If any error, inaccuracy or omission (collectively, “**Errors**”) exist in any information received, and such Errors should cause or materially contribute to the Collateral Agent making or continuing any Error (collectively, “**Continued Errors**”), the Collateral Agent shall have no liability for such Continued Errors.
- (p) If at any time the Collateral Agent is served with any arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process which in any way affects this Agreement, the Collateral, or any part thereof or funds held by it (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions), it shall (i) forward a copy of such arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process to the Participating Counterparties and the Debtors (to the extent not prohibited by applicable law) and (ii) be authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Collateral Agent complies with any such arbitral, judicial or administrative order, judgment, award, decree, writ or other form of arbitral, judicial or administrative process, the Collateral Agent shall not be liable to any of the parties hereto or to any other Person even though such order, judgment, award, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.
- (q) Except as otherwise expressly provided herein, the Collateral Agent shall not be required to ascertain or inquire as to the performance or observance of any of the

covenants or agreements contained herein or in any other instruments to be performed or observed by the Debtors.

- (r) The Collateral Agent may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Collateral Agent need not investigate any fact or matter stated in the document. Notwithstanding the foregoing, the Collateral Agent, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, directions, consents, requests, orders or other instruments furnished to the Collateral Agent that shall be specifically required to be furnished pursuant to any provision of this Agreement, shall examine them to determine whether they comply as to conform to the requirements of this Agreement.
- (s) The Collateral Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys or a custodian or nominee, and the Collateral Agent shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent, attorney, custodian or nominee appointed with due care by it hereunder.
- (t) Except if expressly provided herein that the Collateral Agent is required to act or refrain from acting, if the Collateral Agent is unsure as to the application of the terms of this Agreement to a particular situation or believes that a proposed action may lead the Collateral Agent to incur financial liability, before the Collateral Agent acts or refrains from acting, it may require an officer's certificate from a Participating Counterparty (acknowledged and consented to by the Majority Participating Counterparties) and the cost of any officer's certificate shall be an expense of the Person requesting the Collateral Agent to act or refrain from acting. The Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate.
- (u) The Collateral Agent shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, that the Collateral Agent's conduct does not constitute willful misconduct or gross negligence.
- (v) The Collateral Agent may consult with counsel at the expense of the Debtors, and the advice or opinion of counsel with respect to legal matters relating to this Agreement and the Collateral shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel; *provided, however*, that nothing in this paragraph shall limit the ability of the Debtors to recover Collateral from the Collateral Agent upon the payment of the Obligations in full in cash or the cure or waiver of any Event of Default. The Collateral Agent shall not be under any obligation to take any action in the performance of its respective duties hereunder that would be in violation of applicable law.

- (w) Except for those actions that the Collateral Agent is required to take hereunder without written direction, the Collateral Agent shall not have any obligation, duty or liability to take any action or to refrain from taking any action hereunder that requires written direction in the absence of such written direction as provided hereunder.
- (x) All action taken by the Collateral Agent under any related document (including any servicer acknowledgment, servicing agreement, account control agreement, or Applicable Agreement) shall be covered by the Collateral Agent's protective provisions set forth herein, including **Section 6.6** and **Section 6.7**.

Section 6.8 Resignation and Removal of the Collateral Agent.

- (a) The Collateral Agent may: (i) terminate its obligations as Collateral Agent under this Agreement (subject to the terms set forth herein) upon at least 30 days' prior written notice to the Debtors and the Participating Counterparties; *provided, however*, that without the written consent of the Majority Participating Counterparties, such resignation will not be effective until a successor Collateral Agent reasonably acceptable to the Majority Participating Counterparties and the Debtors shall have accepted appointment by the Participating Counterparties as Collateral Agent, pursuant hereto and shall have agreed to be bound by the terms of this Agreement; or (ii) be removed upon at least 30 days' prior written notice by the Majority Participating Counterparties, delivered to the Collateral Agent, the Debtors, and the Participating Counterparties. In the event of such termination or removal, the Majority Participating Counterparties, with the written consent of the Debtors so long as no Event of Default shall be outstanding (which consent shall not be unreasonably conditioned, withheld, or delayed), shall appoint a successor Collateral Agent. If, however, a successor collateral agent is not appointed by the Majority Participating Counterparties within 90 days after the giving of notice of resignation, the Collateral Agent may petition a court of competent jurisdiction for the appointment of a successor collateral agent.
- (b) Any successor Collateral Agent appointed pursuant hereto shall execute, acknowledge, and deliver to the Debtors, the predecessor Collateral Agent, and the Participating Counterparties, an instrument accepting such appointment under this Agreement. Thereupon, the resignation or removal of the predecessor Collateral Agent shall become effective and such successor Collateral Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties, and obligations of its predecessor as Collateral Agent under this Agreement, with like effect as if originally named as Collateral Agent. The predecessor Collateral Agent shall upon payment of its fees and expenses deliver to the successor Collateral Agent all documents and statements and monies held by it under this Agreement; and the Debtors and the predecessor Collateral Agent shall execute and deliver such instruments and do such things as may reasonably be required for fully and certainly

vesting and confirming in the successor Collateral Agent all such rights, powers, duties, and obligations.

ARTICLE 7

Default

Section 7.1 Rights and Remedies. If an Event of Default shall have occurred and be continuing, the Collateral Agent may, upon a direction from the Majority Participating Counterparties, exercise the following rights and remedies:

- (a)** The Collateral Agent may exercise any of the rights and remedies set forth in this Agreement (including, without limitation, **Article 6** hereof).
- (b)** In addition to all other rights and remedies granted to the Collateral Agent in this Agreement, the Collateral Agent shall have all of the rights and remedies of a Collateral Agent under the UCC (whether or not the UCC applies to the affected Collateral) and the Collateral Agent may also, without previous demand or notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Collateral Agent may, in its reasonable discretion, deem commercially reasonable or otherwise as may be permitted by law. Without limiting the generality of the foregoing, the Collateral Agent may (i) without demand or notice to the Debtors (except as required under applicable law), collect, receive or take possession of the Collateral or any part thereof, and for that purpose the Collateral Agent (and/or its agents, servicers or other independent contractors) may enter upon any premises on which the Collateral is located and remove the Collateral therefrom or render it inoperable, and/or (ii) sell, lease or otherwise dispose of the Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Collateral Agent may, in its reasonable discretion, deem commercially reasonable or otherwise as may be permitted by law. The Collateral Agent shall have the right at any public sale or sales, and, to the extent permitted by applicable law, at any private sale or sales, to bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness) and become a purchaser of the Collateral or any part thereof free of any right of redemption on the part of the Debtors, which right of redemption is hereby expressly waived and released by the Debtors to the extent permitted by applicable law. The Collateral Agent may require the Debtors to assemble the Collateral and make it available to the Collateral Agent at any place designated by the Collateral Agent to allow the Collateral Agent to take possession or dispose of such Collateral. The Debtors agree that the Collateral Agent shall not be obligated to give more than ten (10) days prior written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. The foregoing shall not require notice if none is required by applicable law. The Collateral

Agent shall not be obligated to make any sale of Collateral if, in the exercise of its reasonable discretion, it shall determine not to do so, regardless of the fact that notice of sale of Collateral may have been given. The Collateral Agent may, without notice or publication (except as required by applicable law), adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. The Debtors shall be liable for all reasonable expenses of retaking, holding, preparing for sale or the like, and all reasonable attorneys' fees, legal expenses and other costs and expenses incurred by the Collateral Agent in connection with the collection of the Obligations and the enforcement of the Collateral Agent's rights under this Agreement. The Debtors shall, to the extent permitted by applicable law, remain liable for any deficiency if the proceeds of any such sale or other disposition of the Collateral (conducted in conformity with this clause (b) and applicable law) applied to the Obligations are insufficient to pay the Obligations in full. The Collateral Agent shall apply the proceeds from the sale of the Collateral hereunder against the Obligations as set forth herein.

- (c) The Collateral Agent may cause any or all of the Collateral held by it to be transferred into the name of the Collateral Agent or the name or names of the Collateral Agent's nominee or nominees.
- (d) The Collateral Agent may exercise any and all rights and remedies of the Debtors under or in respect of the Collateral, including, without limitation, any and all rights of the Debtors to demand or otherwise require payment of any amount under, or performance of any provision of any of the Collateral and any and all voting rights and corporate powers in respect of the Collateral.
- (e) On any sale of the Collateral, the Collateral Agent is hereby authorized to comply with any limitation or restriction with which compliance is necessary (based on a reasoned opinion of the Collateral Agent's counsel) in order to avoid any violation of applicable law or in order to obtain any required approval of the purchaser or purchasers by any applicable Governmental Authority.
- (f) The Collateral Agent may direct account debtors and any other parties liable for any payment under any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Participating Counterparties.
- (g) For purposes of enabling the Collateral Agent to exercise its rights and remedies under this **Section 7.1** and enabling the Collateral Agent and its successors and assigns to enjoy the full benefits of the Collateral, the Debtors hereby grant to the Collateral Agent an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Debtors) to use, assign, license or sublicense any of the Computer Records or Software (including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and all computer programs used for the completion or printout thereof), exercisable upon

the occurrence and during the continuance of an Event of Default (and thereafter if the Collateral Agent succeeds to any of the Collateral pursuant to an enforcement proceeding or voluntary arrangement with Debtor), except as may be prohibited by any licensing agreement relating to such Computer Records or Software. This license shall also inure to the benefit of all successors, assigns, transferees of and purchasers from the Collateral Agent.

Section 7.2 Private Sales.

- (a) In view of the fact that applicable securities laws may impose certain restrictions on the method by which a sale of the Pledged Shares may be effected after an Event of Default, Debtors agree that upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may from time to time attempt to sell all or any part of the Pledged Shares by a private sale in the nature of a private placement, restricting the bidders and prospective purchasers to those who will represent and agree that they are “accredited investors” within the meaning of Regulation D promulgated pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), and are purchasing for investment only and not for distribution. In so doing, the Collateral Agent may solicit offers for the Pledged Shares, or any part thereof, from a limited number of investors who might be interested in purchasing the Pledged Shares. Without limiting the methods or manner of disposition which could be determined to be commercially reasonable, if the Collateral Agent hires a firm of regional or national reputation that is engaged in the business of rendering investment banking and brokerage services to solicit such offers and facilitate the sale of the Pledged Shares, then the Collateral Agent’s acceptance of the highest offer (including its own offer) obtained through such efforts of such firm shall be deemed to be a commercially reasonable method of disposition of such Pledged Shares. The Collateral Agent shall not be under any obligation to delay a sale of any of the Pledged Shares for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States, under the Securities Act or under any applicable state securities laws, even if such issuer would agree to do so.
- (b) The Debtors further agree to do or cause to be done, to the extent that the Debtors may do so under applicable law, all such other reasonable acts and things as may be necessary to make such sales or resales of any portion or all of the Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at the Debtors’ expense.

Section 7.3 Cash Collateral Accounts.

- (a) On or before April 24, 2020, the Debtors shall enter into deposit account control agreements (the “**Deposit Account Control Agreements**”) with the Collateral Agent and each applicable bank with respect to the Deposit Accounts set forth on Schedule

3.3 (each such account, a “**Cash Collateral Account**”). The Deposit Account Control Agreements shall remain in effect until the payment of the Obligations in full in cash. The Debtors shall be permitted to use cash in any such Cash Collateral Account to pay the reasonable fees and expenses of the Debtors’ professionals and to otherwise make disbursements that are in accordance with the Forbearance Budget (subject to Permitted Variances). The Collateral Agent may, with the consent of the Majority Participating Counterparties, agree in writing to the use of cash in any Cash Collateral Account which does not conform to the Forbearance Budget. If such consent is given, the use of such cash shall not be included in any calculation of the Debtors’ compliance with clause (ii) of the definition of “Event of Default”.

- (b) In the case of any Event of Default under this Agreement, any and all cash (including amounts received by electronic funds transfer), checks, drafts and other instruments for the payment of money received by each Debtor at any time, in full or partial payment of any of the Collateral consisting of Accounts, shall forthwith upon receipt be transmitted and delivered to the Collateral Agent, properly endorsed, where required, so that such items may be collected by the Collateral Agent. Any such amounts and other items received by a Debtor shall not be commingled with any other of such Debtor’s funds or property, but will be held separate and apart from such Debtor’s own funds or property, and upon express trust for the benefit of the Collateral Agent until delivery is made to the Collateral Agent. All items or amounts which are delivered by or for the benefit of a Debtor to the Collateral Agent on account of partial or full payment of, or any other amount payable with respect to, any of the Collateral shall, at the Collateral Agent’s option, be applied to any of the Obligations, whether then due or not. No Debtor shall have any right whatsoever to withdraw any funds so deposited. Each Debtor further grants to the Collateral Agent a security interest in and Lien on all funds on deposit in such account. Each Debtor hereby irrevocably authorizes and directs the Collateral Agent to endorse all items received for deposit to the Cash Collateral Account, notwithstanding the inclusion on any such item of a restrictive notation, e.g., “paid in full”, “balance of account”, or other restriction. Any items or amounts which are delivered to the Collateral Agent shall remain uninvested and shall not earn interest.
- (c) Notwithstanding **Section 7.3(a) - (b)** or any other provision of this Agreement to the contrary, the Lien of the Collateral Agent on the cash in the Cash Collateral Account in the name of AG Mortgage Investment Trust, Inc. shall be subject and subordinated to payment of the Carve-Out. If an Event of Default shall have occurred and be continuing, the Collateral Agent may only exercise remedies hereunder and under the Deposit Account Control Agreement following delivery of a Carve-Out Trigger Notice to the Debtors and to the depository bank or banks party to the Deposit Account Control Agreements. Immediately upon the delivery of a Carve-Out Trigger Notice, an amount of cash in the Cash Collateral Account equal to the Carve-Out Cap shall be segregated and reserved for, and remain available to, the Debtors for use by the Debtors to pay the fees and expenses provided for by the Carve-Out, without any reduction of the Obligations.

Section 7.4 [Reserved].

Section 7.5 Application of Proceeds. (a) If an Event of Default shall have occurred and be continuing, upon a determination of each Participating Counterparty's Pro Rata Realized Losses, the Collateral Agent, upon written instruction from the Majority Participating Counterparties setting forth the amounts to be paid and the payees with particularity, may apply (i) any cash held in the Cash Collateral Account and (ii) the proceeds of any sale or other disposition of all or any part of the Collateral, in the following order of priorities:

first, to pay the expenses of such sale or other disposition, including reasonable compensation to agents of and counsel for the Collateral Agent, and all expenses, liabilities and advances incurred or made by the Collateral Agent in connection with the Security Documents or any other related document, and any other amounts then due and payable to the Collateral Agent pursuant to Section 6.6;

second, to pay ratably the Pro Rata Realized Losses of the Participating Counterparties;

third, to pay the Subordinated Noteholder on account of the Subordinated Note; and

finally, to pay to the Debtors, or as a court of competent jurisdiction may direct, any surplus then remaining from the proceeds of the Collateral owned by it.

ARTICLE 8

Miscellaneous

Section 8.1 No Waiver; Cumulative Remedies. No failure on the part of the Collateral Agent to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided for in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

Section 8.2 Successors and Assigns. Subject to the terms and conditions of the Forbearance Agreement, this Agreement shall be binding upon and inure to the benefit of the Debtors and the Collateral Agent and their respective heirs, successors and assigns, except that the Debtors may not assign any of their rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

Section 8.3 AMENDMENT; ENTIRE AGREEMENT. THIS AGREEMENT AND THE FORBEARANCE AGREEMENT REFERRED TO HEREIN EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND

MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions of this Agreement may be amended or waived only by an instrument in writing signed by no less than the Debtors, the Majority Participating Counterparties and any other Party hereto that would be adversely affected by such amendment or waiver; provided, however, that the consent of all Participating Counterparties shall be required to: (i) amend the definitions of Event of Default, Majority Participating Counterparties, Participating Counterparties, and Pro Rata Realized Losses; amend **Section 7.5**, (iii) release any Lien on Collateral; or (iii) amend this **Section 8.3**.

Section 8.4 Notices. All notices, requests, consents, approvals, waivers and other communications hereunder shall be in writing (including, by facsimile transmission) and mailed, faxed or delivered to: (i) if to the Debtors, to AG Mortgage Trust, Inc., c/o Angelo, Gordon & Co., L.P., 245 Park Avenue, New York, NY 10167, Attn: Raul Moreno, RMoreno@angelogordon.com, with a copy, which shall not constitute notice, to Hunton Andrews Kurth LLP, 200 Park Avenue, New York, New York 10166, Attn: Peter S. Partee Sr., ppartee@huntonak.com; (ii) if to the Collateral Agent, to Wilmington Trust, National Association, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, Attn: Corporate Trust Administration, jluc@wilmingtontrust.com, and (iii) if to a Participating Counterparty, to the address, email address or facsimile number specified for notices for such Participating Counterparty on signature pages hereto; or, as directed to the Debtors or the Collateral Agent, to such other address or number as shall be designated by such Party in a written notice to the other Parties. All such notices, requests and communications shall, when sent by overnight delivery, or faxed, be effective when delivered for overnight (next Business Day) delivery, or transmitted in legible form by facsimile machine (with electronic confirmation of receipt), respectively, or if mailed, upon the third Business Day after the date deposited into the U.S. mail, or if otherwise delivered, upon delivery; except that notices to the Collateral Agent shall not be effective until actually received by the Collateral Agent.

