

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
**FORM 10-Q**

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the quarterly period ended June 30, 2023.

OR

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

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

Commission file number: 33-92990; 333-270449

TIAA REAL ESTATE ACCOUNT

(Exact name of registrant as specified in its charter)

New York

NOT APPLICABLE

(State or other jurisdiction)

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

C/O TEACHERS INSURANCE AND ANNUITY  
ASSOCIATION OF AMERICA

730 Third Avenue

10017-3206

New York, New York

(Zip code)

(Address of principal executive offices)

(212) 490-9000

Registrant's telephone number, including area code

NOT APPLICABLE

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange of which registered
NONE		

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

Yes  No

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

Yes  No

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller Reporting Company

Emerging Growth Company

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

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

Yes  No

## TABLE OF CONTENTS

	<u>Page</u>
Part I	Financial Information
Item 1.	Unaudited Consolidated Financial Statements
	Consolidated Statements of Assets and Liabilities
	Consolidated Statements of Operations
	Consolidated Statements of Changes in Net Assets
	Consolidated Statements of Cash Flows
	Notes to the Consolidated Financial Statements
	Condensed Consolidated Schedules of Investments
Item 2.	Management's Discussion and Analysis of the Account's Financial Condition and Results of Operations
Item 3.	Quantitative and Qualitative Disclosures about Market Risk
Item 4.	Controls and Procedures
Part II	Other Information
Item 1.	Legal Proceedings
Item 1A.	Risk Factors
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds
Item 3.	Defaults Upon Senior Securities
Item 4.	Mine Safety Disclosures
Item 5.	Other Information
Item 6.	Exhibits
Signatures	

**PART I. FINANCIAL INFORMATION**

**ITEM 1. UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

**TIAA REAL ESTATE ACCOUNT  
CONSOLIDATED STATEMENTS OF ASSETS AND LIABILITIES  
(Unaudited)**

**(In millions, except per accumulation unit amounts)**

	<u>June 30, 2023</u>	<u>December 31, 2022</u>
<b>ASSETS</b>		
Investments, at fair value:		
Real estate properties (cost: \$14,503.4 and \$14,323.2)	\$ 19,191.3	\$ 20,444.0
Real estate joint ventures (cost: \$5,789.6 and \$5,738.1)	6,341.5	7,103.6
Real estate funds (cost: \$815.8 and \$787.7)	892.7	893.4
Real estate operating business (cost: \$371.4 and \$355.0)	653.6	641.9
Marketable securities (cost: \$639.0 and \$2,077.1)	639.3	2,030.2
Loans receivable (principal: \$1,551.1 and \$1,546.0)	1,264.5	1,418.7
Loans receivable with related parties (principal: \$101.0 and \$69.9)	101.0	69.9
Total investments (cost: \$23,771.3 and \$24,897.0)	<u>\$ 29,083.9</u>	<u>\$ 32,601.7</u>
Cash and cash equivalents	82.2	72.4
Due from investment manager	0.1	—
Other	360.6	359.5
<b>TOTAL ASSETS</b>	<u>\$ 29,526.8</u>	<u>\$ 33,033.6</u>
<b>LIABILITIES</b>		
Loans payable, at fair value (principal outstanding: \$1,923.5 and \$2,168.7)	1,847.3	2,069.7
Other unsecured debt, at fair value (principal outstanding: \$1,400.0 and \$1,000.0)	1,354.4	953.1
Due to investment manager	—	7.1
Accrued real estate property expenses	279.1	291.8
Other	47.9	53.8
<b>TOTAL LIABILITIES</b>	<u>\$ 3,528.7</u>	<u>\$ 3,375.5</u>
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>NET ASSETS</b>		
Accumulation Fund	25,428.3	29,025.7
Annuity Fund	569.8	632.4
<b>TOTAL NET ASSETS</b>	<u>\$ 25,998.1</u>	<u>\$ 29,658.1</u>
<b>NUMBER OF ACCUMULATION UNITS OUTSTANDING</b>	<u>49.0</u>	<u>52.1</u>
<b>NET ASSET VALUE, PER ACCUMULATION UNIT</b>	<u>\$ 518.533</u>	<u>\$ 556.923</u>

See notes to the consolidated financial statements

**TIAA REAL ESTATE ACCOUNT**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In millions, Unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2023	2022	2023	2022
<b>INVESTMENT INCOME</b>				
<i>Real estate income, net:</i>				
Rental income	\$ 337.0	\$ 314.1	\$ 671.5	\$ 617.8
Real estate property level expenses and taxes:				
Operating expenses	88.9	71.1	168.3	144.7
Real estate taxes	54.4	50.3	107.8	102.0
Interest expense	23.3	18.2	46.5	37.8
Total real estate property level expenses and taxes	166.6	139.6	322.6	284.5
Real estate income, net	170.4	174.5	348.9	333.3
Income from real estate joint ventures	47.4	42.5	100.7	103.0
Income from real estate funds	3.9	5.5	10.5	11.5
Interest	38.3	22.3	78.6	43.0
Other	—	—	—	0.8
<b>TOTAL INVESTMENT INCOME</b>	<b>260.0</b>	<b>244.8</b>	<b>538.7</b>	<b>491.6</b>
<i>Expenses:</i>				
Investment management charges	19.8	21.4	41.6	43.9
Administrative charges	23.2	8.9	35.1	22.4
Distribution charges	1.3	5.0	6.1	12.3
Mortality and expense risk charges	—	0.1	—	0.5
Liquidity guarantee charges	18.9	22.4	38.8	45.1
Interest expense	19.0	3.1	30.4	4.4
<b>TOTAL EXPENSES</b>	<b>82.2</b>	<b>60.9</b>	<b>152.0</b>	<b>128.6</b>
<b>INVESTMENT INCOME, NET</b>	<b>177.8</b>	<b>183.9</b>	<b>386.7</b>	<b>363.0</b>
<b>NET REALIZED AND UNREALIZED GAIN (LOSS) ON INVESTMENTS AND DEBT</b>				
<i>Net realized gain (loss) on investments:</i>				
Real estate properties	—	37.9	—	29.5
Real estate joint ventures	42.1	(37.8)	42.1	13.1
Real estate funds	13.9	—	13.9	—
Foreign currency exchange on forward contracts	(2.9)	—	(2.9)	—
Marketable securities	(16.5)	(0.3)	(35.6)	(1.3)
<b>Net realized gain (loss) on investments</b>	<b>36.6</b>	<b>(0.2)</b>	<b>17.5</b>	<b>41.3</b>
<i>Net change in unrealized gain (loss) on:</i>				
Real estate properties	(945.4)	939.7	(1,432.8)	2,152.1
Real estate joint ventures	(393.0)	277.1	(770.3)	349.0
Real estate funds	(39.8)	16.3	(28.8)	6.9
Real estate operating business	1.2	140.4	(4.7)	200.8
Foreign currency exchange on forward contracts	2.8	1.6	2.3	1.6
Marketable securities	18.4	(9.9)	47.1	(38.5)
Loans receivable	(116.3)	(83.2)	(159.3)	(82.2)
Loans payable	(15.9)	46.1	(22.7)	49.8
Other unsecured debt	5.6	13.8	(1.3)	13.8
<b>Net change in unrealized (loss) gain on investments and debt</b>	<b>(1,482.4)</b>	<b>1,341.9</b>	<b>(2,370.5)</b>	<b>2,653.3</b>
<b>NET REALIZED AND UNREALIZED (LOSS) GAIN ON INVESTMENTS AND DEBT</b>	<b>(1,445.8)</b>	<b>1,341.7</b>	<b>(2,353.0)</b>	<b>2,694.6</b>
<b>NET (DECREASE) INCREASE IN NET ASSETS RESULTING FROM OPERATIONS</b>	<b>\$ (1,268.0)</b>	<b>\$ 1,525.6</b>	<b>\$ (1,966.3)</b>	<b>\$ 3,057.6</b>

See notes to the consolidated financial statements

**TIAA REAL ESTATE ACCOUNT**  
**CONSOLIDATED STATEMENTS OF CHANGES IN NET ASSETS**  
(In millions, Unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2023	2022	2023	2022
<b>FROM OPERATIONS</b>				
Investment income, net	\$ 177.8	\$ 183.9	\$ 386.7	\$ 363.0
Net realized gain (loss) on investments	36.6	(0.2)	17.5	41.3
Net change in unrealized (loss) gain on investments and debt	(1,482.4)	1,341.9	(2,370.5)	2,653.3
<b>NET (DECREASE) INCREASE IN NET ASSETS RESULTING FROM OPERATIONS</b>	<b>(1,268.0)</b>	<b>1,525.6</b>	<b>(1,966.3)</b>	<b>3,057.6</b>
<b>FROM CONTRACT OWNER TRANSACTIONS</b>				
Premiums	539.8	859.1	1,050.4	1,667.5
Annuity payments	(13.8)	(14.5)	(28.2)	(27.0)
Death benefits	(40.9)	(36.4)	(78.2)	(67.0)
Withdrawals	(1,269.3)	(656.0)	(2,637.7)	(1,254.3)
<b>NET (DECREASE) INCREASE IN NET ASSETS RESULTING FROM CONTRACT OWNER TRANSACTIONS</b>	<b>(784.2)</b>	<b>152.2</b>	<b>(1,693.7)</b>	<b>319.2</b>
<b>NET (DECREASE) INCREASE IN NET ASSETS</b>	<b>(2,052.2)</b>	<b>1,677.8</b>	<b>(3,660.0)</b>	<b>3,376.8</b>
<b>NET ASSETS</b>				
Beginning of period	28,050.3	29,771.0	29,658.1	28,072.0
End of period	<u>\$ 25,998.1</u>	<u>\$ 31,448.8</u>	<u>\$ 25,998.1</u>	<u>\$ 31,448.8</u>

