

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): **June 1, 2020 (May 28, 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, including zip code)

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))

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)

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. ☐

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**Item 1.01 Entry Into a Material Definitive Agreement*****Mortgage Loan Sale***

As previously reported, AG Mortgage Investment Trust, Inc. (the “Company”) entered into a Bid Terms Acknowledgment Letter (the “Letter Agreement”) with an unaffiliated third party, evidencing the third party’s intent to purchase the pool of mortgage loans specified therein. The Letter Agreement provided that the purchase and sale of the loans were subject to the parties entering into a Mortgage Loan Purchase and Sale Agreement.

On May 28, 2020, the Company, as obligor, entered into a Mortgage Loan Purchase and Sale Agreement (the “MLPSA”) with Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as trustee for BCAT 2020-23TT (the “Seller”) and UMB Bank, National Association, not in its individual capacity, but solely as legal title trustee for LVS Title Trust XIII (the “Purchaser”). The MLPSA provided for the sale by the Seller to the Purchaser of mortgage loans specified therein (the “Loans”) having an approximate unpaid principal balance of \$465 million for net proceeds of approximately \$383 million. The closing of the purchase and sale of the Loans occurred on May 28, 2020.

The net proceeds from the sale of the Loans pursuant to the MLPSA, were used to repay the Company’s indebtedness and associated payables secured by the Loans in the aggregate amount of approximately \$383 million.

***Third Forbearance Agreement***

As previously reported, on April 27, 2020, the Company entered into a Second Forbearance Agreement dated April 27, 2020 (the “Second Forbearance Agreement”) pursuant to which each participating counterparty thereto agreed to continue 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) 4:30 p.m. Eastern Daylight Time on June 1, 2020, or (b) the occurrence and continuance of a Triggering Event (as defined). Upon expiration of the Second Forbearance Agreement on June 1, 2020, the Company entered into a Third Forbearance Agreement with the participating counterparties (the “Third Forbearance Agreement”) which extended the forbearance period from June 1, 2020 to the earlier of (i) 4:30 p.m. Eastern Daylight Time on June 15, 2020, or (ii) the occurrence and continuance of a Triggering Event (as defined). The other terms of the Second Forbearance Agreement were substantively unchanged in the Third Forbearance Agreement.

The foregoing descriptions of the MLPSA and the Third Forbearance Agreement are not complete and are qualified in their entirety by the text of each agreement, which are attached as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K.

**Item 7.01. Regulation FD Disclosure.*****Press Release***

On June 1, 2020, the Company issued a press release, a copy of which is furnished as Exhibit 99.1 to this Current Report on Form 8-K 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 8.01. Other Events.*****Litigation Settlement***

As previously reported, the Company received written notices from Royal Bank of Canada and one of its affiliates (“RBC”) alleging that events of default had occurred with respect to various financing agreements. The Company disputed RBC’s notices of events of default and filed a suit in federal district court in New York seeking both to enjoin RBC from selling the Company’s collateral securing the financing as well as damages. On May 28, 2020, the Company entered into a settlement agreement with RBC pursuant to which the Company agreed to dismiss its suit with prejudice and the Company and RBC mutually released each other from further claims pursuant to the financing agreement. As part of the settlement, the Company paid RBC \$5.0 million in cash and issued to RBC a secured promissory note in the principal amount of \$2.0 million (the “Note”).

The principal amount of the Note is due on July 27, 2020 and accrues interest on the unpaid principal balance at 6.0% per annum. 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 (the "RBC Security Agreement") dated May 28, 2020 between the Company and RBC. Pursuant to the RBC Security Agreement, the Company's obligations with respect to the Note and the lien held by RBC for the security of the performance of the Company's obligations under the Note, are subordinate to the Company's obligations to the Participating Counterparties (as defined in the Third Forbearance Agreement) and to the lien held by the Collateral Agent (as defined) pursuant to an Intercreditor and Subordination Agreement by and among the Company, RBC and the Collateral Agent (the "RBC Intercreditor and Subordination Agreement").

AG REIT Management, LLC, the Company's external manager (the "Manager"), simultaneously entered into a separate intercreditor and subordination agreement with RBC (the "Manager Intercreditor and Subordination Agreement") subordinating the payment of the Company's previously issued \$20 million secured promissory note payable to the Manager to the Note payable to RBC, with the effect that the Company's obligations to the Participating Counterparties has first priority with respect to the Company's assets, the Note payable to RBC is second in priority and the note payable to the Manager is third in priority.

As part of the settlement arrangement between the Company and RBC, and to reflect the terms described above, the Company issued to the Manager an Amended and Restated Secured Promissory Note dated May 28, 2020 in the principal amount of \$20 million (the "Amended and Restated Manager Note"), and the Company and the Manager entered into an Amended and Restated Security Agreement dated May 28, 2020 (the "Amended and Restated Manager Security Agreement").

The foregoing descriptions of the Note, the RBC Security Agreement, the RBC Intercreditor and Subordination Agreement, the Amended and Restated Manager Note, the Amended and Restated Manager Security Agreement and the Manager Intercreditor and Subordination Agreement are not complete and are qualified in their entireties by the text of each instrument, which are attached as Exhibits 99.2, 99.3, 99.4, 99.5, 99.6, and 99.7 to this Current Report on Form 8-K, respectively.

#### Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
<a href="#"><u>10.1</u></a>	<a href="#"><u>Mortgage Loan Purchase and Sale Agreement dated as of May 28, 2020 among UMB Bank, National Association, as legal title trustee for LVS Title Trust XIII, as purchaser, Wilmington Savings Fund Society, FSB, as trustee, BCAT 2020-23TT, as seller, and AG Mortgage Investment Trust, Inc., as obligor</u></a>
<a href="#"><u>10.2</u></a>	<a href="#"><u>Third Forbearance Agreement dated June 1, 2020, by and among AG Mortgage Investment Trust, Inc. and certain of its affiliates and the Participating Counterparties listed on Schedule 1 thereto</u></a>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Press Release, dated June 1, 2020</u></a>
<a href="#"><u>99.2</u></a>	<a href="#"><u>Secured Promissory Note, dated May 28, 2020 from AG Mortgage Investment Trust, Inc. payable to Royal Bank of Canada</u></a>
<a href="#"><u>99.3</u></a>	<a href="#"><u>Subordinated Security Agreement, dated May 28, 2020 by and among AG Mortgage Investment Trust, Inc. and certain of its affiliates and Royal Bank of Canada</u></a>
<a href="#"><u>99.4</u></a>	<a href="#"><u>Intercreditor and Subordination Agreement, dated May 28, 2020 by and among Wilmington Trust, National Association, as Collateral Agent, Royal Bank of Canada, AG REIT Management, LLC and AG Mortgage Investment Trust, Inc.</u></a>
<a href="#"><u>99.5</u></a>	<a href="#"><u>Amended and Restated Secured Promissory Note, dated May 28, 2020 from AG Mortgage Investment Trust, Inc. payable to AG REIT Management, LLC</u></a>
<a href="#"><u>99.6</u></a>	<a href="#"><u>Amended and Restated Security Agreement, dated May 28, 2020 by and among AG Mortgage Investment Trust, Inc. and certain of its affiliates and AG REIT Management, LLC</u></a>
<a href="#"><u>99.7</u></a>	<a href="#"><u>Intercreditor and Subordination Agreement, dated May 28, 2020 among Royal Bank of Canada, AG REIT Management, LLC and AG Mortgage Investment Trust, Inc.</u></a>

## FORWARD-LOOKING STATEMENTS

This Current Report on Form 8-K 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 sale of certain of the Company’s assets, the Company’s outstanding indebtedness and investment portfolio, certain additional financial metrics, and the Company’s entry into certain agreements, 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 and the impact of the COVID-19 pandemic on these 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, our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended, conditions in the real estate market, legislative and regulatory actions by the U.S. Department of the Treasury, the Federal Reserve and other agencies and instrumentalities in response to the economic effects of the COVID-19 pandemic, our negotiations with our repurchase financing counterparties and AG REIT Management, LLC, our ability to negotiate, to the extent necessary, further extensions of the forbearance period with the participating counterparties and to enter into settlements with the non-participating counterparties and the impact of the changes described in this Current Report on our ability to accurately estimate our investment portfolio and book value per share as of April 30, 2020. 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/>. The Company undertakes no duty to update any forward-looking statements in this Current Report on Form 8-K 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: June 1, 2020

AG MORTGAGE INVESTMENT TRUST, INC.

By: /s/ RAUL E. MORENO

Name: Raul E. Moreno

Title: General Counsel and Secretary

\*Certain identified information has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed. The redacted confidential portions of the exhibit are marked by [\*\*\*].

**UMB Bank, National Association, not in its individual capacity, but solely as legal title trustee for  
LVS Title Trust XIII  
as Purchaser**

**Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as trustee for  
BCAT 2020-23TT  
as Seller**

**and**

**AG Mortgage Investment Trust, Inc.  
Obligor**

**MORTGAGE LOAN PURCHASE AND SALE AGREEMENT**

**Dated as of May 28, 2020**

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This Mortgage Loan Purchase and Sale Agreement dated as of this 28th day of May, 2020, is executed among Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as trustee for BCAT 2020-23TT (the “Seller”), AG Mortgage Investment Trust, Inc. (the “Obligor”) and UMB Bank, National Association, not in its individual capacity, but solely as legal title trustee for LVS Title Trust XIII (the “Purchaser”).

W I T N E S S E T H

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Purchaser has agreed to purchase from the Seller and the Seller has agreed to sell to the Purchaser the Mortgage Loans (as defined below);

WHEREAS, the Obligor is a direct or indirect beneficial owner of the Seller and the Obligor will directly benefit from the Purchaser’s purchase of the Mortgage Loans from Seller; and

WHEREAS, the Purchaser, the Obligor and the Seller wish to prescribe the manner of purchase and conveyance of the Mortgage Loans and the servicing of the Mortgage Loans following their conveyance to the Purchaser;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Purchaser, the Obligor and the Seller agree as follows:

**ARTICLE I.**  
**DEFINITIONS**

Whenever used herein, the following words and phrases, unless the context otherwise requires and unless otherwise defined herein, shall have the following meanings:

Acceptable Servicing Practices: With respect to any Mortgage Loan, those mortgage servicing practices of prudent mortgage lending institutions servicing similar mortgage loans in the jurisdiction where the related Mortgaged Properties are located and that are (i) in compliance with applicable federal, state and local laws, rules and regulations, and (ii) in compliance with the terms of the related Mortgage Loan Documents.

Accrued Interest: With respect to each Mortgage Loan, accrued interest, due and payable in accordance with the terms of the respective Mortgage Note, on the interest bearing unpaid principal balance of such Mortgage Loan at a rate equal to the Mortgage Interest Rate relating to such Mortgage Loan, from the date through which interest has last been paid (as of the Cut-off Date) through the day prior to the Closing Date; *provided, however*, that in no event shall the Purchaser be obligated to pay accrued interest as to any Mortgage Loan that is sixty (60) days or more delinquent as of the Cut-off Date.

Agreement: This Mortgage Loan Purchase and Sale Agreement and all amendments hereof and supplements hereto.

Assignment of Mortgage: An assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to give record notice of the sale of the Mortgage to the Purchaser.

Bailment Letter: That certain Bailee Letter, dated as of May 4, 2020, among the Seller, an affiliate of the Program Manager and the Bailee governing the retention of the originals of the Mortgage Loan Documents pending the settlement of the sale of the Mortgage Loans to the Purchaser.

Bailee: Wells Fargo Bank. N.A.

Business Day: Any day other than (i) a Saturday or Sunday, (ii) a legal holiday in the States of New York, California, or Delaware or (iii) a day on which banks in the States of Minnesota, Missouri, New York, California, or Delaware or national banks are authorized or obligated by law or executive order to be closed.

Closing Date: The date of this Agreement.

Consumer Information: Any personally identifiable information in any form (written, electronic or otherwise) relating to a Mortgagor, including, but not limited to: a Mortgagor's name, address, telephone number, social security number, birth date, Mortgage Loan number, Mortgage Loan payment history, delinquency status, insurance carrier or payment information, tax amount or payment information; the fact that the Mortgagor has a relationship with the Seller, the Servicer or the originator; and any other non-public personally identifiable information.

Contested Litigation: Any lawsuit or other dispute resolution mechanism (including but not limited to arbitration or mediation) involving a Mortgage Loan and in which a standalone lawsuit or a responsive claim (including but not limited to a counterclaim or third party claim filed in a judicial foreclosure action) is brought that: (a) includes any Original Seller Block Person or the Original Seller's Servicer, as a defendant,

counter-defendant, or cross-defendant in such action; and (b) involves allegations of improper origination, or servicing of any Mortgage Loan prior to the Closing Date, or fraud, misappropriation of funds, gross negligence, willful misconduct or illegal or tortious action or failure to act by any Original Seller Block Person or the Original Seller's Servicer.

Co-op Lease: With respect to a Co-op Loan, the lease with respect to a dwelling unit occupied by the Mortgagor and relating to the stock allocated to the related dwelling unit.

Co-op Loan: A Mortgage Loan that is secured by a first-lien on and a perfected security interest in Cooperative Shares and the related proprietary lease granting exclusive rights to occupy the related cooperative apartment in the building owned by the related Cooperative.

Co-op Stock: With respect to a Co-op Loan, the single outstanding class of stock, partnership interest or other ownership instrument in the related residential cooperative housing corporation.

Cooperative: The private, nonprofit cooperative apartment corporation which owns all of the real property that comprises the Project, including the land, separate dwelling units and all common areas.

Cooperative Shares: With respect to any Co-op Loan, the shares of stock issued by a Cooperative and allocated to a Cooperative Unit and represented by a stock certificate.

Cooperative Unit: With respect to any Co-op Loan, a specific unit in a Project.

Corporate Servicing Advances: All customary, reasonable and necessary "out-of-pocket" costs and expenses incurred by Servicer in the performance of its servicing obligations, including, but not limited to, the cost of (i) preservation, restoration and repair of a Mortgaged Property, (ii) any enforcement or judicial proceedings with respect to a Mortgage Loan, including foreclosure actions and (iii) the management and liquidation of any Mortgaged Property if a Mortgaged Property is acquired in satisfaction of the Mortgage (including default management and similar services, appraisal services and real estate broker services).

Cut-off Date: April 30, 2020.

Deferred Principal Balance: The amount of deferred unpaid principal balance, payment of which has been postponed until the maturity of the related Mortgage Loan pursuant to a modification, as described on the Mortgage Loan Schedule.

Disclosed Liens and Encumbrances: Means the property tax, homeowner's association lien amounts and/or encumbrances or other deficiencies specifically set forth on Schedule 2-A attached hereto.

Disclosed Liens and Encumbrances Credit: Means an amount equal to the aggregate payoff, cure or other amounts set forth on Schedule 2-A attached hereto with respect to the Disclosed Liens and Encumbrances.

Escrow Servicing Advances: Any amounts advanced by the Servicer for the purpose of effecting the payment of any taxes, assessments and insurance premiums relating to a Mortgaged Property.

Fannie Mae: The Federal National Mortgage Association and any of its past or present officers, directors, employees, affiliates, parents, subsidiaries, agents, successors, assigns or representatives.

Fannie Mae Mortgage Loan: Each Mortgage Loan identified on the Mortgage Loan Schedule as a “Fannie Mae Mortgage Loan.”

FHFA: The Federal Housing Finance Agency and any successor thereto.

Follow-Up Report: As defined in Section 2.08(b).

Freddie Mac: The Federal Home Loan Mortgage Corporation and any successor thereto.

Freddie Mac Mortgage Loan: Each Mortgage Loan identified on the Mortgage Loan Schedule as a “Freddie Mac Mortgage Loan.”

Governmental Entity: Any federal, state or local governmental authority, agency, commission or court or self-regulatory authority or commission.

HAMP: As defined in Section 4.05.

HUD: The U.S. Department of Housing and Urban Development, or any successor in interest thereto.

HUD Mortgage Loan: Each Mortgage Loan identified on the Mortgage Loan Schedule as a “HUD Mortgage Loan.”

Initial HUD Mortgage Loan Purchaser: Rushmore Loan Management Services LLC.

Mortgage: (a) With respect to any Mortgage Loan that is not a Co-op Loan, the mortgage, deed of trust or other instrument securing a Mortgage Note, which creates a first priority lien on the Mortgaged Property, and (b) with respect to a Co-op Loan, the related Security Agreement.

Mortgage File: The Mortgage Loan Documents pertaining to a particular Mortgage Loan, including the collateral documentation and servicing documentation with respect to such Mortgage Loan.

Mortgage Interest Rate: The annual rate of interest borne on a Mortgage Note in accordance with the provisions of the related Mortgage Note.

Mortgage Loan: An individual Mortgage Loan or Co-op Loan which is the subject of this Agreement, each Mortgage Loan sold and subject to this Agreement being identified on the Mortgage Loan Schedule, and all other rights, benefits, proceeds and obligations arising from or in connection with such Mortgage Loan, including, without limitation, all related Mortgage Loan Documents, the monthly payments and all proceeds received from such Mortgage Loan, all other rights, interests, benefits, security, proceeds, remedies and claims in favor or for the benefit of the mortgagee arising from or in connection with such Mortgage Loan, and the related Servicing Rights.

Mortgage Loan Documents: With respect to each Mortgage Loan or Co-op Loan, the documents referred to in Exhibit A.

Mortgage Loan Schedule: The schedule of Mortgage Loans annexed to this Agreement as Schedule 1 hereto and containing the fields described in Schedule 1 attached hereto.

Mortgage Note: The executed note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage.

Mortgaged Property: (a) With respect to each Mortgage Loan which is not a Co-op Loan, the underlying real property securing repayment of a Mortgage Note and (b) with respect to each Co-op Loan, the related Cooperative Shares and related Co-op Lease.

Mortgagor: The obligor on a Mortgage Note.

Obligor: AG Mortgage Investment Trust, Inc.

Obligor's Knowledge: The actual knowledge of the fact or circumstance by the Obligor.

Original Seller Block Person: Fannie Mae and any of its past or present officers, directors, employees, affiliates, parents, subsidiaries, agents, successors, assigns or representatives.

Original Seller's Servicer: Nationstar Mortgage, LLC or Wells Fargo Bank, National Association, as applicable.

Original Settlement Date: With respect to each Mortgage Loan, the date identified on the Mortgage Loan Schedule.

Person: Any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, trustee, unincorporated organization, government or any agency or political subdivision thereof.

Post-Sale Report: As defined in Section 2.08(a).

Post-Sale Reporting Period: As defined in Section 2.08(a).

Post-Sale Reporting Period End Date: As defined in Section 2.08(a).

Post-Sale Reporting Requirements: As defined in Section 2.08(c).

Program Administrator: Red Creek Asset Management LLC.

Program Manager: [\*\*\*]

Project: All real property owned by the Cooperative including the land, separate dwelling units and all common areas.

Purchase Price: The meaning assigned to such term in Section 2.01(b).

Purchase Price Percentage: As set forth on the Mortgage Loan Schedule.

Purchaser: The Person identified as the "Purchaser" in the preamble to this Agreement.

Regulator: The FHFA or other Governmental Entity having jurisdiction over the Seller or the Purchaser, and any applicable successor thereto.

Report Documentation: As defined in Section 2.08(d).

Repurchase Price: With respect to any Mortgage Loan, a price equal to the sum of (i) the Purchase Price for such Mortgage Loan and (ii) any unreimbursed Servicing Advances made by the Purchaser or its servicer after the Cut-off Date related to such Mortgage Loan, less (iii) any proceeds received by or on behalf of Purchaser with respect to such Mortgage Loan.

Resolved Default Mortgage Loan: Any such HUD Mortgage Loan for which at least one of the following conditions has been satisfied:

(a) the HUD Mortgage Loan has been modified by the Purchaser, or the Purchaser's servicer or successor-in-interest, and the borrower performed under the terms of the modified HUD Mortgage Loan for at least six (6) consecutive months;

(b) the HUD Mortgage Loan lien has been released or extinguished by the Purchaser or the Purchaser's servicer or successor-in-interest in connection with a voluntary transfer by the borrower or the borrower's successor in interest;

(c) with respect to a HUD Mortgage Loan securing Mortgaged Property occupied by the borrower or a tenant, the HUD Mortgage Loan lien has been released by the Purchaser or the Purchaser's servicer or successor-in-interest; or

(d) the HUD Mortgage Loan lien has been foreclosed.