Section 8.5 GOVERNING LAW; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

- (a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, NOTWITHSTANDING ITS CONFLICT OF LAWS PRINCIPLES OR ANY OTHER RULE, REGULATION OR PRINCIPLE THAT WOULD RESULT IN THE APPLICATION OF ANY OTHER STATE'S LAW.
- (b) EACH PARTY HERETO HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, STATE OF NEW YORK AND APPELLATE COURTS FROM EITHER OF THEM AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND

CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS.

Section 8.6 Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

Section 8.7 Survival of Representations and Warranties. All representations and warranties made in this Agreement or in any certificate delivered pursuant hereto shall survive the execution and delivery of this Agreement, and no investigation by the Collateral Agent shall affect the representations and warranties or the right of the Collateral Agent to rely upon them.

Section 8.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic format shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 8.9 Waiver of Bond. In the event the Collateral Agent seeks to take possession of any or all of the Collateral by judicial process, the Debtors hereby irrevocably waive any bonds and any surety or security relating thereto that may be required by applicable law as an incident to such possession, and waives any demand for possession prior to the commencement of any such suit or action.

Section 8.10 Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.11 Construction. Each Debtor and the Collateral Agent acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement with its legal counsel and that this Agreement shall be construed as if jointly drafted by the Debtors and the Collateral Agent.

Section 8.12 Termination; Reinstatement. If all of the Obligations (other than contingent liabilities pursuant to any indemnity, including without limitation Section 6.5 and Section 6.6 hereof, for claims which have not been asserted, or which have not yet accrued) shall have been paid and performed in full (in cash), the Collateral Agent shall, upon the written request of the Debtors (which shall be delivered to the Collateral Agent and the Participating Counterparties) and in the absence of an objection in writing from any Participating Counterparty received within two (2) Business Days, execute and deliver to the Debtors a proper instrument or instruments acknowledging the release and termination of the security interests created by this Agreement, and shall duly assign and deliver to the Debtors (without recourse and without any representation or warranty) such of the Collateral as may be in the possession of the Collateral Agent and has not previously been sold or otherwise applied pursuant to this Agreement; provided however that, the effectiveness of this Agreement shall continue or be reinstated, as the case may be, in the event that

any payment received or credit given by the Collateral Agent is returned, disgorged, rescinded or required to be recontributed to any party as an avoidable preference, impermissible setoff, fraudulent conveyance, restoration of capital or otherwise under any applicable state, federal, or local law of any jurisdiction, including laws pertaining to bankruptcy or insolvency, and this Agreement shall thereafter be enforceable against the Debtors as if such returned, disgorged, recontributed or rescinded payment or credit has not been received or given by the Collateral Agent, and whether or not the Collateral Agent relied upon such payment or credit or changed its position as a consequence thereof.

Section 8.13 Release of Collateral. The Collateral Agent shall, upon the written request of the Debtors (which shall be delivered to the Collateral Agent and the Participating Counterparties) and in the absence of an objection in writing from any Participating Counterparty received within two (2) Business Days, execute and deliver to the Debtors a proper instrument or instruments acknowledging the release of the security interest and Liens established hereby on any Collateral (other than the Pledged Shares): if the sale or other disposition of such Collateral is permitted under the terms of this Agreement or the Forbearance Agreement and, at the time of such proposed release, both before and after giving effect thereto, no Event of Default has occurred and is continuing.

Section 8.14 WAIVER OF JURY TRIAL. EACH OF THE DEBTORS AND THE COLLATERAL AGENT KNOWINGLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY SUCH PARTY AGAINST THE OTHER(S), WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE DEBTORS AND THE COLLATERAL AGENT AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH SUCH PARTY FURTHER AGREES THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

Section 8.15 Consistent Application. The rights and duties created by this Agreement shall, in all cases, be interpreted consistently with, and shall be in addition to (and not in lieu of), the rights and duties created by the Forbearance Agreement and the Intercreditor Agreement. In the event that any provision of this Agreement shall be inconsistent with any provision of the Forbearance Agreement or the Intercreditor Agreement, such provision of the Forbearance Agreement or Intercreditor Agreement, as applicable, shall govern.

Section 8.16 Continuing Lien. The security interest in and Lien on the Collateral granted under this Security Agreement shall be a continuing security interest in every respect and the

Collateral Agent's security interest in the Collateral as granted herein shall continue in full force and effect until the payment of the Obligations in full in cash.

Section 8.17 Intent. Each grant of a Lien in the Collateral by each Debtor to the Collateral Agent pursuant to this Agreement is a transfer made for the benefit of Participating Counterparties to, and in connection with, securities contracts, repurchase agreements, and master netting agreements, as contemplated by and as such terms are used in Bankruptcy Code Sections 101(38A), 101(47), 546(e), 546(f), 546(j), and 741(7)(A). Further, this Agreement and the Forbearance Agreement, and each grant of a Lien in Collateral by each Debtor to the Collateral Agent pursuant to this Agreement, is a credit enhancement for the benefit of the Participating Counterparties related to securities contracts, repurchase agreements, and master netting agreements, as contemplated by and as such terms are used in Bankruptcy Code Sections 101(38A), 101(47), and 741(7)(A) with respect to which the Collateral Agent and the Participating Entities are entitled to all of the protections of Bankruptcy Code Sections 362(b)(6), 362(b)(7), 362(b)(27), 546(e), 546(f), 546(j), 555, 559 and 561, among other Sections.

Section 8.18 Incorporation of Full Length Omnibus Terms. The parties agree that the terms of Section 1 and Section 2 and the related defined terms of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org), are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a "Covered Agreement," each party that is a Covered Entity shall be deemed a "Covered Entity" and each party (whether or not it is a Covered Entity) shall be deemed a "Counterparty Entity" with respect to each other party that is a Covered Entity. For purposes of the foregoing sentence "*Covered Entity*" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b)..

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

AG MORTGAGE INVESTMENT TRUST, INC., as a Debtor

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

AG MIT CMO, LLC, as a Debtor

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

By: **AG MIT, LLC**, as a Debtor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

By: **GCAT 2020-23A, LLC**, as a Debtor

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: Authorized Signatory

By: **GCAT 2020-23B, LLC**, as a Debtor

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: Authorized Signatory

AG MIT INTERNATIONAL LLC, as a Debtor

By: **AG MIT, LLC**, its Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

AG MIT CMO EC LLC, as a Debtor

By: **AG MIT RES LLC**, its Sole Member

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

AG MIT RES LLC, as a Debtor

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

AG MIT CREL III, LLC, as a Debtor

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno

Title: General Counsel

AG MIT WFB1 2014 LLC, as a Debtor

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT ARC, LLC, as a Debtor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT HC, L.L.C., as a Debtor

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT RPL TRS LLC, as a Debtor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

Participating Counterparties, agreed solely as to Article 5, and acknowledged and consented to:

BANK OF AMERICA, N.A.,
as a Participating Counterparty

By: /s/ Michael J. Berg

Name: Michael J. Berg

Title: Director

Address for Notices:

One Bryant Park

New York, NY 10036

BOFA SECURITIES, INC.,

as a Participating Counterparty

By: /s/ Michael J. Berg

Name: Michael J. Berg

Title: Director

Address for Notices:

One Bryant Park

New York, NY 10036

CREDIT SUISSE SECURITIES (USA) LLC,

as a Participating Counterparty

By: /s/ Margaret Dellafera

Name: Margaret Dellafera

Title: Authorized Signatory

Address for Notices:

Eleven Madison Avenue, 4th Floor

New York, New York 10010

CREDIT SUISSE AG, a company incorporated in Switzerland, acting through its Cayman Islands Branch, as a Participating Counterparty

By: /s/ Margaret Dellafera

Name: Margaret Dellafera

Title: Authorized Signatory

By: /s/ Elie Chau

Name: Elie Chau

Title: Vice President

Address for Notices:

c/o Credit Suisse Securities (USA) LLC

Eleven Madison Avenue, 4th Floor

New York, New York 10010

CREDIT SUISSE INTERNATIONAL,

as a Participating Counterparty

By: /s/ Jason O'Brien

Name: Jason O'Brien

Title: Managing Director

By: /s/ Masahi Washida

Name: Masahi Washida

Title: Managing Director

Address for Notices:

One Cabot Square

Canary Wharf

London E14 4QJ, United Kingdom

BARCLAYS CAPITAL INC.,

as a Participating Counterparty

By: /s/ Robert Silverman

Name: Robert Silverman

Title: Managing Director

Address for Notices:
745 Seventh Ave
New York, NY 10019

—

BARCLAYS BANK PLC,
as a Participating Counterparty

By: /s/ Robert Silverman
Name: Robert Silverman
Title: Managing Director

Address for Notices:
745 Seventh Ave
New York, NY 10019

—

SOCIETE GENERALE S.A.,
as a Participating Counterparty

By: /s/ Julien Thinat
Name: Julien Thinat
Title: Authorized Signatory

Address for Notices:

—
—
—

WELLS FARGO BANK, N.A.,
as a Participating Counterparty

By: /s/ Kevin Graves
Name: Kevin Graves
Title: Director

Address for Notices:

—
—
—

WELLS FARGO SECURITIES, LLC,
as a Participating Counterparty

By: /s/ Kevin Graves
Name: Kevin Graves
Title: Director

Address for Notices:

—
—
—

GOLDMAN SACHS BANK USA,
as a Participating Counterparty

By: /s/ Rajiv Kamilla
Name: Rajiv Kamilla

Title: Authorized Signatory

Address for Notices:

Attn: Rajiv Kamilla

200 West Street

New York, NY 10282

GOLDMAN, SACHS & CO.,

as a Participating Counterparty

By: /s/ Rajiv Kamilla

Name: Rajiv Kamilla

Title: Authorized Signatory

Address for Notices:

Attn: Rajiv Kamilla

200 West Street

New York, NY 10282

Schedule 1

Debtor Parties

Schedule 1.2

Pledged Shares

Schedule 3.2

Form and Jurisdiction; Successor by Merger; Location of Books and Records

Schedule 3.3

Deposit Accounts, Cash Collateral Accounts, Investment Accounts

Schedule 3.5

Financing Statements

Schedule 3.6

UCC Filing Office

EXHIBIT A

Security and Collateral Agency Agreement

THIS SECURITY AGREEMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN ARTICLE 2 BELOW AND THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT (THE “INTERCREDITOR AGREEMENT”) DATED AS OF THE DATE HEREOF, AMONG THE SECURED PARTY, WILMINGTON TRUST, NATIONAL ASSOCIATION AS SENIOR COLLATERAL AGENT (AS DEFINED THEREIN) AND AG MORTGAGE INVESTMENT TRUST, INC. TO THE OBLIGATIONS (INCLUDING INTEREST) OWED BY THE DEBTORS TO THE PARTICIPATING COUNTERPARTIES PURSUANT TO THE APPLICABLE AGREEMENTS (AS DEFINED IN THE FORBEARANCE AGREEMENT (AS DEFINED BELOW)); AND EACH PARTY TO THIS SECURITY AGREEMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE INTERCREDITOR AGREEMENT.

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (the “**Agreement**”) dated as of April 10, 2020, is entered into by and among AG Mortgage Investment Trust, Inc. and the parties set forth on **Schedule 1** of this Agreement (each, a “**Debtor**”, and collectively, the “**Debtors**”) and AG REIT Management, LLC (the “**Secured Party**”).

RECITALS:

A. Certain of the Debtors have entered into that certain Forbearance Agreement (the “**Forbearance Agreement**”) with the Participating Counterparties (as defined in the Forbearance Agreement), pursuant to which the Participating Counterparties have agreed to forebear from exercising any remedies with respect to Acknowledged Events of Default (as defined in the Forbearance Agreement) for the duration of the Forbearance Period (as defined in the Forbearance Agreement).

B. As partial consideration for the agreement of the Participating Counterparties to enter into the Forbearance Agreement, the Secured Party has made a loan to the Debtors of \$10,000,000 (the “**Subordinated Loan**”), evidenced by that certain Secured Promissory Note dated as of the date hereof.

C. In order to induce the Secured Party to make the Subordinated Loan, the Debtors have agreed to grant (or cause to be granted) Liens to the Secured Party for the benefit of the Secured Party to secure the obligations of the Debtors to the Secured Party under the Secured Promissory Note.

D. The Liens granted to the Secured Party are subordinated to the Liens granted to the Collateral Agent (as defined herein) as more fully set forth in the Intercreditor Agreement (as defined herein).

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1
Definitions

Section 1.1 Definitions. As used in this Agreement, capitalized terms not otherwise defined herein have the meanings provided for such terms in the Forbearance Agreement. References to “Sections,” “subsections,” “Exhibits” and “Schedules” shall be to Sections, subsections, Exhibits and Schedules, respectively, of this Agreement unless otherwise specifically provided. All references to statutes and regulations shall include any amendments of the same and any successor statutes and regulations. References to particular sections of the UCC should be read to refer also to parallel sections of the Uniform Commercial Code as enacted in each state or other jurisdiction which may be applicable to the grant and perfection of the Liens held by the Secured Party pursuant to this Agreement.

The following terms have the meanings indicated below, all such definitions to be equally applicable to the singular and plural forms of the terms defined:

“**Account**” means any “account,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by such Debtor: (a) all rights of such Debtor to payment for goods sold or leased or services rendered, whether or not earned by performance, (b) all accounts receivable of such Debtor, (c) all rights of such Debtor to receive any payment of money or other form of consideration, (d) all security pledged, assigned or granted to or held by such Debtor to secure any of the foregoing, (e) all guaranties of, or indemnifications with respect to, any of the foregoing, and (f) all rights of such Debtor as an unpaid seller of goods or services, including, but not limited to, all rights of stoppage in transit, replevin, reclamation and resale.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of New York, New York or Wilmington, Delaware.

“**Carve-Out**” means all unpaid fees, costs, and disbursements of professionals retained by the Debtors that remain unpaid on the date of the Carve-Out Trigger Notice or that will be incurred after the date of the Carve-Out Trigger Notice in connection with the Debtors’ ongoing securities and other regulatory reporting obligations or wind-down of the Debtors, subject to the Carve-Out Cap.

“**Carve-Out Cap**” means \$7,500,000.

“**Carve-Out Trigger Notice**” means a written notice delivered by the Secured Party to the Debtors and to the depository bank or banks party to the Deposit Account Control Agreements at

any time following the occurrence and during the continuance of an Event of Default (but only after the expiration of any applicable cure period) expressly stating that the Carve-Out has been triggered.

“Cash Collateral Account” has the meaning set forth in **Section 7.3(a)**.

“Chattel Paper” means any “chattel paper,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor, and shall include both electronic Chattel Paper and tangible Chattel Paper.

“Collateral” has the meaning specified in **Section 2.1** of this Agreement.

“Collateral Agent” means Wilmington Trust, National Association, as collateral agent for the Participating Counterparties under the Security and Collateral Agency Agreement.

“Computer Records” means any computer records now owned or hereafter acquired by any Debtor.

“Deposit Account” shall mean a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property, securities accounts or accounts evidenced by an instrument.

“Document” means any “document,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by any Debtor, including, without limitation, all documents of title and all receipts covering, evidencing or representing goods now owned or hereafter acquired by a Debtor.

“Equipment” means any “equipment” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor.

“Event of Default” means failure by a Debtor to comply with the covenants and terms of this Agreement, including the inaccuracy of any representation or warranty set forth herein, which failure shall have continued unremedied for two (2) Business Days following receipt of written notice from the Secured Party to the Debtors, or any “Event of Default” under the Secured Promissory Note.

“Forbearance Budget” means the operating budget attached as Exhibit 3 to the Forbearance Agreement.

“General Intangibles” means any “general intangibles,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by such Debtor: (a) all of such Debtor’s intellectual property; (b) all of such Debtor’s books, records, data, plans, manuals, computer software, computer tapes, computer disks, computer programs, source codes, object codes and all rights of such Debtor to retrieve data and other information from third parties; (c) all of such Debtor’s contract rights (including, without limitation, all of such Debtor’s right, title and interest in and to any amounts payable to it upon the termination, acceleration, liquidation or close-out of any repurchase agreement or any other master netting agreement (as such

terms is defined in Bankruptcy Code Section 101(38A)), but only after giving effect to any netting, offset and recoupment rights of the parties thereto pursuant to the terms thereof or of any other agreement), partnership interests, membership interests, joint venture interests, securities, deposit accounts, securities accounts and certificates of deposit; (d) all rights of such Debtor to payment under chattel paper, documents, instruments and similar agreements; (e) letters of credit, letters of credit rights supporting obligations and rights to payment for money or funds advanced or sold of such Debtor; (f) all tax refunds and tax refund claims of such Debtor; (g) all choses in action and causes of action of such Debtor (whether arising in contract, tort or otherwise and whether or not currently in litigation) and all judgments in favor of such Debtor; (h) all rights and claims of such Debtor under warranties and indemnities, (i) all health care receivables; and (j) all rights of such Debtor under any insurance, surety or similar contract or arrangement.

“Governmental Authority” shall mean any nation or government, any state, province or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“Instrument” shall mean any “instrument,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by any Debtor, and, in any event, shall include all promissory notes (including without limitation, any intercompany notes held by such Debtor), drafts, bills of exchange and trade acceptances, whether now owned or hereafter acquired.