See notes to the consolidated financial statements

**TIAA REAL ESTATE ACCOUNT**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In millions, Unaudited)

	For the Six Months Ended June 30,	
	2023	2022
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net (decrease) increase in net assets resulting from operations	\$ (1,966.3)	\$ 3,057.6
<i>Adjustments to reconcile net changes in net assets resulting from operations to net cash provided by (used in) operating activities:</i>		
Net realized (gain) on investments	(17.5)	(41.3)
Net change in unrealized loss (gain) on investments and debt	2,370.5	(2,653.3)
Purchase of real estate properties	(0.3)	(339.5)
Capital improvements on real estate properties	(181.1)	(195.8)
Proceeds from sales of real estate properties	—	334.0
Purchases of other real estate investments	(156.7)	(687.1)
Proceeds from sales of other real estate investments	159.7	392.7
Purchases and originations of loans receivable	(16.5)	(317.5)
Purchases and originations of loans receivable with related parties	(31.1)	—
Proceeds from sales of loans receivable	—	161.4
Proceeds from payoffs of loans receivable	11.4	8.4
Decrease (Increase) in other investments	1,402.4	(556.0)
Net change in due to/from investment manager	(7.2)	1.0
Increase in payable for securities purchased	—	100.0
(Increase) in other assets	(10.0)	(4.8)
(Increase) in other liabilities	(17.6)	(27.4)
<b>NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES</b>	<b>1,539.7</b>	<b>(767.6)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from issuance of unsecured debt	400.0	500.0
Mortgage loan proceeds received	100.0	9.1
Payments of mortgage loans	(345.1)	(46.8)
Premiums	1,050.4	1,667.5
Annuity payments	(28.2)	(27.0)
Death benefits	(78.2)	(67.0)
Withdrawals	(2,637.7)	(1,254.3)
<b>NET CASH (USED IN) PROVIDED BY FINANCING ACTIVITIES</b>	<b>(1,538.8)</b>	<b>781.5</b>
<b>NET INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<b>0.9</b>	<b>13.9</b>
<b>CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>		
Beginning of period cash, cash equivalents and restricted cash	117.0	46.0
Net increase in cash, cash equivalents and restricted cash	0.9	13.9
End of period cash, cash equivalents and restricted cash	<u>\$ 117.9</u>	<u>\$ 59.9</u>
<b>SUPPLEMENTAL DISCLOSURES:</b>		
Cash paid for interest	<u>\$ 38.9</u>	<u>\$ 43.2</u>

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the Consolidated Statements of Assets and Liabilities that sum to the total of the same such amounts shown in the Consolidated Statements of Cash Flows (in millions):

	As of June 30,	
	2023	2022
Cash and cash equivalents	\$ 82.2	\$ 32.1
Restricted cash <sup>(1)</sup>	35.7	27.8
<b>TOTAL CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<u>\$ 117.9</u>	<u>\$ 59.9</u>

<sup>(1)</sup> Restricted cash is included within other assets in the Consolidated Statements of Assets and Liabilities.

See notes to the consolidated financial statements

**TIAA REAL ESTATE ACCOUNT**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note 1—Organization and Significant Accounting Policies**

**Business:** The TIAA Real Estate Account (“Account”) is an insurance separate account of Teachers Insurance and Annuity Association of America (“TIAA”) and was established by resolution of TIAA’s Board of Trustees (the “Board”) on February 22, 1995, under the insurance laws of the State of New York, for the purpose of funding variable annuity contracts issued by TIAA. The Account offers individual and group accumulating annuity contracts (with contributions made on a pre-tax or after-tax basis), as well as individual lifetime and term-certain variable payout annuity contracts (including the payment of death benefits to beneficiaries). Investors are entitled to transfer funds to or from the Account, and make withdrawals from the Account on a daily basis, under certain circumstances. Funds invested in the Account for each category of contract are expressed in terms of units, and unit values will fluctuate depending on the Account’s performance.

The investment objective of the Account is to seek favorable total returns primarily through the rental income and appreciation of a diversified portfolio of directly held, private real estate investments and real estate-related investments while offering investors guaranteed, daily liquidity. The Account holds real estate properties directly and through subsidiaries wholly-owned by TIAA for the sole benefit of the Account. The Account also holds limited interests in real estate joint ventures and funds, as well as investments in loans receivable with real estate properties as underlying collateral. Additionally, the Account invests in real estate-related and non-real estate-related publicly traded securities, cash and other instruments to maintain adequate liquidity levels for operating expenses, capital expenditures and to fund benefit payments (withdrawals, transfers and related transactions).

**Interim Financial Information:** The Consolidated Financial Statements of the Account as of June 30, 2023 and for the three and six months ended June 30, 2023 and 2022 are unaudited and include all adjustments necessary to present a fair statement of results for the interim periods presented. Results of operations for the interim periods are not necessarily indicative of results for the entire year. These Consolidated Financial Statements have been prepared in accordance with the applicable rules and regulations of the Securities and Exchange Commission (“SEC”). Accordingly, certain footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) have been condensed or omitted from this report pursuant to the rules of the SEC. As a result, these Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements and notes thereto included in the Account’s Annual Report on Form 10-K for the year ended December 31, 2022 (“2022 Form 10-K”).

**Use of Estimates:** The Consolidated Financial Statements were prepared in accordance with GAAP, which requires the use of estimates made by management. Actual results may vary from those estimates and such differences may be material.

**Basis of Presentation:** The accompanying Consolidated Financial Statements include the Account and those subsidiaries wholly-owned by TIAA for the benefit of the Account. Certain prior period amounts have been reclassified for comparative purposes to conform to the current period financial statement presentation. These reclassifications had no effect on previously reported results of operations or cash flows. All significant intercompany accounts and transactions between the Account and such subsidiaries have been eliminated.

The Accumulation Unit Value (“AUV”) used for financial reporting purposes may differ from the AUV used for processing transactions. The AUV used for financial reporting purposes includes security and contract owner transactions effective through the period end date to which this report relates. Total return is computed based on the AUV used for processing transactions.

**Significant Accounting Policy Updates:** There were no changes to the Account’s significant accounting policies as described in the Account’s 2022 Form 10-K.

**Recent Accounting Pronouncements:** In March 2023, the FASB issued ASU 2023-01—Leases (Topic 842): Common Control Arrangements. The amendments in this Update provide a practical expedient for private

companies and not-for-profit entities that are not conduit bond obligors to use the written terms and conditions of a common control arrangement to determine: 1. Whether a lease exists and, if so, 2. The classification of and accounting for that lease. The practical expedient may be applied on an arrangement-by-arrangement basis. If no written terms and conditions exist, an entity is prohibited from applying the practical expedient and must evaluate the enforceable terms and conditions to apply Topic 842. In addition, the ASU requires all entities (that is, including public companies) to amortize leasehold improvements associated with common control leases over the useful life to the common control group. Lastly, leasehold improvements should be accounted for as a transfer between entities under common control through an adjustment to equity (or net assets for not-for-profit entities) if, and when, the lessee no longer controls the use of the underlying asset. Additionally, those leasehold improvements are subject to the impairment guidance in Topic 360, Property, Plant, and Equipment. The amendments in this Update are effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted for both interim and annual financial statements that have not yet been made available for issuance. If an entity adopts the amendments in an interim period, it must adopt them as of the beginning of the fiscal year that includes that interim period. Management does not expect the guidance to materially impact the Account.

In March 2020, the FASB issued ASU 2020-04, Facilitation of the Effects of Reference Rate Reform on Financial Reporting (“ASU 2020-04”). The guidance provides optional expedients and exceptions for applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, that reference the London Interbank Offered Rate (“LIBOR”) or another reference rate expected to be discontinued. In December 2022, the FASB issued ASU 2022-06, Reference Rate Reform (Topic 848): Deferral of the Sunset Date of Topic 848 (“ASU 2022-06”). The amendments in ASU 2022-06 extend the period of time preparers can utilize the reference rate reform relief guidance. ASU 2022-06 is effective for all entities upon issuance. To ensure the relief in Topic 848 covers the period of time during which a significant number of modifications may take place, the ASU defers the sunset date of Topic 848 from December 31, 2022, to December 31, 2024, after which entities will no longer be permitted to apply the relief in Topic 848. Management does not expect the guidance to have a material impact to the Account.

## **Note 2—Related Party Transactions**

Investment management, administrative and distribution services are provided to the Account at cost by TIAA. Services provided at cost are paid by the Account on a daily basis based upon projected expenses to be provided to the Account. Payments are adjusted periodically to ensure daily payments are as close as possible to the Account’s actual expenses incurred. Differences between actual expenses and the amounts paid by the Account are reconciled and adjusted quarterly.

Investment management services for the Account are provided by TIAA officers, under the direction and control of the Board, pursuant to investment management procedures adopted by TIAA for the Account. TIAA’s investment management decisions for the Account are subject to review by the independent fiduciary. TIAA also provides various portfolio accounting and related services for the Account.

Part of TIAA’s compensation for provision of at cost investment management services to the Account includes reimbursement of costs incurred by TIAA to manage certain of the Account’s joint ventures. Such joint ventures also reimburse the Account directly in its capacity as general partner or managing member (collectively, the “GP”) of the joint venture in the form of an asset management fee for GP-related services provided by the Account, and such fee is based on a percentage of the fair market value of the underlying properties held in the joint venture.