RESPA: The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601-2617, as amended, and any successor thereto, and rules and regulations promulgated from time to time thereunder.

Security Agreement: With respect to a Co-op Loan, the agreement or mortgage creating a first lien security interest in favor of the originator of the Co-op Loan in the related Co-op Stock.

Seller's Knowledge: The actual knowledge of a fact or circumstance by the Seller.

Servicer: Rushmore Loan Management Services LLC, as servicer for the Seller.

Servicing Advances: All Corporate Servicing Advances and Escrow Servicing Advances.

Servicing Rights: Any and all of the following: (a) any and all rights to service the Mortgage Loans; (b) any payments or monies payable or received or receivable for servicing the Mortgage Loans; (c) any late fees, prepayment fees, assumption fees, penalties or similar payments with respect to the Mortgage Loans; (d) all agreements or documents creating, defining or evidencing any such servicing rights and all rights of Seller thereunder; (e) possession and use of any and all documents, files, records, servicing files, servicing documents, servicing records or other information pertaining to the Mortgage Loans or pertaining to the past, present or prospective servicing of the Mortgage Loans; (f) any benefit from holding the escrow payments made by Mortgagors for taxes, assessments, primary mortgage or hazard insurance premiums or comparable items with respect to the Mortgage Loans, to the extent allowed by law to be kept by the servicer; (g) all accounts and other rights to payment related to any of the property described in this paragraph; (h) all accounts and other rights to payment related to any of the property described in this paragraph; (i) all rights and benefits relating to the direct solicitation of the related Mortgagors and attendant right, title and interest in and to the

list of such Mortgagors and data relating to their Mortgages; and (j) all rights, powers and privileges incident to any of the foregoing.

Standard Servicing Instructions for Contested Litigation Loans: As defined in Section 2.07.

Stated Principal Balance: As to each Mortgage Loan, the unpaid principal balance (including the Deferred Principal Balance) of such Mortgage Loan as of the close of business on the Cut-off Date, after deduction and application of all payments of principal due and received on or prior to the Cut-off Date and any unscheduled principal prepayments received on or prior to the Cut-off Date, as specified on the Mortgage Loan Schedule. The aggregate Stated Principal Balance for all of the Mortgage Loans shall be specified on the final Mortgage Loan Schedule.

Successor Servicer: Rushmore Loan Management Services LLC, as successor servicer for the Purchaser from and after the Closing Date or any other successor servicer of the Purchaser from and after the Closing Date.

Survival Period: Means (i) the period commencing on the Closing Date and expiring on the date that is six (6) months following the Closing Date and (ii) solely with respect to any breach of the representations and warranties set forth in Section 3.01, the period commencing on the Closing Date and expiring on the date that is twelve (12) months following the Closing Date.

Third Party Claim: As defined in Section 2.07(d).

Transfer Date: The date on which the Seller transfers the servicing of the Mortgage Loans to the Successor Servicer, which shall be the Closing Date.

Trust: LVS Title Trust XIII.

Trustee: UMB Bank, National Association.

Uncontested Litigation: Any lawsuit, bankruptcy or other dispute resolution mechanism (including but not limited to arbitration or mediation) involving a Mortgage Loan and in which the Mortgagor (or debtor) of such Mortgage Loan or any third party files a claim that is (a) not brought against any Original Seller Block Person or the Original Seller's Servicer or (b) is brought against any Original Seller Block Person or the Original Seller's Servicer but only due to its status as note owner or lienholder. For illustration purposes, examples of Uncontested Litigation include but are not limited to matters such as judicial foreclosure actions; eminent domain proceedings; junior lien foreclosures; code violations; partition actions; forfeiture actions; quiet title actions; probate actions; and bankruptcy cramdowns and lien avoidance actions. For purposes of this definition, the filing by a Mortgagor, debtor or third party of an appearance or answer or the raising of affirmative defenses without an accompanying claim related to a Mortgage Loan constitutes an Uncontested Litigation.

## **ARTICLE II.**

### **AGREEMENT TO PURCHASE; CONVEYANCE OF MORTGAGE LOANS; PURCHASE PRICE; POSSESSION OF MORTGAGE FILES; BOOKS AND RECORDS; DELIVERY OF DOCUMENTS; CLOSING CONDITIONS; PERIODIC REPORTS**



Section 2.01. Agreement to Purchase; Conveyance of Mortgage Loans; Purchase Price; Possession of Mortgage Files.

(a) Agreement to Purchase; Conveyance of Mortgage Loans; Escrow Balances. In exchange for the payment of the Purchase Price on the Closing Date, and subject to the provisions of Section 2.03, the Seller hereby sells, without recourse, but subject to the terms and conditions of (and except as expressly set forth in) this Agreement, on a servicing released basis, the Mortgage Loans identified on the Mortgage Loan Schedule.

(b) Purchase Price. The “Purchase Price” for the Mortgage Loans shall be (i) the product of (A) the Purchase Price Percentage and (B) the aggregate Stated Principal Balance of the Mortgage Loans listed on the Mortgage Loan Schedule, plus (ii) Accrued Interest for any Mortgage Loan less than sixty (60) days delinquent, plus (iii) any unreimbursed and recoverable Servicing Advances made prior to the Cut-off Date for any Mortgage Loan less than sixty (60) days delinquent; provided, however, that Purchaser shall be entitled to a credit in the aggregate amount of the Disclosed Liens and Encumbrances Credit. The foregoing payments shall be made to the account designated by the Seller on Exhibit D by wire transfer in immediately available funds on the Closing Date. The Purchaser shall be entitled to (1) all principal collected after the Cut-off Date, (2) all payments of interest on the Mortgage Loans collected after the Cut-off Date and (3) all other payments and recoveries on the Mortgage Loans due or collected after the Cut-off Date. The Stated Principal Balance of each Mortgage Loan as of the Cut-off Date is determined after application of payments of principal due and collected on or before the Cut-off Date, together with any unscheduled principal prepayments collected on or prior to the Cut-off Date. If any amount paid pursuant to this Agreement is found to have been calculated or paid in error or is otherwise erroneous, the party discovering such error(s) shall promptly give notice to the other party and the parties shall cooperate in good faith to reconcile such error(s). Upon the reconciliation of any such error(s) by the parties, the party benefitting from the error shall promptly pay to the other party an amount sufficient to correct the error. Notwithstanding the foregoing, the parties’ obligations under this paragraph shall be limited in duration to the six-month period immediately following the Closing Date.

(c) Delivery of Mortgage Loan Documents; Collateral Exceptions and Obligation to Cure or Repurchase. The Seller has, pursuant to the Bailment Letter, and without limitation of the terms and provisions of this Section 2.01(c), delivered to the Bailee the Mortgage Loan Documents with respect to each Mortgage Loan. Attached hereto as Schedule 3-A is an exception report identifying certain missing or deficient documents (the “Collateral Exceptions”) from the Mortgage File (the “Collateral Exception Report”). Obligor, on behalf of the Seller, shall use commercially reasonable efforts to provide any such missing document or cure such deficiency identified on the Collateral Exception Report within one hundred twenty (120) days from the Closing Date or any earlier date set forth on the Collateral Exception Report in respect of any related Collateral Exception (the “Collateral Cure Period”) provided, however, that such cure period shall be extended, on a day-by-day basis for any Force Majeure Event. During the Collateral Cure Period, upon the written request of Seller to Program Manager and at the Seller’s sole cost and expense, the Purchaser shall cause the Program Manager to cooperate with the Seller by providing weekly updates on the items remaining outstanding on the Collateral Exception Report. In the event that the Obligor does not cure any such Collateral Exception with respect to a Mortgage Loan during the Collateral Cure Period, the Obligor shall, upon its receipt of a written request from the Purchaser, repurchase, at the Repurchase Price, such Mortgage Loan within ten (10) Business Days following the date of such request, which repurchase shall occur in the manner set forth in Section 3.03(b). The Collateral Cure Period may be extended upon written request of Seller with the prior written consent of Purchaser in its sole discretion. The provisions of this Section 2.01(c) shall expressly survive the

Closing Date. The obligations of the Obligor set forth in this Section 2.01(c) shall constitute the sole remedies available to the Purchaser with respect to a Collateral Exception identified on the Collateral Exception Report.

(d) Closing Date Documents. On or before the Closing Date, the Purchaser (except as provided below), the Obligor and the Seller shall furnish to each other fully executed counterparts of each of:

(A) this Agreement;

(B) the Bailment Letter;

(C) the Seller shall have delivered to the Purchaser an executed Bill of Sale for the Mortgage Loans being sold by it in the form attached hereto as Exhibit B;

(D) the Seller shall have delivered to the Purchaser a copy of an executed Limited Power of Attorney in the form attached hereto as Exhibit C (the "Limited Power of Attorney"); and

(E) the Seller shall have delivered to the Purchaser an unexecuted version of the final Mortgage Loan Schedule, in form and substance satisfactory to the Program Manager.

(e) Reimbursement of Non-Recoverable Servicing Advances. In the event that Purchaser determines, at any time prior to the date that is six (6) months following the Closing Date, that any Servicing Advances made prior to the Cut-off Date and comprising a component of the Purchase Price are non-recoverable from the applicable Mortgagor as the result of insufficient documentation evidencing such Servicing Advance, then (i) the Purchaser may send to the Obligor a written notification with respect to such non-recoverable Servicing Advance (which shall include a description of the basis upon which the Servicing Advance is non-recoverable as the result of insufficient documentation) and (ii) within ten (10) Business Days following such written notification, Obligor shall pay to Purchaser (or its designee), via wire transfer of immediately available funds, an amount equal to the affected Servicing Advance (or portion thereof that is non-recoverable as the result of insufficient documentation). The provisions of this Section 2.01(e) shall expressly survive the Closing Date.

(f) Disclosed Liens and Encumbrances. With respect to the Disclosed Liens and Encumbrances set forth on Schedule 2-B attached hereto, Obligor, on behalf of the Seller, shall have a period of forty-five (45) days, commencing upon the Closing Date, to provide evidence satisfactory to the Purchaser that such Disclosed Liens and Encumbrances have been discharged or do not otherwise encumber the related Mortgaged Property. If, with respect to any Disclosed Liens and Encumbrances, Obligor, on behalf of the Seller, timely provides such evidence to the Purchaser, then the Purchaser shall pay (or cause to be paid) to the Seller the related lien amount set forth on Schedule 2-B within ten (10) Business Days following Obligor's written request. If Obligor, on behalf of the Seller, fails to timely provide any such evidence with respect to a Mortgage Loan set forth on Schedule 2-B to the Purchaser, then Purchaser shall have no further obligations with respect to the Disclosed Liens and Encumbrances set forth on Schedule 2-B related to such Mortgage Loan. The provisions of this Section 2.01(f) shall expressly survive the Closing Date.

(g) Data Exceptions. Attached hereto as Schedule 3-B is a report identifying certain data exceptions (the "Data Exceptions"). Without limitation of (i) the Obligor's representations and warranties in Section 3.02(a) or (ii) any of Purchaser's rights or remedies pursuant to Section 3.03, Obligor, on behalf of the Seller, shall, from and after the Closing Date, reasonably cooperate with the Purchaser and its custodian to resolve the Data Exceptions.

Section 2.02. Possession and Ownership of Mortgage Files. Upon the payment of the Purchase Price of the Mortgage Loans, the ownership of each related Mortgage Note, each related Mortgage and each related Mortgage File shall vest immediately in the Purchaser, and the ownership of all records and documents with respect to the Mortgage Loans in the possession of the Seller or its designee(s) (including the Bailee) shall vest immediately in the Purchaser. Upon payment of the Purchase Price by the Purchaser to the Seller for the Mortgage Loans in accordance with the terms hereof, the Seller shall be deemed to have released to the Purchaser all of its right, title and interest in, to and under the Mortgage Loans sold by it, including without limitation, the related Servicing Rights and the contents of each Mortgage File related to such Mortgage Loans; *provided*, the Seller may retain copies of any Mortgage File related to such Mortgage Loans subject to the provisions of Section 6.10.

Section 2.03. Closing Conditions. The closing for the purchase and sale of the Mortgage Loans shall take place on the Closing Date. The closing, including payment of the Purchase Price for the Mortgage Loans as set forth in Section 2.01(b) of this Agreement, shall be subject to the satisfaction of each of the following conditions:

(a) the Seller, the Obligor and the Purchaser, as applicable, shall have delivered each of the documents specified in Section 2.01(d);

(b) all of the representations and warranties of the Seller under Article III of this Agreement shall be true and correct in all material respects as of the Closing Date (or in each case such other date specified therein), and no default shall have occurred hereunder which, with notice or the passage of time or both, would constitute a default under this Agreement; and

(c) all of the representations and warranties of the Purchaser under Article III of this Agreement shall be true and correct in all material respects as of the Closing Date (or in each case such other date specified therein), and no default shall have occurred hereunder which, with notice or the passage of time or both, would constitute a default under this Agreement.

Upon satisfaction of the foregoing conditions and receipt of the Purchase Price from the Purchaser for the Mortgage Loans as set forth in Section 2.01(b) of this Agreement, the Seller shall thereupon (i) immediately be deemed to have released all of its right, title and interest in, to and under the Mortgage Loans

sold by it hereunder, including without limitation the contents of each Mortgage File in accordance with the Bailee Letter and (ii) as an obligation that shall expressly survive the Closing, promptly deliver to the Successor Servicer twenty-five (25) executed originals of the Limited Power of Attorney. Upon the written request of Purchaser, the Program Manager or the Successor Servicer (and as a covenant expressly surviving the Closing), the Seller shall deliver to the Successor Servicer such additional, original Limited Powers of Attorney (not to exceed twenty-five (25) originals in the aggregate) as shall from time to time be reasonably necessary for the taking of the actions described therein.

Section 2.04. Execution of Assignments and Endorsements. The Obligor will cooperate with Purchaser and shall, at Obligor's expense, cause to be prepared any intervening assignment documents that Purchaser may reasonably request that are in form acceptable for filing or recording in accordance with any applicable law and/or recorder's office requirements. Preparation of each Assignment of Mortgage, and the delivery of each Assignment of Mortgage to the Successor Servicer, shall be the Obligor's responsibility and sole cost and expense. All recording fees and expenses related to the recordation of the Assignments of Mortgage (other than intervening assignment documents, the cost and expense of which shall be the sole responsibility of Seller) shall be the responsibility of Purchaser. With respect to any Mortgage Loan that is the subject of recording, including but not limited to any public filing ("Recorded Mortgage Loans"), no later than one hundred twenty (120) days after the Closing Date, the Purchaser, at its expense, shall cause the Successor Servicer to use commercially reasonable efforts to file and submit for recording, as applicable, the Assignment of Mortgage for the Recorded Mortgage Loans; provided, however, that such one hundred twenty (120) day period shall be extended, with respect to any Assignment of Mortgage, on a day-by-day basis for (i) any Force Majeure Event and (ii) any delay in the Obligor's delivery to the Successor Servicer of any intervening assignment document with respect to the related Mortgage Loan. As used herein, "Force Majeure Event" shall mean any act or occurrence beyond the reasonable control of Purchaser or Successor Servicer, including, but not limited to, any act or provision of any present or future law, order or regulation or governmental authority (including any "shelter in place" or similar order), any act of God or war or terrorism, pandemic, labor dispute, or the closure of any recording or filing office.

Section 2.05. Cooperation with the Seller.

(a) Should the Seller become, or continue to be, a party to any third party claim, action or proceeding relating to the Mortgage Loans following the Closing Date, the Purchaser shall, at the expense of the Obligor, to the extent permitted by applicable law, reasonably cooperate or cause the Successor Servicer to reasonably cooperate with the Seller by providing the Seller any and all applicable documentation or data in the possession or under the control of the Purchaser (or the Successor Servicer) regarding such Mortgage Loans as may be reasonably requested in writing by the Seller to defend such third party claim, action or proceeding. The Purchaser shall notify, or shall cause the Successor Servicer to notify, the Seller promptly after receiving written notice of any third party complaint, claim, action or proceeding raised by a Mortgagor or any other third party that names the Seller or the Servicer, including, without limitation, the Consumer Financial Protection Bureau, relating to the Mortgage Loans.

(b) The Purchaser shall reasonably cooperate or shall cause the Successor Servicer to reasonably cooperate with the Seller and/or the Obligor, as applicable, at the expense of the Obligor, by providing any regulator or governmental agency or body having authority over the Seller, and/or the Obligor, as applicable, the right to examine and audit, during business hours or at such other times as are reasonable under applicable circumstances, upon five (5) Business Days advance written notice of the Seller, any and all of (i) the Mortgage Files relating to the Mortgage Loans sold by the Seller hereunder and (ii) any and all books, records, documentation or other information relating to the Mortgage Loans or the servicing thereof, in each instance and in each case under clause (i) and/or clause (ii), as applicable, to the extent in the possession or under the control of the Purchaser or the Successor Servicer and reasonably requested by the Seller, and/or the Obligor, as applicable.

(c) The Purchaser shall cause the Successor Servicer to provide on-going reporting as set forth herein to the Seller with respect to the Mortgage Loans to the extent necessary for the Seller to comply with its reporting obligations to the prior owner of the Mortgage Loans.

(d) The Purchaser understands and acknowledges that the provisions of this Section 2.05 shall survive the Closing Date and shall not be subject to any limitations on survival periods set forth herein.

Section 2.06. Freddie Mac Monthly Reporting. The Purchaser shall cause the Successor Servicer to provide to Freddie Mac monthly reports regarding loan resolution results and borrower outcomes with respect to the Freddie Mac Mortgage Loans, containing the data fields and in the format provided in Exhibit E attached hereto, for a period of forty-eight (48) consecutive months from the Original Settlement Date, subject to applicable privacy laws. The Purchaser shall cause the Successor Servicer to submit the first report to Freddie Mac at [NPL\\_Sales\\_Reporting@freddiemac.com](mailto:NPL_Sales_Reporting@freddiemac.com) in the same month as the Transfer Date (or, if the reporting date follows the Transfer Date, in the month following the Transfer Date). Sales of the Freddie Mac Mortgage Loans or placing them into a securitization trust will not relieve the Purchaser of the reporting requirements. The Purchaser acknowledges and agrees that beginning on and after the Transfer Date, (i) the Purchaser shall be solely responsible for submission (or causing the submission) of all such reports and (ii) the Seller and its affiliates shall have no obligation or liability with respect to such reports. The Purchaser further acknowledges that Freddie Mac (or its regulator) may publicly disclose the information on these reports on a pool level (not a loan level) basis. The Purchaser understands and acknowledges that the provisions of this Section 2.06 shall survive the Closing Date and shall not be subject to any limitations on survival periods set forth herein.

Section 2.07. Fannie Mae Quarterly Reporting; Uncontested Litigation and Contested Litigation; Third Party Claims.

(a) Reporting. The Purchaser shall cause the Successor Servicer to provide to [robert\\_brunk@fanniemae.com](mailto:robert_brunk@fanniemae.com) (or such other email address as may be provided to the Successor Servicer by Fannie Mae or the Program Administrator on behalf of the Seller) quarterly reports regarding the Fannie Mae Mortgage Loans, containing the data fields and in the format provided in Exhibit F attached hereto, for a period of up to forty-eight (48) months following the Original Settlement Date, subject to the applicable privacy laws. The Purchaser shall cause the Successor Servicer to (i) submit the first quarterly report to Fannie Mae using data calculated as of the end of the first calendar quarter following the Transfer Date, which is June 30, 2020, on the applicable reporting due date specified by Fannie Mae and (ii) continue to submit reports using data calculated as required by Fannie Mae on the applicable reporting due date specified by Fannie Mae for all subsequent reporting periods. The

Purchaser acknowledges and agrees that beginning on and after the Transfer Date (1) the Purchaser shall be solely responsible for submission (or causing the submission) of all such reports and (2) the Seller and its affiliates shall have no obligation or liability with respect to such reports.