“Insurance Proceeds” shall have the meaning set forth in **Section 4.3** of this Agreement.

“Intellectual Property” shall mean patents, patent licenses, copyrights, copyright licenses, trademarks, trademark licenses, trade secrets, registrations, goodwill, franchises, permits, proprietary information, customer lists, designs, inventions, and all other intellectual property rights.

“Intercreditor Agreement” means that certain Intercreditor and Subordination Agreement entered into as of the date hereof by and among the Debtors, the Collateral Agent and the Secured Party, as the same may be amended from time to time after the date hereof.

“Inventory” means any “inventory,” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor.

“Investment Property” means any “investment property” as such term is defined in Article or Chapter 9 of the UCC, now owned or hereafter acquired by a Debtor, and in any event, shall include without limitation all shares of stock and other equity, partnership or membership interests constituting securities, of the domestic subsidiaries of such Debtor from time to time owned or acquired by such Debtor in any manner (including, without limitation, the Pledged Shares), and the certificates and all dividends, cash, instruments, rights and other property from time to time received, receivable or otherwise distributed or distributable in respect of or in exchange for any or all of such shares, but excluding any shares of stock or other equity, partnership or membership interests in any foreign subsidiaries of such Debtor.

“Liens” shall mean any lien on or security interest in the Collateral.

“Obligations” shall mean the obligations of the Debtors under the Secured Promissory Note.

“Participating Counterparties” shall mean the Participating Counterparties party to the Forbearance Agreement, as set forth on Schedule 1 thereto.

“Participating Counterparty Obligations” shall mean the “Obligations” (as such term is defined in the Security and Collateral Agency Agreement).

“Permitted Liens” means (a) any lien granted to the Collateral Agent for the benefit of the Participating Counterparties, (b) any lien heretofore granted to a Participating Counterparty prior to the date hereof, (c) any customary lien in favor of the depository bank or banks party to the Deposit Account Control Agreement with respect to the Cash Collateral Account, and (d) the liens evidence by the financing statements listed on ***Schedule 3.5***.

“Permitted Variance” means that the aggregate disbursements of the Debtors of cash in the Cash Collateral Account in any full two-week period shall not exceed one hundred twenty percent (120%) of the aggregate amount of projected disbursements for such two-week period as provided for in the Forbearance Budget. Any disbursement projected to be made in in the Forbearance Budget in a particular week that is not made by the Debtors in such week may be made in a subsequent week or weeks, provided, however, that for purposes of calculating the Permitted Variance, such disbursement shall be treated as if it had been made in the week set forth in the Forbearance Budget.

“Pledged Shares” means the shares of capital stock or other equity, partnership or membership interests described on ***Schedule 1.2*** attached hereto and incorporated herein by reference, and all other shares of capital stock or other equity, partnership or membership interests (other than in an entity which is a foreign subsidiary) acquired by any Debtor after the date hereof.

“Proceeds” means any “proceeds,” as such term is defined in Article or Chapter 9 of the UCC and, in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to a Debtor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to a Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting, or purporting to act, for or on behalf of any Governmental Authority), and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

“Pro Rata Realized Losses” shall have the meaning set forth in the Forbearance Agreement.

“Secured Promissory Note” means the Secured Promissory Note, dated as of the date hereof, made to the Secured Party by AG Mortgage Investment Trust, Inc. in the principal amount of \$10,000,000, as such note may be increased from time to time.

“Security and Collateral Agency Agreement” means that certain Security and Collateral Agency Agreement dated as of the date hereof by and among the Debtors, the Collateral Agent, and the Participating Counterparties.

“UCC” or **“Uniform Commercial Code”** means the Uniform Commercial Code as in effect in the State of New York; provided, that if, by applicable law, the perfection or effect of perfection or non-perfection of the security interest created hereunder in any Collateral is governed by the Uniform Commercial Code as in effect on or after the date hereof in any other jurisdiction, **“UCC”** means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or the effect of perfection or non-perfection.

ARTICLE 2

Security Interest

Section 2.1 Grant of Security Interest. As collateral security for the prompt payment and performance in full when due of the Obligations (whether at stated maturity, by acceleration or otherwise), each Debtor hereby pledges, assigns, transfers and conveys to the Secured Party as collateral, and grants the Secured Party a continuing Lien on and security interest in, all of such Debtor’s right, title and interest in and to all of its assets, whether now owned or hereafter arising or acquired and wherever located, including (collectively, the **“Collateral”**):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all General Intangibles;
- (d) all Equipment;
- (e) all Intellectual Property;
- (f) all Documents;
- (g) all Instruments;
- (h) all Pledged Shares;
- (i) all Deposit Accounts and any other cash collateral, deposit or securities accounts, including all cash collateral, deposit or securities accounts established or maintained pursuant to the terms of this Agreement or the Forbearance Agreement;
- (j) all Computer Records and Software, whether relating to the foregoing Collateral or otherwise, but in the case of such Software, subject to the rights of any non-affiliated licensee of software;
- (k) all Investment Property;

- (l) all other personal property; and
- (m) the Proceeds, in cash or otherwise, of any of the property described in the foregoing clauses (a) through (k) and all Liens, security, rights, remedies and claims of such Debtor with respect thereto (provided that the grant of a security interest in Proceeds set forth in this subsection (m) shall not be deemed to give the applicable Debtor any right to dispose of any of the Collateral, except as may be expressly permitted pursuant to the terms of the Forbearance Agreement and this Agreement);

provided, however, that “Collateral” shall not include rights under or with respect to any General Intangible, license, permit or authorization to the extent any such General Intangible, Document, Instrument, license, permit or authorization, by its terms in effect on the date hereof or on the date of acquisition of such General Intangible, Document, Instrument, license, permit or authorization (and not entered into in contemplation thereof) or by law, prohibits the assignment of, or the granting of a lien on or security interest in the rights of a grantor thereunder or which would be invalid or unenforceable upon any such assignment or grant (the “**Restricted Assets**”), provided that (A) the Proceeds of any Restricted Asset shall be continue to be deemed to be “Collateral”, and (B) this provision shall not limit the grant of any Lien on or assignment of any Restricted Asset to the extent that the UCC or any other applicable law provides that such grant of Lien or assignment is effective irrespective of any prohibitions to such grant provided in any Restricted Asset (or the underlying documents related thereto).

Section 2.2 Priority of Liens and Debtors Remain Liable.

- (a) Notwithstanding anything herein to the contrary, the Liens and security interests granted to the Secured Party pursuant to this Agreement shall be subordinated as and to the extent set forth in the Intercreditor Agreement and the exercise of any right or remedy by the Secured Party hereunder is subject to the terms and provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control. The Liens and security interests granted to the Secured Party pursuant to this Agreement shall be senior to all Liens other than as set forth in the Intercreditor Agreement.
- (b) Notwithstanding anything herein or in any other agreement by and among the Secured Party and the Debtors to the contrary, before the Participating Counterparty Obligations have been paid in full in cash, (i) the requirements of this Agreement to endorse, assign or deliver Collateral and any certificates, instruments or agreements in relation thereto to the Secured Party shall be deemed satisfied by endorsement, assignment or delivery of such Collateral and such certificates, instruments or agreements in relation thereto to the Collateral Agent (as bailee for the Secured Party) as provided in the Intercreditor Agreement, (ii) any endorsement, assignment or delivery to the Collateral Agent shall be deemed an endorsement, assignment or delivery to the Secured Party for all purposes hereunder, and (iii) the requirements of this Agreement to perfect by control (pursuant to the UCC) the Secured Party’s security interest in any Collateral shall be deemed satisfied by the Collateral Agent’s

obtaining such control of such Collateral expressly on behalf of itself and the Secured Party as provided in the Intercreditor Agreement.

- (c) In the event any Debtor shall create any additional security interest upon any assets to secure the Participating Counterparty Obligations, it shall concurrently grant a security interest to the Secured Party upon such assets as security for the obligations under this Agreement. In the event any Debtor shall undertake any actions to perfect or protect any Liens on any assets pledged to the Collateral Agent, such Debtor shall also at the same time undertake such actions (subject to the terms of the Intercreditor Agreement) with respect to the Collateral for the benefit of the Secured Party without request by the Secured Party, including with respect to any property in which the Collateral Agent directs a Debtor to grant or perfect a Lien or take such other action under the Security and Collateral Agency Agreement.

Section 2.3 Financing Statements. Each Debtor hereby consents to the filing of a financing statement describing the Collateral covered thereby as “all assets of the Debtor, now owned or hereafter acquired and all products and proceeds thereof,” or such similar language as the Secured Party may deem appropriate.

ARTICLE 3

Representations and Warranties

To induce the Secured Party to enter into this Agreement, each Debtor represents and warrants to the Secured Party as follows, each such representation and warranty being a continuing representation and warranty, surviving until termination of this Agreement in accordance with the provisions of **Section 7.12** of this Agreement:

Section 3.1 Title. Such Debtor is, and with respect to Collateral acquired after the date hereof such Debtor will be, the legal and beneficial owner of the Collateral free and clear of any lien or security interest or other encumbrance, except for the Permitted Liens, provided that, other than the Lien established under this Agreement, no lien on or security interest in any Pledged Shares shall constitute a Permitted Lien.

Section 3.2 Change in Form or Jurisdiction; Successor by Merger; Location of Books and Records. As of the date hereof, each Debtor (a) is duly organized, validly existing, and in good standing, as a corporation (or other business organization) under the laws of (i) its jurisdiction of organization and (ii) all foreign jurisdictions where the failure to so qualify could reasonably be expected to result in a material adverse effect on the Debtors, taken as a whole; (b) is formed in the jurisdiction of organization and has the registration number and tax identification number set forth on ***Schedule 3.2*** attached hereto; (c) has not changed its respective corporate form or its jurisdiction of organization at any time during the five years immediately prior to the date hereof, except as set forth on such ***Schedule 3.2***; (d) except as set forth on such ***Schedule 3.2*** attached hereto, no Debtor has, at any time during the five years immediately prior to the date hereof, become the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise of any other Person, and (e) keeps true and accurate books and records regarding the Collateral (the “**Records**”) in the office indicated on such ***Schedule 3.2***.

Section 3.3 Representations and Warranties Regarding Deposit Accounts. As of the date hereof, all Deposit Accounts, including the Cash Collateral Account, or securities accounts of each Debtor are located at the banks and securities intermediaries specified on **Schedule 3.3** attached hereto which Schedule sets forth the true and correct name of each bank where such accounts are located, such bank's address, the type of account and the account number.

Section 3.4 Pledged Shares.

- (a) **Duly Authorized and Validly Issued.** The Pledged Shares that are shares of a corporation have been duly authorized and validly issued and are fully paid and nonassessable, and the Pledged Shares that are membership interests or partnership units (if any) have been validly granted, under the laws of the jurisdiction of organization of the issuers thereof, and, to the extent applicable, are fully paid and nonassessable. No such membership or partnership interests constitute "securities" within the meaning of Article 8 of the UCC, and each Debtor covenants and agrees not to allow any such membership or partnership interest to become "securities" for purposes of Article 8 of the UCC.
- (b) **Valid Title; No Liens; No Restrictions.** Each Debtor is the legal and beneficial owner of the Pledged Shares, free and clear of any lien or security interest (other than the Liens created by this Agreement or Permitted Liens), and such Debtor has not otherwise sold, granted any option with respect to, assigned, transferred or otherwise disposed of any of its rights or interest in or to the Pledged Shares. None of the Pledged Shares are subject to any contractual or other restrictions upon the pledge or other transfer of such Pledged Shares, other than those imposed by securities laws generally. No issuer of Pledged Shares is party to any agreement granting "control" (as defined in Section 8-106 of the UCC) of such Debtor's Pledged Shares to any third party other than as stated in the Intercreditor Agreement. All such Pledged Shares are held by each Debtor directly and not through any securities intermediary.
- (c) **Description of Pledged Shares; Ownership.** The Pledged Shares constitute the percentage of the issued and outstanding shares of stock, partnership units or membership interests of the issuers thereof indicated on **Schedule 1.2** (as the same may be amended from time to time) and such Schedule contains a description of all shares of capital stock, membership interests and other equity interests of or in any subsidiaries owned by such Debtor.

Section 3.5 Priority. As of the date hereof, other than as set forth on **Schedule 3.5**, no financing statement, security agreement or other lien or security interest instrument covering all or any part of the Collateral (other than on account of Permitted Liens) is on file in any public office with respect to any outstanding obligation of such Debtor except as may have been filed in favor of the Collateral Agent or the Secured Party.

Section 3.6 Perfection. Upon the filing of Uniform Commercial Code financing statements in the jurisdictions listed on **Schedule 3.6** attached hereto, the Lien in favor of the Secured

Party created herein will constitute a valid and perfected lien upon and security interest in the Collateral which may be perfected under the UCC by filing financing statements. Upon execution and delivery of a customary deposit account control agreement in respect of each Cash Collateral Account by the applicable Debtor, the applicable depository bank and the Secured Party, the Lien in favor of the Secured Party in the Cash Collateral Accounts created herein will constitute a valid and perfected lien upon and security interest in such Cash Collateral Accounts.

Section 3.7 Applicable Agreements. Each Debtor is a party to the repurchase agreements and related agreements listed on Schedule 3.7 with Participating Counterparties (the “**Applicable Agreements**”). Schedule 3.7 constitutes a complete list of all agreements between each Debtor and the Participating Counterparties. The Debtors have provided the Secured Party with a true and complete copy of each Applicable Agreement.

ARTICLE 4

Covenants

Each Debtor covenants and agrees with the Secured Party, until termination of this Agreement in accordance with the provisions of **Section 8.12** hereof, as follows:

Section 4.1 Covenants Regarding Certain Kinds of Collateral.

- (a) **Promissory Notes and Tangible Chattel Paper.** If Debtors, now or at any time hereafter, collectively hold or acquire any promissory notes or tangible Chattel Paper for which the principal amount thereof or the obligations evidenced thereunder are, in the aggregate, in excess of \$100,000, the applicable Debtors shall promptly notify the Secured Party in writing thereof and, at the request of the Secured Party, forthwith endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time reasonably specify, and cause all such Chattel Paper to bear a legend reasonably acceptable to the Secured Party indicating that the Secured Party has a security interest in such Chattel Paper.
- (b) **Electronic Chattel Paper and Transferable Records.** If Debtors, now or at any time hereafter, collectively hold or acquire an interest in any electronic Chattel Paper or any “transferable record,” as that term is defined in the federal Electronic Signatures in Global and National Commerce Act, or in the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, worth, in the aggregate, in excess of \$100,000, the applicable Debtors shall promptly notify the Secured Party thereof and, at the request and option of the Secured Party, shall take such action as the Secured Party may reasonably request to vest in the Secured Party control, under Section 9-105 of the UCC, of such electronic chattel paper or control under the federal Electronic Signatures in Global and National Commerce Act, or the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

- (c) **Letter-of-Credit Rights.** If Debtors, now or at any time hereafter, collectively are or become beneficiaries under letters of credit, with an aggregate face amount in excess of \$100,000, the applicable Debtors shall promptly notify the Secured Party thereof and, at the request of the Secured Party, the applicable Debtors shall, pursuant to an agreement in form and substance reasonably satisfactory to the Secured Party either arrange (i) for the issuer and any confirmer of such letters of credit to consent to an assignment to the Secured Party of the proceeds of the letters of credit or (ii) for the Secured Party to become the transferee beneficiary of the letters of credit, together with, in each case, any such other actions as reasonably requested by the Secured Party to perfect its Lien in such letter of credit rights. The applicable Debtor shall retain the proceeds of the applicable letters of credit until an Event of Default has occurred and is continuing whereupon the proceeds are to be delivered to the Secured Party.
- (d) **Reserved.**
- (e) **Pledged Shares.** All certificates or certified instruments representing or evidencing the Pledged Shares or any Debtor's rights therein shall be delivered to the Secured Party promptly upon Debtor gaining any rights therein, in suitable form for transfer by delivery or accompanied by duly executed stock powers or instruments of transfer or assignments in blank, all in form and substance reasonably acceptable to the Secured Party.
- (f) **Accounts and Contracts.** Each Debtor shall, in accordance with its usual business practices in effect from time to time, endeavor to collect or cause to be collected from each account debtor under its Accounts, as and when due, any and all amounts owing under such Accounts. So long as no Event of Default has occurred and is continuing and except as otherwise provided in **Section 7.3**, each Debtor shall have the right to collect and receive payments on its Accounts, and to use and expend the same in the normal course of business in accordance with the Forbearance Budget.
- (g) **Deposit Accounts.** Each Debtor agrees to promptly notify the Secured Party in writing of all Deposit Accounts, cash collateral accounts or investments accounts opened after the date hereof, and such Debtor shall take all commercially reasonable actions to execute and deliver an account control agreement (in form and substance reasonably satisfactory to the Secured Party) to perfect the Lien granted hereunder over each of the Deposit Accounts, cash collateral accounts or securities accounts disclosed on **Schedule 3.3** or opened after the date hereof.

Section 4.2 Encumbrances. No Debtor shall create, permit or suffer to exist, and each Debtor shall defend the Collateral against any lien on or security interest in (other than the Permitted Liens) or any restriction upon the pledge or other transfer thereof, and shall defend such Debtor's title to and other rights in the Collateral and the Secured Party's pledge and collateral assignment of and Lien on the Collateral against the claims and demands of all Persons.