The Account is a party to the Distribution Agreement for the Contracts Funded by the TIAA Real Estate Account (the “Distribution Agreement”), dated January 1, 2008, by and among TIAA, for itself and on behalf of the Account, and TIAA-CREF Individual and Institutional Services, LLC (“Services”). Services is a direct wholly-owned subsidiary of TIAA, and is registered with the SEC as a broker-dealer and a registered investment adviser and is a member of the Financial Industry Regulatory Authority. Pursuant to the Distribution Agreement, Services performs distribution services for the Account which include, among other things, (i) distribution of annuity contracts issued by TIAA and funded by the Account, (ii) advising existing annuity contract owners in connection with their accumulations and (iii) helping employers implement and manage retirement plans. In addition, TIAA

performs administrative functions for the Account, which include, among other things, (i) maintaining accounting records and performing accounting services, (ii) receiving and allocating premiums, (iii) calculating and making annuity payments, (iv) processing withdrawal requests, (v) providing regulatory compliance and reporting services, (vi) maintaining the Account's records of contract ownership and (vii) otherwise assisting generally in all aspects of the Account's operations. Both distribution services (pursuant to the Distribution Agreement) and administrative services are provided to the Account by Services and TIAA, as applicable, on an at cost basis. The Distribution Agreement is terminable by either party upon 60 days written notice and terminates automatically upon any assignment thereof.

In addition to providing the services described above, TIAA charges the Account fees to bear certain mortality and expense risks and risks with providing the liquidity guarantee. These fees are charged as a percentage of the net assets of the Account. Rates for these fees are established annually.

Once an Account contract owner begins receiving lifetime annuity income benefits, payment levels cannot be reduced as a result of the Account's actual mortality experience. As such, mortality and expense risk are contractual charges for TIAA's assumption of this risk.

TIAA provides the Account with a liquidity guarantee enabling the Account to have funds available to meet contract owner redemption, transfer or cash withdrawal requests. The liquidity guarantee is required by the New York State Department of Financial Services and is subject to a prohibited transaction exemption that the Account received in 1996 (96-76) from the U.S. Department of Labor (the "PTE 96-76"). The Account pays TIAA for the risk associated with providing the liquidity guarantee through a daily deduction from the Account's net assets. Whether the liquidity guarantee is exercised is based on the cash level of the Account from time to time, as well as recent contract owner withdrawal activity and the Account's expected working capital, debt service and cash needs, and subject to the oversight of the independent fiduciary. If the Account cannot fund contract owner withdrawal or redemption requests from the Account's own cash flow and liquid investments, TIAA will fund them by purchasing accumulation units issued by the Account (accumulation units that are purchased by TIAA are generally referred to as "liquidity units"). TIAA guarantees that contract owners can redeem their accumulation units at the accumulation unit value next determined after their transfer or cash withdrawal request is received in good order. Liquidity units owned by TIAA are valued in the same manner as accumulation units owned by the Account's contract owners. The independent fiduciary, which has the right to adjust the percentage of total accumulation units that TIAA's ownership should not exceed (the "trigger point"), has established the trigger point at 45% of the outstanding accumulation units.

Expenses for the services and fees described above are identified as such in the accompanying Consolidated Statements of Operations and are further identified as "Expenses" in *Note 12—Financial Highlights*.

The Account has loans receivable outstanding with related parties as of June 30, 2023. Two of the loans are with a joint venture partner and the other loans are with joint ventures in which the Account also has an equity interest. The loans are held at fair value in accordance with the valuation policies described in *Note 1—Organization and Significant Accounting Policies* of the Account's 2022 Form 10-K. The following table presents the key terms of the loans as of the reporting date (in millions):

Principal		Related Party	Equity Ownership Interest	Interest Rate	Maturity Date	Fair Value at	
2023	2022					June 30, 2023	December 31, 2022
36.5	36.5	MRA Hub 34 Holding, LLC	95.00%	2.50% + LIBOR	9/1/2023	\$ 36.5	\$ 36.5
0.5	0.5	MRA 34 LLC	—%	3.75% + LIBOR	8/26/2023	0.5	0.5
32.8	32.8	THP Student Housing, LLC	97.00%	3.20%	9/1/2024	32.9	32.9
3.4	—	MR MCC 3 Sponsor, LLC	—%	6.00%	12/1/2025	3.4	—
27.8	—	THP Student Housing, LLC	97.00%	6.10%	6/30/2026	27.7	—
<b>TOTAL LOANS RECEIVABLE WITH RELATED PARTIES</b>						<b>101.0</b>	<b>69.9</b>

### Note 3—Concentrations of Risk

Concentrations of risk may arise when a number of properties are located in a similar geographic region such that the economic conditions of that region could impact tenants' obligations to meet their contractual obligations or cause the values of individual properties to decline. Additionally, concentrations of risk may arise if any one tenant comprises a significant amount of the Account's rent, or if tenants are concentrated in a particular industry.

As of June 30, 2023, the Account had no significant concentrations of tenants as no single tenant had annual contract rent that made up more than 4% of the rental income of the Account. Moreover, the Account's tenants have no notable concentration present in any one industry.

The Account's wholly-owned real estate investments and investments in joint ventures are primarily located in the United States. The following table represents the diversification of the Account's portfolio by region and property type as of June 30, 2023:

Diversification by Fair Value <sup>(1)</sup>						
	West <sup>(2)</sup>	South <sup>(3)</sup>	East <sup>(4)</sup>	Midwest <sup>(5)</sup>	Foreign <sup>(6)</sup>	Total
Industrial	17.3 %	7.8 %	2.6 %	1.5 %	— %	29.2 %
Apartments	8.1 %	10.9 %	7.0 %	1.0 %	— %	27.0 %
Office	6.8 %	5.5 %	12.1 %	0.2 %	— %	24.6 %
Retail	3.8 %	5.4 %	2.9 %	0.7 %	— %	12.8 %
Other <sup>(7)</sup>	1.9 %	2.4 %	1.6 %	0.4 %	0.1 %	6.4 %
<b>Total</b>	<b>37.9 %</b>	<b>32.0 %</b>	<b>26.2 %</b>	<b>3.8 %</b>	<b>0.1 %</b>	<b>100.0 %</b>

<sup>(1)</sup> Wholly-owned properties are represented at fair value and gross of any debt, while joint venture properties are represented at the net equity value.

<sup>(2)</sup> Properties in the "West" region are located in: AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY.

<sup>(3)</sup> Properties in the "South" region are located in: AL, AR, FL, GA, LA, MS, OK, TN, TX.

<sup>(4)</sup> Properties in the "East" region are located in: CT, DC, DE, KY, MA, MD, ME, NC, NH, NJ, NY, PA, RI, SC, VA, VT, WV.

<sup>(5)</sup> Properties in the "Midwest" region are located in: IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, SD, WI.

<sup>(6)</sup> Represents a developable land investment in Ireland.

<sup>(7)</sup> Represents interests in Storage Portfolio investments, a hotel investment and land.

### Note 4—Leases

The Account's wholly-owned real estate properties are leased to tenants under operating lease agreements which expire on various dates through 2051. Rental income is recognized in accordance with the billing terms of the lease agreements. The leases do not have material variable payments, material residual value guarantees or material restrictive covenants. Certain leases have the option to extend or terminate at the tenant's discretion, with termination options resulting in additional fees due to the Account. Aggregate minimum annual rentals for wholly-owned real estate investments owned by the Account through the non-cancelable lease term, excluding short-term residential leases, as of June 30, 2023 and December 31, 2022 are as follows (in millions):

Years Ended	As of	
	June 30, 2023	December 31, 2022
2023	\$ 350.7 <sup>(1)</sup>	\$ 689.0
2024	669.2	634.5
2025	602.1	556.9
2026	507.7	460.0
2027	409.2	362.0
Thereafter	1,320.6	1,276.1
<b>Total</b>	<b>\$ 3,859.5</b>	<b>\$ 3,978.5</b>

<sup>(1)</sup> Representative of minimum rents owed for the remaining months of the calendar year ending December 31, 2023.

Certain leases provide for additional rental amounts based upon the recovery of actual operating expenses in excess of specified base amounts, sales volume or contractual increases as defined in the lease agreement. These contractual contingent rentals are not included in the table above.

The Account has ground leases for which the Account is the lessee. The leases do not contain material residual value guarantees or material restrictive covenants. The fair value of right-of-use assets and leases liabilities related to ground leases are reflected on the balance sheet within other assets and other liabilities, respectively.

The fair values and key terms of the right-of-use assets and lease liabilities related to the Account's ground leases are as follows (in millions):

	<b>As of</b>	
	<b>June 30, 2023</b>	<b>December 31, 2022</b>
<b>Assets:</b>		
Right-of-use assets, at fair value	\$ 40.5	\$ 43.3
<b>Liabilities:</b>		
Ground lease liabilities, at fair value	\$ 40.5	\$ 43.3
<b>Key Terms:</b>		
Weighted-average remaining lease term (years)	64.9	69.9
Weighted-average discount rate <sup>(1)</sup>	7.94 %	7.51 %

<sup>(1)</sup> Discount rates are reflective of the rates utilized during the most recent appraisal of the associated real estate investments.

For both the six months ended June 30, 2023 and 2022, operating lease costs related to ground leases were \$1.2 million and \$1.1 million, respectively. These costs include variable lease costs, which are immaterial. Aggregate future minimum annual payments for ground leases held by the Account are as follows (in millions):

	<b>As of</b>	
	<b>June 30, 2023</b>	<b>December 31, 2022</b>
<b>Years Ended</b>		
2023	\$ 1.3 <sup>(1)</sup>	\$ 2.4
2024	2.5	2.4
2025	2.6	2.5
2026	2.6	2.5
2027	2.6	2.5
Thereafter	448.7	424.3
<b>Total</b>	<b>\$ 460.3</b>	<b>\$ 436.6</b>

<sup>(1)</sup> Representative of minimum rents owed for the remaining months of the calendar year ending December 31, 2023.