(b) Litigation. The Seller (or the Program Administrator on behalf of the Seller, as applicable) and Fannie Mae shall manage litigation, and the Purchaser shall cause the Successor Servicer to manage litigation, with respect to the Fannie Mae Mortgage Loans that exists as of, or arises subsequent to, the Closing Date in accordance with the protocol set forth on Exhibit G or Exhibit I, as applicable, and the terms of this Section 2.07. Notwithstanding anything to the contrary in this Agreement, should the Original Seller Block Persons or the Original Seller's Servicer become, or continue to be, a party to any claim, action, proceeding, investigation, or inquiry relating to the Fannie Mae Mortgage Loans following the Closing Date: (a) the Seller (or the Program Administrator on behalf of the Seller, as applicable), the Original Seller Block Person or the Original Seller's Servicer may notify the opposing party in the action that the Fannie Mae Mortgage Loan has been sold to the Purchaser and the servicing has been transferred to the Successor Servicer; and (b) the Purchaser shall cause the Successor Servicer to provide the Original Seller Block Person any and all applicable documentation or data reasonably available to the Purchaser or the Successor Servicer regarding such Fannie Mae Mortgage Loans as may be requested by the Original Seller Block Person or the Original Seller's Servicer to defend such claim, action or proceeding.

(c) Contested Litigation. For Contested Litigation, Fannie Mae reserves the right, in its sole discretion, to retain a law firm of its choice and to manage the defense for some or all of the named Original Seller Block Person or the Original Seller's Servicer defendants. For all Contested Litigation, the Purchaser shall cause the Successor Servicer to designate a liaison or liaisons who will work with the Seller (or the Program Administrator on behalf of the Seller, as applicable), Fannie Mae and each of their counsel to provide loan-level information and payoff and reinstatement quotes upon request during the course of the Contested Litigation, and who will implement the terms of settlements agreed to by Fannie Mae, the Seller (or the Program Administrator on behalf of the Seller, as applicable) and the Successor Servicer, including but not limited to applying payment adjustments; requesting credit reporting corrections; creating and implementing loan modifications permissible under the Purchaser's servicing documents; delaying any foreclosure, eviction, or marketing activity; and rescinding foreclosure sales. Upon the Purchaser becoming aware of Contested Litigation through service of process or notification by any Original Seller Block Person, the Original Seller's Servicer or the Seller, the Purchaser shall thereafter cause the Successor Servicer to comply with the requirements of Exhibit G attached hereto ("Standard Servicing Instructions for Contested Litigation Loans") with respect to the Fannie Mae Mortgage Loans affected by such Contested Litigation. For all such Fannie Mae Mortgage Loans in Contested Litigation arising following the Closing Date, each of the Seller (or the Program Administrator on behalf of the Seller, as applicable) and the Purchaser recognize that they (or in the case of Purchaser, the Successor Servicer) are jointly working together with Fannie Mae and that they are both necessary parties to share information related to such litigation and that, as such, information and the fruits thereof shared between the two shall not be considered a waiver of any attorney-client privilege, work product doctrine or any other applicable principle of protecting information from disclosure. This provision should be interpreted to create a joint defense agreement and/or a common interest agreement between the parties hereto which may be further formalized at the request of any party hereto with an addendum to that effect between them at a later date.

For Contested Litigation arising following the Closing Date, the Purchaser shall cause the Successor Servicer to promptly notify (i) the Seller in accordance with the notice provisions set forth herein and (ii) Fannie Mae in the manner specified in subsection 13 under the heading "Standard Servicing Instructions for Contested Litigation Loans" on Exhibit G attached hereto and neither the Successor Servicer nor the Purchaser may, absent confirmation from Fannie Mae that such Contested Litigation will be managed by it, allow any default with regard to the Contested Litigation to occur pending a response. Moreover, the Purchaser covenants not to contact any form of media (including but not limited to posting on any social media or public disclosure source) or to contact any state Attorney General, the Office of the Comptroller of Currency, the Federal Reserve Board, the Consumer Financial Protection Bureau or any other state or federal regulatory authorities on any Fannie Mae Mortgage Loan involving allegations against any Original Seller Block Person or the Original Seller's Servicer or an origination or servicing activity, omission or event that occurred prior to the Closing Date. The Purchaser further agrees that, unless obligated by law, it will not respond to any inquiry from the media or a governmental entity relating to any Fannie Mae Mortgage Loan involving allegations against any Original Seller Block Person, or an origination or servicing activity, omission or event that occurred prior to the Closing Date, and shall promptly (and before responding) forward the inquiry to Fannie Mae, unless prohibited from doing so by the entity issuing such inquiry. This specific paragraph shall not prohibit the Purchaser from responding to inquiries and requests for information from its Regulators and the Purchaser shall not be required to notify Fannie Mae of any such inquiry or request unless, provided such notification is not prohibited by such Regulator, such inquiry or request targets the Fannie Mae Mortgage Loans, the Original Seller's Servicer or any Original Seller Block Persons.

(d) Third Party Claims.

(1) The Purchaser shall cause the Successor Servicer to notify Fannie Mae and the Seller if a claim is made upon an Original Seller Block Person by a third party with respect to this Agreement or the Fannie Mae Mortgage Loans (a "Third Party Claim"). Any such notice shall be provided in the manner specified in this Agreement.

(2) In the event of any such Third Party Claim made in respect of which Fannie Mae may have contractual damage claims against or may be entitled to indemnification, Fannie Mae may control, assume the defense of, negotiate or settle any such claim and pay all expenses in connection therewith, and promptly pay, discharge and satisfy any judgment or decree that may be entered in respect of such claim. The Purchaser hereby agrees to cooperate or to cause the Successor Servicer to cooperate fully with Fannie Mae and the Seller in connection with the defense, negotiation or settlement of any such legal proceeding.

(3) The Purchaser shall not, and shall cause the Successor Servicer not to, settle a Third Party Claim without the consent of Fannie Mae, which consent shall not be unreasonably withheld, conditioned or delayed, unless the terms of any settlement or compromise provide for (i) no relief other than the payment of monetary damages for which Fannie Mae has received a written commitment for repayment of such monetary damages from Purchaser, (ii) a full and unconditional release of Fannie Mae for all liability in respect of such claim or litigation, and (iii) confidentiality and non-disparagement terms substantially in the form of Exhibit H; and *provided, further*, that if a settlement is not consented to by Fannie Mae, the Purchaser shall be liable in the event and to the extent that a

subsequent settlement or other resolution causes Purchaser to incur a greater liability than that provided for in the proposed settlement that did not receive the consent required hereunder.

(4) In connection with any settlement, whether judicial or non-judicial, entered into by the Purchaser with a borrower of a Fannie Mae Mortgage Loan that includes a release of the Purchaser or its successors or assigns for any claims pertaining to such Fannie Mae Mortgage Loan, the Purchaser shall also obtain or cause the Successor Servicer to obtain a release of the Seller, its servicer and their respective affiliates, officers, directors, employees, agents and representatives, and their respective successors and assigns, for any such claims pertaining to such Fannie Mae Mortgage Loan.

(e) Survival. The Purchaser understands and acknowledges that the provisions of this Section 2.07 shall survive the Closing Date and shall not be subject to any limitations on survival periods set forth herein.

Section 2.08. HUD Reporting; Failure to Report.

(a) Post-Sale Reports. Purchaser shall cause the Successor Servicer to provide a summary reporting to AssetMan@rooseveltmc.com on the current status of the sale portfolio quarterly in the format provided in Exhibit J (the “Post-Sale Report”). Each reporting period begins on the first day following the end of the prior reporting period, and ends on the fifteenth (15th) day of the third (3rd) calendar month following the prior reporting period. The Purchaser shall cause the Successor Servicer to submit each Post-Sale Report no later than the date relating to such reporting period identified under the “Report Due Date” column in the table set forth in Exhibit J. The Purchaser shall cause the initial Post-Sale Report for the first reporting period to be submitted by the Successor Servicer no later than June 25, 2020, as set forth in Exhibit J. This periodic post-sale reporting requirement shall end on the “Post-Sale Reporting Period End Date,” which is the date on which the fourth (4th) Post-Sale Report following the Transfer Date, as set forth in Exhibit J, has been delivered or the date on which each of the HUD Mortgage Loans has been liquidated, whichever occurs first. For purposes of this Section 2.08(a), “liquidated” shall not apply to any HUD Mortgage Loan sold to a third-party or affiliate.

(b) Follow-Up Report. In the event that any HUD Mortgage Loan has not been liquidated by the date of submission of the final Post-Sale Report, the Purchaser shall cause the Successor Servicer to provide post-sale reporting to AssetMan@rooseveltmc.com on the status of the HUD Mortgage Loans on the earlier of (A) five (5) Business Days prior to the next quarterly due date after which all of the HUD Mortgage Loans purchased have been liquidated and/or have received six (6) consecutive on-time payments; or (B) five (5) Business Days prior to the second (2nd) anniversary of the Post-Sale Reporting Period End Date (the “Follow-Up Report”). The Follow-Up Report shall be provided in the same format as the Post-Sale Report set forth in Exhibit J attached hereto.

(c) General Reporting Requirements.

(i) The Post-Sale Report and Follow-Up Report Requirements set forth in Exhibit J attached hereto (the “Post-Sale Reporting Requirements”) are applicable for all HUD Mortgage Loans purchased, regardless of whether they have been securitized or sold by the Purchaser.

(ii) The Post-Sale Reporting Requirements are an integral part of this Agreement. HUD may unilaterally amend, supplement or change the reporting date, content, format, or delivery method of the Post-Sale Reporting Requirements, but only in a manner that does not have a material adverse effect (including a material adverse economic or financial effect) on the rights and obligations of the Purchaser under this Agreement.

(iii) All Post-Sale Reports and the Follow-Up Report shall be submitted to AssetMan@rooseveltmc.com for further submission by Roosevelt online through HUD’s Post-Sale Reporting (PSR) tool at www.psrttool.com (or to such other addresses as HUD may later provide).

(d) Report Documentation. HUD, in its sole and absolute discretion, may require the Seller and the Purchaser to submit (or, in the case of the Purchaser, to cause the Successor Servicer to submit) documentation supporting the information provided in any Post-Sale Report or Follow-Up Report (“Report Documentation”). Report Documentation may be requested after submission of the first Post-Sale Report and for any time within two (2) years following the submission of the final Post-Sale Report or Follow-Up Report, if applicable. Upon receipt of HUD’s written request (to be promptly delivered to the Purchaser and the Successor Servicer via the Seller or the Program Administrator on the Seller’s behalf, as applicable), the Purchaser shall cause the Successor Servicer to provide the Report Documentation to

(e) Post-Sale Servicing. The HUD Mortgage Loans must be serviced by a servicer that is (i) either an FHA-approved mortgagee or a Fannie Mae or Freddie Mac approved servicer that is capable of servicing in accordance with FHA guidelines; and (ii) in good standing with and rated average or above by the applicable agencies. Purchaser shall cause the Successor Servicer to service each HUD Mortgage Loan, beginning on and after the Transfer Date, in accordance with all applicable state and federal laws and regulations, including but not limited to RESPA and the National Housing Act.

The Purchaser shall cause the Successor Servicer to take commercially appropriate, reasonably necessary steps to ensure that each HUD Mortgage Loan set forth on Schedule 4 attached hereto becomes a Resolved Default Mortgage Loan by the Post Sale Reporting Period End Date. Neither the Purchaser nor the Successor Servicer shall be relieved of this obligation merely by sale or transfer of a HUD Mortgage Loan and, with respect to any sold HUD Mortgage Loan that, at the time of sale, is not a Resolved Default Mortgage Loan, "commercially appropriate, reasonably necessary steps" shall entail inclusion of any necessary restrictions in the subject sale agreement.

(f) Indemnification. To the extent Rushmore Loan Management Services LLC is not the servicer with respect to any Mortgage Loan, the Purchaser hereby indemnifies the Initial HUD Mortgage Loan Purchaser and its affiliates, employees, directors, officers and agents (each, an "Initial HUD Mortgage Loan Purchaser Indemnified Party") with respect to any such Mortgage Loan from and against any and all claims, losses, liabilities or expenses, including reasonable compensation and expenses, disbursements and advances of its agents, counsel, accountants and experts, and expenses incurred in the enforcement of this obligation right (collectively, the "Initial HUD Mortgage Loan Purchaser Claims") imposed on, incurred by or asserted against any Initial HUD Mortgage Loan Purchaser Indemnified Party in connection with or resulting from a material failure of the Purchaser to perform (or to cause the Successor Servicer to perform) its reporting duties and obligations under this Section 2.08 (subject to any limitations on survival periods set forth herein).

(g) Survival. The Purchaser understands and acknowledges that the provisions of this Section 2.08 shall survive the Closing Date and shall not be subject to any limitations on survival periods set forth herein.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES; REMEDIES FOR BREACH**

#### **Section 3.01. Representations and Warranties Respecting the Seller and the Obligor.**

(a) The Obligor, on behalf of the Seller, represents and warrants to the Purchaser that, as of the Closing Date:

i. Organization and Standing. The Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has all powers necessary to carry on its business as now being conducted;

ii. Due Authority. The Seller has the full power and authority and legal right to execute, deliver and perform, and to enter into and consummate all transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement have been duly and validly authorized, and the Seller has duly executed and delivered this Agreement. This Agreement constitutes a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, subject to principles of equity, bankruptcy, insolvency and other laws of general application affecting the rights of creditors. All requisite corporate or other action has been taken by the Seller to make this Agreement and all agreements contemplated hereby or thereby valid and binding upon the Seller in accordance with their terms.

iii. No Conflict. The fulfillment of or compliance with the terms and conditions of this Agreement, will not conflict with or result in a breach of any of the terms, conditions or provisions of the Seller's charter, by-laws or other governing documents, or result in a breach of any legal restriction or any material agreement or instrument to which the Seller is now a party or by which it is bound, or constitute a material default or result in an acceleration under any of the foregoing, or result in any violation of any law, rule, regulation, order, judgment or decree to which the Seller or its property is subject;

iv. No Pending Litigation. There is no action, suit, proceeding, investigation or litigation pending or, to the Seller's Knowledge, threatened, which in the aggregate, if determined adversely to the Seller, would (A) result in any material impairment of this Agreement, or (B) adversely affect the sale of the Mortgage Loans to the Purchaser or the Seller's ability to perform its obligations under this Agreement in any material respect;

v. No Consent Required. No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Seller of, or compliance by the Seller with, this Agreement, or if required, such consent, approval, authorization or order has been obtained prior to the Closing Date;

vi. No Brokers. The Seller has not employed or used a broker or anyone else who might be entitled to a broker fee or commission in connection with the transactions contemplated herein, with respect to which the Seller is responsible for any fees or commissions; and

vii. Sale Treatment. The disposition of the Mortgage Loans shall be treated as a sale on the books and records of the Seller.

(b) The Obligor represents and warrants to the Purchaser that, as of the Closing Date:

(i) Organization and Standing. The Obligor is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has all powers necessary to carry on its business as now being conducted;

(ii) Due Authority. The Obligor has the full power and authority and legal right to execute, deliver and perform, and to enter into and consummate all transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement have been duly and validly authorized, and the Obligor has duly executed and delivered this Agreement. This Agreement each constitutes a legal, valid and binding obligation of the Obligor, enforceable against it in accordance with its terms, subject to principles of equity, bankruptcy, insolvency and other laws of general application affecting the rights of creditors. All requisite corporate action has been taken by the Obligor to make this Agreement and all agreements contemplated hereby or thereby valid and binding upon the Obligor in accordance with their terms.

(iii) No Conflict. The fulfillment of or compliance with the terms and conditions of this Agreement, will not conflict with or result in a breach of any of the terms, conditions or provisions of the Obligor's charter, by-laws or operating agreement or result in a breach of any legal restriction or any material agreement or instrument to which the Obligor is now a party or by which it is bound, or constitute a material default or result in an acceleration under any of the foregoing, or result in any violation of any law, rule, regulation, order, judgment or decree to which the Obligor or its property is subject;

(iv) No Pending Litigation. There is no action, suit, proceeding, investigation or litigation pending or, to the Obligor's Knowledge, threatened, which in the aggregate, if determined adversely to the Obligor, would (A) result in any material impairment of this Agreement, or (B) adversely affect the sale of the Mortgage Loans to the Purchaser or the Obligor's ability to perform its obligations under this Agreement in any material respect;

(v) No Consent Required. No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Obligor of, or compliance by the Obligor with, this Agreement, or if required, such consent, approval, authorization or order has been obtained prior to the Closing Date; and

(vi) No Brokers. The Obligor has not employed or used a broker or anyone else who might be entitled to a broker fee or commission in connection with the transactions contemplated herein, with respect to which the Obligor is responsible for any fees or commissions.

Section 3.02. Representations and Warranties Regarding Individual Mortgage Loans. The Obligor represents and warrants to the Purchaser with respect to each Mortgage Loan as of the Closing Date (unless another date is expressly set forth below) as follows:

(a) Mortgage Loan Schedule. The information contained in the Mortgage Loan Schedule relating to such Mortgage Loan is true and correct in all material respects as of the Cut-Off Date;

(b) No Release. Other than as set forth in the Mortgage Loan Schedule and pursuant to documentation in the related Mortgage File or servicing file, the Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission;

(c) Validity of Mortgage. Except with respect to the Disclosed Liens and Encumbrances specifically set forth on Schedule 2-A attached hereto, the Mortgage is a valid, existing and enforceable first lien on the Mortgaged Property, subject only to: (x) the lien of current real property taxes and assessments not yet due and payable; (y) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording and generally acceptable to prudent lending institutions and (z) other matters to which like properties are commonly subject and which do not materially interfere with the benefits intended to be provided by the Mortgage (collectively, "Permitted Encumbrances"). The Obligor makes no representation or warranty as to the extent or absence of homeowners' association fees or similar charges that may encumber, in a junior lien position, any Mortgaged Property, and which could never impose a lien upon such Mortgaged Property superior to the Mortgage ("Junior HOA Fees"). With respect to any Cooperative Loan, except with respect to the Disclosed Liens and Encumbrances specifically set forth on Schedule 2-A attached hereto, the Security Agreement is a valid, subsisting and enforceable first priority security interest on the related Cooperative Shares and Proprietary Lease securing the Mortgage Note, subject only to (a) liens of the related residential Cooperative Corporation for unpaid assessments representing the Mortgagor's pro rata share of the related residential Cooperative Corporation's payments for its blanket mortgage, current and future real property taxes, insurance premiums, maintenance fees and other assessments to which like collateral is commonly subject and (b) other matters to which like collateral is commonly subject which do not materially interfere with the benefits of the security interest intended to be provided by such Mortgage;

(d) Legal and Binding. The Mortgage Note (and the lost note affidavit, if applicable), the related Mortgage, and other agreements executed in connection therewith are genuine, and each is the legal, valid, and binding obligation of the maker thereof, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(e) Good Title. The Seller is the sole owner and holder of the Mortgage Loan, and the related Mortgage Note and Mortgage (or Security Agreement with respect to a Co-op Loan), and has good title to the Mortgage Loan. The Mortgage Loan, including, if applicable, the Mortgage Note and Mortgage (or Security Agreement with respect to a Co-op Loan), is not assigned or pledged, and the Seller has good and marketable title thereto and has full right to transfer and sell the Mortgage Loan to the Purchaser free and clear of any encumbrance, equity, lien, pledge, charge, claim or security interest;



(f) No Defenses. The Mortgage Note and the Mortgage are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor will the operation of any of the terms of the Mortgage Note and the Mortgage, or the exercise of any right thereunder, render the Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, and no such right of rescission, set-off, counterclaim or defense has been, to the best of such Seller's knowledge, asserted with respect thereto;

(g) Servicing; Collection Practices. During the period in which such Mortgage Loan was owned by the Seller, such Mortgage Loan has been serviced in accordance with Acceptable Servicing Practices in all material respects;

(h) Taxes Paid. Except with respect to the Disclosed Liens and Encumbrances specifically set forth on Schedule 2-A attached hereto, all properly assessed real property taxes, tax assessments and homeowners association fees (other than Junior HOA Fees) affecting the Mortgaged Property which are due and payable prior to the Cut-Off Date have been paid or escrow funds on account with the Servicer have been established for such amounts;

(i) Litigation. Except as specified on the Mortgage Loan Schedule, the Mortgage Loan is not subject to any contested litigation;

(j) Regulatory Compliance. Any and all requirements of any federal, state or local law including, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, fair housing, or disclosure laws applicable to the origination of the Mortgage Loan have been complied with in all material respects; provided, however, that Obligor makes such representation and warranty solely with respect to each Mortgage Loan in respect of which any applicable statute of limitations period remains unexpired for any claim, liability or dispute arising under applicable laws;

(k) No Condemnation; No Casualty. To the Seller's Knowledge, the Mortgaged Property is not subject to a condemnation proceeding, and there is no proceeding pending or, to Seller's Knowledge, threatened in writing for the total or partial condemnation of the Mortgaged Property;

(l) Full Disbursement of Proceeds. The proceeds of the Mortgage Loan have been fully disbursed, and there is no requirement for future advances under the Mortgage Loan;

(m) Mortgaged Property. The real property secured by the related Mortgage is not (i) manufactured housing that is not affixed to the land or (ii) vacant land;

(n) [Intentionally Omitted]

(o) Texas Section 50(a)(6). Each Mortgage Loan originated in the state of Texas pursuant to Article XVI, Section 50(a)(6) of the Texas Constitution (a "Texas Refinance Loan") has been originated in compliance with the provisions of Article XVI, Section 50(a)(6) of the Texas Constitution, the Texas Civil Statutes, the Texas Finance Code, and the Texas Administrative Code; and

(p) High-Cost Loans; HOEPA. No Mortgage Loan is a "high-cost" loan, "covered" loan, or any other similarly designated loan as defined under any state, local, or federal applicable predatory, abusive lending or other applicable laws; provided that the Obligor makes such representation and warranty solely with respect to each Mortgage Loan sold hereunder in respect of which the statute of limitations period has not yet expired as of the Closing Date with respect to such Mortgage Loan for any claim, liability or dispute arising from an alleged violation of such applicable laws.