Section 4.3 Disposition of Collateral. No Debtor shall enter into or consummate any transfer or other disposition of Collateral to a non-Debtor third party without the consent of the Secured Party.

Section 4.4 Insurance. The Collateral pledged by such Debtor or the Debtors will be insured (but solely to the extent such Collateral is insured as of the date hereof) with insurance coverage provided by financially sound and reputable insurance companies in such amounts and of such types as are customarily carried by companies similar in size and nature. In the case of all such insurance policies, each such Debtor shall designate the Secured Party, as mortgagee or lender loss payee and such policies shall provide that any loss be payable to the Secured Party, as mortgagee or lender loss payee, as its interests may appear. Further, upon the request of the Secured Party, each such Debtor shall deliver certificates evidencing such policies, including all endorsements thereon and those required hereunder, to the Secured Party; and each such Debtor assigns to the Secured Party, as additional security hereunder, all its rights to receive proceeds of insurance with respect to the Collateral. All such insurance shall, by its terms, provide that the applicable carrier shall, prior to any cancellation before the expiration date thereof, mail written notice to the Secured Party of such cancellation in accordance with such carrier's standard policies and procedures. Each Debtor further shall provide the Secured Party upon request with evidence reasonably satisfactory to the Secured Party that each such Debtor is at all times in compliance with this paragraph. Subject to the terms of the Intercreditor Agreement, upon the occurrence and during the continuance of a an Event of Default, the Secured Party may act as each such Debtor's attorney-in-fact in obtaining, adjusting, settling and compromising such insurance and endorsing any drafts. Upon such Debtor's failure to maintain insurance coverage on the Collateral to the extent it exists on the date hereof, the Secured Party may procure such insurance and its costs therefor shall be charged to such Debtor, payable on demand. Subject to the terms of the Intercreditor Agreement, all proceeds payable to such Debtor of any insurance on the Collateral (the "**Insurance Proceeds**") shall be paid to the Secured Party.

Section 4.5 Corporate Changes; Books and Records; Inspection Rights. Each Debtor shall not change its respective name, identity, corporate structure or jurisdiction of organization, or identification number in any manner that might make any financing statement filed in connection with this Agreement seriously misleading within the meaning of Section 9-506 of the UCC unless such Debtor shall have given the Secured Party thirty (30) days prior written notice with respect to any change in such Debtor's corporate structure, jurisdiction of organization, name or identity and shall have taken all action deemed reasonably necessary by the Secured Party under the circumstances to protect its Liens and the perfection and priority thereof, (b) each Debtor shall keep the Records at the location specified on ***Schedule 3.2*** as the location of such books and records or as otherwise specified in writing to the Secured Party and (c) the Debtors shall permit the Secured Party and its agents and representatives to conduct inspections, discussion and audits of the Collateral during the Debtors' normal business hours and without interrupting the conduct of the Debtor's businesses.

Section 4.6 Covenants Regarding Pledged Shares.

(a) Voting Rights and Distributions. Subject to the terms of the Intercreditor Agreement,

- (i)** So long as no Event of Default shall have occurred and be continuing (both before and after giving effect to any of the actions or other matters described in clauses (A) or (B) of this subparagraph):
 - (A)** Each Debtor shall be entitled to exercise any and all voting and other consensual rights (including, without limitation, the right to give consents, waivers and ratifications) pertaining to any of the Pledged Shares or any part thereof; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken without the prior written consent of the Secured Party which would violate any provision of this Agreement or the Forbearance Agreement; and
 - (B)** Such Debtor shall be entitled to receive and retain any and all dividends, distributions and interest paid in respect of any of the Pledged Shares and to use and expend the same in the normal course of business in accordance with the Forbearance Budget.
- (ii)** Upon the occurrence and during the continuance of an Event of Default:
 - (A)** The Secured Party may, on ten (10) days' written notice to such Debtor, transfer or register in the name of the Secured Party or any of its nominees, any or all of the Pledged Shares and the Proceeds thereof (in cash or otherwise) held by the Secured Party hereunder, and the Secured Party or its nominee may thereafter, after delivery of notice to such Debtor, exercise all voting and corporate rights at any meeting of any corporation issuing any of the Pledged Shares and any and all rights of conversion, exchange, subscription or any

other rights, privileges or options pertaining to any of the Pledged Shares as if the Secured Party were the absolute owner thereof, including, without limitation, the right to exchange, at its discretion, any and all of the Pledged Shares upon the merger, consolidation, reorganization, recapitalization or other readjustment of any corporation issuing any of such Pledged Shares or upon the exercise by any such issuer or the Secured Party of any right, privilege or option pertaining to any of the Pledged Shares, and in connection therewith, to deposit and deliver any and all of the Pledged Shares with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Secured Party may determine, all without liability except to account for property actually received by it, but the Secured Party shall have no duty to exercise any of the aforesaid rights, privileges or options, and the Secured Party shall not be responsible for any failure to do so or delay in so doing.

- (B) All rights of such Debtor to exercise the voting and other rights which it would otherwise be entitled to exercise pursuant to **Section 4.6(a)(i)(A)** and to receive the dividends, interest and other distributions which it would otherwise be authorized to receive and retain pursuant to **Section 4.6(a)(i)(B)** shall be suspended until such Event of Default shall no longer exist, and all such rights shall, until such Event of Default shall no longer exist, thereupon become vested in the Secured Party which shall thereupon have the sole right to exercise such voting and other rights and to receive, hold and dispose of such dividends, interest and other distributions.
- (C) All dividends, interest and other distributions which are received by such Debtor contrary to the provisions of this **Section 4.6(a)(ii)** shall be received in trust for the benefit of the Secured Party, shall be segregated from other funds of such Debtor and shall be forthwith paid over to the Secured Party as Collateral in the same form as so received (with any necessary endorsement).
- (D) Such Debtor shall execute and deliver (or cause to be executed and delivered) to the Secured Party all such proxies and other instruments as the Secured Party may reasonably request for the purpose of enabling the Secured Party to exercise the voting and other rights which it is entitled to exercise pursuant to this **Section 4.6(a)(ii)** and to receive the dividends, interest and other distributions which it is entitled to receive and retain pursuant to this **Section 4.6(a)(ii)**. The foregoing shall not in any way limit the Secured Party's power and authority granted pursuant to the other provisions of this Agreement.

- (b) **Possession; Reasonable Care.** The Secured Party shall have the right to hold in its possession all Pledged Shares pledged, assigned or transferred hereunder and from time to time constituting a portion of the Collateral. The Secured Party may appoint one or more agents (which in no case shall be a Debtor or an affiliate of a Debtor) to hold physical custody, for the account of the Secured Party, of any or all of the Collateral. Absent gross negligence, the Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Secured Party accords its own property, it being understood that the Secured Party shall not have any responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not the Secured Party has or is deemed to have knowledge of such matters, or (ii) taking any necessary steps to preserve rights against any parties with respect to any Collateral. Following the occurrence and continuance of an Event of Default, the Secured Party shall be entitled to take ownership of the Pledged Shares in accordance with the UCC.

Section 4.7 New Subsidiaries; Additional Collateral.

- (a) Each Person which becomes a subsidiary of a Debtor subsequent to the date hereof shall execute a joinder to the Forbearance Agreement and deliver such joinders or security agreements or other pledge documents to ensure that the assets of such subsidiary are pledged as Collateral for security of the full and prompt payment of the Obligations.
- (b) Each Debtor agrees that, except with the written consent of the Secured Party, it will not permit any domestic subsidiary (whether now existing or formed after the date hereof) to issue to such Debtor or any of such Debtor's other subsidiaries any shares of stock, membership interests, partnership units, notes or other securities or instruments (including without limitation the Pledged Shares) in addition to or in substitution for any of the Collateral, unless, concurrently with each issuance thereof, any and all such shares of stock, membership interests, partnership units, notes or instruments are encumbered in favor of the Secured Party under this Agreement or otherwise (it being understood and agreed that all such shares of stock, membership interests, partnership units, notes or instruments issued to such Debtor shall, without further action by such Debtor or the Secured Party, be automatically encumbered by this Agreement as Pledged Shares)

Section 4.8 Further Assurances.

- (a) At any time and from time to time, upon the request of the Secured Party, and at the sole expense of the Debtors, each Debtor shall promptly execute and deliver all such further agreements, documents and instruments and take such further action as the Secured Party may reasonably deem necessary or appropriate to (i) preserve, ensure the priority, effectiveness and validity of and perfect the Secured Party's security interest in and pledge and collateral assignment of the Collateral (including causing

the Secured Party's name to be noted as Secured Party on any certificate of title for a titled good if such notation is a condition of the Secured Party's ability to enforce its security interest in such Collateral), unless such actions are specifically waived under the terms of this Agreement and the Forbearance Agreement, (ii) carry out the provisions and purposes of this Agreement and (iii) enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any of the Collateral. Except as otherwise expressly permitted by the terms of this Agreement and except for Permitted Liens, each Debtor agrees to maintain and preserve the Secured Party's security interest in and pledge and collateral assignment of the Collateral hereunder and the priority thereof.

- (b) Each Debtor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto that (i) indicate any or all of the Collateral upon which the Debtors have granted a Lien, and (ii) provide any other information required by Part 5 of Article 9 of the UCC, including organizational information and in the case of a fixture filing or a filing for Collateral consisting of as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Each Debtor agrees to furnish any such information required by the preceding paragraph at its sole cost and expense and to the Secured Party promptly upon request.

Section 4.9 Priority of Liens. Notwithstanding anything in this Agreement to the contrary, and as provided in the Intercreditor Agreement, (x) the liens securing the Subordinated Note shall be subordinated in priority to the Liens granted to the Collateral Agent and (y) the payment obligations of the Debtors with respect to the Subordinated Note shall be subordinated in right of payment to the Participating Counterparty Obligations.

ARTICLE 5

Reserved

ARTICLE 6

Rights of the Secured Party

Section 6.1 Power of Attorney. Subject to the terms of the Intercreditor Agreement, each Debtor hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the name of such Debtor or in its own name, to take, after the occurrence and during the continuance of an Event of Default, any and all actions, and to execute any and all documents and instruments which the Secured Party at any time and from time to time deems reasonably necessary, to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, such Debtor hereby gives the Secured Party the power and right on behalf of such Debtor and in its own name to do any of the following after the occurrence and during the continuance of an Event of Default, without notice to or the consent of such Debtor:

- (a) to demand, sue for, collect or receive, in the name of such Debtor or in its own name, any money or property at any time payable or receivable on account of or in exchange for any of the Collateral and, in connection therewith, endorse checks, notes, drafts, acceptances, money orders, documents of title or any other instruments for the payment of money under the Collateral or any policy of insurance;
- (b) to pay or discharge taxes, liens or security interests (other than Permitted Liens) or other encumbrances levied or placed on or threatened against the Collateral;
- (c) (i) to direct account debtors and any other parties liable for any payment under any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Secured Party; (ii) to receive payment of and receipt for any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (iii) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, proxies, stock powers, verifications and notices in connection with accounts and other documents relating to the Collateral; (iv) to commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (v) to defend any suit, action or proceeding brought against such Debtor with respect to any Collateral; (vi) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Secured Party may deem appropriate; (vii) to exchange any of the Collateral for other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any committee, depositary, transfer agent, registrar or other designated agency upon such terms as the Secured Party may determine; (viii) to add or release any guarantor, indorser, surety or other party to any of the Collateral; (ix) to renew, extend or otherwise change the terms and conditions of any of the Collateral; (x) to make, settle, compromise or adjust any claim under or pertaining to any of the Collateral (including claims under any policy of insurance); and (xi) to sell, transfer, pledge, convey, make any agreement with respect to, or otherwise deal with, any of the Collateral as fully and completely as though the Secured Party were the absolute owner thereof for all purposes, and to do, at the Secured Party's option and such Debtor's expense, at any time, or from time to time, all acts and things which the Secured Party deems necessary to protect, preserve, maintain, or realize upon the Collateral and the Secured Party's security interest therein.

This power of attorney is a power coupled with an interest and shall be irrevocable. The Secured Party shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Secured Party in this Agreement, and shall not be liable for any failure to do so or any delay in doing so. This power of attorney is conferred on the Secured Party solely to protect, preserve, maintain and realize upon its security interest in the Collateral. The Secured Party shall not be responsible for any decline in the value

of the Collateral and shall not be required to take any steps to preserve rights against prior parties or to protect, preserve or maintain any Lien securing the Collateral.

Section 6.2 Setoff. Subject to the terms of the Intercreditor Agreement, the Secured Party shall, upon the occurrence and continuance of an Event of Default, without notice or demand of any kind, have the right to appropriate and apply to the payment of the Obligations (whether or not then due) any and all balances, credits, deposits, accounts or moneys of Debtors then or thereafter on deposit with such Secured Party.

Section 6.3 Reserved.

Section 6.4 Performance by the Secured Party. If any Debtor shall fail to perform any covenant or agreement contained in this Agreement, the Secured Party may (but shall not be obligated to) perform or attempt to perform such covenant or agreement on behalf of the Debtors, in which case the Secured Party shall exercise good faith and make diligent efforts to give Debtors prompt prior written notice of such performance or attempted performance. In such event, the Debtors shall, at the request of the Secured Party, promptly pay any reasonable amount expended by the Secured Party in connection with such performance or attempted performance to the Secured Party. Notwithstanding the foregoing, it is expressly agreed that the Secured Party shall not have any liability or responsibility for the performance (or non-performance) of any obligation of the Debtors under this Agreement.

Section 6.5 Certain Costs and Expenses. The Debtors shall pay or reimburse the Secured Party within thirty (30) Business Days after demand for all reasonable costs and expenses (including reasonable attorney's and paralegal fees) incurred by it in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement and the Forbearance Agreement. The agreements in this **Section 6.5** shall survive the payment in full of the Obligations.

Section 6.6 Indemnification. The Debtors shall indemnify, defend and hold the Secured Party and each of its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "**Indemnified Person**") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including reasonable attorneys' and paralegals' fees) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnified Person in any way relating to or arising out of this Agreement (including reasonable attorneys' fees and paralegals' fees and expenses incurred in enforcing its indemnification rights hereunder) or any document relating to or arising out of or referred to in this Agreement or the Forbearance Agreement, or the transactions contemplated hereby, or any action taken or omitted by any such Indemnified Person under or in connection with any of the foregoing, including with respect to any investigation, litigation or proceeding (including any bankruptcy proceeding or appellate proceeding) related to or arising out of this Agreement, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**"); provided, that the Debtors shall have no obligation under this **Section 6.6** to any Indemnified Person with respect to Indemnified Liabilities to the extent resulting from the gross negligence or willful misconduct of such Indemnified Person (as

determined by a court of competent jurisdiction in a final and non-appealable judgment). The agreements in this **Section 6.6** shall survive payment of all other Obligations.

ARTICLE 7

Default

Section 7.1 Rights and Remedies. If an Event of Default shall have occurred and be continuing, the Secured Party shall have the following rights and remedies, subject in all respects to the Intercreditor Agreement:

- (a) The Secured Party may exercise any of the rights and remedies set forth in this Agreement (including, without limitation, **Article 6** hereof).
- (b) In addition to all other rights and remedies granted to the Secured Party in this Agreement, the Secured Party shall have all of the rights and remedies of a Secured Party under the UCC (whether or not the UCC applies to the affected Collateral) and the Secured Party may also, without previous demand or notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Secured Party may, in its reasonable discretion, deem commercially reasonable or otherwise as may be permitted by law. Without limiting the generality of the foregoing, the Secured Party may (i) without demand or notice to the Debtors (except as required under applicable law), collect, receive or take possession of the Collateral or any part thereof, and for that purpose the Secured Party (and/or its agents, servicers or other independent contractors) may enter upon any premises on which the Collateral is located and remove the Collateral therefrom or render it inoperable, and/or (ii) sell, lease or otherwise dispose of the Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at the Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Secured Party may, in its reasonable discretion, deem commercially reasonable or otherwise as may be permitted by law. The Secured Party shall have the right at any public sale or sales, and, to the extent permitted by applicable law, at any private sale or sales, to bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness) and become a purchaser of the Collateral or any part thereof free of any right of redemption on the part of the Debtors, which right of redemption is hereby expressly waived and released by the Debtors to the extent permitted by applicable law. The Secured Party may require the Debtors to assemble the Collateral and make it available to the Secured Party at any place designated by the Secured Party to allow the Secured Party to take possession or dispose of such Collateral. The Debtors agree that the Secured Party shall not be obligated to give more than ten (10) days prior written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. The foregoing shall not require notice if none is required by applicable law. The Secured Party shall not be obligated to make any

sale of Collateral if, in the exercise of its reasonable discretion, it shall determine not to do so, regardless of the fact that notice of sale of Collateral may have been given. The Secured Party may, without notice or publication (except as required by applicable law), adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. The Debtors shall be liable for all reasonable expenses of retaking, holding, preparing for sale or the like, and all reasonable attorneys' fees, legal expenses and other costs and expenses incurred by the Secured Party in connection with the collection of the Obligations and the enforcement of the Secured Party's rights under this Agreement and the Notes. The Debtors shall, to the extent permitted by applicable law, remain liable for any deficiency if the proceeds of any such sale or other disposition of the Collateral (conducted in conformity with this clause (ii) and applicable law) applied to the Obligations are insufficient to pay the Obligations in full. The Secured Party shall apply the proceeds from the sale of the Collateral hereunder against the Obligations.