## Note 5—Assets and Liabilities Measured at Fair Value on a Recurring Basis

**Valuation Hierarchy:** The Account's fair value measurements are grouped into three levels, as defined by the FASB. The levels are defined as follows:

- Level 1 fair value inputs are quoted prices for identical items in active, liquid and visible markets such as stock exchanges.
- Level 2 fair value inputs are observable information for similar items in active or inactive markets, and appropriately consider counterparty creditworthiness in the valuations.
- Level 3 fair value inputs reflect our best estimate of inputs and assumptions market participants would use in pricing an asset or liability at the measurement date. The inputs are unobservable in the market and significant to the valuation estimate.

An asset or liability's categorization within the valuation hierarchy described above is based upon the lowest level of input that is significant to the fair value measurement. Real estate fund investments are excluded from the valuation hierarchy, as these investments are fair valued using their net asset value as a practical expedient since market quotations or values from independent pricing services are not readily available. See *Note 1—Organization and Significant Accounting Policies* of the Account's 2022 Form 10-K for further discussion regarding the use of a practical expedient for the valuation of real estate funds.

The following tables show the major categories of assets and liabilities measured at fair value on a recurring basis as of June 30, 2023 and December 31, 2022, using unadjusted quoted prices in active markets for identical assets (Level 1); significant other observable inputs (Level 2); and significant unobservable inputs (Level 3); and fair value using the practical expedient (millions):

Description	Level 1: Quoted Prices in Active Markets for Identical Assets	Level 2: Significant Other Observable Inputs	Level 3: Significant Unobservable Inputs	Fair Value Using Practical Expedient	Total at June 30, 2023
Real estate properties	\$ —	\$ —	\$ 19,191.3	\$ —	\$ 19,191.3
Real estate joint ventures	—	—	6,341.5	—	6,341.5
Real estate funds	—	—	—	892.7	892.7
Real estate operating business	—	—	653.6	—	653.6
Marketable securities:					
U.S. government agency notes	—	627.3	—	—	627.3
U.S. treasury securities	—	12.0	—	—	12.0
Loans receivable <sup>(1)</sup>	—	—	1,365.5	—	1,365.5
<b>Total Investments at June 30, 2023</b>	<b>\$ —</b>	<b>\$ 639.3</b>	<b>\$ 27,551.9</b>	<b>\$ 892.7</b>	<b>\$ 29,083.9</b>
Loans payable	\$ —	\$ —	\$ (1,847.3)	\$ —	\$ (1,847.3)
Other unsecured debt	\$ —	\$ (854.4)	\$ (500.0)	\$ —	\$ (1,354.4)

Description	Level 1: Quoted Prices in Active Markets for Identical Assets	Level 2: Significant Other Observable Inputs	Level 3: Significant Unobservable Inputs	Fair Value Using Practical Expedient	Total at December 31, 2022
Real estate properties	\$ —	\$ —	\$ 20,444.0	\$ —	\$ 20,444.0
Real estate joint ventures	—	—	7,103.6	—	7,103.6
Real estate funds	—	—	—	893.4	893.4
Real estate operating business	—	—	641.9	—	641.9
Marketable securities:					
U.S. government agency notes	—	902.9	—	—	902.9
Foreign government agency notes	—	16.9	—	—	16.9
U.S. treasury securities	—	574.0	—	—	574.0
Corporate bonds	—	536.4	—	—	536.4
Loans receivable <sup>(1)</sup>	—	—	1,488.6	—	1,488.6
<b>Total Investments at December 31, 2022</b>	<b>\$ —</b>	<b>\$ 2,030.2</b>	<b>\$ 29,678.1</b>	<b>\$ 893.4</b>	<b>\$ 32,601.7</b>
Loans payable	\$ —	\$ —	\$ (2,069.7)	\$ —	\$ (2,069.7)
Other unsecured debt	\$ —	\$ (453.1)	\$ (500.0)	\$ —	\$ (953.1)

<sup>(1)</sup> Includes loans receivable with related parties.

The following tables show the reconciliation of the beginning and ending balances for assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) during the three and six months ended June 30, 2023 and 2022 (in millions):

	Real Estate Properties	Real Estate Joint Ventures	Real Estate Operating Business	Loans Receivable <sup>(3)</sup>	Total Level 3 Investments	Loans Payable	Other Unsecured Debt
<b>For the three months ended June 30, 2023</b>							
Beginning balance April 1, 2023	\$ 20,057.9	\$ 6,762.1	\$ 636.0	\$ 1,450.2	\$ 28,906.2	\$ (2,129.9)	\$ (500.0)
Total realized and unrealized (losses) gains included in changes in net assets	(945.4)	(350.9)	1.2	(116.3)	(1,411.4)	(15.9)	—
Purchases <sup>(1)</sup>	78.8	55.2	16.4	35.1	185.5	(1.1)	—
Sales	—	—	—	—	—	—	—
Settlements <sup>(2)</sup>	—	(124.9)	—	(3.5)	(128.4)	299.6	—
Ending balance June 30, 2023	<u>\$ 19,191.3</u>	<u>\$ 6,341.5</u>	<u>\$ 653.6</u>	<u>\$ 1,365.5</u>	<u>\$ 27,551.9</u>	<u>\$ (1,847.3)</u>	<u>\$ (500.0)</u>
<b>For the six months ended June 30, 2023</b>							
Beginning balance January 1, 2023	\$ 20,444.0	\$ 7,103.6	\$ 641.9	\$ 1,488.6	\$ 29,678.1	\$ (2,069.7)	\$ (500.0)
Total realized and unrealized (losses) included in changes in net assets	(1,432.8)	(728.2)	(4.7)	(159.3)	(2,325.0)	(22.7)	—
Purchases <sup>(1)</sup>	180.1	91.4	16.4	47.6	335.5	(100.0)	—
Sales	—	—	—	—	—	—	—
Settlements <sup>(2)</sup>	—	(125.3)	—	(11.4)	(136.7)	345.1	—
Ending balance June 30, 2023	<u>\$ 19,191.3</u>	<u>\$ 6,341.5</u>	<u>\$ 653.6</u>	<u>\$ 1,365.5</u>	<u>\$ 27,551.9</u>	<u>\$ (1,847.3)</u>	<u>\$ (500.0)</u>

	Real Estate Properties	Real Estate Joint Ventures	Real Estate Operating Business	Loans Receivable <sup>(3)</sup>	Total Level 3 Investments	Loans Payable	Other Unsecured Debt
<b>For the three months ended June 30, 2022</b>							
Beginning balance April 1, 2022	\$ 20,179.1	\$ 7,253.3	\$ 487.6	\$ 1,329.2	\$ 29,249.2	\$ (2,338.0)	\$ (500.0)
Total realized and unrealized gains (losses) included in changes in net assets	977.6	239.3	140.4	(83.2)	1,274.1	46.1	—
Purchases <sup>(1)</sup>	308.3	230.4	—	312.3	851.0	(6.1)	—
Sales <sup>(4)</sup>	(176.4)	—	—	—	(176.4)	—	—
Settlements <sup>(2)</sup>	—	(80.1)	—	(0.2)	(80.3)	5.0	—
Ending balance June 30, 2022	<u>\$ 21,288.6</u>	<u>\$ 7,642.9</u>	<u>\$ 628.0</u>	<u>\$ 1,558.1</u>	<u>\$ 31,117.6</u>	<u>\$ (2,293.0)</u>	<u>\$ (500.0)</u>

	Real Estate Properties	Real Estate Joint Ventures	Real Estate Operating Business	Loans Receivable <sup>(3)</sup>	Total Level 3 Investments	Loans Payable	Other Unsecured Debt
<b>For the six months ended June 30, 2022</b>							
Beginning balance January 1, 2022	\$ 18,903.9	\$ 7,175.9	\$ 326.3	\$ 1,492.6	\$ 27,898.7	\$ (2,380.5)	\$ (500.0)
Total realized and unrealized gains (losses) included in changes in net assets	2,181.6	362.1	200.8	(82.2)	2,662.3	49.8	—
Purchases <sup>(1)</sup>	537.1	481.8	100.9	317.5	1,437.3	(9.1)	—
Sales <sup>(4)</sup>	(334.0)	—	—	(161.4)	(495.4)	—	—
Settlements <sup>(2)</sup>	—	(376.9)	—	(8.4)	(385.3)	46.8	—
Ending balance June 30, 2022	<u>\$ 21,288.6</u>	<u>\$ 7,642.9</u>	<u>\$ 628.0</u>	<u>\$ 1,558.1</u>	<u>\$ 31,117.6</u>	<u>\$ (2,293.0)</u>	<u>\$ (500.0)</u>

(1) Includes purchases, contributions for joint ventures, capital expenditures, lending for loans receivable, assumption of loans payable and term loan borrowings.

(2) Includes operating income for real estate joint ventures net of distributions, payments of loans receivable, and payments of loans payable and line of credit.

(3) Includes loans receivable with related parties.

(4) Real estate properties amount shown is inclusive of post closing realized losses.

The following table shows quantitative information about unobservable inputs related to the Level 3 fair value measurements as of June 30, 2023.