**Except as expressly set forth herein, the Purchaser understands that the Mortgage Loans are sold on an "AS IS," "WHERE IS" basis WITH ALL FAULTS and no representation or warranty of any kind is made by the Seller or the Obligor with respect thereto.**

### Section 3.03. Remedies for Breach of Representations and Warranties.

(a) Notice of Breach. Upon discovery by the Seller, the Obligor or the Purchaser of any breach of the representations and warranties set forth in Sections 3.01 or 3.02 that adversely affects the value, enforceability or collectability of a Mortgage Loan in any material respect (a "Breach"), the party discovering such breach shall give prompt written notice in the form described in the immediately following paragraph of this Section 3.03(a) to the other parties, but in no event shall such notice be provided later than the expiration of the Survival Period. Within ninety (90) days of its discovery or receipt of notice of such Breach (the "Cure Period"), as applicable, the Obligor shall use its best efforts to cure such Breach, to the extent curable, in all material respects. If such Breach is not curable or, if curable, cannot be cured within such ninety (90) day period, the Obligor shall have the right to propose in writing a reimbursement to the Purchaser of an amount (the "Purchase Price Adjustment") equal to the reduction in value of the affected Mortgage Loan based upon the Breach. The Obligor shall be deemed to have elected not to propose a Purchase Price Adjustment to the Purchaser if the Obligor fails to deliver to the Program Manager a proposed Purchase Price Adjustment (i) within five (5) Business Days following the expiration of the Cure Period, if the related Breach is curable, or (ii) within fifteen (15) Business Days following the earlier to occur of (a) the Seller's or the Obligor's discovery of the related Breach or (b) the Purchaser's delivery of written notice to the Obligor with respect to the related Breach, if such Breach is not curable, in which event the Obligor shall repurchase the related Mortgage Loan in accordance with Section 3.03(b). To the extent that Obligor proposes a Purchase Price Adjustment to the Program Manager, the Obligor and the Purchaser (or the Program Manager on behalf of the Purchaser) shall work together in good faith to agree upon the Purchase Price Adjustment within five (5) Business Days following the date on which the Program Manager receives the proposed Purchase Price Adjustment from the Obligor. In no event, however, shall the Purchase Price Adjustment exceed an amount equal to the Repurchase Price for the applicable Mortgage Loan. If the Obligor and Program Manager are unable to timely agree upon the Purchase Price Adjustment, which determination shall be made in the Program Manager's sole and absolute discretion, the Obligor shall repurchase the applicable Mortgage Loan in accordance with Section 3.03(b) at the Repurchase Price. In addition, the Purchaser agrees that with respect to any alleged breach of a representation that is due to or results in any tax, assessment or similar monetary lien, charge or encumbrance that adversely affects the value, enforceability or collectability

of the related Mortgage Loan in any material respect, the Obligor shall have satisfied its cure obligation related thereto by paying in full the related amounts to the Purchaser (or its designee) or the applicable taxing authority (together with evidence of such payment reasonably satisfactory to the Purchaser), and upon such cure, the Purchaser shall be precluded from requesting any additional remedy related thereto from the Obligor. It is understood that the obligations of the Obligor to cure, pay the applicable Purchase Price Adjustment or repurchase as set forth in Sections 3.03(a) and 3.03(b) constitute the sole remedies of the Purchaser with respect to any Breach (whether sounding in contract or otherwise).

Any written notice provided pursuant to this Section 3.03 in connection with a Breach of any of the representations and warranties made by the Seller or the Obligor in Sections 3.01 and 3.02 of this Agreement shall set forth the following:

- (1) for any Breach under Section 3.02, the identity of the Mortgage Loan (by the number assigned to such Mortgage Loan by the Seller at the time of sale as set forth on the Mortgage Loan Schedule) with respect to which a Breach is alleged to have occurred;
- (2) a description of the claimed Breach;
- (3) the section and (if applicable) subsection under which such Breach is claimed; and
- (4) supporting documentation describing such claimed Breach, including (if applicable) copies of any documents necessary to determine that such alleged Breach exists.

(b) Repurchase. The Obligor shall repurchase any Mortgage Loans sold by the Seller hereunder for which a notice of a Breach is delivered prior to the expiration of the Survival Period pursuant to Section 3.03(a), if the Obligor fails to timely effect a cure (if applicable) and the repurchase of such Mortgage Loans is required in accordance with the provisions of Section 3.03(a) above. Any repurchase of a Mortgage Loan(s) pursuant to the provisions of this Section 3.03 shall be accomplished within ten (10) days following demand by the Purchaser, by payment of the Repurchase Price to the Purchaser or its designee in immediately-available funds. On or before the date of the repurchase, the Purchaser and the Seller shall arrange for the reassignment of such Mortgage Loan, release of the related collateral file to the Seller or its designee, delivery to the Seller or its designee of any documents held by the Purchaser or its designee, and transfer of the Servicing Rights relating to such Mortgage Loan.

(c) Conditions to Repurchase. Notwithstanding any other provision of this Agreement, the Obligor shall not be required to repurchase any Mortgage Loan in the event that:

- (i) Purchaser (or its servicer or other designee) has released or impaired the lien of the related Mortgage on the related Mortgaged Property;
- (ii) at the time of repurchase, (1) as a result of the actions of the Purchaser or the Successor Servicer, Purchaser is not the sole owner of the Mortgage Loan and holder of the related Mortgage Note, free and clear of any and all liens, claims, encumbrances, participation interest, equities, pledges, charges or security interests of any nature, other than any liens, claims, encumbrances, participation interests, equities, pledges, charges or security interests in existence as of the Closing Date or any other Permitted Encumbrances, and/or (2) Purchaser does not have full right and authority to sell or assign the same; and
- (iii) Purchaser (or its servicer or other designee) has not serviced the Mortgage Loan in accordance with all applicable federal, state and local laws and regulations and the terms of the related Mortgage and Mortgage Note from and after the Closing Date to and including to the date of repurchase.

(d) Mortgage Files. Subject to the payment of the Repurchase Price by the Obligor to the Purchaser for any Mortgage Loan in accordance with the terms hereof, the Purchaser shall cause its custodian to release from its custody to the Seller (or its designee(s)) the contents of each Mortgage File related to any such repurchased Mortgage Loan; *provided*, the Purchaser may retain copies of any Mortgage File related to such Mortgage Loan.

(e) Survival. The provisions of this Section 3.03 shall expressly survive the Closing Date.

Section 3.04. Representations and Warranties Respecting the Purchaser and the Trustee. Each of Trustee and the Purchaser, as applicable, solely for itself, represents, warrants and covenants to the Seller and the Obligor that, as of the Closing Date:

- (a) Organization and Existence. The Trustee is duly organized and validly existing under the laws of the United States of America and has all powers necessary to carry on its business as now being conducted;
- (b) Due Authority. The Purchaser has the full power and authority to perform, and to enter into and consummate, all transactions contemplated by this Agreement; the Purchaser has the full power and authority to purchase, hold and service each Mortgage Loan;
- (c) No Conflict. Neither the acquisition of the Mortgage Loans by the Purchaser pursuant to this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will conflict with or result in a breach of any of the terms, conditions or provisions of the Purchaser's trust documents or result in a breach of any legal restriction or any material agreement or instrument to which the Purchaser is now a party or by which it is bound, or constitute a material default or result in an acceleration under any of the foregoing, or result in the violation of any law, rule, regulation, order, judgment or decree to which the Purchaser or its property is subject;
- (d) No Pending Litigation. There is no action, suit, proceeding, investigation or litigation pending or, to the Purchaser's knowledge, threatened, which either in any one instance or in the aggregate, if determined adversely to the Purchaser would adversely affect the purchase of the Mortgage Loans by the Purchaser hereunder, or the Purchaser's ability to perform its obligations under this Agreement in any material respect;

(e) No Consent Required. No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Purchaser of or compliance by the Purchaser with this Agreement or the consummation of the transactions contemplated by this Agreement, or if required, such consent, approval, authorization or order has been obtained prior to the Closing Date;

(f) Due Diligence. The Purchaser has conducted such due diligence review and analysis, or had the opportunity to conduct such due diligence review and analysis, of the Mortgage Loans and the Servicing Rights related thereto, the Mortgage Loan Documents and such other related information, as necessary, proper or appropriate in order to make a complete and fully informed decision with respect to the purchase and acquisition of the Mortgage Loans and the Servicing Rights related thereto;

(g) Sophisticated Investor. The Purchaser is a sophisticated investor with such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of investment in the Mortgage Loans;

(h) No Reliance. The Purchaser's bid and decision to purchase the Mortgage Loans are based upon its own independent evaluations of the Mortgage Files and other materials made available by the Seller and deemed relevant by the Purchaser and its agents. In entering into this Agreement, the Purchaser has not relied upon any oral information from the Seller, the Obligor, any affiliate of the Seller or the Obligor, or, in each case, any of their employees, agents, attorneys or representatives, other than the limited statements, representations and warranties of the Seller and Obligor expressly contained herein. The Purchaser acknowledges that no affiliate, employee, agent, attorney or representative of the Seller or the Obligor has been authorized to make, and that the Purchaser has not relied upon, any statements, representations or warranties other than those specifically contained in this Agreement. Without limiting the foregoing, the Purchaser acknowledges that, except as specifically set forth in this Agreement, none of the Seller, the Obligor, any affiliate of the Seller or the Obligor, or in each case, any of their employees, agents, attorneys or representatives has made any representations or warranties as to the Mortgage Loans (including without limitation, the value, marketability, condition or future performance thereof, the existence of leases or the status of any tenancies or occupancies with respect thereto, the applicability of any rent control or rent stabilization laws on the compliance or lack of compliance thereof with any laws (including without limitation, environmental, land use or occupancy laws));

(h) No Brokers. The Purchaser has not employed or used a broker or anyone else who might be entitled to a broker fee or commission in connection with the transactions contemplated herein, with respect to which the Purchaser is responsible for any fees or commissions;

(i) HAMP-Approved Servicer. To Purchaser's knowledge, the Successor Servicer on the Transfer Date shall be a HAMP-approved servicer and shall be participating in the HAMP;

(j) [Intentionally Omitted];

(k) [Intentionally Omitted];

(l) Loss Mitigation. Purchaser acknowledges and agrees that the Mortgage Loans may be subject to loss mitigation to the extent set forth in the Servicer's servicing files. From the Transfer Date, Purchaser shall, or shall cause the Successor Servicer to, service any Mortgage Loan that is subject to loss mitigation as of the Transfer Date in accordance with the terms of any such loss mitigation and in accordance with applicable law. If the Seller or the Servicer has commenced any loss mitigation process prior to the Transfer Date, the Purchaser shall cause the Successor Servicer to continue such loss mitigation process until completion. Purchaser agrees that it will evaluate and offer loss mitigation options to Mortgagors under the Mortgage Loans generally to the same extent and on similar terms as it offers loss mitigation options to Mortgagors under other similar mortgage loans held or serviced on behalf of Purchaser or Successor Servicer in accordance with applicable law. The Seller and the Successor Servicer shall cooperate and assist each other to confirm and ensure that any loss mitigation application process that is initiated and not completed prior to the Transfer Date is properly reflected in Purchaser's or the Successor Servicer's servicing records, including by confirmation of applicable data;

(m) Servicing Compliance. Purchaser covenants and agrees that on and after the Transfer Date (i) it will cause the Successor Servicer to service each Mortgage Loan in accordance with the terms of the related Mortgage Loan Documents, any loss mitigation and with applicable law, (ii) the Purchaser shall direct the Successor Servicer and its employees, representatives or assignees to comply with all applicable law, (iii) it shall cause the Successor Servicer to service each Mortgage Loan in accordance with customary accepted servicing practices and (iv) Purchaser shall cause the Successor Servicer to respond to Mortgagors' inquiries regarding the servicing of the related Mortgage Loans in a timely fashion and provide Mortgagors with a reasonable appeals process with respect to servicing decisions relating to the applicable Mortgage Loan;

(n) Ability to Service; Servicer Eligibility; Loss Mitigation. The Purchaser does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant and obligation contained in this Agreement. There exists no law or judgment, award, order, writ, or decree of any court that would prohibit the Purchaser or its designee from acquiring, holding or causing the Successor Servicer to service the Mortgage Loans, including, but not limited to, the Purchaser's or its designee's ability to foreclose on any Mortgaged Property, to abide by the terms of any loss mitigation activities of the Seller or the Servicer and to continue or properly complete (or to cause the Successor Servicer to continue or properly complete) any loss mitigation activities with respect to any Mortgage Loan commenced by the Seller or the Servicer prior to the Transfer Date in accordance with the terms of this Agreement;

(o) Substitution of Purchaser as Claimant with respect to Bankruptcy Proceedings. Purchaser agrees that with respect to each Mortgage Loan subject to this Agreement, if the related Mortgagor is a debtor in a case under the United States Bankruptcy Code of 1986, as amended, (11 U.S.C. § 101, et seq.) on the Transfer Date and a proof of claim has been filed by or on behalf of the Seller, Purchaser, at its sole cost and expense, shall (if applicable) cause the Successor Servicer to substitute Purchaser for Seller, or any entity that filed such claim on behalf of such Seller, including Servicer, as the claimant against such Mortgagor within forty-five (45) days after the Transfer Date; and

(p) Notification to Counsel. With respect to any Mortgage Loan which is, as of the Transfer Date, the subject of litigation, bankruptcy or foreclosure (a “Pending Proceeding”), the Purchaser shall, at its sole cost and expense, cause the Successor Servicer to, within forty-five (45) days after the Transfer Date (as such time period shall be extended, on a day-by-day basis, for any Force Majeure Event), (i) notify the appropriate court officer and all counsel of record in each such Pending Proceeding of the transfer of such Mortgage Loan from the Seller to the Purchaser, (ii) file pleadings to substitute counsel (unless said counsel has agreed to represent the Purchaser in the Pending Proceeding at the Purchaser’s sole cost and expense), and (iii) file pleadings and other appropriate documents to remove the Seller as a party in such Pending Proceeding and substitute the Purchaser or its designee as the real party in interest, and change the caption thereof accordingly. To the extent a notice of substitution has not occurred in accordance with clauses (i) through (iii) above within forty-five (45) days following the Transfer Date (as such time period shall be extended, on a day-by-day basis, for any Force Majeure Event), the Seller shall provide notice to the Purchaser (the “Notice”). If the notice of substitution has not occurred in accordance with clauses (i) through (iii) above within thirty (30) days following the Purchaser’s receipt of the Notice, the Seller shall be permitted to discontinue or otherwise remove itself as a party in interest from such Pending Proceeding, to the extent permitted by applicable law in such jurisdiction.

**ARTICLE IV.**  
**SERVICING OF MORTGAGE LOANS**

Section 4.01. Servicing Released Sale. The Mortgage Loans are being sold pursuant to this Agreement on a servicing-released basis. All rights to service the Mortgage Loans, and all responsibility for the servicing of the Mortgage Loans, are hereby transferred by the Seller to Purchaser as of the Closing Date, subject to this Article IV.

Section 4.02. [Intentionally Deleted]

Section 4.03. Mortgage Transfer and Servicing Transfer Disclosures. The Purchaser shall cause the Successor Servicer to provide the Mortgagor of each Mortgage Loan with the applicable notice required pursuant to Section 404 of the Helping Families Save Their Homes Act of 2009 (P.L. 111-22), as amended, and the TILA-RESPA Integrated Disclosure Rule (collectively, the “Section 404 Notices”). Seller and Purchaser shall each be responsible for fifty percent (50%) of any and all costs and expenses of the preparation and delivery of the Section 404 Notices.

Section 4.04. Suitability. Purchaser agrees that it or its affiliates and/or agents, or the Successor Servicer, has sufficient experience and expertise in the maintenance and servicing of mortgage loans of the type purchased herein and is capable of maintaining and servicing the Mortgage Loans in compliance with all applicable federal, state and local laws, rules and regulations relating thereto.

Section 4.05. Regulatory Compliance; Collection Practices. Purchaser shall cause the Successor Servicer to service the Mortgage Loans in accordance with industry standards, all applicable federal, state and local laws, statutes, rules, ordinances and regulations and the terms of the Mortgage Notes and Mortgages. The Purchaser shall cause the Successor Servicer to not violate any laws relating to unfair credit collection practices in connection with the Mortgage Loans in a manner that would create or expose the Seller or its servicer to any claim, demand, or assertion that, after the Closing Date, such Person was in any way involved in or had in any way authorized any unlawful collection practices in connection with the related Mortgage Loans.

Section 4.06. Reporting to the Internal Revenue Service. The Purchaser agrees to cause the Successor Servicer to submit all Internal Revenue Service forms and information returns for the Mortgage Loans for all periods occurring on and after the Transfer Date during which it owns the Mortgage Loans.

Section 4.07. Use of the Seller's, Fannie Mae's, Freddie Mac's or HUD's Name. The Purchaser covenants and agrees that it shall cause the Successor Servicer not to (i) except as required by applicable law, institute or continue any enforcement or legal action or proceeding in the name of the Seller or its servicer, Fannie Mae or its servicer, Freddie Mac or its servicer, or HUD or its servicer, or, except as required by applicable law, make reference to the Seller or its servicer, Fannie Mae or its servicer, Freddie Mac or its servicer, or HUD or its servicer in any correspondence to or discussion with any particular obligor regarding enforcement or collection of the Mortgage Loans except for purposes of identifying a Mortgage Loan as previously owned by the Seller, Fannie Mae, Freddie Mac or HUD, (ii) misrepresent, mislead, deceive, or otherwise fail to adequately disclose to any particular Mortgagor or guarantor the identity of the Purchaser as the owner of the Mortgage Loan or (iii) hold itself out as an agent or representative of the Seller, Fannie Mae, Freddie Mac or HUD. The Seller, Fannie Mae, Freddie Mac and HUD, as applicable, shall have the right to seek the entry of an order by a court of competent jurisdiction enjoining any violation hereof.

## ARTICLE V. INDEMNIFICATION

Section 5.01. Purchaser's Indemnification. The Purchaser shall indemnify the Seller, the Obligor and their respective affiliates, employees, directors, officers, agents, members, partners, advisors and representatives (collectively, “Related Persons”) and hold them harmless against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and any other costs, fees and expenses (including expenses incurred in the enforcement of this indemnification obligation) (collectively, “Losses”) that the Seller or Obligor may sustain from any material failure of the Purchaser to perform its duties and obligations hereunder. The Seller and the Obligor, as applicable, shall promptly notify the Purchaser and the Program Manager if a claim is made by a third party against the Seller, the Obligor, or any of their respective Related Persons with respect to any Mortgage Loan that could give rise to an indemnity claim under this Section 5.01, and the Purchaser shall have the right but not the obligation to assume the defense of any such claim and to assert any and all claims or other pleadings that it may have. The Seller and the Obligor, as applicable, shall cooperate with the Purchaser and the Program Manager in the defense of any such claim. Purchaser shall not settle a claim without the written consent of the Seller or the Obligor, as applicable, which consent shall not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the Purchaser; *provided, however*, that in such case, there shall be no admission of liability on the part of the Seller or the Obligor, respectively, without the written consent of the Seller or the Obligor, respectively. This indemnification shall survive the closing of the purchase and sale of the Mortgage Loans and any termination of this Agreement for the Survival Period, but shall expressly further survive with respect to any claim made hereunder prior to the expiration of such period.