- (c) The Secured Party may cause any or all of the Collateral held by it to be transferred into the name of the Secured Party or the name or names of the Secured Party's nominee or nominees.
- (d) The Secured Party may exercise any and all rights and remedies of the Debtors under or in respect of the Collateral, including, without limitation, any and all rights of the Debtors to demand or otherwise require payment of any amount under, or performance of any provision of any of the Collateral and any and all voting rights and corporate powers in respect of the Collateral.
- (e) On any sale of the Collateral, the Secured Party is hereby authorized to comply with any limitation or restriction with which compliance is necessary (based on a reasoned opinion of the Secured Party's counsel) in order to avoid any violation of applicable law or in order to obtain any required approval of the purchaser or purchasers by any applicable Governmental Authority.
- (f) The Secured Party may direct account debtors and any other parties liable for any payment under any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Participating Counterparties.
- (g) For purposes of enabling the Secured Party to exercise its rights and remedies under this **Section 7.1** and enabling the Secured Party and its successors and assigns to enjoy the full benefits of the Collateral, the Debtors hereby grant to the Secured Party an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Debtors) to use, assign, license or sublicense any of the Computer Records or Software (including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and all computer programs used for the completion or printout thereof), exercisable upon the occurrence and during the continuance of an Event of Default (and thereafter if

the Secured Party succeeds to any of the Collateral pursuant to an enforcement proceeding or voluntary arrangement with Debtor), except as may be prohibited by any licensing agreement relating to such Computer Records or Software. This license shall also inure to the benefit of all successors, assigns, transferees of and purchasers from the Secured Party.

Section 7.2 Private Sales.

- (a) In view of the fact that applicable securities laws may impose certain restrictions on the method by which a sale of the Pledged Shares may be effected after an Event of Default, Debtors agree that upon the occurrence and during the continuance of an Event of Default, the Secured Party may from time to time attempt to sell all or any part of the Pledged Shares by a private sale in the nature of a private placement, restricting the bidders and prospective purchasers to those who will represent and agree that they are “accredited investors” within the meaning of Regulation D promulgated pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), and are purchasing for investment only and not for distribution. In so doing, the Secured Party may solicit offers for the Pledged Shares, or any part thereof, from a limited number of investors who might be interested in purchasing the Pledged Shares. Without limiting the methods or manner of disposition which could be determined to be commercially reasonable, if the Secured Party hires a firm of regional or national reputation that is engaged in the business of rendering investment banking and brokerage services to solicit such offers and facilitate the sale of the Pledged Shares, then the Secured Party’s acceptance of the highest offer (including its own offer) obtained through such efforts of such firm shall be deemed to be a commercially reasonable method of disposition of such Pledged Shares. The Secured Party shall not be under any obligation to delay a sale of any of the Pledged Shares for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States, under the Securities Act or under any applicable state securities laws, even if such issuer would agree to do so.
- (b) The Debtors further agree to do or cause to be done, to the extent that the Debtors may do so under applicable law, all such other reasonable acts and things as may be necessary to make such sales or resales of any portion or all of the Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at the Debtors’ expense.

Section 7.3 Cash Collateral Accounts.

- (a) On or before April 23, 2020, the Debtors shall enter into deposit account control agreements (the “**Deposit Account Control Agreement**”) with the Secured Party and each applicable bank with respect to the Deposit Accounts set forth on Schedule 3.3 (each such account, a “**Cash Collateral Account**”). The Deposit Account

Control Agreements shall remain in effect until the payment of the Obligations in full in cash. The Debtors shall be permitted to use cash in any such Cash Collateral Account to pay the reasonable fees and expenses of the Debtors' professionals and to otherwise make disbursements that are in accordance with the Forbearance Budget (subject to Permitted Variances). The Secured Party may agree in writing to the use of cash in any Cash Collateral Account which does not conform to the Forbearance Budget. If such consent is given, the use of such cash shall not be included in any calculation of the Debtors' compliance with clause (ii) of the definition of "Event of Default".

- (b) In the case of any Event of Default under this Agreement, any and all cash (including amounts received by electronic funds transfer), checks, drafts and other instruments for the payment of money received by each Debtor at any time, in full or partial payment of any of the Collateral consisting of Accounts, shall forthwith upon receipt be transmitted and delivered to the Secured Party, properly endorsed, where required, so that such items may be collected by the Secured Party. Any such amounts and other items received by a Debtor shall not be commingled with any other of such Debtor's funds or property, but will be held separate and apart from such Debtor's own funds or property, and upon express trust for the benefit of the Secured Party until delivery is made to the Secured Party. All items or amounts which are delivered by or for the benefit of a Debtor to the Secured Party on account of partial or full payment of, or any other amount payable with respect to, any of the Collateral shall, at the Secured Party's option, be applied to any of the Obligations, whether then due or not. No Debtor shall have any right whatsoever to withdraw any funds so deposited. Each Debtor further grants to the Secured Party a security interest in and Lien on all funds on deposit in such account. Each Debtor hereby irrevocably authorizes and directs the Secured Party to endorse all items received for deposit to the Cash Collateral Account, notwithstanding the inclusion on any such item of a restrictive notation, e.g., "paid in full", "balance of account", or other restriction.
- (c) Notwithstanding Section 7.3(a) - (b) or any other provision of this Agreement to the contrary, the Lien of the Secured Party on the cash in the Cash Collateral Account in the name of AG Mortgage Investment Trust, Inc. shall be subject and subordinated to payment of the Carve-Out. If an Event of Default shall have occurred and be continuing, the Secured Party may only exercise remedies hereunder and under the Deposit Account Control Agreements following delivery of a Carve-Out Trigger Notice to the Debtors and to the depository bank or banks party to the Deposit Account Control Agreements. Immediately upon the delivery of a Carve-Out Trigger Notice, an amount of cash in the Cash Collateral Account equal to the Carve-Out Cap shall be segregated and reserved for, and remain available to, the Debtors for use by the Debtors to pay the fees and expenses provided for by the Carve-Out, without any reduction of the Obligations.

Section 7.4 [Reserved].

Section 7.5 Application of Proceeds. If an Event of Default shall have occurred and be continuing, any cash held in the Cash Collateral Account and the proceeds of any sale or other disposition of all or any part of the Collateral shall be applied in the manner set forth in the Intercreditor Agreement; provided, however, that if the Participating Counterparty Obligations have been paid in full, then any such cash and proceeds shall be applied in the manner set forth below:

first, to pay the expenses of such sale or other disposition, including reasonable compensation to agents of and counsel for the Secured Party and all expenses, liabilities and advances incurred or made by the Secured Party in connection with this Agreement;

second, to pay the unpaid principal of the Secured Promissory Note and any accrued and unpaid interest thereon in full together with any and all other amounts payable thereunder or hereunder; and

finally, to pay to the Debtors, or as a court of competent jurisdiction may direct, any surplus then remaining from the proceeds of the Collateral owned by it.

ARTICLE 8

Miscellaneous

Section 8.1 No Waiver; Cumulative Remedies. No failure on the part of the Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided for in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

Section 8.2 Successors and Assigns. Subject to the terms and conditions of the Forbearance Agreement, this Agreement shall be binding upon and inure to the benefit of the Debtors and the Secured Party and their respective heirs, successors and assigns, except that the Debtors may not assign any of their rights or obligations under this Agreement without the prior written consent of the Secured Party.

Section 8.3 AMENDMENT; ENTIRE AGREEMENT. THIS AGREEMENT, THE SECURED PROMISSORY NOTE AND THE INTERCREDITOR AGREEMENT REFERRED TO HEREIN EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO. THIS AGREEMENT IS SUBJECT TO THE INTERCREDITOR AGREEMENT IN ALL RESPECTS AND SHALL

REMAIN SUBJECT TO THE INTERCREDITOR AGREEMENT UNTIL FULL PAYMENT OF THE PARTICIPATING COUNTERPARTY OBLIGATIONS. The provisions of this Agreement may be amended or waived only by an instrument in writing signed by the parties hereto.

Section 8.4 Notices. All notices, requests, consents, approvals, waivers and other communications hereunder shall be in writing (including, by facsimile transmission) and mailed, faxed or delivered to: (i) if to the Debtors, to AG Mortgage Investment Trust Trust, Inc., c/o Angelo, Gordon & Co., L.P., 245 Park Ave, New York, NY 10167, Attn: Raul E. Moreno, RMoreno@angelogordon.com, with a copy, which shall not constitute notice, to Hunton Andrews Kurth LLP, 200 Park Avenue, New York, New York 10166, Attn: Peter S. Partee Sr., ppartee@huntonak.com; and (ii) if to the Secured Party, to AG REIT Management LLC, c/o Mr. Frank Stadelmaier, Chief Operating Officer, Angelo, Gordon & Co., L.P., 245 Park Avenue, New York, NY 10167, Email:FStadelmaier@angelogordon.com, with a copy, which shall not constitute notice, to: Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036-6745, Attn: Mark Volow, mvolow@akingump.com; or, as directed to the Debtors or the Secured Party, to such other address or number as shall be designated by such party in a written notice to the other. All such notices, requests and communications shall, when sent by overnight delivery, or faxed, be effective when delivered for overnight (next Business Day) delivery, or transmitted in legible form by facsimile machine (with electronic confirmation of receipt), respectively, or if mailed, upon the third Business Day after the date deposited into the U.S. mail, or if otherwise delivered, upon delivery; except that notices to the Secured Party shall not be effective until actually received by the Secured Party.

Section 8.5 GOVERNING LAW; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

- (a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, NOTWITHSTANDING ITS CONFLICT OF LAWS PRINCIPLES OR ANY OTHER RULE, REGULATION OR PRINCIPLE THAT WOULD RESULT IN THE APPLICATION OF ANY OTHER STATE'S LAW.
- (b) EACH PARTY HERETO HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, STATE OF NEW YORK AND APPELLATE COURTS FROM EITHER OF THEM AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS.
- (c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR

THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY)..

Section 8.6 Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

Section 8.7 Survival of Representations and Warranties. All representations and warranties made in this Agreement or in any certificate delivered pursuant hereto shall survive the execution and delivery of this Agreement, and no investigation by the Secured Party shall affect the representations and warranties or the right of the Secured Party to rely upon them.

Section 8.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 8.9 Waiver of Bond. In the event the Secured Party seeks to take possession of any or all of the Collateral by judicial process, the Debtors hereby irrevocably waive any bonds and any surety or security relating thereto that may be required by applicable law as an incident to such possession, and waives any demand for possession prior to the commencement of any such suit or action.

Section 8.10 Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.11 Construction. Each Debtor and the Secured Party acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement with its legal counsel and that this Agreement shall be construed as if jointly drafted by the Debtors and the Secured Party.

Section 8.12 Termination; Reinstatement. If all of the Obligations (other than contingent liabilities pursuant to any indemnity, including without limitation Section 6.5 and Section 6.6 hereof, for claims which have not been asserted, or which have not yet accrued) shall have been paid and performed in full (in cash), the Secured Party shall, upon the written request of the Debtors, execute and deliver to the Debtors a proper instrument or instruments acknowledging the release and termination of the security interests created by this Agreement, and shall duly assign and deliver to the Debtors (without recourse and without any representation or warranty) such of the Collateral as may be in the possession of the Secured Party and has not previously been sold or otherwise applied pursuant to this Agreement; provided however that, the effectiveness of this Agreement shall continue or be reinstated, as the case may be, in the event that any payment received or credit given by the Secured Party is returned, disgorged, rescinded or required to be recontributed to any party as an avoidable preference, impermissible setoff, fraudulent conveyance, restoration of capital or otherwise under any applicable state, federal, or local law of any jurisdiction, including laws pertaining to bankruptcy or insolvency, and this Agreement shall thereafter be enforceable against

the Debtors as if such returned, disgorged, recontributed or rescinded payment or credit has not been received or given by the Secured Party, and whether or not the Secured Party relied upon such payment or credit or changed its position as a consequence thereof.

Section 8.13 Release of Collateral. The Secured Party shall, upon the written request of the Debtors, execute and deliver to the Debtors a proper instrument or instruments acknowledging the release of the security interest and Liens established hereby on any Collateral (other than the Pledged Shares): if the sale or other disposition of such Collateral is permitted under the terms of this Agreement or the Forbearance Agreement and, at the time of such proposed release, both before and after giving effect thereto, no Event of Default has occurred and is continuing.

Section 8.14 WAIVER OF JURY TRIAL. EACH DEBTOR AND THE SECURED PARTY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY EITHER SUCH PARTY AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH DEBTOR AND THE SECURED PARTY AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH SUCH PARTY FURTHER AGREES THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

Section 8.15 Consistent Application. The rights and duties created by this Agreement shall, in all cases, be interpreted consistently with, and shall be in addition to (and not in lieu of), the rights and duties created by the Secured Promissory Note and the Intercreditor Agreement. In the event that any provision of this Agreement shall be inconsistent with any provision of the Intercreditor Agreement, such provision of the Intercreditor Agreement shall govern.

Section 8.16 Continuing Lien. The security interest in and Lien on the Collateral granted under this Security Agreement shall be a continuing security interest in every respect and the Secured Party's security interest in the Collateral as granted herein shall continue in full force and effect until the payment of the Obligations in full in cash.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

AG MORTGAGE INVESTMENT TRUST, INC., as a Debtor

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT CMO, LLC, as a Debtor

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

By: **AG MIT, LLC**, as a Debtor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

By: **GCAT 2020-23A, LLC**, as a Debtor

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: Authorized Signatory

By: **G CAT 2020-23B, LLC**, as a Debtor

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: Authorized Signatory

AG MIT INTERNATIONAL LLC, as a Debtor

By: **AG MIT, LLC**, its Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

AG MIT CMO EC LLC, as a Debtor

By: **AG MIT RES LLC**, its Sole Member

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

AG MIT RES LLC, as a Debtor

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT CREL III, LLC, as a Debtor

By: **AG MIT CMO, LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT WFB1 2014 LLC, as a Debtor

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT ARC, LLC, as a Debtor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT HC, L.L.C., as a Debtor

By: **AG MIT WLG LLC**, its Sole Member

By: **AG MIT, LLC**, its Sole Member

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG MIT RPL TRS LLC, as a Debtor

By: **AG MORTGAGE INVESTMENT TRUST, INC.**, its Member

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

AG REIT Management, LLC, as Secured Party

By: ANGELO, GORDON & CO. L.P., its Member

By: /s/ Brian Sigman

Name: Brian Sigman

Title: Chief Financial Officer

Schedule 1

AG MIT CMO, LLC

AG MIT, LLC

GCAT 2020-23A, LLC

GCAT 2020-23B, LLC

AG MIT International LLC

AG MIT CMO EC LLC

AG MIT RES LLC

AG MIT CREL III LLC

AG MIT WFB1 2014 LLC

AG MIT ARC, LLC

AG MIT HC, LLC

AG MITT RPL TRS LLC

INTERCREDITOR AND SUBORDINATION AGREEMENT

Dated as of April 10, 2020

Among

WILMINGTON TRUST, NATIONAL ASSOCIATION

As the Senior Collateral Agent,

AG REIT MANAGEMENT LLC

As Subordinated Lender

and

AG Mortgage Investment Trust, Inc., on behalf of itself and the Seller Entities

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INTERCREDITOR AND SUBORDINATION AGREEMENT

This Intercreditor and Subordination Agreement is made as of April 10, 2020 by and among AG Mortgage Investment Trust, Inc., for itself and the Seller Entities (defined below) (“**AGMIT**”), Wilmington Trust, National Association, not in its individual capacity but solely in its capacity as collateral agent for the holders of the Senior Secured Debt Obligations (defined below) (in such capacity, together with its successors, assigns or replacements in such capacity, the “**Senior Collateral Agent**”) and AG REIT Management LLC, as the holder of the Subordinated Note hereinafter referred to (together with its successors and assigns, the “**Subordinated Lender**”)

PRELIMINARY STATEMENTS

WHEREAS, pursuant to that certain Forbearance Agreement, dated as of April 10, 2020 (the “**Forbearance Agreement**”) by and among AGMIT and its affiliates party thereto (collectively, the “**Seller Entities**” and, together with AGMIT, the “**Debtors**”) and each of the Participating Counterparties (as defined therein) party thereto (the “**Senior Secured Parties**”) and the Security and Collateral Agency Agreement, dated as of April 10, 2020 (the “**Senior Security Agreement**”) by and among the Seller Entities and the Senior Collateral Agent, the Senior Secured Parties have agreed to refrain from exercising certain rights and remedies afforded to such parties under the Applicable Agreements (as defined below);

WHEREAS, pursuant to that certain Note, dated as of April 10, 2020 (the “**Subordinated Note**”) made by AGMIT and issued to the Subordinated Lender, AGMIT incurred indebtedness in the initial principal amount of \$10,000,000 on the terms and subject to the conditions specified in the Subordinated Note; and

WHEREAS, the Senior Collateral Agent and the Subordinated Lender desire to enter into this Agreement to provide for the relative priority of, and to evidence certain agreements with respect to, the Senior Secured Debt Documents and the Subordinated Note Documents (each as defined herein).

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I Definitions and Interpretation.

Section 1.01 Definitions. The following terms shall have the following meanings in this Agreement.

“AGMIT” has the meaning set forth in the Recitals.

“Agreement” means this Intercreditor and Subordination Agreement, as amended, restated, amended and restated, supplemented, renewed, replaced, extended, or otherwise modified from time to time.