Type	Asset Class	Valuation Technique(s)	Unobservable Inputs <sup>(1)</sup>	Range (Weighted Average)
Real Estate Properties and Joint Ventures	Office	Income Approach—Discounted Cash Flow	Discount Rate	6.3% - 9.5% (7.4%)
			Terminal Capitalization Rate	5.0% - 8.5% (6.2%)
	Industrial	Income Approach—Discounted Cash Flow	Discount Rate	6.0% - 8.3% (7.0%)
			Terminal Capitalization Rate	4.5% - 7.0% (5.3%)
	Apartment	Income Approach—Discounted Cash Flow	Discount Rate	6.0% - 7.3% (6.5%)
			Terminal Capitalization Rate	4.5% - 5.8% (5.1%)
	Retail	Income Approach—Discounted Cash Flow	Discount Rate	6.3% - 11.5% (7.4%)
			Terminal Capitalization Rate	5.0% - 8.8% (6.1%)
	Hotel	Income Approach—Discounted Cash Flow	Discount Rate	10.0%
			Terminal Capitalization Rate	8.0%
	Real Estate Operating Business	Income Approach—Discounted Cash Flow	Discount Rate	10.0%
			Terminal Growth Rate	8.2%
Loans Payable	Office	Discounted Cash Flow	EBITDA Multiple	30.0x
			Loan to Value Ratio	35.7% - 82.5% (55.0%)
			Equivalency Rate	5.2% - 7.7% (6.1%)

Type	Asset Class	Valuation Technique(s)	Unobservable Inputs <sup>(1)</sup>	Range (Weighted Average)
		Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	35.7% - 82.5% (55.0%) 1.1 - 1.9 (1.3)
	Industrial	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	28.6% - 36.5% (31.8%) 5.5% - 5.6% (5.5%)
		Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	28.6% - 36.5% (31.8%) 1.1 - 1.1 (1.1)
	Apartment	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	27.9% - 70.1% (42.1%) 5.6% - 7.5% (6.4%)
		Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	27.9% - 70.1% (42.1%) 1.1 - 1.3 (1.1)
	Retail	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	47.9% - 79.7% (56.9%) 5.7% - 6.6% (6.0%)
		Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	47.9% - 79.7% (56.9%) 1.2 - 1.7 (1.3)
<b>Loans Receivable, including those with related parties</b>	Office	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	41.0% - 105.0% (68.0%) 6.7% - 17.2% (10.6%)
	Industrial	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	49.5% - 66.0% (57.8%) 5.3% - 8.3% (6.0%)
	Apartment	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	39.6% - 70.2% (61.8%) 6.1% - 8.5% (7.7%)
	Retail & Hospitality	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	12.1% - 56.6% (34.4%) 10.0% - 12.4% (12.3%)

The following table shows quantitative information about unobservable inputs related to the Level 3 fair value measurements as of June 30, 2022.

Type	Asset Class	Valuation Technique(s)	Unobservable Inputs <sup>(1)</sup>	Range (Weighted Average)	
<b>Real Estate Properties and Joint Ventures</b>	Office	Income Approach—Discounted Cash Flow	Discount Rate	5.8% - 9.8% (6.6%)	
			Terminal Capitalization Rate	4.5% - 8.5% (5.5%)	
			Income Approach—Direct Capitalization	Overall Capitalization Rate	4.0% - 8.0% (5.0%)
	Industrial	Income Approach—Discounted Cash Flow	Discount Rate	4.8% - 8.0% (5.8%)	
			Terminal Capitalization Rate	3.3% - 6.8% (4.4%)	
			Income Approach—Direct Capitalization	Overall Capitalization Rate	1.8% - 6.0% (3.8%)
	Apartment	Income Approach—Discounted Cash Flow	Discount Rate	5.3% - 7.0% (5.8%)	
			Terminal Capitalization Rate	4.0% - 5.5% (4.5%)	
			Income Approach—Direct Capitalization	Overall Capitalization Rate	3.5% - 5.0% (4.0%)
	Retail	Income Approach—Discounted Cash Flow	Discount Rate	6.0% - 11.5% (7.0%)	
Terminal Capitalization Rate			5.0% - 8.5% (5.6%)		
		Income Approach—Direct Capitalization	Overall Capitalization Rate	4.5% - 8.3% (5.2%)	
Hotel	Income Approach—Discounted Cash Flow	Discount Rate	9.8% (9.8%)		
		Terminal Capitalization Rate	7.8% (7.8%)		
		Income Approach—Direct Capitalization	Overall Capitalization Rate	7.5% (7.5%)	
<b>Real Estate Operating Business</b>		Income Approach—Discounted Cash Flow	Discount Rate	9.8 %	
			Terminal Growth Rate	7.1 %	
		Market Approach	EBITDA Multiple	28.3x	
<b>Loans Payable</b>	Office	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	35.6% - 70.1% (46.2%) 3.5% - 5.0% (4.1%)	
			Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	35.6% - 70.1% (46.2%) 1.2 - 1.3 (1.2)
	Industrial	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	28.3% - 36.3% (31.5%) 4.5% - 4.7% (4.6%)	
			Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	28.3% - 36.3% (31.5%) 1.1 - 1.2 (1.2)
	Apartment	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	24.8% - 66.4% (39.1%) 1.9% - 4.4% (3.2%)	
			Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	24.8% - 66.4% (39.1%) 1.2 - 1.4 (1.2)

Type	Asset Class	Valuation Technique(s)	Unobservable Inputs <sup>(1)</sup>	Range (Weighted Average)
	Retail	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	42.5% - 73.8% (46.0%) 4.1% - 5.1% (4.4%)
		Net Present Value	Loan to Value Ratio Weighted Average Cost of Capital Risk Premium Multiple	42.5% - 73.8% (46.0%) 1.2 - 1.5 (1.3)
<b>Loans Receivable, including those with related parties</b>	Office	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	40.4% - 94.7% (72.2%) 2.7% - 9.6% (6.3%)
	Industrial	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	49.5% - 66.0% (57.8%) 2.9% - 6.6% (3.8%)
	Apartment	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	36.4% - 76.5% (47.5%) 2.9% - 8.6% (4.7%)
	Retail & Hospitality	Discounted Cash Flow	Loan to Value Ratio Equivalency Rate	57.1% - 79.8% (65.6%) 2.2% - 7.8% (4.0%)

<sup>(1)</sup> Equivalency Rate is defined as the prevailing market interest rate used to discount the contractual loan payments.

Significant increases (decreases) in any of those inputs in isolation would result in significantly lower (higher) fair value measurements, respectively.

*Line of Credit and Other Unsecured Debt:* The Account's line of credit and term loans are recorded at par as Management believes par approximates fair value due to the short-term nature of the credit facility.

During the six months ended June 30, 2023 and 2022, there were no transfers between Levels 1, 2 or 3.

The amount of total net unrealized gains (losses) included in changes in net assets relating to Level 3 investments and loans payable using significant unobservable inputs still held as of the reporting date is as follows (millions):

	Real Estate Properties	Real Estate Joint Ventures	Real Estate Operating Business	Loans Receivable <sup>(1)</sup>	Total Level 3 Investments	Loans Payable
For the three months ended June 30, 2023	\$ (945.4)	\$ (380.0)	\$ 1.2	\$ (116.3)	\$ (1,440.5)	\$ (15.9)
For the six months ended June 30, 2023	\$ (1,432.8)	\$ (771.1)	\$ (4.7)	\$ (159.3)	\$ (2,367.9)	\$ (22.7)
For the three months ended June 30, 2022	\$ 966.1	\$ 279.4	\$ 140.4	\$ (83.1)	\$ 1,302.8	\$ 46.1
For the six months ended June 30, 2022	\$ 2,168.4	\$ 405.0	\$ 200.8	\$ (82.2)	\$ 2,692.0	\$ 49.8

<sup>(1)</sup> Amount shown is reflective of loans receivable and loans receivable with related parties.

## Note 6—Investments in Joint Ventures

The Account owns interests in several real estate properties through joint ventures and receives distributions and allocations of profits and losses from the joint ventures based on the Account's ownership interest in those investments. Several of these joint ventures have loans payable collateralized by the properties owned by the aforementioned joint ventures. At June 30, 2023, the Account held investments in joint ventures with ownership interest percentages that ranged from 2.0% to 98.5%. Certain joint ventures are subject to adjusted distribution percentages when earnings in the investment reach a predetermined threshold.

A condensed summary of the results of operations of the joint ventures are shown below (millions):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2023	2022	2023	2022
<b>Operating Revenue and Expenses</b>				
Revenues	\$ 308.1	\$ 288.1	\$614.6	\$558.0
Expenses	177.1	163.6	361.6	331.0
Excess of revenues over expenses	\$ 131.0	\$ 124.5	\$253.0	\$227.0

## Note 7—Investments in Real Estate Funds

The Account has ownership interests in real estate funds (each a “Fund”, and collectively the “Funds”). The Funds are set up as limited partnerships or entities similar to a limited partnership, and as such, meet the definition of a VIE as the limited partners collectively lack the power, through voting or similar rights, to direct the activities of the Fund that most significantly impact the Fund's economic performance. Management has determined that the Account is not the primary beneficiary for any of the Funds, as the Account lacks the power to direct the activities of each Fund that most significantly impact the respective Fund's economic performance, and the Account further lacks substantive kick-out rights to remove the entity with these powers. Refer to *Note 1—Organization and Significant Accounting Policies* of the Account's 2022 Form 10-K for a description of the methodology used to determine the primary beneficiary of a VIE.

No financial support (such as loans or financial guarantees) was provided to the Funds during the six months ended June 30, 2023. The Account is contractually obligated to make additional capital contributions in certain Funds in future years. These commitments are included in the maximum exposure to loss presented below.