Notwithstanding the provisions set forth in this Section 5.01, the Purchaser shall not be liable for any indirect, special, consequential or punitive damages.

Section 5.02. Obligor's Indemnification. The Obligor, on behalf of itself and the Seller, shall indemnify the Purchaser, the Program Manager, the Trustee and their respective Related Persons and hold them harmless against any and all Losses that the Purchaser or any such Related Person may sustain from any material failure of the Seller or Obligor to perform their duties and obligations hereunder. The Purchaser shall promptly notify the Obligor if a claim is made by a third party against the Purchaser, the Program Manager or any of their respective Related Persons with respect to any Mortgage Loan that could give rise to an indemnity claim under this Section 5.02, and the Obligor shall have the right but not the obligation to assume the defense of any such claim and to assert any and all claims or other pleadings that it may have. The Purchaser shall cooperate with the Obligor in the defense of any such claim. The Obligor shall not settle a claim without the written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the Purchaser is limited to monetary damages that are paid by the Obligor; *provided, however*, that in such case, there shall be no admission of liability on the part of the Purchaser without the written consent of the Purchaser. This indemnification shall survive the closing of the purchase and sale of the Mortgage Loans and any termination of this Agreement for the Survival Period, but shall expressly further survive with respect to any claim made hereunder prior to the expiration of the Survival Period.

Notwithstanding the provisions set forth in this Section 5.02, the Obligor shall not be liable for any indirect, special, consequential or punitive damages.

## ARTICLE VI. MISCELLANEOUS PROVISIONS

Section 6.01. Amendment. This Agreement and any provision or part thereof may be modified, waived or amended from time to time only by a separate written agreement executed by all parties to this Agreement against whom such modification, waiver or amendment to this Agreement is sought.

Section 6.02. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW), AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) EACH OF THE PARTIES HERETO HEREBY SUBMITS (TO THE EXTENT PERMITTED BY APPLICABLE LAW) TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW YORK LOCATED IN NEW YORK COUNTY, NEW YORK, SOLELY WITH RESPECT TO MATTERS ARISING UNDER THIS AGREEMENT, AND EACH WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY REGISTERED MAIL DIRECTED TO THE ADDRESS SET FORTH IN SECTION 6.03 HEREOF AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON RECEIPT THEREOF. EACH OF THE PARTIES HERETO HEREBY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY OBJECTION BASED ON *FORUM NON CONVENIENS*, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

(c) THE SELLER AND THE PURCHASER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY OTHER DOCUMENTS OR INSTRUMENTS EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF THE SELLER OR THE PURCHASER.

(d) THE PROVISIONS SET FORTH IN THIS SECTION 6.02 ARE A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

Section 6.03. Notices. All demands, notices and communications hereunder shall be in writing. Any such demand, notice or communication shall be delivered in person or transmitted by a recognized private overnight courier service or deposited with the United States Postal Service, certified mail, postage prepaid, return receipt requested, or via email, addressed as follows, unless such address is changed by written notice hereunder. All notices shall be deemed delivered (i) when received by the party to which it is sent, if delivered in person, (ii) after 1 Business Day, if delivered by courier, (iii) four days after the date of mailing, if mailed and (iv) upon receipt, if delivered via email.

(a) if to the Seller:

Wilmington Savings Fund Society, FSB, not in its individual capacity,  
but solely as trustee for BCAT 2020-23TT  
1500 Delaware Avenue, 11th Floor  
Wilmington, Delaware 19801  
Attention: BCAT 2020-23TT

E-mail: : [smohajer@wsfsbank.com](mailto:smohajer@wsfsbank.com)

or such other address as may hereafter be furnished to the Purchaser in writing by the Seller;

(b) if to the Obligor:

AG Mortgage Investment Trust, Inc.

245 Park Avenue

New York, New York 10167

Attention: General Counsel

or such other address as may hereafter be furnished to the Purchaser in writing by the Obligor;

(c) if to Purchaser:

[\*\*\*]

(d) if to Program Manager:

[\*\*\*]

or such other address as may hereafter be furnished to the Seller and the Obligor in writing by the Purchaser or the Program Manager, as the case may be.

Section 6.04. Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held invalid for any reason whatsoever, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement. The consideration for each party's agreement may not and is not intended to be apportioned among specific rights or obligations set forth in this Agreement which rights and obligations are interrelated and dependent.

Section 6.05. Relationship of Parties. Nothing herein contained shall be deemed or construed to create a partnership or joint venture between the parties hereto and the services of the Seller and the Obligor shall be rendered as an independent contractor and not as agent for the Purchaser.

Section 6.06. Execution. This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts, together, shall constitute one and the same agreement. The Parties agree that this Agreement and signature pages to this Agreement and each other transaction document contemplated hereunder may be transmitted between them electronically (in pdf. format), that such signatures may constitute original signatures and that such signature page containing the signature of an authorized individual (electronically or original) is binding on the respective Parties.

Section 6.07. Preparation and Recordation of Assignments of Mortgage. To the extent permitted by applicable law, each of the Assignments of Mortgage is subject to recordation in all appropriate public offices for real property records in all the counties or other comparable jurisdictions in which any or all of the Mortgaged Properties are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected at the Purchaser's expense, in the event recordation is either necessary or advisable in accordance with applicable law.

Section 6.08. Assignment. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors. Neither the Purchaser nor the Seller or the Obligor may transfer, sell or assign its rights, obligations or interests in this Agreement without the written consent of the other parties, and any purported transfer, sale or assignment in violation of this Section 6.08 shall be null and void *ab initio*; provided, however, that the Purchaser may assign this Agreement to an affiliate of the Purchaser without the prior written consent of the Seller or the Obligor, however an assignment of this Agreement to a securitization trust or any unrelated third party purchaser is not permitted.

Section 6.09. Further Agreements. The Purchaser, the Obligor and the Seller each agree to execute and deliver to the other such additional documents, instruments or agreements as may be necessary or appropriate to effectuate the purposes of this Agreement.

Section 6.10. Confidential Information. The parties (i) shall comply with all applicable laws regarding the privacy or security of Consumer Information, (ii) shall not collect, create, use, store, access, disclose or otherwise handle Consumer Information in any manner inconsistent with any applicable laws or regulations regarding the privacy or security of Consumer Information, (iii) shall not disclose Consumer Information to any affiliated or non-affiliated third party except to enforce or preserve its rights, as otherwise permitted or required by applicable law (or by regulatory authorities having jurisdiction in the premises), and (iv) shall maintain appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of Consumer Information, including maintaining security measures designed to meet the Interagency Guidelines Establishing Standards for Safeguarding Consumer Information published in final form on February 1, 2001, 66 Fed. Reg. 8616, and the rules promulgated thereunder. Notwithstanding anything to the contrary set forth in this Section 6.10, Purchaser may disclose Consumer Information to prospective third party purchasers or financing sources (including to any financial advisors thereof) of any one or more of the related Mortgage Loans who are subject to confidentiality; provided, such disclosure is made by Purchaser in accordance with applicable laws regarding the privacy or security of Consumer Information. In addition to other remedies available at law and in equity, receiving party shall be liable for all reasonable costs associated with any commercially reasonable remedial action taken by the disclosing party in accordance with prevailing industry practices to resolve a data breach by the receiving party. Without limiting the generality of the foregoing, the parties shall hold and use all Consumer Information in compliance with Subtitle A of Title V of the Gramm-Leach-Bliley Act (codified at 15 U.S.C. § 6801 et seq.), as it may be amended from time to time, and the regulations promulgated thereunder (the “GLB Act”), the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (“FCRA”), and all other applicable law.

The parties expressly agree and acknowledge that the terms of this transaction and the identity of the parties hereto and their respective affiliates (collectively, “Confidential Information”) shall be treated as confidential under the terms of this Section 6.10. The parties acknowledge and agree that the Confidential Information shall be kept confidential and shall not, except with the prior written consent of the disclosing party, be disclosed to any person other than (i) their and their affiliates’ employees, officers, directors, counsel, accountants, potential financing sources, advisors and agents (collectively “Representatives”) on a need to know basis, (ii) rating agencies or servicers or potential servicers in relation to the Mortgage Loans, (iii) purchasers or transferees of any of the Mortgage Loans who are subject to confidentiality with respect to such information, (iv) pursuant to routine supervisory review by an applicable regulatory authority which review is not targeted at the disclosing party or the transaction (whether by inquiry, exam, or audit) without notice to the disclosing party, and (v) if required by applicable law, order, rule or regulation or pursuant to a subpoena, court order, demand or other judicial process or in connection with a legal proceeding, in such case receiving party shall provide to the disclosing party prompt prior notice of such disclosure.

The parties agree that nothing contained herein is intended to seek confidential treatment for or limit disclosure of information that is in or becomes available to the public other than as a result of an unauthorized disclosure by the receiving party or its Representatives in violation of the terms of this Section 6.10. Solely with respect to the Obligor and Purchaser, either party acting in its capacity as the receiving party shall be responsible to the other party for any breach of this Section 6.10 by its Representatives. Each of the parties agrees that it shall not issue any press release in respect of the matters contemplated in this Agreement that utilizes the other party’s name in any manner, without such other party’s express prior written consent, except as expressly required by applicable law, rule or regulation. Each party understands and agrees that money damages would not be a sufficient remedy for any breach or threatened breach of this Section 6.10 and that the non-breaching party shall be entitled to obtain equitable relief, including injunction and specific performance, as a remedy for any such breach without the need to prove the inadequacy of monetary damages or post a bond or other undertaking. Such remedy shall, however, not be exclusive and shall be in addition to any other remedies which the non-breaching party may have at law or in equity. The restrictions set forth herein shall survive the termination of this Agreement.

Section 6.11. Exhibits. The exhibits to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement.

Section 6.12. General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;

(b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time in the United States, consistently applied;

(c) references herein to “Articles”, “Sections”, “Subsections”, “Paragraphs”, and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs and other subdivisions of this Agreement;

(d) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs and other subdivisions;

(e) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(f) the term “include” or “including” shall mean without limitation by reason of enumeration; and



(g) Section headings contained in this Agreement are for convenience of reference only, and they shall not be used in the interpretation hereof.

Section 6.13. Survival of the Agreement. To the extent this Agreement includes provisions which state that such will remain in effect after the closing of the transaction contemplated by this Agreement, such provisions shall survive and remain in effect after the closing.

Section 6.14. Regulation AB. Notwithstanding anything in this Agreement to the contrary, the Seller will not provide to the Purchaser any originator disclosure, servicer disclosure, or static pool information, as is contemplated by Regulation AB (Subpart 229.1100 – Asset Backed Securities, 17 C.F.R. §§229.1100-229.1125, as such may be amended from time to time).

Section 6.15. Limitation on Liability. It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed and delivered by Wilmington Savings Fund Society, FSB ("Wilmington") not individually or personally, but solely as trustee, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Seller is made and intended not as a personal representation, undertaking and agreement Wilmington but is made and intended for the purpose of binding only the Seller, (c) nothing herein contained shall be construed as creating any liability on Wilmington individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any person claiming by, through or under the parties hereto, (d) Wilmington has made no investigation as to the accuracy or completeness of any representations or warranties made by the Seller in the Agreement and (e) under no circumstances shall Wilmington be personally liable for the payment of any indebtedness or expenses of the Seller or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Seller.

Section 6.16. Program Manager; Discretionary Acts of Purchaser; No Recourse to Trustee.

(a) Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt, it is hereby acknowledged and agreed that each and every exercise of discretion on the part of Purchaser under this Agreement (including the election to exercise or waive any right, and the grant or withholding of any consent or approval), may be made by Program Manager in accordance with the Trust's trust agreement, as amended from time to time.

(b) It is expressly understood and agreed by the parties hereto (and any Person claiming by or through the parties hereto) that (i) this Agreement is executed and delivered by UMB Bank, National Association ("UMB Bank"), not individually or personally but solely as legal title trustee of the Trust, in the exercise of the powers and authority conferred and vested in it under its trust agreement, (ii) each of the undertakings and agreements herein made on the part of Purchaser is made and intended not as personal undertakings or agreements by UMB Bank but is made and intended for the purpose of binding only the Trust, (iii) nothing herein contained shall be construed as creating any obligation or liability on UMB Bank, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, and (iv) under no circumstances shall UMB Bank (in its individual capacity or as legal title trustee of the Trust) be personally liable for the payment of any indebtedness, indemnification or expenses of Purchaser or be liable for the performance, breach or failure of any obligation or covenant made or undertaken by Purchaser under this Agreement or any related document. Without limitation of anything in the foregoing, in no event shall UMB Bank have any liability to any Person under or in connection with this Agreement, any liability of Purchaser being solely the liability of the Trust and the assets of the Trust.

IN WITNESS WHEREOF, the Seller, the Obligor and the Purchaser have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

WILMINGTON SAVINGS FUND SOCIETY, FSB, not in its individual capacity but solely as  
Trustee for BCAT 2020-23TT, as Seller

By: /s/ Devon Almeida  
Name: Devon Almeida  
Title: Assistant Vice President

AG MORTGAGE INVESTMENT TRUST, INC., as Obligor

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

UMB BANK, NATIONAL ASSOCIATION, not in its individual capacity, but solely as legal title  
trustee for LVS Title Trust XIII, as Purchaser

By: /s/ Katie Carlson  
Name: Katie Carlson  
Title: Vice President



SCHEDULE 1

MORTGAGE LOAN SCHEDULE

Schedule 1

SCHEDULE 2-A

PROPERTY TAX AND HOMEOWNER'S LIEN AMOUNTS AND/OR ENCUMBRANCES OR OTHER DEFICIENCIES AND DISCLOSED LIENS  
AND ENCUMBRANCES CREDIT

SCHEDULE 2-B

DISPUTED DISCLOSED LIENS AND ENCUMBRANCES

Schedule 2-B

SCHEDULE 3-A  
COLLATERAL EXCEPTIONS

Schedule 3

SCHEDULE 3-B  
DATA EXCEPTIONS

EXHIBIT A  
MORTGAGE LOAN DOCUMENTS

Exhibit A-1

ACTIVE 50239353v12



EXHIBIT B  
FORM OF BILL OF SALE

Exhibit B-1

ACTIVE 50239353v12

EXHIBIT C

LIMITED POWER OF ATTORNEY

EXHIBIT D  
WIRE TRANSFER INSTRUCTIONS

Exhibit D-0

EXHIBIT E

PURCHASER REPORTS TO FREDDIE MAC

Exhibit E-1

EXHIBIT F

ADDITIONAL SALE REQUIREMENTS AND CONDITIONS TO THE SALE

Exhibit F-1

EXHIBIT G

STANDARD SERVICING INSTRUCTIONS FOR CONTESTED LITIGATION LOANS

Exhibit G-1

EXHIBIT H

CONFIDENTIALITY & NON-DISPARAGEMENT TERMS FOR SETTLEMENT OF THIRD PARTY CLAIMS

Exhibit H-1

EXHIBIT I

STANDARD SERVICING INSTRUCTIONS FOR UNCONTESTED LITIGATION LOANS

Exhibit I-1



EXHIBIT J

POST-SALE REPORTING REQUIREMENTS

### **THIRD FORBEARANCE AGREEMENT**

THIS THIRD FORBEARANCE AGREEMENT, dated as of June 1, 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 are party to that certain Forbearance Agreement, dated as of April 10, 2020 (the “First Forbearance Agreement”), with certain buyer parties listed on Schedule 1 thereto (the “First Forbearance Counterparties”), and the forbearance period under the First Forbearance Agreement ended on April 27, 2020.

C. The Companies are party to that certain Second Forbearance Agreement, dated as of April 27, 2020 (the “Second Forbearance Agreement”), with certain buyer parties listed on Schedule 1 thereto (the “Second Forbearance Counterparties”), and the forbearance period under the First Forbearance Agreement is scheduled to end on June 1, 2020.

D. 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”).

E. 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.

F. 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) 4:30 p.m. Eastern Daylight Time on June 15, 2020, 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. **Security Interest**. Pursuant and subject to the terms of the First Forbearance Agreement and the Security and Collateral Agency Agreement, the Companies granted a security interest in the Collateral (as defined in the First Forbearance Agreement) to the Collateral Agent and its successors and assigns, for the benefit of the First Forbearance Counterparties in accordance with their respective Pro Rata Realized Losses. With respect to the security interest granted by the Companies, (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 at least one First Forbearance Counterparty, provided that, with respect to a Participating Counterparty that executes a counterpart of this Agreement within one (1) business day after the Effective Date, (i) this Agreement shall be effective as to such Participating Counterparty upon such execution by such Participating Counterparty and (ii) the Companies shall provide updated versions of Schedule 1 and Schedule 2 to all of the Participating Counterparties within one (1) business day after execution by such Participating Counterparty;
- (b) the security interests granted pursuant to Section 2 of the First Forbearance Agreement and the Security and Collateral Agency Agreement 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;
- (c) 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;
- (d) 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; and
- (e) 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.

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 (but not, for the avoidance of doubt, obligations of any affiliate or managed fund of Angelo Gordon, L.P. party to a JV Applicable Agreement that is not a Seller Entity, which obligations shall accrue at the rate of interest specified in such JV Applicable Agreement) shall be the sum of (i) LIBOR (as defined and determined pursuant to the terms of each Applicable

Agreement) and (ii) 5.00% (the “Common Rate”). During the Forbearance Period, to the extent the income, funds, cash collateral and other proceeds received under or in connection with an Applicable Agreement and/or Applicable Assets thereunder is insufficient to pay the Common Rate due on the applicable due date under such Applicable Agreement, the applicable Seller Entity shall pay such unpaid amount on such due date.

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.**

- (a) 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 (“Applicable Transaction”) 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 (x) each sale of the Applicable Assets shall be made on an arm’s length basis by the Companies 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) unless otherwise approved by the Required Counterparties, no such sale will result in a loss in excess of the amounts set forth in Section 6(b) below.
- (b) The Required Counterparties shall be deemed to have approved (i) the sale of a Loan Asset or a pool of Loan Assets provided that such sale does not result in a loss in excess of 1% of the Loan Balance, and (ii) the sale of Securities Assets to the extent that such sale does not result in an Aggregate Securities Net Loss in excess of 10% of the Participating Counterparty’s Securities Balance.
- (c) Within two (2) business days after settlement of a sale in accordance with this Section 6, the Companies shall send a report detailing any gains and/or losses and the then current outstanding amounts due under the related Applicable Agreements in form and substance reasonably acceptable to the parties.
- (d) 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, after termination of all of a Participating Counterparty's Applicable Agreements, satisfaction of all obligations thereunder, and application of all remaining proceedings in accordance with the foregoing, any further proceeds shall be subject to the lien and security interest granted in Section 2 of the First Forbearance Agreement and any such excess cash proceeds shall be remitted directly to Deposit Accounts (as defined in the Security and Collateral Agency Agreement) that are subject to Deposit Account Control Agreements (as defined in the Security and Collateral Agency Agreement).

- (e) The Companies and the Participating Counterparties will reasonably cooperate to facilitate the sales contemplated in this Section 6 and any sales executed prior to the Effective Date, and the Companies shall use best efforts to receive the consent of the Required Counterparties as required in Section 6(b) above.
- (f) 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) There are no material agreements between the Companies and any other counterparties that have not been disclosed to the Participating Counterparties; and
- (c) The Companies have not received any notice of default or event 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, provided, however, for the avoidance of doubt, that the foregoing does not prohibit a Seller Entity from declaring a dividend that would not be paid until after the end of the Forbearance Period;
- (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, and provided, further, for the avoidance of doubt, that neither the First Forbearance Agreement nor the Second Forbearance Agreement constitutes an agreement with a Non-Participating Counterparty for purposes of this Section 9(c);

- (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 reporting each business day 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) unless otherwise agreed upon by the Participating Counterparties, 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 the First Forbearance Agreement; provided, however, for the avoidance of doubt, except with respect to the payment of interest as set forth above in Section 4, 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 the First Forbearance 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) other than the termination of the forbearance period under the First Forbearance Agreement or the Second Forbearance Agreement, 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) 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;
- (n) the Companies shall continue to make a good faith effort to undertake a deleveraging process and use its commercially reasonable efforts to accomplish such deleveraging; and
- (o) on a weekly basis during the Forbearance Period, the Companies shall provide reasonably detailed written reports on the progress of the Companies in their recapitalization and refinancing process.