“Applicable Agreements” has the meaning set forth in the Forbearance Agreement.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereinafter effect, or any successor statute.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of New York, New York or Wilmington, Delaware.

“Collateral” means, collectively, the Senior Secured Collateral and the Subordinated Collateral.

“Debtors” has the meaning set forth in the Recitals.

“Debtor Relief Laws” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Distribution” means, with respect to any Indebtedness, obligation or security, including the Subordinated Obligations (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such indebtedness, obligation or security or (b) any redemption, purchase or other acquisition of such Indebtedness, obligation or security by any Person (other than any assignment or endorsement of the Subordinated Note to an affiliate of the Subordinated Lender).

“Enforcement Action” means, with respect to the Senior Secured Debt Obligations or the Subordinated Obligations, any (a) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against any of the Collateral or any portion thereof, or against the Debtors, including, without limitation, the taking of possession or control of the Collateral or any portion thereof, (b) any demand for payment thereof (or any portion thereof), the exercise of any rights and remedies with respect to any Collateral or any other assets of the Debtors or the commencement or prosecution of enforcement of any of the rights and remedies under any applicable documents or applicable law, including without limitation the exercise of any right of set-off or recoupment, the making of any

judicial or nonjudicial claim or demand, the commencement or continuation of any judicial, nonjudicial or collection proceeding seeking payment or damages or other relief by way of specific performance, instructions or otherwise and the exercise of any right or remedy (including as a secured creditor under the UCC (or any similar law) of any applicable jurisdiction or under the Bankruptcy Code); provided, however, “Enforcement Action” shall specifically exclude, without limitation, (i) accrual of default interest and late charges and (ii) the filing of claims in any Insolvency Proceeding, including any proofs of claim.

“**Event of Default**” means (a) with respect to the Senior Secured Debt Documents, any Event of Default (as defined in the Senior Security Agreement) and (b) with respect to the Subordinated Note and the Subordinated Note Documents, any Event of Default (as defined therein).

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, as in effect from time to time, in each case that are applicable to the circumstances as of the date of determination.

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra national bodies such as the European Union or the European Central Bank).

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; net obligations of such Person under any rate protection agreement;
- (c) all obligations of such Person to pay the deferred purchase price of Property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than sixty (60) days after the date on which such trade account payable was due);

(d) indebtedness (excluding any prepaid interest thereon) secured by a Lien on Property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(e) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(f) all guarantees of such Person in respect of any of the foregoing Indebtedness of any other Person.

“Insolvency Proceeding” with respect to any Person, means (a) entry by any competent Governmental Authority of any jurisdiction or a court having jurisdiction in the premises of (i) a decree or order for relief in respect of such Person in an involuntary case or proceeding under any applicable Debtor Relief Law or (ii) an involuntary or contested decree or order adjudging such Person as bankrupt or insolvent, or approving as properly filed a petition seeking suspension of payment, reorganization, arrangement, adjustment or composition of or in respect of such Person under any applicable Debtor Relief Law, or appointing a custodian, receiver, monitor, liquidator, assignee, trustee, sequestrator, or other similar official of such Person or of any substantial part of the Property of such Person, or ordering the dissolution, winding up or liquidation of the affairs of such Person and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or (b) commencement by such Person of a voluntary case or proceeding under any applicable Debtor Relief Law or of any other case or proceeding to be adjudicated as bankrupt or insolvent, or the consent by such Person to the entry of a decree or order for relief in respect of such Person in an involuntary case or proceeding under any applicable Debtor Relief Law or to the commencement of any bankruptcy or insolvency case or proceeding against such Person, or the filing by such Person of a petition or answer or consent seeking arrangement, reorganization or relief under any applicable Debtor Relief Law, or consent by such Person to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, monitor, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of the Property of such Person, or the making by such Person of an assignment for the benefit of creditors, or the admission by such Person in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by or on behalf of such Person in furtherance of any such action.

“Lien” means any Mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or preference, contractual right of setoff, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any netting, defeasance or reciprocal fee arrangement, any

purchase or call option, any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real Property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Mortgages” means any deed of trust, mortgage, leasehold mortgage, fixture filing, assignment of rents or other document creating a Lien on real Property or any interest in real Property.

“Paid in Full” means that, with respect to the Senior Secured Debt Obligations (a) all of the Senior Secured Debt Obligations (other than contingent obligations or indemnification obligations for which no underlying claim has been asserted) have been paid, performed or discharged in full (with all Senior Secured Debt Obligations consisting of monetary or payment obligations having been paid in full in cash) and (b) no Person has any further right to obtain any loans or other extensions of credit under the Senior Secured Debt Documents.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Property” with respect to any Person, any right or interest (whether owned, leased or otherwise under the control of such Person) in or to any asset or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Related Parties” means, with respect to any Person, such Person’s affiliates and the directors, officers, employees, partners, agents, trustees, administrators, managers, advisors and representatives of it and its affiliates.

“Seller Entities” has the meaning set forth in the Recitals.

“Senior Collateral Agent” has the meaning set forth in the preamble to this Agreement.

“Senior Secured Collateral” means any “Collateral” as defined in any Senior Secured Debt Document or any other assets of the Debtors with respect to which a Lien is granted or purported to be granted pursuant to a Senior Secured Debt Document as security for any Senior Secured Debt Obligations.

“Senior Secured Debt Documents” means the Forbearance Agreement, the Applicable Agreements and the Senior Security Agreement.

“Senior Secured Debt Obligations” means the obligations of any Debtor to a Senior Secured Party under an Applicable Agreement. Senior Secured Debt Obligations shall be considered to be outstanding until all such Senior Secured Debt Obligations are Paid in Full.

“Senior Secured Parties” has the meaning set forth in the Recitals.

“Senior Secured Rights and Remedies” has the meaning set forth in Section 9.08.

“Senior Security Agreement” has the meaning set forth in the Recitals.

“Standstill Period” has the meaning set forth in Section 4.02.

“Subordinated Collateral” means any “Collateral” as defined in any Subordinated Note Document or any other assets of AGMIT with respect to which a Lien is granted or purported to be granted pursuant to a Subordinated Note Document as security for any Subordinated Obligations.

“Subordinated Lender” has the meaning set forth in the Recitals.

“Subordinated Notes” has the meaning set forth in the Recitals.

“Subordinated Note Documents” means the Subordinated Note and all agreements, documents and instruments entered into in connection therewith.

“Subordinated Obligations” means all of the obligations of the Debtors to the Subordinated Lender, whether now existing or hereafter arising and evidenced by or incurred pursuant to the Subordinated Note Documents, including (a) all principal of and interest (including without limitation any post-petition interest) and premium (if any) on all Indebtedness under the Subordinated Note Documents and (b) all fees, expenses and other amounts payable from time to time pursuant to the Subordinated Note Documents, in each case whether or not allowed or allowable in an Insolvency Proceeding. To the extent any payment with respect to any Subordinated Obligations (whether by or on behalf of the Subordinated Lender, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any Senior Secured Party, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of this Agreement and the rights and obligations of the Senior Secured Parties and Subordinated Lender, be deemed to be reinstated and outstanding as if such payment had not occurred and any notice indicating such obligation or part thereof has been discharged or paid in full shall be deemed void ab initio and to have no effect.

“Subordinated Parties” means the Subordinated Lender.

“UCC” means the Uniform Commercial Code as in effect, from time to time, in the state of New York or any other applicable jurisdiction.

Section 1.02 Terms Generally.

(a) All terms defined in the UCC, unless otherwise defined herein, shall have the meanings set forth therein.

(b) The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise:

(i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented, renewed, replaced, extended, or otherwise modified;

(ii) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns;

(iii) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(iv) any references to sections, subsections, clauses or paragraphs shall be references to sections, subsections, clauses and paragraphs in this Agreement;

(v) the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”; and

(vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

ARTICLE II

Approvals of Indebtedness and Debt Documents.

Section 2.01 Subordinated Lender. The Subordinated Lender hereby acknowledges that (a) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the granting of Liens contemplated by the Senior Secured Debt Documents, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Senior Secured Debt Documents; (b) the execution, delivery and performance of the Senior Secured Debt Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Subordinated Note Documents; and (c) any conditions precedent to the Subordinated Lender’s

consent to the granting of Liens contemplated by the Senior Secured Debt Documents or any other agreements with the Debtors, as they apply to any Senior Secured Debt Documents, have been either satisfied or waived.

Section 2.02 Senior Collateral Agent. The Senior Collateral Agent, on behalf of the Senior Secured Parties, at the direction of the Senior Secured Parties hereby acknowledges that (a) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the issuance of the Subordinated Note and the granting of Liens contemplated by the Subordinated Note Documents and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Subordinated Note Documents; (b) the execution, delivery and performance of the Subordinated Note Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Senior Secured Debt Documents; and (c) any conditions precedent to the Senior Collateral Agent's consent to the Subordinated Note as set forth in the Senior Secured Debt Documents or any other agreements with the Debtors, as they apply to any Subordinated Note Documents or the issuance of the Subordinated Note, have been either satisfied or waived.

Section 2.03 Debtors. AGMIT, on behalf of itself and the Seller Entities, hereby consents to the provisions of this Agreement and the intercreditor arrangements provided for herein and acknowledges that obligations of the Seller Entities under the Senior Secured Debt Documents and the Subordinated Note Documents will in no way be diminished or otherwise affected by such intercreditor arrangements.

ARTICLE III

Subordination.

Section 3.01 General. Except as otherwise expressly set forth in this Agreement, the Subordinated Lender, hereby subordinates and makes junior the Subordinated Note, the Subordinated Note Documents, and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (a) the Senior Secured Debt Obligations, (b) the liens and security interests created by the Senior Secured Debt Documents, and (c) all of the terms, covenants, conditions, rights and remedies contained in the Senior Secured Debt Documents, and no extensions, modifications, consolidations, supplements, amendments, replacements and restatements of or to the Senior Secured Debt Documents shall affect the subordination thereof as set forth in this Article III.

Section 3.02 Payment Subordination (Subordinated Obligations). Except as otherwise expressly set forth in this Agreement, all of the Subordinated Parties' rights to payment under the Subordinated Note and the other Subordinated Obligations are hereby subordinated to all of the Senior Secured Parties' rights to payment by the Debtors of the Senior Secured Debt

Obligations, and no Subordinated Party shall, from and after receipt by such Subordinated Party of written notice of the declaration of an Event of Default with respect to the Senior Secured Debt Documents, accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from the Debtors, or any Subordinated Collateral prior to the date that all Senior Secured Debt Obligations are Paid in Full.

Section 3.03 Lien Subordination. Any and all Liens now existing or hereafter created or arising in favor of any Subordinated Party securing Subordinated Obligations, regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, are expressly junior and subordinate in priority, operation and effect to any and all Liens now existing or hereafter created or arising in favor of any Senior Secured Party securing the Senior Secured Debt Obligations, notwithstanding (a) anything to the contrary contained in any agreement or filing to which any Subordinated Party may now or hereafter be a party, and regardless of the time, order or method of grant, attachment, recording or perfection of any financing statements or other security interests, assignments, pledges, deeds, Mortgages and other liens, charges or encumbrances or any defect or deficiency, alleged defect or deficiency in, or failure to attach or perfect or lapse in perfection of, or avoidance as a fraudulent conveyance or otherwise of, any of the foregoing, (b) any provision of the UCC or any applicable law or any document or any other circumstance whatsoever and (c) the fact that any such Liens in favor of any Senior Secured Party securing any of the Senior Secured Debt Obligations are (i) subordinated to any Lien securing any other obligation of any Senior Secured Party or (ii) otherwise subordinated, voided, avoided, invalidated or lapsed. In the event that any Subordinated Party becomes a judgment lien creditor as a result of its enforcement of its rights hereunder or under any Subordinated Note Documents (whether or not in violation of this Agreement), such judgment lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Liens securing the Senior Secured Debt Obligations) to the same extent as all other Liens securing the Subordinated Obligations. Liens on the Senior Secured Collateral shall be and remain senior in all respects and prior to all Liens on the Subordinated Collateral for all purposes, whether or not such Liens securing any such Senior Secured Debt Obligations are subordinated to any Lien securing any other obligation of the Debtors or any other Person. Payments Held in Trust. All payments or distributions upon or with respect to the Subordinated Note or any other Subordinated Obligations which are received by the Subordinated Lender contrary to the provisions of this Agreement shall be received in trust for the benefit of the Senior Secured Parties and shall be paid over to Senior Collateral Agent in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as Senior Secured Collateral for, the payment or performance of the Senior Secured Debt Obligations in accordance with the terms of the Senior Secured Debt Documents.

Section 3.04 Permitted Payments. Subject to Section 3.02 hereof and receipt by the Senior Collateral Agent of evidence reasonably acceptable to the Senior Collateral Agent that such payments are otherwise permitted pursuant to the Senior Secured Debt Documents, the Subordinated Lender may accept and retain (a) payment-in-kind interest provided for in the Subordinated Note without restriction of any kind hereunder or otherwise and (b) scheduled payments of principal and interest due and payable from time to time (including at maturity) which are required to be paid to the Subordinated Lender, in each case in accordance with the terms and conditions of the Subordinated Note and Subordinated Lender shall have no obligation to pay any such amounts over to the Senior Collateral Agent.

Section 3.05 Prohibition on Contesting Liens. The Senior Collateral Agent, on behalf of each Senior Secured Party, shall have no obligation to perfect or maintain the perfection of the Subordinated Lender's Lien on each item constituting the Subordinated Collateral. The Subordinated Lender shall have no obligation to perfect or maintain the perfection of the Senior Collateral Agent's Lien on each item constituting the Senior Secured Collateral. This Agreement is intended solely to govern the respective Lien and payment priorities as between the Senior Collateral Agent and the Senior Secured Parties, on the one hand, and the Subordinated Lender, on the other hand, and no Subordinated Lender shall impose on the Senior Collateral Agent or any Senior Secured Party any obligations in respect of the disposition of proceeds or foreclosure of any Collateral which would conflict with prior claims thereon in favor of the Senior Collateral Agent or any Senior Secured Party or any order or decree of any court or other governmental authority or any applicable law. The Subordinated Lender, agrees that it will not at any time directly or indirectly object to, contest or support any other Person in objecting to or contesting in any proceeding (including any Insolvency Proceeding), the validity, extent, perfection, priority or enforceability of the Senior Secured Debt Obligations, the Senior Secured Debt Documents, or the Liens and security interests of the Senior Collateral Agent in the Senior Secured Collateral. The Senior Collateral Agent agrees, on behalf of the Senior Secured Parties, that it will not at any time directly or indirectly object to, contest or support any other Person in objecting to or contesting in any proceeding (including any Insolvency Proceeding), the validity, extent, perfection, priority or enforceability of the Subordinated Obligations, the Subordinated Note Documents, or the Liens and security interests of the Subordinated Lender in the Subordinated Collateral. Notwithstanding any failure by the Senior Collateral Agent, the Subordinated Lender, any Senior Secured Party or the Subordinated Lender to perfect its security interests in the Collateral or any avoidance, invalidation or subordination by any third party or court of competent jurisdiction of the security interests in the Collateral granted to any of the foregoing, the priority and rights as between the Senior Collateral Agent, Subordinated Lender, Senior Secured Parties and Subordinated Lender with respect to the Collateral shall be as set forth in this Agreement. Notwithstanding the foregoing, nothing in this

Agreement shall be construed to prevent or impair the rights of the Senior Collateral Agent, any Senior Secured Party, or the Subordinated Lender to enforce this Agreement.

Section 3.06 Authorizations to Senior Collateral Agent and Senior Secured Parties. Each Subordinated Lender hereby (a) irrevocably authorizes and empowers (without imposing any obligation on) the Senior Collateral Agent to demand, sue for, collect and receive all payments and distributions on or in respect of the Subordinated Obligations that are required to be paid or delivered to the Senior Collateral Agent provided herein, and to file and prove all claims therefor and take all such other actions, in the name of such Subordinated Lender, or otherwise, as the Senior Collateral Agent may determine to be necessary or appropriate for the enforcement of these subordination provisions (other than the exercise of the Subordinated Lender's voting rights in respect of its claim in any Insolvency Proceeding involving the Debtors), and (b) agrees to execute and deliver to the Senior Collateral Agent all such further instruments confirming the above authorization, and all such powers of attorney and other instruments and to take all such other actions as may be reasonably requested by the Senior Collateral Agent in order to enable the Senior Collateral Agent to enforce all claims upon or in respect of such Senior Secured Debt Obligations.

Section 3.07 Agreement to Release Liens. Notwithstanding anything to the contrary contained in any agreement between the Subordinated Lender and the Debtors, until the Senior Secured Debt Obligations have been Paid in Full, only the Senior Collateral Agent shall have the right to restrict or permit, or approve or disapprove, the sale, transfer, release or other disposition of the Collateral or take any action with respect to the Collateral. Any such action may be taken by the Senior Collateral Agent without any consultation with or the consent of the Subordinated Lender. In the event that the Senior Collateral Agent releases or agrees to release any of its Liens or security interests in any portion of the Collateral in connection with the sale or other disposition thereof, or any of the Collateral is sold or retained pursuant to a foreclosure or similar action, the Subordinated Lender shall be deemed to consent to such sale or other disposition and the Subordinated Lender's Liens on and security interest in the Collateral to be sold or retained may be released without the need for any further consent or action from the Subordinated Lender. In the event of any sale, transfer, or other disposition (including a casualty loss or taking through eminent domain) of the Collateral, the proceeds resulting therefrom (including insurance proceeds) shall be applied in accordance with the terms of the Senior Secured Debt Documents until such time as the Senior Secured Debt Obligations have been Paid in Full and thereafter shall be applied in accordance with the terms of the Subordinated Note Documents until such time as the Subordinated Obligations have been paid in full.