The carrying amount and maximum exposure to loss relating to unconsolidated VIEs in which the Account holds a variable interest but is not the primary beneficiary were as follows at June 30, 2023 (in millions):

Fund Name	Carrying Amount	Maximum Exposure to Loss	Liquidity Provisions	Investment Strategy
<b>LCS SHIP Venture I, LLC (90.0% Account Interest)</b>	\$ 221.3	\$ 221.3	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2025.  The Account is permitted to sell or transfer its interest in the fund, subject to consent and approval of the manager.	To invest in senior housing properties.
<b>Veritas - Trophy VI, LLC (90.4% Account Interest)</b>	\$ 67.8	\$ 80.3	Redemptions prohibited prior to liquidation.  The Account is not permitted to sell or transfer its interest in the fund until August 2023. After this date, the Account can sell or transfer its interest in the fund with the consent and approval of the manager.	To invest in multi-family properties primarily in the San Francisco Bay and Los Angeles metropolitan statistical area ("MSA").
<b>SP V - II, LLC (61.8% Account Interest)</b>	\$ 106.0	\$ 115.6	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2023.  The Account is permitted to sell or transfer its interest in the fund, subject to consent and approval of the manager.	To invest in medical office properties in the U.S.
<b>Taconic New York City GP Fund, LP (60.0% Account Interest)</b>	\$ 24.9	\$ 24.9	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2024.  The Account is permitted to sell its interest in the fund, subject to consent and approval of the general partner.	To invest in real estate and real estate-related assets in the New York City MSA.
<b>Silverpeak NRE FundCo LLC (90.0% Account Interest)</b>	\$ 44.9	\$ 71.0	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2028.  The Account is permitted to sell its interest in the fund to qualified institutional investors, subject to consent and approval of the manager.	To invest in alternative real estate investments primarily in major U.S. metropolitan markets.
<b>IDR - Core Property Index Fund, LLC (1.1% Account Interest)</b>	\$ 41.0	\$ 41.0	Redemptions are permitted for a full calendar quarter and upon at least 90 days prior written notice, subject to fund availability.  The Account is permitted to sell its interest in the fund, subject to consent and approval of the manager.	To invest primarily in open-ended funds that fall within the NFI-ODCE Index and are actively managed.

<b>Fund Name</b>	<b>Carrying Amount</b>	<b>Maximum Exposure to Loss</b>	<b>Liquidity Provisions</b>	<b>Investment Strategy</b>
<b>Townsend Group Value-Add Fund (99.0% Account Interest)</b>	\$ 180.7	\$ 259.7	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2027.  The Account is prohibited from transferring its interest in the fund without consent by the general partner, which can be withheld in their sole discretion	To invest in value-add real estate investment opportunities in the U.S. market.
<b>Flagler REA Healthcare Properties Partnership (90.0% Account Interest)</b>	\$ 20.5	\$ 20.5	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2025.  The Account is permitted to transfer its interest in the fund to a qualified institutional investor, subject to the right first offer by the partner, following the one year anniversary of the fund launch.	To acquire healthcare properties within the top 50 MSA's in the U.S.
<b>Grubb Southeast Real Estate Fund VI, LLC (66.7% Account Interest)</b>	\$ 18.5	\$ 18.5	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2026.  The Account is permitted to sell or transfer its interest in the fund with the consent and approval of the manager.	To acquire office investments across the Southeast.
<b>Silverpeak NRE FundCo 2 LLC (90.0% Account Interest)</b>	\$ 58.4	\$ 99.0	Redemptions prohibited prior to liquidation.  The Account is permitted to sell its interest in the fund to qualified institutional investors, subject to consent and approval of the manager.	To invest in value-add real estate investment opportunities in the top 25 major U.S. metropolitan markets.
<b>JCR Capital - REA Preferred Equity Parallel Fund (31.1% Account Interest)</b>	\$ 61.5	\$ 103.2	Redemptions prohibited prior to liquidation.  Liquidation estimated to begin no earlier than 2026.  The Account is prohibited from transferring its interest in the fund without consent by the general partner, which can be withheld in their sole discretion	To invest primarily in multi-family properties.
<b>Silverpeak NRE FundCo 3 LLC (90.0% Account Interest)</b>	\$ 47.2	\$ 98.7	Redemptions prohibited prior to liquidation.  The Account is permitted to sell its interest in the fund to qualified institutional investors, subject to consent and approval of the manager.	To invest in value-add real estate investment opportunities in the top 25 major U.S. metropolitan markets.
<b>Total</b>	<b>\$ 892.7</b>	<b>\$ 1,153.7</b>		

## Note 8—Loans Receivable

The Account's loan receivable portfolio is primarily comprised of mezzanine loans secured by the borrower's direct and indirect interests in commercial real estate. Mezzanine loans are subordinate to first mortgages on the underlying real estate collateral. The following property types represent the underlying real estate collateral for the Account's loans (in millions):

	June 30, 2023			December 31, 2022		
	Principal Outstanding	Fair Value	% of Fair Value	Principal Outstanding	Fair Value	% of Fair Value
Office <sup>(1)</sup>	\$ 1,085.3	\$ 805.7	59.0 %	\$ 904.6	\$ 788.4	52.9 %
Apartments <sup>(1)</sup>	244.6	239.8	17.6 %	214.2	209.6	14.1 %
Industrial	133.6	133.7	9.8 %	131.6	130.6	8.8 %
Hotel	139.3	137.5	10.1 %	139.3	134.9	9.1 %
Retail	45.8	45.4	3.3 %	226.1	225.1	15.1 %
Land	3.4	3.4	0.2 %	—	—	— %
	<u>\$ 1,652.0</u>	<u>\$ 1,365.5</u>	<u>100.0 %</u>	<u>\$ 1,615.8</u>	<u>\$ 1,488.6</u>	<u>100.0 %</u>

<sup>(1)</sup> Includes loans receivable with related parties.

The Account monitors the risk profile of the loan receivable portfolio with the assistance of a third-party rating service that models the loans and assigns risk ratings based on inputs such as loan-to-value ratios, yields, credit quality of the borrowers, property types of the collateral, geographic and local market dynamics, physical condition of the collateral, and the underlying structure of the loans. Ratings for loans are updated monthly. Assigned ratings can range from AAA to C, with an AAA designation representing debt with the lowest level of credit risk and C representing a greater risk of default or principal loss. Loans that are delinquent or in default are assigned a D rating. Mezzanine debt in good health is typically reflective of a risk rating in the B range (e.g., BBB, BB, or B), as these ratings reflect borrowers' having adequate financial resources to service their financial commitments, but also acknowledging that adverse economic conditions, should they occur, would likely impede on a borrowers' ability to pay.

All borrowers of loans rated C or higher are current as of June 30, 2023.

The following table presents the fair values of the Account's loan portfolio based on the risk ratings as of June 30, 2023 (in millions), listed in order of the strength of the risk rating (from strongest to weakest):

	June 30, 2023			December 31, 2022		
	Number of Loans	Fair Value	% of Fair Value	Number of Loans	Fair Value	% of Fair Value
A+	—	—	— %	1	—	— %
A	—	—	— %	2	130.6	8.8 %
A-	—	—	— %	1	—	— %
BBB+	—	—	— %	3	191.0	12.8 %
BBB	2	200.7	14.7 %	2	137.4	9.2 %
BBB-	—	—	— %	1	47.5	3.2 %
BB+	5	282.3	20.7 %	2	64.9	4.4 %
BB	1	57.3	4.2 %	2	72.3	4.8 %
BB-	—	—	— %	1	18.9	1.3 %
B+	3	119.3	8.7 %	3	87.2	5.9 %
B	1	71.6	5.2 %	2	72.5	4.9 %
B-	6	320.2	23.5 %	5	171.0	11.5 %
CCC+	—	—	— %	3	223.4	15.0 %
CCC-	—	—	— %	2	60.9	4.1 %
CC	1	12.8	0.9 %	1	66.0	4.4 %
C	4	156.4	11.5 %	1	75.1	5.0 %
D	6	43.9	3.2 %	—	—	— %
NR <sup>(1)</sup>	5	101.0	7.4 %	3	69.9	4.7 %
	<u>34</u>	<u>\$ 1,365.5</u>	<u>100.0 %</u>	<u>35</u>	<u>\$ 1,488.6</u>	<u>100.0 %</u>

<sup>(1)</sup> "NR" designates loans not assigned an internal credit rating. As of June 30, 2023 and December 31, 2022, all loans with NR designations were with related parties. The loans are collateralized by equity interests in real estate investments.

The following table represents loans receivable in nonaccrual status as of June 30, 2023 (in millions). Loans are placed in nonaccrual status when a loan is more than 90 days in arrears or at any point when management believes the full collection of principal is doubtful.

Aging	Number of Loans	Principal Outstanding	Fair Value
Past Due - 90 Days +	2	\$ 148.9	\$ —

## Note 9—Loans Payable

At June 30, 2023, the Account had outstanding loans payable secured by the following assets (in millions):

Property	Annual Interest Rate and Payment Frequency	Principal Amounts Outstanding as of		Maturity
		June 30, 2023	December 31, 2022	
1001 Pennsylvania Avenue <sup>(1)(2)</sup>	3.70% paid monthly	\$ —	\$ 301.2	June 1, 2023
Biltmore at Midtown	3.94% paid monthly	36.4	36.4	July 5, 2023
Cherry Knoll	3.78% paid monthly	35.3	35.3	July 5, 2023
Lofts at SoDo	3.94% paid monthly	35.1	35.1	July 5, 2023
San Diego Office Portfolio <sup>(3)</sup>	1.61% + SOFR paid monthly	58.2	58.2	August 9, 2023
Pacific City	2.10% + SOFR paid monthly	105.0	105.0	October 1, 2023
The Stratum <sup>(3)</sup>	2.25% + LIBOR paid monthly	40.4	40.4	May 9, 2024
Spring House Innovation Park <sup>(3)</sup>	1.25% + LIBOR paid monthly	56.7	52.3	July 9, 2024
1401 H Street NW	3.65% paid monthly	115.0	115.0	November 5, 2024
The District on La Frontera <sup>(1)</sup>	3.84% paid monthly	36.6	37.0	December 1, 2024
The District on La Frontera <sup>(1)</sup>	4.96% paid monthly	4.2	4.2	December 1, 2024
Circa Green Lake	3.71% paid monthly	52.0	52.0	March 5, 2025