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. **Sale of Claims During Forbearance Period.** During the Forbearance Period and provided that no Triggering Event shall have occurred, but subject to the provisions of Section 6 hereof, no Participating Counterparty may sell or otherwise transfer (either directly or indirectly) any claim it may have arising out of any Applicable Agreement to any person (other than (x) another Participating Counterparty, (y) an affiliate of a Participating Counterparty that expressly agrees to be bound by the terms of this Agreement, or (z) another person that expressly agrees to be bound by the terms of this Agreement; provided that, in the case of this clause (z), the Participating Counterparty selling such claims shall provide prior written notice of such sale to the Companies and the other Participating Counterparties) without the prior written consent of the Required Counterparties. In no event shall any claims be sold or otherwise transferred (whether directly or indirectly) to the Companies.

14. **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](http://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).

15. **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.

16. **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).

17. **Entire Agreement.** This Agreement, together with all Applicable Agreements to which the parties are bound, the First Forbearance Agreement, the Second Forbearance Agreement, 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.

18. **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.

19. **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.

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

21. **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.

22. **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.

23. **Certain Definitions.**

- (a) “Aggregate Securities Net Loss” shall mean, as determined on any date of determination, the aggregate net losses incurred from and including April 10, 2020 by a Participating Counterparty in connection with one or more sales of Securities Assets.



- (b) “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.
- (c) “Intercreditor Agreement” shall mean that certain Intercreditor and Subordination Agreement dated as of April 10, 2020, as amended by that certain Amendment No. 1 to Intercreditor and Subordination Agreement dated as of April 27, 2020, among 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.
- (d) “Loan Assets” shall mean Applicable Assets that are mortgage loans, REO properties and interests therein (other than Securities Assets).
- (e) “Loan Balance” shall mean, as determined as of the date of any sale of Loan Assets, the principal amount owed to a Participating Counterparty under the Applicable Agreements in respect of the Loan Assets subject to such sale.
- (f) “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.
- (g) “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).
- (h) “Required Counterparties” shall mean the Participating Counterparties listed on Schedule 7 hereto.
- (i) “Securities Assets” shall mean Applicable Assets that are securities.
- (j) “Securities Balance” shall mean, as determined as of April 10, 2020, the aggregate amount owed to a Participating Counterparty under the Applicable Agreements in respect of Securities Assets.
- (k) “Security and Collateral Agency Agreement” shall mean that certain Security and Collateral Agency Agreement dated as of April 10, 2020, among the Companies,

Wilmington Trust, National Association, as agent for the First Forbearance Counterparties, and the First Forbearance Counterparties.

- (l) “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 First Forbearance Counterparties.
- (m) “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, provided, however, for the avoidance of doubt, that the foregoing shall not apply to a Seller Entity declaring a dividend that would not be paid until after the end of the Forbearance Period;
  - (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) unless otherwise agreed upon by the Participating Counterparties, 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 actions within such Company's control within two (2) business days of actual notice to, or actual knowledge by, such Company 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;
- (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 the First Forbearance Agreement and the Security Documents; or
- (xvi) any Company shall take any actions within such Company's control to have the DTC repo tracker turned "on" with respect to assets subject to the relevant Applicable Agreements.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

**SELLER ENTITIES:**

*Signature Page to AG MITT Third Forbearance Agreement*

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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: Authorized Signatory

*Signature Page to AG MITT Third Forbearance Agreement*



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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: Authorized Signatory

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*

**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

*Signature Page to AG MITT Third Forbearance Agreement*



**AG MITT 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

*Signature Page to AG MITT Third Forbearance Agreement*

**AG MIT TREASURY, 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

*Signature Page to AG MITT Third Forbearance Agreement*

**SELLER ENTITIES:**

*Signature Page to AG MITT Third Forbearance Agreement*

**BOFA SECURITIES, INC.**, as a Participating Counterparty

By: /s/ Michael J. Berg

Name: Michael J. Berg

Title: Director

*Signature Page to AG MITT Third Forbearance Agreement*

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

By: /s/ Ernest Calabrese

Name: Ernest Calabrese

Title: Director

*Signature Page to AG MITT Third Forbearance Agreement*

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

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

By: /s/ Ernest Calabrese  
Name: Ernest Calabrese  
Title: Authorized Signatory

*Signature Page to AG MITT Third Forbearance Agreement*

**CREDIT SUISSE INTERNATIONAL**, as a Participating Counterparty

By: /s/ Masashi Washida  
Name: Masashi Washida  
Title: Managing Director

By: /s/ Jason OBrien  
Name: Jason OBrien  
Title: Managing Director

*Signature Page to AG MITT Third Forbearance Agreement*

**BARCLAYS CAPITAL INC.**, as a Participating Counterparty

By: /s/ Robert Silverman

Name: Robert Silverman

Title: Managing Director

*Signature Page to AG MITT Third Forbearance Agreement*



**BARCLAYS BANK PLC**, as a Participating Counterparty

By: /s/ Robert Silverman

Name: Robert Silverman

Title: Managing Director

*Signature Page to AG MITT Third Forbearance Agreement*

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

By: /s/ Chris Allbright

Name: Chris Allbright

Title: Assistant Vice President

*Signature Page to AG MITT Third Forbearance Agreement*

**GOLDMAN SACHS BANK USA**, as a Participating Counterparty

By: /s/ Rajiv Kamilla

Name: Rajiv Kamilla

Title: Authorized Signatory

*Signature Page to AG MITT Third Forbearance Agreement*

## SCHEDULE 1

Participating Counterparties

## SCHEDULE 2

Applicable Agreements

### SCHEDULE 3

Budget

SCHEDULE 4

Notices of Default

SCHEDULE 5

Excepted Agreements



SCHEDULE 6

[Reserved]

SCHEDULE 7

Required Counterparties

## AG Mortgage Investment Trust, Inc. Provides Company Update

**NEW YORK -- (BUSINESS WIRE) - June 1, 2020** -AG Mortgage Investment Trust, Inc. (NYSE: MITT) (the “Company”) announced today the following updates with respect to its business operations:

### *Mortgage Loan Sale*

As previously reported, the Company entered into a Bid Terms Acknowledgment Letter (the “Letter Agreement”) with an unaffiliated third party, evidencing the third party’s intent to purchase the pool of mortgage loans specified therein. The Letter Agreement provided that the purchase and sale of the loans were subject to the parties entering into a Mortgage Loan Purchase and Sale Agreement.

On May 28, 2020, the Company, as obligor, entered into a Mortgage Loan Purchase and Sale Agreement (the “MLPSA”) with Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as trustee for BCAT 2020-23TT (the “Seller”) and UMB Bank, National Association, not in its individual capacity, but solely as legal title trustee for LVS Title Trust XIII (the “Purchaser”). The MLPSA provided for the sale by the Seller to the Purchaser of mortgage loans specified therein (the “Loans”) having an approximate unpaid principal balance of \$465 million for net proceeds of approximately \$383 million. The closing of the purchase and sale of the Loans occurred on May 28, 2020.

The net proceeds from the sale of the Loans pursuant to the MLPSA, were used to repay the Company’s indebtedness and associated payables secured by the Loans in the aggregate amount of approximately \$383 million.

### *Third Forbearance Agreement*

As previously reported, on April 27, 2020, the Company entered into a Second Forbearance Agreement dated April 27, 2020 (the “Second Forbearance Agreement”) pursuant to which each participating counterparty thereto agreed to continue 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) 4:30 p.m. Eastern Daylight Time on June 1, 2020, or (b) the occurrence and continuance of a Triggering Event (as defined). Upon expiration of the Second Forbearance Agreement on June 1, 2020, the Company entered into a Third Forbearance Agreement with the participating counterparties (the “Third Forbearance Agreement”) which extended the forbearance period from June 1, 2020 to the earlier of (i) 4:30 p.m. Eastern Daylight Time on June 15, 2020, or (ii) the occurrence and continuance of a Triggering Event (as defined). The other terms of the Second Forbearance Agreement were substantively unchanged in the Third Forbearance Agreement.

### *Litigation Settlement*

As previously reported, the Company received written notices from certain affiliates of Royal Bank of Canada (“RBC”) alleging that events of default had occurred with respect to various financing agreements. The Company disputed RBC’s notices of events of default and filed a suit in federal district court in New York seeking both to enjoin RBC from selling the Company’s collateral securing the financing as well as damages. On May 28, 2020, the Company entered into a settlement agreement with RBC pursuant to which the Company and RBC mutually released each other from further claims pursuant to the financing agreement. As part of the settlement, the Company paid RBC \$5.0 million in cash and issued to RBC a secured promissory note in the principal amount of \$2.0 million (the “Note”).

The principal amount of the Note is due on July 27, 2020 and accrues interest on the unpaid principal balance at 6.0% per annum. 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 (the “RBC Security Agreement”) dated May 28, 2020 between the Company and RBC. Pursuant to the RBC Security Agreement, the Company’s obligations with respect to the Note and the lien held by RBC for the security of the performance of the Company’s obligations under the Note, are subordinate to the Company’s obligations to the Participating Counterparties (as defined in the Third Forbearance Agreement) and to the lien held by the Collateral Agent (as defined) pursuant to an Intercreditor and Subordination Agreement by and among the Company, RBC and the Collateral Agent (the “RBC Intercreditor and Subordination Agreement”).

AG REIT Management, LLC, the Company’s external manager (the “Manager”), simultaneously entered into a separate intercreditor and subordination agreement with RBC (the “Manager Intercreditor and Subordination Agreement”) subordinating the payment of the Company’s previously issued \$20 million secured promissory note payable to the Manager to the Note payable to RBC, with the effect that the Company’s obligations to the Participating Counterparties has first priority with respect to the Company’s assets, the Note payable to RBC is second in priority and the note payable to the Manager is third in priority.

As part of the settlement arrangement between the Company and RBC, and to reflect the terms described above, the Company issued to the Manager an Amended and Restated Secured Promissory Note dated May 28, 2020 in the principal amount of \$20 million (the “Amended and Restated Manager Note”), and the Company and the Manager entered into an Amended and Restated Security Agreement dated May 28, 2020 (the “Amended and Restated Manager Security Agreement”).

## **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 sale of certain of the Company’s assets, the Company’s outstanding indebtedness and investment portfolio, certain additional financial metrics, and the Company’s entry into certain agreements, 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 and the impact of the COVID-19 pandemic on these 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, our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended, conditions in the real estate market, legislative and regulatory actions by the U.S. Department of the Treasury, the Federal Reserve and other agencies and instrumentalities in response to the economic effects of the COVID-19 pandemic, our negotiations with our repurchase financing counterparties and AG REIT Management, LLC, our ability to negotiate, to the extent necessary, further extensions of the forbearance period with the participating counterparties and to enter into settlements with the non-participating counterparties and the impact of the changes described in this Press Release on our ability to accurately estimate our investment portfolio and book value per share as of April 30, 2020. 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/>. The Company undertakes no duty to update any forward-looking statements in this Press Release to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based.

## **AG Mortgage Investment Trust, Inc.**

Investor Relations

(212) 692-2110

[ir@agmit.com](mailto:ir@agmit.com)

Source: AG Mortgage Investment Trust, Inc.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATED IN THE MANNER AND TO THE EXTENT SET FORTH IN SECTION 5 BELOW AND THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT DATED AS OF THE DATE HEREOF (THE “INTERCREDITOR AGREEMENT”) AND AMONG THE NOTEHOLDER (AS DEFINED BELOW), WILMINGTON TRUST, NATIONAL ASSOCIATION AS AGENT FOR THE PARTICIPATING COUNTERPARTIES UNDER THE FIRST LIEN SECURITY AGREEMENT (AS DEFINED BELOW) (IN SUCH CAPACITY, THE “COLLATERAL AGENT”), AND THE BORROWER TO THE OBLIGATIONS (INCLUDING INTEREST) OWED BY BORROWER (AS DEFINED BELOW) AND THE GUARANTORS TO THE PARTICIPATING COUNTERPARTIES (AS DEFINED IN THE FORBEARANCE AGREEMENT (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.

\$2,000,000.00

AG MORTGAGE INVESTMENT TRUST, INC.

SECURED PROMISSORY NOTE

May 28, 2020

AG Mortgage Investment Trust, Inc., a Maryland corporation (the “Borrower”), for value received, hereby promises to pay to the order of Royal Bank of Canada (the “Noteholder”) or its assigns, the sum of Two Million Dollars and 00/100 (\$2,000,000.00) 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 July 27, 2020 (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 accordance with that certain Settlement Agreement dated as of the date hereof by and among the Borrower, the Noteholder, and certain of their affiliates.

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 April 10, 2020 and as the same may be amended from time to time hereafter.

(v) “Forbearance Agreement” means collectively: (i) that certain Forbearance Agreement, dated as of April 10, 2020, by and among the Borrower, the Guarantors, and the Participating Counterparties; (ii) that certain Second Forbearance Agreement, dated as of April 27, 2020, by and among the Borrower, the Guarantors, and the Participating Counterparties; and (iii) any extension, amendment, modification, or supplement to either of the foregoing agreements;

(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, computed on the basis of a three hundred sixty five (365) day year. 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, and pari passu solely with any Permitted Pari Passu Secured Indebtedness (as defined in the Subordinated Security Agreement). No Borrower or Guarantor shall make any payment of principal or of interest on this Note, regardless of whether the Maturity Date has occurred, until the payment in full of the Obligations (as defined in the First Lien Security Agreement) without the consent of Participating Counterparties for which amounts remain due under an Applicable Agreement (as defined in the Forbearance 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. Reserved.

7. Events of Default. Subject to the Intercreditor Agreement, if any of the events specified in this Section 7 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 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 and commencement of exercise of remedies thereunder or under the First Lien Security Agreement by, or at the direction of, the Participating Counterparties;

(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. Prior to the termination of the Forbearance Agreement with the consent of Participating Counterparties for which amounts remain due under an Applicable Agreement (as defined in the Forbearance Agreement) and the termination of the Intercreditor Agreement in accordance with the terms thereof, unless consented to by the Required Counterparties (as defined in the Forbearance Agreement), neither the Borrower nor any Guarantor may prepay the principal amount of, or any accrued and unpaid interest with respect to, the Note. Thereafter, the Borrower may, at its sole option, at any time prepay in whole or in part, without premium or penalty, the principal amount of, and accrued and unpaid interest with respect to, the Note.

9. Transfer. This Note may not be transferred directly or indirectly, in whole or in part, to any party without the prior written consent of the Borrower. Any transfer in violation of the foregoing will be of no force and effect, will be void *ab initio* and will not operate to transfer any rights to the transferee.

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, appraisement, 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.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Borrower and each Guarantor has caused this Note to be issued this 28 day of May, 2020.

**AG MORTGAGE INVESTMENT TRUST, INC.,** as Borrower

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

*Signature Page to RBC Secured Promissory Note*

**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

*Signature Page to RBC Secured Promissory Note*

**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

*Signature Page to RBC Secured Promissory Note*

**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

*Signature Page to RBC Secured Promissory Note*

**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

*Signature Page to RBC Secured Promissory Note*

**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

*Signature Page to RBC Secured Promissory Note*

**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

*Signature Page to RBC Secured Promissory Note*



**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

*Signature Page to RBC Secured Promissory Note*

**AG MITT 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

*Signature Page to RBC Secured Promissory Note*

**AG MIT TREASURY, LLC**, as a Guarantor

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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

*Signature Page to RBC Secured Promissory Note*

Agreed and Acknowledged:

Royal Bank of Canada

By: /s/ Mark Douvas

Name: Mark Douvas

Title: SVP

Address:

Royal Bank of Canada

30 Hudson Street

Jersey City, NJ 07302

Attn: Paul Serritella, Senior Counsel

Email: paul.serritella@rbccm.com

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

Skadden, Arps, Slate, Meagher & Flom LLP

One Manhattan West

New York, NY 10001

Attn: Christopher P. Malloy

Email: Christopher.Malloy@skadden.com

*Signature Page to RBC Secured Promissory Note*

Schedule 1

Guarantors

AG MIT CMO, LLC

AG MIT, LLC

AG MIT International LLC

AG MIT CMO EC LLC

AG MIT RES LLC

AG MIT ARC, LLC

AG MIT HC, LLC

AG MITT RPL TRS LLC

AG MIT TREASURY, LLC

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 SENIOR INTERCREDITOR AGREEMENT (AS DEFINED BELOW) DATED AS OF THE DATE HEREOF, AMONG ROYAL BANK OF CANADA, 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 May 28, 2020, is entered into by and among AG Mortgage Investment Trust, Inc. (the “**Borrower**”) and the parties set forth on **Schedule 1** of this Agreement (each, a “**Debtor**”, and collectively, the “**Debtors**”) and Royal Bank of Canada (together with a holder of Permitted Pari Passu Secured Indebtedness designated by the Borrower that executes a Joinder hereto, collectively, the “**Secured Party**”).

### **RECITALS:**

A. Certain of the Debtors have entered into that certain Forbearance Agreement dated as of April 10, 2020 (together with that certain Second Forbearance Agreement dated as of April 27, 2020, and as may be further amended, modified, extended, replaced or supplemented hereafter, the “**Forbearance Agreement**”) with the Participating Counterparties (as defined in 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 settlement and release of claims alleged by certain of the Debtors against Royal Bank of Canada (“**RBC**”) and its affiliate, in accordance with that certain Settlement Agreement dated as of the date hereof by and among the Borrower, RBC, and certain of their affiliates, the Borrower has issued a Secured Promissory Note to RBC in the principal amount of \$2,000,000, evidenced by that certain Secured Promissory Note dated as of the date hereof.

C. In order to induce RBC to accept the Secured Promissory Note, the Debtors have agreed to grant (or cause to be granted) Liens to RBC to secure the obligations of the Debtors to RBC under the Secured Promissory Note.

D. The Liens granted to RBC are subordinated to the Liens granted to the Collateral Agent (as defined herein), as more fully set forth in the Senior Intercreditor Agreement, and senior

to the Liens granted to AG REIT Management, LLC, to secure the AG REIT Secured Promissory Note as more fully set forth in the AG REIT Subordination 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.

“**AG REIT Secured Promissory Note**” means that certain Amended and Restated Secured Promissory Note issued by the AG Mortgage Investment Trust, Inc. to AG REIT Management, LLC on the date hereof, and as the same may be further amended hereafter.

“**AG REIT Subordination Agreement**” means that certain Intercreditor and Subordination Agreement dated as of the date hereof by and among the Debtors, RBC, and AG REIT Management, LLC.

“**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 Agreements”** means the Senior Intercreditor Agreement and the AG REIT Subordination Agreement.

**“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.

“**Joinder**” means a joinder to this Agreement and the Intercreditor Agreements, in substantially the form attached hereto as Exhibit A, executed by a holder of Permitted Pari Passu Secured Indebtedness.

“**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 and Permitted Pari Passu Secured Indebtedness, if any.

“**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, (d) the Liens granted pursuant to the AG REIT Subordinated Security Agreement, and (e) the liens evidenced by the financing statements listed on **Schedule 3.5**.

“**Permitted Pari Passu Secured Indebtedness**” means indebtedness of the Debtors evidenced by one or more secured promissory notes that are substantially identical to the Secured Promissory Note, in an aggregate principal amount not to exceed \$3,000,000, and that are secured by Liens on the Collateral that are of equal priority with the Liens held by RBC, as designated by the Borrower and as evidenced by a Joinder.

“**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 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 RBC by AG Mortgage Investment Trust, Inc. in the principal amount of \$2,000,000, 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 April 10, 2020 by and among the Debtors, the Collateral Agent, and the Participating Counterparties.

**“Senior 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 RBC, as the same may be amended from time to time after the date hereof.