Section 3.08 Agreements Regarding Actions to Perfect Liens. The Subordinated Lender agrees that UCC-1 financing statements or other filings or recordings filed

or recorded by or on its behalf shall be in form reasonably satisfactory to the Senior Collateral Agent.

Section 3.09 Possessory Security Interests. Upon the Senior Secured Debt Obligations being Paid in Full, the Senior Collateral Agent shall transfer any Subordinated Collateral or evidence of same in its possession or control to the Subordinated Lender, and shall take such action (at the expense of the Debtors) as may be reasonably requested by the Subordinated Lender to provide for control in favor of the Subordinated Lender in respect of any Collateral consisting of deposit or securities accounts subject to a control agreement in favor of the Senior Collateral Agent.

Section 3.10 No New Liens.

(a) The Subordinated Lender agrees that no Subordinated Party shall acquire or hold any Lien on any assets of the Debtors securing any Subordinated Obligation which assets are not also made part of the Senior Secured Collateral and subject to this Agreement. If any Subordinated Party shall (nonetheless and in breach hereof) acquire or hold any Lien on any assets of the Debtors securing any Subordinated Obligation which assets are not also made part of the Senior Secured Collateral and subject to this Agreement, they shall, without the need for further consent of any other party and notwithstanding anything to the contrary in any other document (a) be deemed to hold and have held such Lien for the benefit of the Senior Collateral Agent as security for the Senior Secured Debt Obligations (such Lien to have the priority set forth in this Article III) and shall assign such Lien to the Senior Collateral Agent or (b) if (i) such Lien is held by the Subordinated Lender and (ii) the Senior Collateral Agent is not able to obtain a prior perfected Lien on the applicable assets and (iii) the Senior Collateral Agent so requests, release such Lien.

Section 3.11 Limitation on Duties and Obligations. The Subordinated Lender acknowledges and agrees that no fiduciary or agency relationship between (i) any Senior Secured Party and (ii) any Subordinated Party is intended to be or has been created in respect of any of the transactions contemplated by this Agreement.

ARTICLE IV

Enforcement.

Section 4.01 Exercise of Remedies.

(a) Until the Senior Secured Debt Obligations have been Paid in Full, whether or not an Insolvency Proceeding has been commenced against the Debtors, the Senior Collateral Agent shall have the exclusive right to take or continue any Enforcement Action with respect to the Collateral or any other assets of the Debtors, including the exclusive right to manage, perform and enforce (or not enforce) the terms of the Senior Secured Debt Documents with

respect to the Collateral, to exercise and enforce all privileges and rights thereunder in such order and manner as it may determine in its sole discretion (in accordance with and subject to the terms of the Senior Secured Debt Documents), including, without limitation, the exclusive right to take or retake control or possession of any Collateral and to make determinations regarding the release, disposition or restrictions with respect to the Collateral, without any consultation with or the consent of the Subordinated Lender. In that regard, no Subordinated Party shall, without the prior written consent of the Senior Collateral Agent (i) take or continue any Enforcement Action, (ii) exercise or seek to exercise any rights or remedies (including setoff) with respect to any Collateral, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), (iii) contest, protest or object to any Enforcement Action brought with respect to the Collateral by the Senior Collateral Agent or any Senior Secured Party in respect of the Senior Secured Debt Obligations, or any other exercise by any such party of any rights and remedies relating to the Collateral under the Senior Secured Debt Documents or otherwise in respect of the Senior Secured Debt Obligations, or (iv) object to the forbearance by the Senior Secured Parties from bringing or pursuing any Enforcement Action or other action or any other exercise of any rights or remedies relating to the Collateral in respect of Senior Secured Debt Obligations. Notwithstanding anything to the contrary in this Agreement, the Subordinated Lender may, subject to Section 8.02, file and defend proofs of claim against the Debtors in any Insolvency Proceeding involving the Debtors.

(b) The Subordinated Lender acknowledges and agrees it shall not, in an Insolvency Proceeding or otherwise, directly or indirectly bid, or work in concert with any prospective bidder, in any sale or disposition of any assets of AGMIT (including any credit bid) unless such bid (i) contains a cash component sufficient to Pay in Full in cash the Senior Secured Debt Obligations and (ii) requires, and is expressly conditioned upon the court approving, such payment being made in closing of the transaction. None of the Senior Secured Parties shall have any liability to any Subordinated Party in respect of any failure by any of the Senior Secured Parties to obtain repayment in full of the Subordinated Obligations.

Section 4.02 Standstills and Waivers. The Subordinated Lender agrees that until the Senior Secured Debt Obligations are Paid in Full, the Subordinated Lender:

(a) will not take or cause to be taken any action, the purpose or effect of which is to make any Lien in respect of any Subordinated Obligation *pari passu* with or senior to, or to give any Subordinated Lender any preference or priority relative to, the Liens with respect to the Senior Secured Debt Obligations or the Senior Secured Parties with respect to any of the Collateral;

(b) will not oppose, object to, interfere with, hinder or delay, in any manner, whether by judicial proceedings (including without limitation the filing of an Insolvency Proceeding by or against the Debtors or any of their assets) or otherwise, any foreclosure, sale,

lease, exchange, transfer or other disposition of the Collateral by or for the benefit of the Senior Collateral Agent or any other Enforcement Action taken by or on behalf of any Senior Secured Party;

(c) has no right to (i) direct any Senior Secured Party to exercise any right, remedy or power with respect to the Collateral or pursuant to the Senior Secured Debt Documents or (ii) have its consent required for or object to the exercise by any Senior Secured Party of any right, remedy or power with respect to the Collateral or pursuant to the Senior Secured Debt Documents or to the timing or manner in which any such right is exercised or not exercised (or, to the extent they may have any such right described in this clause (c), whether as a junior lien creditor, unsecured creditor or otherwise, each such Person hereby irrevocably waives such right);

(d) will not institute any suit or other proceeding or assert in any suit, Insolvency Proceeding or other proceeding any claim against the Senior Collateral Agent or any Senior Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, and neither the Senior Collateral Agent nor any Senior Secured Party shall be liable for, any action taken or omitted to be taken by the Senior Collateral Agent or any Senior Secured Party with respect to the Collateral or pursuant to the Senior Secured Debt Documents;

(e) will not commence any Enforcement Action;

(f) will not commence judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interest in or realize upon, the Collateral or the Subordinated Note Documents; and

(g) will not seek, and hereby waives any right, to have the Collateral or any part thereof marshaled upon any foreclosure or other disposition of the Collateral.

ARTICLE V

Payments.

Section 5.01 Application of Collateral Proceeds. If an Event of Default with respect to the Senior Secured Debt Documents shall have occurred and be continuing, so long as the Senior Secured Debt Obligations have not been Paid in Full and whether or not any Insolvency Proceeding has been commenced by or against the Debtors, the Collateral and any proceeds received in connection with the sale or other disposition of, or collection on, the Collateral upon the exercise of remedies shall be applied by the Senior Collateral Agent to the Senior Secured Debt Obligations in such order as specified in the Senior Secured Debt

Documents until the Senior Secured Debt Obligations shall have been Paid in Full. When the Senior Secured Debt Obligations have been Paid in Full, the Senior Collateral Agent shall deliver promptly to the Subordinated Lender any Collateral or proceeds thereof held by it in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct, to be applied by the Subordinated Lender to the Subordinated Obligations in such order as specified in the relevant Subordinated Note Document.

Section 5.02 Payments Over. Unless and until the Senior Secured Debt Obligations have been Paid in Full and whether or not any Insolvency Proceeding has been commenced by or against the Debtors, the Collateral and any proceeds thereof received by the Subordinated Lender in connection with the exercise of any right or remedy (including setoff) relating to the Collateral, in contravention of this Agreement or otherwise, shall be segregated and held in trust for the benefit of, and immediately paid over to, the Senior Collateral Agent for the benefit of the Senior Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The Senior Collateral Agent is hereby authorized to make any such endorsements as agent for the Subordinated Lender. This authorization is coupled with an interest and is irrevocable.

ARTICLE VI

Modifications and Amendments.

Section 6.01 Modifications to Senior Secured Debt Documents. The Senior Collateral Agent may at any time and from time to time without the consent of or notice to the Subordinated Lender, without incurring liability to the Subordinated Lender and without impairing or releasing the obligations of the Subordinated Lender under this Agreement, change the manner or place of payment, or extend the time of payment of, or renew or alter any of the terms of the Senior Secured Debt Obligations (including any increase in the amount thereof), or amend in any manner any Senior Secured Debt Document.

Section 6.02 Modifications to Subordinated Note Documents. Until the Senior Secured Debt Obligations have been Paid in Full, and notwithstanding anything to the contrary contained in the Subordinated Note Documents, the Subordinated Lender agrees that it shall not, without the prior written consent of the Senior Collateral Agent, agree to any amendment, modification, or supplement to the Subordinated Note Documents if such amendment, modification or supplement would add or change any terms in a manner adverse to the Senior Collateral Agent or any Senior Secured Party (including, for the avoidance of doubt, any addition of any Event of Default under the Subordinated Note Documents not existing on the date hereof), or shorten the final maturity of the Subordinated Obligations, require any payment to be made sooner than originally scheduled, increase the interest rate applicable thereto or subject the Debtors to any prohibitions or limitations on the making of payments on the Senior Secured Debt Obligations.

ARTICLE VII

Waiver of Certain Rights over Collateral by Subordinated Lender.

Section 7.01 Marshalling. The Subordinated Lender hereby waives any rights it may have under applicable law to assert the doctrine of marshalling or to otherwise require the Senior Collateral Agent to marshal any property of the Debtors for the benefit of the Subordinated Parties.

Section 7.02 Rights Relating to Senior Collateral Agent's Actions Regarding the Collateral. The Subordinated Lender hereby waives, to the extent permitted by applicable law, any rights which it may have to enjoin or otherwise obtain a judicial or administrative order preventing the Senior Collateral Agent from taking, or refraining from taking, any action with respect to all or any part of the Collateral. Without limitation of the foregoing, the Subordinated Lender hereby agrees (a) that it has no right to direct or object to the manner in which the Senior Collateral Agent applies the proceeds of the Collateral resulting from the exercise by the Senior Collateral Agent of rights and remedies under the Senior Secured Debt Documents and (b) that the Senior Collateral Agent has not assumed any obligation to act as the agent for the Subordinated Lender with respect to the Collateral. The Senior Collateral Agent shall have the exclusive right to enforce rights and exercise remedies with respect to the Collateral until the Senior Secured Debt Obligations have been Paid in Full. In exercising rights and remedies with respect to the Collateral, the Senior Collateral Agent may enforce the provisions of the Senior Secured Debt Documents and exercise remedies thereunder, all in such order and in such manner as it may determine in its sole discretion. Such exercise and enforcement shall include, without limitation, the rights to sell or otherwise dispose of Collateral, to incur expenses in connection with such sale or disposition and to exercise all the rights and remedies of a secured lender under the UCC. In conducting any public or private sale under the UCC, the Senior Collateral Agent shall give the Subordinated Lender written notice of such sale; provided, however, that 10 (ten) days' notice shall be deemed to be commercially reasonable notice; provided, further, that the Subordinated Lender may waive the number of days required to provide notice.

Section 7.03 Preservation of Rights. The Senior Collateral Agent shall have no duty to protect or preserve any rights pertaining to any of the Collateral in its possession and the Senior Collateral Agent shall not have any liability to the Subordinated Lender for any claims and liabilities at any time arising with respect to the Collateral in its possession.

Section 7.04 Bailee/Agent for Perfection. Each of the Senior Collateral Agent and the Subordinated Lender acknowledges and agrees that to the extent that it (or its agent) retains physical possession or control of any of the Collateral or has control of any Collateral consisting of deposit accounts or securities accounts, it (or its agent) shall hold such Collateral or have such control on behalf of the others so that for purposes of perfecting any Lien in any Collateral it acts and holds such Collateral on behalf of the Senior Collateral Agent and the

Subordinated Lender. Nothing in this Section 7.04 shall affect the relative priorities in and to the Collateral, all of which shall be governed by Article III.

ARTICLE VIII

Insolvency Proceedings.

Section 8.01 Subordination Agreement. This Agreement, which the parties hereto expressly acknowledge is a “subordination agreement” under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency Proceeding. All references in this Agreement to the Borrower shall include the Borrower as a debtor-in-possession and any receiver or trustee for the Borrower in any Insolvency Proceeding.

Section 8.02 Liquidation, Dissolution, Bankruptcy. In the event of any Insolvency Proceeding involving the Debtors:

(a) All Senior Secured Debt Obligations shall first be Paid in Full before any Distribution, whether in cash, securities or other property, shall be made to any Subordinated Party on account of any Subordinated Obligations.

(b) Any Distribution, whether in cash, securities or other property which would otherwise, but for the terms hereof, be payable or deliverable in respect of the Subordinated Obligations shall be delivered to the Senior Collateral Agent, and applied in accordance with the terms of the Senior Secured Debt Documents.

(c) The Subordinated Lender irrevocably authorizes, empowers, and directs any debtor, debtor-in-possession, receiver, trustee, liquidator, custodian, conservator or other Person having authority, to pay or otherwise deliver all such Distributions to the Senior Collateral Agent as set forth above. The Subordinated Lender also irrevocably authorizes and empowers the Senior Collateral Agent, in the name of the Subordinated Lender, to demand, sue for, collect and receive any and all such Distributions.

(d) The Subordinated Lender agrees not to initiate, prosecute or participate in any claim, action or other proceeding challenging the enforceability, validity, perfection or priority of any portion of the Senior Secured Debt Obligations or any Liens and security interests securing any portion of the Senior Secured Debt Obligations.

(e) The Subordinated Lender agrees that the Senior Secured Parties may consent to the use of cash collateral or provide debtor-in-possession financing to the Borrower, on such terms and conditions as the Senior Secured Parties, in their sole discretion, may decide _ and, in connection therewith, the Borrower may grant to the Senior Collateral Agent liens and security interests upon all of the property of the Borrower, which liens and security interests (i) shall secure payment of all Senior Secured Debt Obligations owing to the Senior Collateral

Agent or the Senior Secured Parties (whether such Senior Secured Debt Obligations arose prior to the commencement of any Insolvency Proceeding or at any time thereafter) and all other financing provided by the Senior Collateral Agent (on behalf of the Senior Secured Parties) and the Senior Secured Parties during such Insolvency Proceeding and (ii) shall be superior in priority to the Liens in favor of the Subordinated Lender on the property of the Debtors. The Subordinated Lender agrees that it will not object to or oppose any such cash collateral usage or debtor-in-possession financing or any sale or other disposition of any property securing all of any part of the Senior Secured Debt Obligations free and clear of security interests, liens, or other claims of any Subordinated Party under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code, if the Senior Secured Parties have consented to such sale or disposition. The Subordinated Lender agrees not to assert any right it may have to “adequate protection” of its interest in any Collateral in any Insolvency Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to any Collateral without the prior written consent of the Senior Collateral Agent; provided that, the Senior Collateral Agent will not object to any request by the Subordinated Lender for adequate protection replacement liens on all pre-petition and post-petition property of the Debtors upon which the Senior Collateral Agent is also granted adequate protection replacement liens, with such liens in favor of the Subordinated Lender being subject in all respects to this Agreement; provided, further that, other than such replacement liens the Subordinated Lender will not seek any other form of adequate protection. The Subordinated Lender waives any claim it may now or hereafter have against the Senior Collateral Agent and any Senior Secured Party arising out of the election of any of them of the application of Section 1111(b)(2) of the Bankruptcy Code or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency Proceeding. The Subordinated Lender agrees that it and they will not provide, or offer to provide, any debtor-in-possession financing to the Debtors without the prior written consent of the Senior Collateral Agent unless any such debtor-in-possession financing will be utilized to Pay in Full the Senior Secured Debt Obligations .

(f) The Subordinated Lender agrees to execute, verify, deliver, and file any proofs of claim in respect of the Subordinated Obligations reasonably requested by the Senior Collateral Agent in connection with any such Insolvency Proceeding and hereby irrevocably authorizes the Senior Collateral Agent to file such proofs of claim upon the failure of the Subordinated Lender to do so by the date that is three (3) Business Days before the expiration of the time to file any such proof of claim; provided, however, that the Senior Collateral Agent shall not be permitted to vote such claim and all voting rights with respect thereto shall be retained by the Subordinated Lender. The Subordinated Lender agrees not to vote for any plan of reorganization that does not provide for the Senior Secured Debt Obligations to be Paid in Full or otherwise vote its claims or interests in any Insolvency Proceeding (including voting for, or supporting, confirmation of any plans of reorganization) in a manner that would be inconsistent

with the covenants and agreements of the Subordinated Lender contained herein. For the avoidance of doubt, the Senior Collateral Agent shall have no affirmative obligation to file any such proof of claim on behalf of the Subordinated Lender.