Property	Annual Interest Rate and Payment Frequency	Principal Amounts Outstanding as of		Maturity
		June 30, 2023	December 31, 2022	
Union - South Lake Union	3.66% paid monthly	57.0	57.0	March 5, 2025
Holly Street Village	3.65% paid monthly	81.0	81.0	May 1, 2025
Henley at Kingstowne <sup>(1)</sup>	3.60% paid monthly	67.0	67.7	May 1, 2025
32 South State Street	4.48% paid monthly	24.0	24.0	June 6, 2025
Project Sonic <sup>(3)</sup>	2.00% + SOFR paid monthly	93.5	—	June 9, 2025
Vista Station Office Portfolio <sup>(1)</sup>	4.00% paid monthly	18.4	18.6	July 1, 2025
780 Third Avenue	3.55% paid monthly	150.0	150.0	August 1, 2025
780 Third Avenue	3.55% paid monthly	20.0	20.0	August 1, 2025
Reserve at Chino Hills <sup>(3)</sup>	1.50% + LIBOR paid monthly	76.6	72.5	August 9, 2025
Vista Station Office Portfolio <sup>(1)</sup>	4.20% paid monthly	41.4	41.9	November 1, 2025
Sixth & Main	1.87% + LIBOR paid monthly	—	41.1	November 9, 2025
701 Brickell Avenue <sup>(1)</sup>	3.66% paid monthly	176.7	178.5	April 1, 2026
Marketplace at Mill Creek	3.82% paid monthly	39.6	39.6	September 11, 2027
Overlook At King Of Prussia	3.82% paid monthly	40.8	40.8	September 11, 2027
Winslow Bay	3.82% paid monthly	25.8	25.8	September 11, 2027
1900 K Street, NW <sup>(1)</sup>	3.93% paid monthly	159.8	161.1	April 1, 2028
99 High Street	3.90% paid monthly	277.0	277.0	March 1, 2030
Total Principal Outstanding		\$ 1,923.5	\$ 2,168.7	
Fair Value Adjustment <sup>(4)</sup>		(76.2)	(99.0)	
Total Loans Payable		\$ 1,847.3	\$ 2,069.7	

<sup>(1)</sup> The mortgage is adjusted monthly for principal payments.

<sup>(2)</sup> The principal amount of the outstanding debt was paid off during the quarter.

<sup>(3)</sup> The loan is collateralized by a mezzanine loan receivable. The mezzanine loan receivable is collateralized by the property reflected within the table above.

<sup>(4)</sup> The fair value adjustment consists of the difference (positive or negative) between the principal amount of the outstanding debt and the fair value of the outstanding debt. See *Note 1—Organization and Significant Accounting Policies*.

## Note 10—Credit Facility

The Account has a credit agreement (the "Credit Agreement") with a syndicate of third-party bank lenders, including JPMorgan Chase Bank, N.A., comprised of revolving credit loans ("Line of Credit") up to \$945.0 million and up to \$500.0 million in term loans ("Term Loans"). The Account may use the proceeds of borrowings under the Credit Agreement for general organizational purposes in the ordinary course of business, including to finance certain real estate portfolio investments. The Account may prepay borrowings under the Credit Facility at any time during the life of the loan without penalty.

The Account may elect for each borrowing under the Credit Agreement to bear annual interest at an adjusted base rate ("ABR") or adjusted SOFR plus an applicable margin which is dependent on the leverage ratio of the Account. The applicable margin for adjusted SOFR Term Loans ranges from 1.00% to 1.50% and for ABR Term Loans ranges from 0.00% to 0.50%. The applicable margin for adjusted SOFR Revolving Credit Loans ranges from 0.875% to 1.30% and for ABR Revolving Credit Loans ranges from 0.00% to 0.30%. In addition, the Account pays facility fees ranging from 0.125% to 0.20%, depending on the leverage ratio of the Account, on the total revolving commitments (used and unused) under the Credit Agreement.

As of June 30, 2023, the Account was in compliance with all covenants required by the Credit Agreement.

The following table provides a summary of the key characteristics of the Credit Agreement, as of June 30, 2023:

Current Balance - Line of Credit (in millions)	\$	—
Current Balance - Term Loans (in millions)	\$	500.0
Maximum Capacity (in millions)	\$	1,445.0
Inception Date		September 16, 2022
Revolving Commitment Termination and Term Loan Maturity Date		September 16, 2024
Extension Option <sup>(1)</sup>		Yes
ABR Revolving Credit Loans Interest Rate		ABR + Applicable Margin
ABR Term Loans Interest Rate		ABR + Applicable Margin
SOFR Revolving Credit Loans Interest Rate		Adjusted SOFR + Applicable Margin
SOFR Term Loans Interest Rate <sup>(3)</sup>		Adjusted SOFR + Applicable Margin
Facility Fee <sup>(2)</sup>		0.125% - 0.20% quarterly

<sup>(1)</sup> The Account has three options to extend the Commitment Termination Date for an additional twelve months each. The Account may also request additional funding, not to exceed \$55.0 million, at any time prior to the Commitment Termination Date or the Term Loan Maturity Date; however, this request is subject to approval at the sole discretion of the lenders and is not guaranteed.

<sup>(2)</sup> The Account is charged a fee on the Line of Credit, whether used or unused, which is determined based on the Account's loan-to-value ratio.

<sup>(3)</sup> The weighted average interest rate for the three and six months ended June 30, 2023 was 6.081% and 5.855%.

## Note 11—Senior Notes Payable

On June 10, 2022, the Account entered into a note purchase agreement with certain qualified institutional investors. Under the note purchase agreement, the Account issued \$500.0 million of debt securities, in the form of Series A senior notes and Series B senior notes that mature in 2029 and 2032, respectively (the "Series A and B Notes"). The Account is obligated to repay the Series A and B Notes at par, plus accrued and unpaid interest to, but not including, the date of repayment. The Series A Notes bear interest at an annual rate of 3.24%, payable semi-annually, and the Series B Notes bear interest at an annual rate of 3.35%, payable semi-annually. The Account may also prepay the Series A and B Notes in whole or in part at any time, or from time to time, at the Account's option at par plus accrued interest to the prepayment date and, if prepaid on or before 90 days prior to the applicable maturity date, a make-whole premium.

On March 21, 2023, the Account entered into another note purchase agreement with certain qualified institutional investors. Under this note purchase agreement, the Account issued \$400.0 million of debt securities on May 30, 2023, in the form of Series C senior notes (the "Series C Notes") that will mature on May 30, 2027. The Series C

Notes bear interest at an annual rate of 5.50%, payable semi-annually and are subject to the same prepayment terms as the Series A and B Notes.

As of June 30, 2023, the Account was in compliance with all covenants required by the note purchase agreements.

The following table provides a summary of the key characteristics of the outstanding senior notes payable, as of June 30, 2023:

	Principal (in millions)	Interest Rate	Maturity Date
Series A	\$ 300.0	3.24%	June 10, 2029
Series B	\$ 200.0	3.35%	June 10, 2032
Series C	\$ 400.0	5.50%	May 30, 2027

## Note 12—Financial Highlights

Selected condensed financial information for an Accumulation Unit of the Account is presented below. Per Accumulation Unit data is calculated on average units outstanding.

	For the Six Months Ended June 30, 2023	Years Ended December 31,		
		2022	2021	2020
Per Accumulation Unit Data:				
Rental income	\$ 13.271	\$ 23.751	\$ 22.672	\$ 21.145
Real estate property level expenses and taxes	6.375	11.042	10.683	10.027
Real estate income, net	6.896	12.709	11.989	11.118
Other income	3.751	6.559	5.474	4.980
Total income	10.647	19.268	17.463	16.098
Expense charges <sup>(1)</sup>	3.004	5.121	4.035	3.603
Investment income, net	7.643	14.147	13.428	12.495
Net realized and unrealized (loss) gain on investments and debt	(46.033)	28.011	64.615	(16.195)
Net (decrease) increase in Accumulation Unit Value	(38.390)	42.158	78.043	(3.700)
Accumulation Unit Value:				
Beginning of period	556.923	514.765	436.722	440.422
End of period	\$ 518.533	\$ 556.923	\$ 514.765	\$ 436.722
Total return <sup>(3)</sup>	(6.89)%	8.19 %	17.87 %	(0.84)%
Ratios to Average net assets <sup>(2)</sup> :				
Expenses <sup>(1)</sup>	1.10 %	0.89 %	0.84 %	0.81 %
Investment income, net	2.80 %	2.45 %	2.82 %	2.85 %
Portfolio turnover rate <sup>(3)</sup> :				
Real estate properties <sup>(4)</sup>	0.7 %	5.6 %	7.6 %	7.1 %
Marketable securities <sup>(5)</sup>	9.0 %	4.7 %	— %	113.4 %
Accumulation Units outstanding at end of period (millions)				
	49.0	52.1	53.4	52.0
Net assets end of period (millions)	\$ 25,998.1	\$ 29,658.1	\$ 28,072.0	\$ 23,243.9

<sup>(1)</sup> Expense charges per Accumulation Unit and the Ratio of Expenses to average net assets reflect the year-to-date Account level expenses and exclude real estate property level expenses which are included in real estate income, net.

<sup>(2)</sup> Percentages for the six months ended June 30, 2023 are annualized.

<sup>(3)</sup> Percentages for the six months ended June 30, 2023 are not annualized.

- (4) Real estate investment portfolio turnover rate is calculated by dividing the lesser of purchases or sales of real estate property investments (including contributions to, or return of capital distributions received from, existing real estate joint ventures and fund investments) by the average value of the portfolio of real estate investments held during the period.
- (5) Marketable securities portfolio turnover rate is calculated by dividing the lesser of purchases or sales of securities, excluding securities having maturity dates at acquisition of one year or less, by the average value of the portfolio securities held during the period.