**“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 Senior Intercreditor Agreement and the exercise of any right or remedy by the Secured Party hereunder is subject to the terms and provisions of the Senior Intercreditor Agreement. In the event of any conflict between the terms of the Senior Intercreditor Agreement and this Agreement, the terms of the Senior 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 Liens securing Permitted Pari Passu Secured Indebtedness or as set forth in the Senior Intercreditor Agreement. The Secured Party agrees to execute any intercreditor or other agreement reasonably requested by the Debtors in connection with the Debtors' incurrence of any Permitted Pari Passu Secured Indebtedness in order to reflect that the Liens held by the Secured Party shall be of equal priority with the Liens held by the holder or holders of such Permitted Pari Passu Secured Indebtedness.
- (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 Senior 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 Senior 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 Senior 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 by each Secured Party 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 applicable 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 Senior 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 or AG REIT Management, LLC.

**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 Senior 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 Senior 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 Senior 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.**

- (a) Notwithstanding anything in this Agreement to the contrary, and as provided in the Senior Intercreditor Agreement, (x) the liens securing the Obligations 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 Obligations shall be subordinated in right of payment to the Participating Counterparty Obligations.
- (b) Notwithstanding anything in this Agreement to the contrary, and as provided in the AG REIT Subordination Agreement, (x) the liens securing the Obligations shall be senior in priority to the Liens granted to secure the AG REIT Secured Promissory Note and (y) the payment obligations of the Debtors with respect to the Obligations shall be senior in right of payment to the Debtors' obligations under the AG REIT Secured Promissory Note.

#### **ARTICLE 5**

##### **Reserved**

#### **ARTICLE 6**

##### **Rights of the Secured Party**

**Section 6.1 Power of Attorney.** Subject to the terms of the Senior 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, depository, 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 Senior 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 Senior 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) The Debtors shall use commercially reasonable efforts to enter into amendments to the deposit account control agreements (the “**Deposit Account Control Agreements**”) within ten business days of the date hereof with each applicable bank with respect to the Deposit Accounts set forth on Schedule 3.3, the Senior Collateral Agent, and AG REIT Management, LLC to name the Secured Party as an additional second lien Secured Party. 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 Cave-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 Senior 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 the Secured Parties in proportion to their holdings of then outstanding Obligations, 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;

*third*, to AG REIT Management, LLC to pay the unpaid principal of AG REIT 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 AGREEMENTS 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 SENIOR INTERCREDITOR AGREEMENT IN ALL RESPECTS AND SHALL REMAIN SUBJECT TO THE SENIOR 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; (ii) if to RBC as Secured Party, to Royal Bank of Canada, 30 Hudson Street, Jersey City, New Jersey 07302, Attn: Paul Serritella, Senior Counsel, paul.serritella@rbccm.com, with a copy, which shall not constitute notice, to: Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attn: Christopher P. Malloy, Christopher.Malloy@skadden.com; (iii) if to a holder of Permitted Pari Passu Secured Indebtedness, to the address set forth in the applicable Joinder; 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 Agreements. In the event that any provision of this Agreement shall be inconsistent with any provision of the Intercreditor Agreements, the provisions of the applicable Intercreditor Agreement shall control. To the extent of any conflict between the Intercreditor Agreements, the provisions of the Senior Intercreditor Agreement shall control.

**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

*Signature Page to AG MITT Subordinated Security Agreement*

**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

*Signature Page to AG MITT Subordinated Security Agreement*

**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

*Signature Page to AG MITT Subordinated Security Agreement*

**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

*Signature Page to AG MITT Subordinated Security Agreement*

**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

*Signature Page to AG MITT Subordinated Security Agreement*

**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

*Signature Page to AG MITT Subordinated Security Agreement*

**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

*Signature Page to AG MITT Subordinated Security Agreement*



**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

*Signature Page to AG MITT Subordinated Security Agreement*

**AG MITT 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

*Signature Page to AG MITT Subordinated Security Agreement*

**AG MIT TREASURY, LLC**, as a Debtor

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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

*Signature Page to AG MITT Subordinated Security Agreement*

Secured Party:

**ROYAL BANK OF CANADA**

By: /s/ Mark Douvas

Name: Mark Douvas

Title: SVP

*Signature Page to AG MITT Subordinated Security Agreement*

**Schedule 1**

AG MIT CMO, LLC

AG MIT, LLC

AG MIT International LLC

AG MIT CMO EC LLC

AG MIT RES LLC

AG MIT ARC, LLC

AG MIT HC, LLC

AG MITT RPL TRS LLC

AG MIT TREASURY LLC

**Exhibit A**

Form of Joinder

## JOINDER AGREEMENT

This Joinder Agreement (this “Agreement”) is dated as of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (“**New Pari Passu Indebtedness Holder**”).

WHEREAS, the New Pari Passu Indebtedness Holder is the holder of that certain Secured Promissory Note (the “**Pari Passu Note**”) issued by AG Mortgage Investment Trust, Inc. (the “**Borrower**”) and guaranteed by the Guarantors named there in (the “**Guarantors**”);

WHEREAS, the New Pari Passu Indebtedness Holder hereby acknowledges and agrees that the obligations under the Pari Passu Note are secured by the liens granted pursuant to that certain Security Agreement, dated as of May 28, 2020, by and among the Borrower and Guarantors, as Debtors, and Royal Bank of Canada (“**RBC**”), as secured party (the “**Security Agreement**”);

WHEREAS, in order to comply with the Security Agreement and Intercreditor Agreements (as defined therein), New Pari Passu Indebtedness Holder hereby covenants and agrees as follows:

1. The liens securing the Pari Passu Note shall be subordinate to the liens securing the Participating Counterparty Obligations.
2. The liens securing the Pari Passu Note shall be of equal priority with the liens securing the Secured Promissory Note issued by the Borrower, and guaranteed by the Guarantors, to RBC on May 28, 2020 (as amended, the “**RBC Note**”).
3. The New Pari Passu Indebtedness Holder hereby agrees to be bound by the Senior Intercreditor Agreement as a “Subordinated Lender” thereunder.
4. The New Pari Passu Indebtedness Holder hereby agrees to be bound by the AG REIT Subordination Agreement as a “Senior Lender” thereunder.
5. The New Pari Passu Indebtedness Holder expressly acknowledges that it shall be required to file financing statements naming it as a secured party against the Borrower and Guarantors, and that no financing statement filed by RBC or any other holder of Permitted Pari Passu Secured Indebtedness (as defined in the Security Agreement) shall be deemed to have perfected any security interest held by the New Pari Passu Indebtedness Holder.

**[NEW PARI PASSU HOLDER]**

By: \_\_

Its: \_\_

Accepted:

**AG Mortgage Investment Trust, Inc.**

By: \_\_\_\_\_

Its: \_\_\_\_\_



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INTERCREDITOR AND SUBORDINATION AGREEMENT

Dated as of May 28, 2020

Among

WILMINGTON TRUST, NATIONAL ASSOCIATION

As the Senior Collateral Agent,

Royal Bank of Canada, together with its successors and assigns, and holders of Permitted Pari Passu Secured Indebtedness designated by AGMIT that execute a Joinder, collectively,

As Subordinated Lender,

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

AG REIT Management LLC, solely with respect to Sections 5.01 and 9.01

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## INTERCREDITOR AND SUBORDINATION AGREEMENT

This Intercreditor and Subordination Agreement is made as of May 28, 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 RBC, as the holder of the Subordinated Note hereinafter referred to (together with its successors and assigns and any holder of Permitted Pari Passu Secured Indebtedness designated by AGMIT that executes a Joinder, collectively, the “**Subordinated Lender**”)

### PRELIMINARY STATEMENTS

WHEREAS, pursuant to (i) that certain Forbearance Agreement, dated as of April 10, 2020, by and among the Borrower, the Guarantors, and the Participating Counterparties; (ii) that certain Second Forbearance Agreement, dated as of April 27, 2020, by and among the Borrower, the Guarantors, and the Participating Counterparties; and (iii) any extension, amendment, modification, replacement or supplement to either of the foregoing agreements (collectively, 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 the date hereof (the “**Subordinated Note**”) made by AGMIT and issued to [RBC] pursuant to the Settlement Agreement (as defined herein), AGMIT has agreed to pay to [RBC] the principal amount of \$2,000,000 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, joined 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.

**“Joinder”** means a joinder in substantially the form attached hereto as Exhibit A, executed by a holder of Permitted Pari Passu Secured Indebtedness.

**“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, 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.

**“Permitted Pari Passu Secured Indebtedness”** means indebtedness of the Debtors evidenced by one or more secured promissory notes that are substantially identical to the Subordinated Note, in an aggregate principal amount not to exceed \$3,000,000, and that are secured by Liens on the Collateral that are of equal priority with the Liens held by RBC, as designated by AGMIT and as evidenced by a Joinder hereto in accordance with Section 9.19.

**“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.

**“Settlement Agreement”** means that certain Settlement Agreement entered into by certain of the Debtors, RBC, and an RBC affiliate on the date hereof.

**“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 Note”** 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, and all agreements, documents and instruments entered into in connection with Permitted Pari Passu Secured Indebtedness.

**“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. Notwithstanding Section 5.01 of that certain Intercreditor and Subordination Agreement, dated as of April 10, 2020, by and among AG REIT Management LLC, the Debtors, and Wilmington Trust, National Association (as amended from time to time thereafter, the “**Participating Counterparties Intercreditor Agreement**”), when the Senior Secured Debt Obligations have been Paid in Full, the Senior Collateral Agent shall, if the Subordinated Obligations have not been otherwise satisfied, deliver promptly to the Subordinated Lender (not AG REIT Management LLC) 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 and Senior Secured Parties 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 ten (10) 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. The Senior Collateral Agent and the Senior Secured Parties acknowledge and agree that to the extent of any conflict between Section 5.01 of this Agreement and Section 5.01 of the Participating Counterparties Intercreditor Agreement, Section 5.01 of this Agreement shall control, and neither Senior Collateral Agent nor any Senior Secured Parties shall be deemed to be in breach of Section 5.01 of the Participating Counterparties Intercreditor Agreement to the extent any action taken by the Senior Collateral Agent or any Senior Secured Party complies with Section 5.01 of this Agreement.

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 RBC as Subordinated Lender, to:

Royal Bank of Canada  
30 Hudson Street  
Jersey City, NJ 07302  
Attn: Paul Serritella, Senior Counsel  
Email: paul.serritella@rbccm.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, NY 10001  
Attn: Christopher P. Malloy  
Email: Christopher.Malloy@skadden.com

(iv) If to a holder of Permitted Pari Passu Secured Indebtedness, to the address set forth for such party in an applicable Joinder.

(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 9.18(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 Joinder. A holder of Permitted Pari Passu Secured Indebtedness shall become party to this Agreement upon execution of the form of joinder attached hereto as Exhibit A and delivery of such executed joinder to the Subordinated Lender, the Debtors, and the Senior Secured Parties then party hereto.

Section 9.20 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, as Senior Collateral Agent

By: /s/ Jennifer A. Luce  
Name: Jennifer A. Luce  
Title: Vice President

*Signature Page to Intercreditor and Subordination Agreement*

ROYAL BANK OF CANADA, as Subordinated Lender

By: /s/ Mark Douvas

Name: Mark Douvas

Title: SVP

*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 REIT MANAGEMENT LLC, solely with respect to Sections 5.01 and 9.01

By: /s/ Frank Stadelmaier

Name: Frank Stadelmaier

Title: Authorized Signatory

*Signature Page to Intercreditor and Subordination Agreement*

**Exhibit A**

Form of Joinder

## JOINDER AGREEMENT

This Joinder Agreement (this “Agreement”) is dated as of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (“**New Pari Passu Indebtedness Holder**”).

WHEREAS, the New Pari Passu Indebtedness Holder is the holder of that certain Secured Promissory Note (the “**Pari Passu Note**”) issued by AG Mortgage Investment Trust, Inc. (the “**Borrower**”) and guaranteed by the Guarantors named there in (the “**Guarantors**”);

WHEREAS, the New Pari Passu Indebtedness Holder hereby acknowledges and agrees that the obligations under the Pari Passu Note are secured by the liens granted pursuant to that certain Security Agreement, dated as of May 28, 2020, by and among the Borrower and Guarantors, as Debtors, and Royal Bank of Canada (“**RBC**”), as secured party (the “**Security Agreement**”);

WHEREAS, in order to comply with the Security Agreement and Intercreditor Agreements (as defined therein), New Pari Passu Indebtedness Holder hereby covenants and agrees as follows:

1. The liens securing the Pari Passu Note shall be subordinate to the liens securing the Participating Counterparty Obligations.
2. The liens securing the Pari Passu Note shall be of equal priority with the liens securing the Secured Promissory Note issued by the Borrower, and guaranteed by the Guarantors, to RBC on May 28, 2020 (as amended, the “**RBC Note**”).
3. The New Pari Passu Indebtedness Holder hereby agrees to be bound by the Senior Intercreditor Agreement as a “Subordinated Lender” thereunder.
4. The New Pari Passu Indebtedness Holder hereby agrees to be bound by the AG REIT Subordination Agreement as a “Senior Lender” thereunder.
5. The New Pari Passu Indebtedness Holder expressly acknowledges that it shall be required to file financing statements naming it as a secured party against the Borrower and Guarantors, and that no financing statement filed by RBC or any other holder of Permitted Pari Passu Secured Indebtedness (as defined in the Security Agreement) shall be deemed to have perfected any security interest held by the New Pari Passu Indebtedness Holder.

[NEW PARI PASSU HOLDER]

By: \_\_

Its: \_\_

Accepted:

**AG Mortgage Investment Trust, Inc.**

By: \_\_\_\_\_

Its:\_\_\_\_\_

THIS NOTE AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN SECTION 5 BELOW AND IN THE FIRST LIEN INTERCREDITOR AGREEMENT (AS DEFINED BELOW) AND THE SECOND LIEN INTERCREDITOR AGREEMENT (AS DEFINED BELOW); AND EACH HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE FIRST LIEN INTERCREDITOR AGREEMENT AND SECOND LIEN 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.

\$20,000,000.00

AG MORTGAGE INVESTMENT TRUST, INC.

AMENDED AND RESTATED SECURED PROMISSORY NOTE

May 28, 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 Twenty Million Dollars and 00/100 (\$20,000,000.00) 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, with respect to the Initial Advance, March 31, 2021, and with respect to the Additional Advance, July 27, 2020 (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 Amended & Restated Note has been executed and delivered in exchange for the Noteholder's delivery to the Borrower of \$10,000,000 on April 10, 2020 (the "Initial Advance") and \$10,000,000 on April 27, 2020 (the "Additional Advance").

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 Third Lien Security Agreement;

- (iii) “Collateral Agent” means Wilmington Trust, National Association, as collateral agent for the Participating Counterparties under the First Lien Security Agreement.
- (iv) “Deposit Account Control Agreements” has the meaning set forth in the Third Lien Security Agreement;
- (v) “First Lien Intercreditor Agreement” means the Intercreditor and Subordination Agreement among the Noteholder, the Collateral Agent, and the Borrower dated as of April 10, 2020, as amended by that certain Amendment No. 1 dated as of April 27, 2020, and as may be amended further hereafter;
- (vi) “First Lien Obligations” shall have the meaning ascribed to the term “Obligations” in the First Lien Security Agreement;
- (vii) “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.
- (viii) “Forbearance Agreement” means, collectively, that certain Forbearance Agreement, dated as of April 10, 2020, by and among the Borrower, the Guarantors, and the Participating Counterparties, the Second Forbearance Agreement, dated as of April 27, 2020, by and among the Borrower, the Guarantors, and the Participating Counterparties, and any amendment, modification, or supplement to either of the foregoing agreements;
- (ix) “Guarantors” means each party listed on Schedule 1;
- (x) “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;
- (xi) “Participating Counterparties” shall have the meaning set forth in the Forbearance Agreement;
- (xii) “Second Lien Intercreditor Agreement” means the Intercreditor and Subordination Agreement dated as of the date hereof by and among the Noteholder, [RBC], the Borrower, and any subsequent holder of Permitted Pari Passu Secured Indebtedness (as defined in the Second Lien Security Agreement) that becomes party thereto after the date hereof, as the same may be amended from time to time hereafter;
- (xiii) “Second Lien Obligations” shall have the meaning ascribed to the term “Obligations” in the Second Lien Security Agreement;
- (xiv) “Second Lien Security Agreement” means the Security Agreement by and among the Borrower, Guarantors, [RBC], and any subsequent holder of Permitted Pari Passu Secured Indebtedness (as defined in the Second Lien Security Agreement) dated as of the date hereof and as the same may be amended from time to time hereafter;
- (xv) “Third Lien Security Agreement” means the Amended and Restated 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

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

2. Interest. Interest shall accrue on the unpaid principal balance of the \$10,000,000 initial amount advanced by the Noteholder on April 10, 2020 (the “Initial Advance”) from such date until the payment in full of such Initial Advance at 6.0% per annum, computed on the basis of a three hundred sixty five (365) day year. The unpaid principal balance of the Additional Advance shall accrue interest from April 27, 2020 until the repayment in full of such Additional Advance at 6.0% per annum, computed on the basis of a three hundred sixty five (365) day year. 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 on each of the Initial Advance and the Additional Advance shall be payable in full in cash on the applicable Maturity Date for each such advance.

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 Third Lien 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 Third Lien 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 (i) the Obligations (as defined in the First Lien Security Agreement) as set forth in the Senior Intercreditor Agreement and (ii) the Second Lien Obligations as set forth in the Second Lien Intercreditor Agreement. No Borrower or Guarantor shall make any payment of principal or of interest on this Note, regardless of whether the Maturity Date has occurred, until the payment in full of the Obligations (as defined in the First Lien Security Agreement) and the payment in full of the Second Lien Obligations. No Borrower or Guarantor shall incur any other obligation or indebtedness that is or purports to be senior to the obligations of the Borrower or any Guarantor under this Note without the prior written consent of the Noteholder.

6. Covenants. The Borrower covenants and agrees that the \$20,000,000 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, Second Lien Security Agreement and the Third Lien Security Agreement.

7. Events of Default. Subject to the First Lien Intercreditor Agreement and Second Lien Intercreditor Agreement, if any of the events specified in this Section 7 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 Third Lien 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 and commencement of exercise of remedies thereunder or under the First Lien Security Agreement by, or at the direction of, the Participating Counterparties;

(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. Prior to (i) the termination of the Forbearance Agreement with the consent of Participating Counterparties for which amounts remain due under an Applicable Agreement (as defined in the Forbearance Agreement) and the termination of the First Lien Intercreditor Agreement in accordance with the terms thereof, unless consented to by the Required Counterparties (as defined in the Forbearance Agreement) and (ii) the termination of the Second Lien Intercreditor Agreement, neither the Borrower nor any Guarantor may prepay the principal amount of, or any accrued and unpaid interest with respect to, the Note. Thereafter, the Borrower may, at its sole option, at any time prepay in whole or in part, without premium or penalty, the principal amount of, and accrued and unpaid interest with respect to, the Note.

9. Transfer. This Note may not be transferred directly or indirectly, in whole or in part, to any party without the prior written consent of the Borrower. Any transfer in violation of the foregoing will be of no force and effect, will be void *ab initio* and will not operate to transfer any rights to the transferee.

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, appraisement, 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.

17. This Amended and Restated Note amends and restates the Secured Promissory Note of Borrower to Noteholder dated April 10, 2020, as amended on April 27, 2020, and is not a novation.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Borrower and each Guarantor has caused this Note to be issued this 28 day of May, 2020.

**AG MORTGAGE INVESTMENT TRUST, INC.,** as Borrower

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

*Amended and Restated AG REIT Secured Promissory Note*

**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

*Amended and Restated AG REIT Secured Promissory Note*

**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

*Amended and Restated AG REIT Secured Promissory Note*

**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

*Amended and Restated AG REIT Secured Promissory Note*

**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

*Amended and Restated AG REIT Secured Promissory Note*



**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

*Amended and Restated AG REIT Secured Promissory Note*

**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

*Amended and Restated AG REIT Secured Promissory Note*

**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

*Amended and Restated AG REIT Secured Promissory Note*

**AG MITT 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

*Amended and Restated AG REIT Secured Promissory Note*

**AG MIT TREASURY, LLC**, as a Guarantor

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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

*Amended and Restated AG REIT Secured Promissory Note*

Agreed and Acknowledged:

**AG REIT Management, LLC, as Noteholder**

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

By: /s/ Frank Stadelmaier

Name: Frank Stadelmaier

Title: Authorized Signatory

Address:

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  
Email: mvolow@akingump.com

*Amended and Restated AG REIT Secured Promissory Note*

Schedule 1

Guarantors

AG MIT CMO, LLC

AG MIT, LLC

AG MIT International LLC

AG MIT CMO EC LLC

AG MIT RES LLC

AG MIT ARC, LLC

AG MIT HC, LLC

AG MITT RPL TRS LLC

AG MIT TREASURY, LLC

*Amended and Restated AG REIT Secured Promissory Note*

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 IN THE FIRST LIEN INTERCREDITOR AGREEMENT (AS DEFINED BELOW) AND THE SECOND LIEN INTERCREDITOR AGREEMENT (AS DEFINED BELOW); AND EACH HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE FIRST LIEN INTERCREDITOR AGREEMENT AND SECOND LIEN INTERCREDITOR AGREEMENT.