(g) The Senior Secured Debt Obligations shall continue to be treated as Senior Secured Debt Obligations and the provisions of this Agreement shall continue to govern the relative rights and priorities of the Senior Secured Parties and the Subordinated Parties even if all or part of the Senior Secured Debt Obligations or the Liens or security interests securing the Senior Secured Debt Obligations are subordinated, set aside, avoided, invalidated, or disallowed in connection with any such Insolvency Proceeding. This Agreement shall be reinstated if at any time any payment of any of the Senior Secured Debt Obligations is rescinded or must otherwise be returned by any holder of Senior Secured Debt Obligations or any representative of such holder.

(h) Each of the Senior Collateral Agent and the Subordinated Lender acknowledges and agrees with respect to the Collateral that (i) the grants of Liens on the Collateral pursuant to the Senior Secured Debt Documents and the Subordinated Note Documents constitute separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Senior Secured Debt Obligations and the Subordinated Obligations are fundamentally different from one another and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency Proceeding of the Debtors. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is determined by a court of competent jurisdiction that the claims of the Senior Secured Parties and the Subordinated Lender in respect of any Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the Senior Secured Parties shall be entitled to receive, in addition to amounts distributed to them from, or in respect of, the Collateral in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs and other charges, irrespective of whether a claim for such amounts is allowed or allowable in such liquidation or Insolvency Proceeding, before any Distribution from, or in respect of, any such Collateral is made in respect of the claims held by the Subordinated Lender. The Subordinated Lender, hereby acknowledges and agrees to turn over to the Senior Collateral Agent amounts otherwise received or receivable by it to the extent necessary to effectuate the intent of the preceding sentence, regardless of whether such turnover has the effect of reducing the claim or recovery of the Subordinated Lender.

ARTICLE IX

Miscellaneous.

Section 9.01 Conflict. In the event of any conflict between any term, covenant, or condition of this Agreement and any term, covenant or condition of the Subordinated Note Documents, the provisions of this Agreement shall control and govern.

Section 9.02 Continuing Subordination; Termination of Agreement. This is a continuing agreement of subordination and the Senior Secured Parties may continue, at any time and without notice to any of the Subordinated Parties, to extend credit or other financial accommodations and loan monies to, or for the benefit of, the Debtors on the faith hereof.

Section 9.03 Amendments; Modifications. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether oral or written, relating to the subject matter hereof. Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in any event unless the same is in writing and signed by the Senior Collateral Agent and the Subordinated Lender, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given; provided, however, that no such amendment shall be effective without the consent of the Debtors to the extent such amendment is adverse to the Debtors or imposes additional obligations or otherwise changes the Debtors' obligations under this Agreement. Any notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

Section 9.04 No Subrogation. The Subordinated Lender shall not be subrogated to the rights of the Senior Collateral Agent with respect to receipt of Distributions on account of the Subordinated Obligations unless and until all of the Senior Secured Debt Obligations have been Paid in Full. For the purposes of such subrogation, no Distributions made to the holders of the Senior Secured Debt Obligations to which the Subordinated Lender would be entitled except for this Agreement, and no payments made pursuant to the provisions of this Agreement to the Senior Collateral Agent or any other Senior Secured Party by such Subordinated Lender shall, as among the Debtors, their creditors and such Subordinated Lender, be deemed to be a payment by the Debtors to or on account of the Senior Secured Obligations. The Subordinated Lender agrees that in the event that all or any part of a payment made with respect to the Senior Secured Debt Obligations is recovered from the holders of the Senior Secured Debt Obligations in an Insolvency Proceeding or otherwise, any Distribution received by the Subordinated Lender with respect to the Subordinated Obligations at any time after the date of the payment that is so recovered, whether pursuant to the right of subrogation provided for in this Agreement or otherwise, shall be deemed to have been received by the Subordinated Lender in trust as property of the holders of the Senior Secured Debt Obligations and the Subordinated Lender, as the case

may be, shall forthwith deliver the same to the Senior Collateral Agent for application to the Senior Secured Debt Obligations, until the Senior Secured Debt Obligations have been Paid in Full.

Section 9.05 No Impairment. No right of the Senior Secured Parties to enforce the provisions hereof shall at any time in any way be prejudiced or impaired by any act taken in good faith, or failure to act, which failure to act is in good faith, by the Senior Secured Parties or by any non-compliance by the Borrower with the terms and provisions and covenants herein. The Subordinated Lender agrees not to take any action to avoid or to seek to avoid the observance and performance of the terms and conditions hereof, and shall at all times in good faith carry out all such terms and conditions.

Section 9.06 Subordinated Obligations Not Affected. The subordination provisions of this Agreement as relates to the Subordinated Obligations relative to the Senior Secured Debt Obligations are and are intended solely for the purposes of defining the relative rights of the Subordinated Lender, on the one hand, and the Senior Secured Parties, on the other hand, as among themselves. Subject to this Agreement, as between the Debtors and the Subordinated Lender, nothing contained herein shall impair the obligation of the Debtors to the Subordinated Lender to pay the Subordinated Obligations as they become due and payable. No Person other than the Senior Secured Parties and the Subordinated Lender and their respective successors and assigns shall have any rights hereunder with respect to such subordination provisions.

Section 9.07 Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Senior Secured Parties, the Subordinated Lender, and the Debtors. To the extent permitted under the Senior Secured Debt Documents, any of the Senior Secured Parties may, from time to time, without notice to the Subordinated Lender, assign or transfer any or all of the Senior Secured Debt Obligations or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the Senior Secured Debt Obligations shall, subject to the terms hereof, be and remain Senior Secured Debt Obligations for purposes of this Agreement, and every permitted assignee or transferee of any of the Senior Secured Debt Obligations or of any interest therein shall, to the extent of the interest of such permitted assignee or transferee in the Senior Secured Debt Obligations, be entitled to rely upon and be the third party beneficiary of the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto.

Section 9.08 Senior Secured Rights and Remedies. The rights, remedies, powers and privileges of the Senior Secured Parties hereunder (hereinafter, the “**Senior Secured Rights and Remedies**”) shall be cumulative and not exclusive of any rights or remedies which it would

otherwise have. No delay or omission by any Senior Secured Party in exercising or enforcing any of the Senior Secured Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by any Senior Secured Party of any of the Senior Secured Rights and Remedies or of any default or remedy under any other agreement with the Borrower or any Subordinated Party shall operate as a waiver of any other default hereunder or thereunder. No exercise of the Senior Secured Rights and Remedies at any time shall preclude any other or further exercise of the Senior Secured Rights and Remedies. No waiver by any Senior Secured Party of any of the Senior Secured Rights and Remedies on any one occasion shall be deemed a continuing waiver. All of the Senior Secured Rights and Remedies and all of the Senior Secured Parties' rights, remedies, powers and privileges under any other agreement with any Subordinated Party and/or the Debtors shall be cumulative, and not alternative or exclusive, and may be exercised by the Senior Secured Parties at such time or times and in such order of preference as the Senior Secured Parties in their sole discretion may determine.

Section 9.09 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (or by e-mail as provided in clause (b) below), all notices and other communications provided for herein shall be made in writing and mailed by certified or registered mail, delivered by hand or overnight courier service, or sent by facsimile as follows:

(i) If to the Debtors, to:

AG Mortgage Investment Trust, Inc.
c/o Angelo, Gordon & Co., L.P.,
245 Park Avenue
New York, NY 10167
Attn: Raul E. Moreno
Email: RMoreno@angelogordon.com

with a copy, which shall not constitute notice, to

Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166
Attn: Peter S. Partee, Sr.
Email: ppartee@huntonak.com

(ii) if to the Senior Collateral Agent, to:

Wilmington Trust, National Association,
as Senior Collateral Agent

1100 North Market Street
Wilmington, Delaware 19890
Attn: Corporate Trust Administration
Email: jluce@wilmingtontrust.com

(iii) if to the Subordinated Lender, to:

AG REIT Management LLC
c/o Angelo, Gordon & Co., L.P.,
245 Park Avenue
New York, NY 10167
Attn: Frank Stadelmaier
Email: FStadelmaier@angelogordon.com

with a copy to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Mark Volow
Email: mvolow@akingump.com

(b) Each party hereto may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications (i) mailed by certified or registered mail or sent by hand or overnight courier service shall be deemed to have been given when received; (ii) sent by facsimile shall be deemed to have been given when sent; (iii) sent by e-mail shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (iv) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (iii) of notification that such notice or communication is available and identifying the website address therefor; provided that, in the case of clauses (ii), (iii) and (iv) above, if such notice, facsimile, e-mail or other communication is not sent during the recipient's normal business hours, such notice, facsimile, e-mail or communication shall be deemed to have been sent at the recipient's opening of business on the next business day. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.10 Further Assurances. Each party to this Agreement will promptly execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

Section 9.11 Headings. The section headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

Section 9.12 Counterparts; Integration; Effectiveness; Electronic Execution. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties with respect to the subject matter hereof and supersedes all previous agreements and understandings, oral or written, with respect thereto. This Agreement shall become effective when it shall have been executed by the Senior Collateral Agent and the Subordinated Lender and when the Senior Collateral Agent shall have received counterparts hereof that together bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.13 Severability. In the event that any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as to most fully achieve the intention of this Agreement.

Section 9.14 Specific Performance. The Senior Collateral Agent may demand specific performance of this Agreement. The Subordinated Lender hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any Senior Secured Party.

Section 9.15 Expenses. In the event that the Senior Secured Parties undertake any action that is reasonably necessary in order to enforce the provisions of this Agreement (whether or not suit is commenced), the Borrower shall be obligated to pay all costs and expenses incurred by the Senior Secured Parties in connection therewith, including, without limitation, attorneys’ fees, all in accordance with the Senior Secured Debt Documents.

Section 9.16 Termination. This Agreement shall terminate upon the Senior Secured Debt Obligations being Paid in Full; provided, that upon repayment in full of the Subordinated Obligations, the Subordinated Lender shall no longer be a party hereto and provisions related specifically to the Subordinated Obligations shall no longer be in effect.

Section 9.17 Concerning the Senior Collateral Agent. Notwithstanding anything contained herein to the contrary, this Agreement has been signed by Wilmington Trust, National Association, not in its individual capacity but solely in its capacity as Senior Collateral Agent and in no event shall Wilmington Trust, National Association in its individual capacity have any liability for the representations, covenants, agreements or other obligations made by the Senior Collateral Agent on behalf of the Senior Secured Parties hereunder or in any of the certificates, notices or agreements delivered pursuant hereto. The parties agree that the Senior Collateral Agent shall be afforded all of the rights, privileges, protections and immunities afforded to the Collateral Agent under the Senior Secured Debt Documents in connection with its execution of this Agreement and the performance of its duties hereunder.

Section 9.18 Governing Law; Jurisdiction; Etc.

(a) This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the State of New York. The Subordinated Lender irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever, whether in law or equity, or whether in contract or tort or otherwise, against any Senior Secured Party, or any of their respective Related Parties in any way relating to this Agreement, in any forum other than the United States District Court for the Southern District of New York and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that any such action, litigation or proceeding may be brought in any such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing herein shall affect any right that the Senior Secured Parties may otherwise have to bring any action or proceeding relating to this Agreement against the Subordinated Lender or the Debtors or their respective properties in the courts of any jurisdiction. The Subordinated Lender irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court referred to in Section 9.17(a). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(b) Each party hereto irrevocably consents to the service of process in the manner provided for notices in Section 9.09 and agrees that nothing herein will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

Section 9.19 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY. EACH PARTY HERETO (A) CERTIFIES THAT NO AGENT, ATTORNEY, REPRESENTATIVE OR ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF LITIGATION, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Collateral Agent

By: /s/ Jennifer A. Luce

Name: Jennifer A. Luce

Title: Vice President

Signature Page to Intercreditor and Subordination Agreement

AG REIT MANAGEMENT, LLC, as Subordinated Lender

By: **ANGELO, GORDON & CO. L.P.**

its Member

By: /s/ Brian Sigman

Name: Brian Sigman

Title: Chief Financial Office

Signature Page to Intercreditor and Subordination Agreement

AG MORTGAGE INVESTMENT TRUST, INC., on behalf of itself and the
Seller Entities

By: /s/ Raul E. Moreno
Name: Raul E. Moreno
Title: General Counsel

Signature Page to Intercreditor and Subordination Agreement

AG Mortgage Investment Trust, Inc. Provides Company Update

NEW YORK -- (BUSINESS WIRE) - April 13, 2020 -AG Mortgage Investment Trust, Inc. (NYSE: MITT) (the “Company”) announced today that the Company and certain of its affiliates have entered into a Forbearance Agreement with each of the following financing counterparties: Bank of America, N.A., BofA Securities, Inc., Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse International, Barclays Capital Inc., Barclays Bank PLC, Société Générale S.A., Wells Fargo Bank, National Association, Wells Fargo Securities, LLC, Goldman Sachs Bank USA and Goldman, Sachs & Co. (each, a “Participating Counterparty,” and collectively, the “Participating Counterparties”). As initially announced on March 23, 2020, due to the turmoil in the financial markets resulting from the COVID-19 pandemic, the Company has been engaged in ongoing discussions with its financing counterparties regarding forbearance with respect to the Company’s obligations under its financing arrangements.

The Company’s aggregate outstanding financing arrangements with the Participating Counterparties included under the Forbearance Agreement are approximately \$750 million as of April 9, 2020, representing approximately 82% of the Company’s recourse financing arrangements outstanding as of the date of the Forbearance Agreement, exclusive of recourse financing arrangements relating to unsettled security sales, which are scheduled to settle Monday, April 13. The Company believes that it has good working relationships with certain other counterparties that are not participating in the Forbearance Agreement and is engaged in continuing discussions with those counterparties.

Under the terms of the Forbearance Agreement, the Participating Counterparties have agreed to forbear from exercising any rights or remedies for 15 days (unless terminated sooner upon the occurrence of certain events) under their respective financing agreements, including selling collateral to enforce margin calls.

In connection with the Forbearance Agreement, the Company also granted the Participating Counterparties a security interest in all assets of the Company, including the proceeds of the Note (as defined below).

During the period covered by the Forbearance Agreement, the Company intends to continue to consider asset sales and explore other potential transactions to reduce its obligations under its financing arrangements and raise cash to bolster its liquidity.

In connection with the Forbearance Agreement, on April, 10, 2020, the Company issued a secured promissory note (the “Note”) to AG REIT Management, LLC, the Company’s external manager (the “Manager”), evidencing a \$10 million loan made by the Manager to the Company. The obligations under the Note are guaranteed by certain subsidiaries of the Company. The Note is payable on the earlier to occur of (i) the full and indefeasible payment of the obligations of the Company arising under the repurchase agreements of the Participating Counterparties, and (ii) March 31, 2021. The unpaid principal balance of the Note will accrue interest at a rate of 6.0% per annum. Interest on the Note shall be payable monthly in kind through the addition of such accrued monthly interest to the outstanding principal balance of the Note.

The Manager has agreed to subordinate the obligations of the Company with respect to the Note and liens held by the Manager for the security of the performance of the Company’s obligations under the Note to the Company’s obligations to the Participating Counterparties pursuant to the Forbearance Agreement and related documents.

The terms of the Note were unanimously approved by the independent members of the Board of Directors of the Company.

As previously reported, the Company has engaged Hunton Andrews Kurth LLP as legal counsel and FTI LLC as financial advisor in connection with its financings and related matters.

Evercore has been engaged by the independent members of the Board to advise them in connection with a review of capital raising and strategic options for the Company. Fried Frank Harris Shriver & Jacobson LLP is serving as legal advisor to the independent members of the Board.

ABOUT AG MORTGAGE INVESTMENT TRUST, INC.

AG Mortgage Investment Trust, Inc. is a hybrid mortgage REIT that opportunistically invests in and manages a diversified risk-adjusted portfolio of Agency RMBS and Credit Investments, which include Residential Investments and Commercial Investments. AG Mortgage Investment Trust, Inc. is externally managed and advised by AG REIT Management, LLC, a subsidiary of Angelo, Gordon & Co., L.P., an SEC-registered investment adviser that specializes in alternative investment activities.

FORWARD LOOKING STATEMENTS

This press release includes “forward-looking statements” within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995 related to the Company’s outstanding indebtedness and the status of our ongoing discussions with our repurchase counterparties, among others. Forward-looking statements are based on estimates, projections, beliefs and assumptions of management of the Company at the time of such statements and are not guarantees of future performance. Forward-looking statements involve risks and uncertainties in predicting future results and conditions. Actual results and outcomes could differ materially from those projected in these forward-looking statements due to a variety of factors, including, without limitation, changes in interest rates, changes in default rates, changes in the yield curve, changes in prepayment rates, the availability and terms of financing, changes in the market value of our assets, general economic conditions, conditions in the market for Agency RMBS, Non-Agency RMBS and CMBS securities, Excess MSRs and loans, our ability to predict and control costs, conditions in the real estate market, legislative and regulatory changes that could adversely affect the business of the Company and the ongoing spread and economic effects of the novel coronavirus (COVID-19). Additional information concerning these and other risk factors are contained in the Company’s filings with the SEC, including its most recent Annual Report on Form 10-K and subsequent filings. Copies are available free of charge on the SEC’s website, <http://www.sec.gov/>. All information in this press release is as of April 13, 2020. The Company undertakes no duty to update any forward-looking statements to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based.

Source: AG Mortgage Investment Trust, Inc.

AG Mortgage Investment Trust, Inc.

Investor Relations

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