**AMENDED AND RESTATED SECURITY AGREEMENT**

THIS AMENDED AND SECURITY AGREEMENT (the “**Agreement**”) dated as of May 28, 2020, is entered into by and among AG Mortgage Investment Trust, Inc. (the “**Borrower**”) 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 (i) that certain Forbearance Agreement, dated as of April 10, 2020, by and among such Debtors and the Participating Counterparties (as defined therein) and (ii) that certain Second Forbearance Agreement, dated as of April 27, 2020 (collectively with the agreement in clause (i), as amended, modified or supplemented, the “**Forbearance Agreement**”), by and among such Debtors and the Participating Counterparties, 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 Secured Party has made loans to the Borrower of \$20,000,000 (the “**Subordinated Loan**”), evidenced by that certain Amended and Restated Secured Promissory Note dated as of the date hereof.

C. The Debtors (other than the Borrower) are affiliates of the Borrower and will derive a substantial direct and indirect benefit from the Subordinated Loan.

D. In order to induce the Secured Party to make the Subordinated Loan, the Debtors 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 pursuant to the Security Agreement dated as of April 10, 2020 (the “**Original Security Agreement**”).

E. 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 First Lien Intercreditor Agreement (as defined herein) and to the Liens granted to the Second Lien Parties (as defined herein) as more fully set forth in the Second Lien Intercreditor 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 to amend and restate the Original Security Agreement 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.

**“First Lien 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.

**“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.

**"Intercreditor Agreements"** means the First Lien Intercreditor Agreement and Second Lien Intercreditor Agreement.

**"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.

**"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, (d) any lien granted to the Second Lien Parties pursuant to the Second Lien Security Agreement, and (e) 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 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.

**“Second Lien Intercreditor Agreement”** means the Intercreditor and Subordination Agreement dated as of the date hereof by and among the Secured Party, [RBC], the Borrower, and any subsequent holder of Permitted Pari Passu Secured Indebtedness (as defined in the Second Lien Security Agreement) that becomes party thereto after the date hereof, as the same may be amended from time to time hereafter.

**“Second Lien Obligations”** shall have the meaning ascribed to the term “Obligations” in the Second Lien Security Agreement;

**“Second Lien Parties”** means [RBC] and any subsequent holder of Permitted Pari Passu Secured Indebtedness (as defined in the Second Lien Security Agreement) that becomes party thereto after the date hereof.

**“Second Lien Security Agreement”** means the Security Agreement, dated as of the date hereof by and among the Borrower, Guarantors, [RBC], and any subsequent holder of Permitted Pari Passu Secured Indebtedness (as defined in the Second Lien Security Agreement) that becomes party thereto after the date hereof, as the same may be amended from time to time hereafter.

**“Secured Promissory Note”** means the Amended and Restated 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 \$20,000,000, 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, as the same may be amended from time to time hereafter.

**“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 confirms that it has pledged, assigned, transferred and conveyed to the Secured Party as collateral and granted the Secured Party a continuing Lien on and security interest in and to all of its assets under the Original Security Agreement, and each Debtor hereby re-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 Agreements and the exercise of any right or remedy by the Secured Party hereunder is subject to the terms and provisions of the Intercreditor Agreements. In the event of any conflict between the terms of either of the Intercreditor Agreements and this Agreement, the terms of the applicable 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 Agreements.
- (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 First Lien 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 First Lien Intercreditor Agreement. After payment in full of the Participating Counterparty Obligations but before payment in full of the Second Lien Obligations, (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 Second Lien Parties as provided in the Second Lien Intercreditor Agreement, (ii) any endorsement, assignment or delivery to the Second Lien Parties 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 any Second Lien Party obtaining such control of such Collateral expressly on behalf of itself and the Secured Party as provided in the Second Lien Intercreditor Agreement
- (c) In the event any Debtor shall create any additional security interest upon any assets to secure the Participating Counterparty Obligations or Second Lien 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 or the Second Lien Parties, such Debtor shall also at the same time undertake such actions (subject to the terms of the First Lien Intercreditor Agreement or Second Lien Intercreditor Agreement, as applicable) 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 or Second Lien Party directs a Debtor to grant or perfect a Lien or take such other action under the Security and Collateral Agency Agreement or Second Lien Security Agreement, as applicable.

**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 Agreements. 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, the Second Lien Parties 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 Agreements, 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 Agreements, 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 Agreements,

- (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 Agreements, (x) the liens securing the Subordinated Note shall be subordinated in priority to the Liens granted to the Collateral Agent and the Second Lien Parties 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 and the Second Lien Obligations.

## **ARTICLE 5**

### **Reserved**

## **ARTICLE 6**

### **Rights of the Secured Party**

**Section 6.1 Power of Attorney.** Subject to the terms of the Intercreditor Agreements, 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 Agreements, 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 Agreements:

- (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 24, 2020, the Debtors have entered 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 Agreements; provided, however, that if the Participating Counterparty Obligations and Second Lien 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 AGREEMENTS 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 AGREEMENTS IN ALL RESPECTS AND SHALL REMAIN SUBJECT TO THE FIRST LIEN INTERCREDITOR AGREEMENT UNTIL FULL PAYMENT OF THE PARTICIPATING COUNTERPARTY OBLIGATIONS AND THE SECOND LIEN INTERCREDITOR AGREEMENT UNTIL FULL PAYMENT OF THE SECOND LIEN OBLIGATIONS, AS APPLICABLE. 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 Agreements. In the event that any provision of this Agreement shall be inconsistent with any provision of the the First Lien Intercreditor Agreement or the Second Lien Intercreditor Agreement, such provision of the First Lien Intercreditor Agreement or the Second Lien 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.

**DEBTORS:**

**AG MORTGAGE INVESTMENT TRUST, INC.**, as a Debtor

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title: General Counsel

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**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

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**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

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**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

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**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

*Signature Page to A&R AG MITT Subordinated Security Agreement*



**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

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**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

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**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:     

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**AG MITT RPL TRS LLC**, as a Debtor

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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title:    

:

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**AG MIT TREASURY, LLC**, as a Debtor

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

By: /s/ Raul E. Moreno

Name: Raul E. Moreno

Title:     

*Signature Page to A&R AG MITT Subordinated Security Agreement*

Secured Party:

**AG REIT Management, LLC**

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

By: /s/ Frank Stadelmaier

Name: Frank Stadelmaier

Title: Authorized Signatory

*Signature Page to A&R AG MITT Subordinated Security Agreement*

**Schedule 1**

AG MIT CMO, LLC

AG MIT, LLC

AG MIT International LLC

AG MIT CMO EC LLC

AG MIT RES LLC

AG MIT ARC, LLC

AG MIT HC, LLC

AG MITT RPL TRS LLC

AG MIT TREASURY, LLC

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INTERCREDITOR AND SUBORDINATION AGREEMENT

Dated as of May 28, 2020

Among

Royal Bank of Canada, together with its successors and assigns, and holders of Permitted Pari Passu Secured Indebtedness designated by AGMIT that execute a Joinder, collectively,

As the Senior Lender,

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 May 28, 2020 by and among AG Mortgage Investment Trust, Inc., for itself and the Seller Entities (defined below) (“**AGMIT**”), Royal Bank of Canada (“**RBC**”), as the holder of the Senior Secured Note hereinafter referred to (together with its successors and assigns and any holder of Permitted Pari Passu Secured Indebtedness designated by AGMIT that executes a Joinder, collectively, the “**Senior Lender**”), 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 Note, dated as of the date hereof (the “**Senior Secured Note**”) made by AGMIT and issued to RBC pursuant to the Settlement Agreement (as defined herein), AGMIT has agreed to pay to RBC the principal amount of \$2,000,000 on the terms and subject to the conditions specified in the Senior Secured Note;

WHEREAS, pursuant to that certain [Amended and Restated Note, dated as of the date hereof and as may be amended hereafter with the Senior Lender’s approval in accordance with Section 6.02 hereof (the “**Subordinated Note**”), made by AGMIT and issued to the Subordinated Lender, AGMIT incurred indebtedness in the initial principal amount of \$20,000,000 on the terms and subject to the conditions specified in the Subordinated Note];

WHEREAS, the RBC 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); and

WHEREAS, the Subordinated Lender acknowledges and agrees that this Agreement shall also govern the relative priority of any Senior Secured Debt Documents entered into by a Debtor with respect to Permitted Pari Passu Secured Indebtedness (as defined herein) and the Subordinated Note Documents.

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, joined 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”** means, collectively, AGMIT and the Seller Entities.

**“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 Note and Senior Secured Debt Documents, any Event of Default (as defined therein) 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).

**“Joinder”** means a joinder in substantially the form attached hereto as Exhibit A, executed by a holder of Permitted Pari Passu Secured Indebtedness.

**“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.

**“Permitted Pari Passu Secured Indebtedness”** means indebtedness of the Debtors evidenced by one or more secured promissory notes that are substantially identical to the Senior Secured Note, in an aggregate principal amount not to exceed \$[3,000,000], and that are secured by Liens on the Senior Secured Collateral that are of equal priority with the Liens held by RBC, as designated by the Borrower and evidenced by a Joinder hereto in accordance with Section 9.17.

**“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”** means, AG MIT and its affiliates party to the Forbearance 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, with respect to RBC, the Senior Secured Note, Senior Security Agreement, and, with respect to a holder of Permitted Pari Passu Secured Indebtedness, any secured note or security agreement entered into among such holder and the Debtors after the date hereof.

**“Senior Secured Debt Obligations”** means the obligations of any Debtor to the Senior Lender (including to a holder of Permitted Pari Passu Secured Indebtedness then outstanding under the Senior Secured Debt Documents).

**“Senior Secured Parties”** means, collectively, the Senior Lender and each of its permitted successors and assigns under the Senior Secured Debt Documents (including a holder of Permitted Pari Passu Secured Indebtedness so designated by the Borrower that execute the form of joinder attached hereto as Exhibit A).

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

**“Senior Security Agreement”** means the Security Agreement entered into on the date hereof by and among RBC, the Debtors, and any subsequent holder of Permitted Pari Passu Secured Indebtedness that becomes party thereto after the date hereof, as the same may be amended from time to time hereafter on the date hereof.

**“Settlement Agreement”** means that certain Settlement Agreement entered into by certain of the Debtors, RBC, and an RBC affiliate on the date hereof.

**“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 Lender. The Senior 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 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 Lender’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 (including any payments or distributions received from Wilmington Trust, National Association, as collateral agent (in such capacity, the “**Collateral Agent**”), or any secured party under or pursuant to the Security and Collateral Agency Agreement, dated as of April 10, 2020, by and among AGMIT and its affiliates party thereto and the Collateral Agent) shall, to the extent of any outstanding Senior Secured Debt Obligations, be received in trust for the benefit of the Senior Secured Parties and shall be paid over to the Senior Secured Parties in proportion to their holdings of then outstanding Senior Secured Debt Obligations in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to 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 Secured Parties of evidence reasonably acceptable to the Senior Secured Parties 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 Secured Parties.

Section 3.05 Prohibition on Contesting Liens. The Senior Secured Parties 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 Liens of a Senior Secured Party 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 Secured Parties, on the one hand, and the Subordinated Lender, on the other hand, and no Subordinated Lender shall impose on 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 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 any Senior Secured Party in the Senior Secured Collateral. Each Senior Secured Party 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 Subordinated Obligations, the Subordinated Note Documents, or the Liens and security interests of the Subordinated Lender in the Subordinated Collateral. Notwithstanding any failure by 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 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 any Senior Secured Party or the Subordinated Lender to enforce this Agreement.

Section 3.06 Authorizations to Senior Secured Parties. Each Subordinated Lender hereby (a) irrevocably authorizes and empowers (without imposing any obligation on) the Senior Secured Parties 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 Secured Parties in proportion to their holdings of then outstanding Senior Secured Debt Obligations, 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 Secured Parties 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 Secured Parties 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 Secured Parties in order to enable the Senior Secured Parties 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 Secured Parties 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 Secured Parties without any consultation with or the consent of the Subordinated Lender. In the event that the Senior Secured Parties releases or agrees to release any of their 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 Secured Parties.

Section 3.09 Possessory Security Interests. Upon the Senior Secured Debt Obligations being Paid in Full, the Senior Secured Parties shall transfer any Subordinated Collateral or evidence of same then possessed or controlled by any of them 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 any of the Senior Secured Parties.

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 Secured Parties 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 Secured Parties or (b) if (i) such Lien is held by the Subordinated Lender and (ii) the Senior Secured Parties are not able to obtain

a prior perfected Lien on the applicable assets and (iii) the Senior Secured Parties so request, 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, as between the Senior Secured Parties and the Subordinated Lender, the Senior Secured Parties 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 Secured Parties (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 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 any Senior Secured Party 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 any Senior Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, and no Senior Secured Party shall be liable for, any action taken or omitted to be taken by 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 Secured Parties in proportion to their holdings of then outstanding Senior Secured Debt Obligations until the Senior Secured Debt Obligations shall have been Paid in Full. When the Senior Secured Debt Obligations have been Paid in Full, each Senior Secured Party 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 Secured Parties in proportion to their holdings of then outstanding Senior Secured Debt Obligations in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The Senior Secured Parties are 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 Secured Parties 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 Secured Parties, 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 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 any Senior Secured Party to marshal any property of the Debtors for the benefit of the Subordinated Parties.

Section 7.02 Rights Relating to Senior Secured Parties' 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 any Senior Secured Party 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 any Senior Secured Party applies the proceeds of the Collateral resulting from the exercise by a Senior Secured Party of rights and remedies under the Senior Secured Debt Documents and (b) that the Senior Secured Parties have not assumed any obligation to act as the agent for the Subordinated Lender with respect to the Collateral. As between the Senior Secured Parties and the Subordinated Lender, the Senior Secured Parties 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 Secured Parties 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 Secured Parties 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. No Senior Secured Party shall have a duty to protect or preserve any rights pertaining to any of the Collateral in its possession or 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 Senior Secured Party 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 Secured Parties 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 Secured Parties in proportion to their holdings of then outstanding Senior Secured Debt Obligations.

(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 Secured Parties in proportion to their holdings of then outstanding Senior Secured Debt Obligations. The Subordinated Lender also irrevocably authorizes and empowers each Senior Secured Party, 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 Secured Parties 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 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 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 Secured Parties; provided that, the Senior Secured Parties 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 Secured Parties are 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 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 Secured Parties 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 Secured Parties in connection with any such Insolvency Proceeding and hereby irrevocably authorizes the Senior Secured Parties 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 Secured Parties 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 Secured Parties 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 Secured Parties 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 Secured Parties 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 and the Senior Secured Debt Documents, the provisions of this Agreement shall control and govern; provided, however, that: (i) the Senior Secured Parties acknowledge and agree that to the extent of any conflict between Sections 3.04, the first sentence of 5.01 and 5.02 of this Agreement and Sections 3.04, the first sentence of 5.01 and 5.02 of that certain Intercreditor and Subordination Agreement, dated as of April 10, 2020, by and among AG REIT Management LLC, the Debtors, and Wilmington Trust, National Association (as amended from time to time thereafter, the “**Participating Counterparties Intercreditor Agreement**”), Sections 3.04, the first sentence of 5.01 and 5.02 of the Participating Counterparties Intercreditor Agreement shall control so long as the Debtors’ obligations to the Participating Counterparties (as defined in the Participating Counterparties Intercreditor Agreement) remain outstanding, and the Subordinated Lender shall not be deemed to be in breach of Sections 3.04, the first sentence of 5.01 and 5.02 of this Agreement to the extent any action taken by the Subordinated Lender complies with Sections 3.04, the first sentence of 5.01 and 5.02 of the Participating Counterparties Intercreditor Agreement; and (ii) the second sentence of Section 5.01 of that certain Intercreditor and Subordination Agreement, dated as of the date hereof, by and among Wilmington Trust, National Association, RBC, AG REIT Management LLC (solely to the extent set forth therein), and the Debtors shall control over the second sentence of Section 5.01 of the

Participating Counterparties Intercreditor Agreement so long as the Senior Secured Debt Obligations remain outstanding.

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 Secured Parties 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 Secured Parties 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 any 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 Secured Parties in proportion to their holdings of then outstanding 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 RBC as a the Senior Lender, to:

Royal Bank of Canada  
30 Hudson Street  
Jersey City, NJ 07302

Attn: Paul Serritella, Senior Counsel  
Email: paul.serritella@rbccm.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, NY 10001  
Attn: Christopher P. Malloy  
Email: Christopher.Malloy@skadden.com

(iii) If to a holder of Permitted Pari Passu Secured Indebtedness, to the address set forth for such party in an applicable Joinder

(iv) 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 Lender and the Subordinated Lender and when the Senior Lender 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. Each Senior Secured Party 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 Joinder. A holder of Permitted Pari Passu Secured Indebtedness shall become party to this Agreement upon execution of the form of joinder attached hereto as Exhibit A and delivery of such executed joinder to the Subordinated Lender, the Debtors, and the Senior Secured Parties then party hereto.

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 9.18(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.

Royal Bank of Canada, as Senior Lender

By: /s/ Mark Douvas

Name: Mark Douvas

Title: SVP

*Signature Page to Intercreditor and Subordination Agreement*

AG REIT Management, LLC, as Subordinated Lender

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

By: /s/ Frank Stadelmaier Frank Stadelmaier  
Name: Title: Authorized Signatory

*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*



Exhibit A

Form of Joinder

## JOINDER AGREEMENT

This Joinder Agreement (this “Agreement”) is dated as of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (“**New Pari Passu Indebtedness Holder**”).

WHEREAS, the New Pari Passu Indebtedness Holder is the holder of that certain Secured Promissory Note (the “**Pari Passu Note**”) issued by AG Mortgage Investment Trust, Inc. (the “**Borrower**”) and guaranteed by the Guarantors named there in (the “**Guarantors**”);

WHEREAS, the New Pari Passu Indebtedness Holder hereby acknowledges and agrees that the obligations under the Pari Passu Note are secured by the liens granted pursuant to that certain Security Agreement, dated as of May 28, 2020, by and among the Borrower and Guarantors, as Debtors, and Royal Bank of Canada (“**RBC**”), as secured party (the “**Security Agreement**”);

WHEREAS, in order to comply with the Security Agreement and Intercreditor Agreements (as defined therein), New Pari Passu Indebtedness Holder hereby covenants and agrees as follows:

1. The liens securing the Pari Passu Note shall be subordinate to the liens securing the Participating Counterparty Obligations.
2. The liens securing the Pari Passu Note shall be of equal priority with the liens securing the Secured Promissory Note issued by the Borrower, and guaranteed by the Guarantors, to RBC on May 28, 2020 (as amended, the “**RBC Note**”).
3. The New Pari Passu Indebtedness Holder hereby agrees to be bound by the Senior Intercreditor Agreement as a “Subordinated Lender” thereunder.
4. The New Pari Passu Indebtedness Holder hereby agrees to be bound by the AG REIT Subordination Agreement as a “Senior Lender” thereunder.
5. The New Pari Passu Indebtedness Holder expressly acknowledges that it shall be required to file financing statements naming it as a secured party against the Borrower and Guarantors, and that no financing statement filed by RBC or any other holder of Permitted Pari Passu Secured Indebtedness (as defined in the Security Agreement) shall be deemed to have perfected any security interest held by the New Pari Passu Indebtedness Holder.

[NEW PARI PASSU HOLDER]

By: \_\_

Its: \_\_

Accepted:

**AG Mortgage Investment Trust, Inc.**

By: \_\_\_\_\_

Its:\_\_\_\_\_