### Note 13—Accumulation Units

Changes in the number of Accumulation Units outstanding were as follows (in millions):

	<u>For the Six Months Ended June 30, 2023</u>	<u>For the Year Ended December 31, 2022</u>
<b>Outstanding:</b>		
Beginning of period	52.1	53.4
Credited for premiums	2.0	5.4
Annuity, other periodic payments, withdrawals and death benefits	(5.1)	(6.7)
End of period	<u>49.0</u>	<u>52.1</u>

### Note 14—Commitments and Contingencies

*Commitments*—As of June 30, 2023 and December 31, 2022, the Account had the following immediately callable commitments to purchase additional interests in its real estate funds or provide additional funding through its loans receivable investments (in millions):

	<u>Commitment Expiration</u>	<u>June 30, 2023</u>	<u>December 31, 2022</u>
<b>Real Estate Funds<sup>(1)</sup></b>			
SP V - II, LLC	08/2023	\$ 9.6	\$ 10.0
Veritas Trophy VI, LLC	08/2023	12.5	15.4
Taconic New York City GP Fund, LP	11/2023	—	4.2
Silverpeak NRE FundCo 3 LLC	12/2023	51.5	70.0
JCR Capital - REA Preferred Equity Parallel Fund	02/2024	41.7	48.6
Flagler - REA Healthcare Properties Partnership	02/2025	—	1.2
Townsend Group Value-Add Fund	12/2026	79.0	84.7
Silverpeak NRE FundCo LLC	12/2028	26.1	26.2
Silverpeak NRE FundCo 2 LLC	12/2029	40.6	29.6
		<u>\$ 261.0</u>	<u>\$ 289.9</u>
<b>Loans Receivable<sup>(2)</sup></b>			
311 South Wacker Mezzanine	03/2023	—	2.2
SCG Oakland Portfolio Mezzanine	04/2023	—	5.4
Five Oak Mezzanine	05/2023	—	1.5
MRA Hub 34 Holding, LLC	08/2023	1.4	1.5
Liberty Park Mezzanine	11/2023	2.6	2.6
Colony New England Hotel Portfolio Senior Loan	11/2023	3.6	3.6
Colony New England Hotel Portfolio Mezzanine	11/2023	1.2	1.2
Exo Apartments Mezzanine	01/2024	3.9	2.4
The Stratum Senior Loan	05/2024	1.1	1.3
The Stratum Mezzanine	05/2024	0.4	0.4
Spring House Innovation Park Senior Loan	07/2024	17.9	23.4
Spring House Innovation Park Mezzanine	07/2024	6.0	7.8
Project Sonic Senior Loan	06/2025	2.4	3.9
Project Sonic Mezzanine	06/2025	0.8	1.3

	<b>Commitment Expiration</b>	<b>June 30, 2023</b>	<b>December 31, 2022</b>
One Biscayne Tower Senior Loan	07/2025	31.8	31.8
One Biscayne Tower Mezzanine	07/2025	10.6	10.6
The Reserve at Chino Hills	08/2025	8.1	12.7
735 Watkins Mill	08/2025	5.8	9.2
Sixth and Main Senior Loan	11/2025	—	6.2
Sixth and Main Mezzanine	11/2025	—	3.4
		<u>\$ 97.6</u>	<u>\$ 132.4</u>
<b>TOTAL COMMITMENTS</b>		<u><b>\$ 358.6</b></u>	<u><b>\$ 422.3</b></u>

- (1) Additional capital can be called during the commitment period at any time. The commitment period can only be extended by the manager with the consent of the Account. The commitment expiration date is reflective of the most recent signed agreement between the Account and the fund manager, including any side letter agreements.
- (2) Advances from the Account can be requested during the commitment period at any time. The commitment expiration date is reflective of the most recent signed agreement between the Account and the borrower, including any side letter agreements. Certain loans contain extension clauses on the term of the loan that do not require the Account's prior consent. If elected, the Account's commitment may be extended through the extension term.

*Contingencies*—In the normal course of business, the Account may be named, from time to time, as a defendant or may be involved in various legal actions, including arbitration, class actions and other litigation.

The Account establishes an accrual for all litigation and regulatory matters when it believes it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. Once established, accruals are adjusted, as appropriate, in light of additional information. The amount of loss ultimately incurred in relation to those matters may be higher or lower than the amounts accrued for those matters.

As of the date of this report, management of the Account does not believe that the results of any such claims or litigation, individually or in the aggregate, will have a material effect on the Account's business, financial position or results of operations.

#### **Note 15—Subsequent Events**

In preparing these financial statements, Management has evaluated events and transactions for potential recognition or disclosure subsequent to June 30, 2023, through August 4, 2023, the date the financial statements were issued and determined there were no material events or transactions to disclose.

**TIAA REAL ESTATE ACCOUNT**  
**CONDENSED CONSOLIDATED SCHEDULES OF INVESTMENTS**  
(Dollar values shown in millions)

**REAL ESTATE PROPERTIES**

Location/Sector	June 30, 2023		December 31, 2022	
	Fair Value	% of Net Assets	Fair Value	% of Net Assets
<b>Alabama</b>				
Retail	50.3	0.2 %	55.3	0.2 %
	<b>\$ 50.3</b>	<b>0.2 %</b>	<b>\$ 55.3</b>	<b>0.2 %</b>
<b>Arizona</b>				
Industrial	48.3	0.2 %	48.3	0.2 %
Land	6.0	— %	4.3	— %
	<b>\$ 54.3</b>	<b>0.2 %</b>	<b>\$ 52.6</b>	<b>0.2 %</b>
<b>California</b>				
Industrial	3,740.8	14.4 %	3,924.6	13.2 %
Apartment	1,475.2	5.7 %	1,567.0	5.3 %
Office	473.3	1.8 %	574.2	1.9 %
Retail	437.8	1.7 %	441.0	1.5 %
	<b>\$ 6,127.1</b>	<b>23.6 %</b>	<b>\$ 6,506.8</b>	<b>21.9 %</b>
<b>Colorado</b>				
Office	79.0	0.3 %	102.0	0.3 %
Industrial	46.5	0.2 %	49.0	0.2 %
	<b>\$ 125.5</b>	<b>0.5 %</b>	<b>\$ 151.0</b>	<b>0.5 %</b>
<b>Connecticut</b>				
Office	31.6	0.1 %	35.4	0.1 %
	<b>\$ 31.6</b>	<b>0.1 %</b>	<b>\$ 35.4</b>	<b>0.1 %</b>
<b>Florida</b>				
Apartment	1,225.6	4.7 %	1,304.4	4.4 %
Industrial	716.8	2.8 %	714.0	2.4 %
Office	500.4	1.9 %	503.0	1.7 %
Retail	158.7	0.6 %	157.6	0.5 %
	<b>\$ 2,601.5</b>	<b>10.0 %</b>	<b>\$ 2,679.0</b>	<b>9.0 %</b>
<b>Georgia</b>				
Apartment	418.1	1.6 %	456.7	1.5 %
Retail	255.6	1.0 %	253.7	0.9 %
Industrial	239.0	0.9 %	258.3	0.9 %
	<b>\$ 912.7</b>	<b>3.5 %</b>	<b>\$ 968.7</b>	<b>3.3 %</b>
<b>Illinois</b>				
Retail	174.4	0.7 %	189.3	0.6 %
Industrial	154.3	0.6 %	182.1	0.6 %
Apartment	123.0	0.5 %	129.4	0.5 %
Land	41.7	0.1 %	5.7	— %
	<b>\$ 493.4</b>	<b>1.9 %</b>	<b>\$ 506.5</b>	<b>1.7 %</b>
<b>Indiana</b>				
Industrial	102.0	0.4 %	108.0	0.4 %
	<b>\$ 102.0</b>	<b>0.4 %</b>	<b>\$ 108.0</b>	<b>0.4 %</b>
<b>Maryland</b>				
Apartment	83.4	0.3 %	86.5	0.3 %

**TIAA REAL ESTATE ACCOUNT**  
**CONDENSED CONSOLIDATED SCHEDULES OF INVESTMENTS**  
(Dollar values shown in millions)

**REAL ESTATE PROPERTIES**

Location/Sector	June 30, 2023		December 31, 2022	
	Fair Value	% of Net Assets	Fair Value	% of Net Assets
Industrial	78.9	0.3 %	68.4	0.2 %
Retail	70.6	0.3 %	74.4	0.3 %
	<b>\$ 232.9</b>	<b>0.9 %</b>	<b>\$ 229.3</b>	<b>0.8 %</b>
<b>Massachusetts</b>				
Office	578.6	2.2 %	687.3	2.3 %
Industrial	152.6	0.6 %	169.5	0.6 %
Retail	124.0	0.5 %	123.0	0.4 %
Apartment	53.4	0.2 %	57.7	0.2 %
	<b>\$ 908.6</b>	<b>3.5 %</b>	<b>\$ 1,037.5</b>	<b>3.5 %</b>
<b>Minnesota</b>				
Industrial	140.1	0.5 %	149.1	0.5 %
Apartment	93.2	0.4 %	100.8	0.3 %
	<b>\$ 233.3</b>	<b>0.9 %</b>	<b>\$ 249.9</b>	<b>0.8 %</b>
<b>New Jersey</b>				
Industrial	368.4	1.4 %	388.7	1.3 %
Retail	89.0	0.3 %	90.5	0.3 %
	<b>\$ 457.4</b>	<b>1.7 %</b>	<b>\$ 479.2</b>	<b>1.6 %</b>
<b>New York</b>				
Office	673.9	2.6 %	787.0	2.7 %
Apartment	267.3	1.0 %	266.8	0.9 %
	<b>\$ 941.2</b>	<b>3.6 %</b>	<b>\$ 1,053.8</b>	<b>3.6 %</b>
<b>North Carolina</b>				
Retail	89.4	0.3 %	90.3	0.3 %
Apartment	75.8	0.3 %	86.4	0.3 %
	<b>\$ 165.2</b>	<b>0.6 %</b>	<b>\$ 176.7</b>	<b>0.6 %</b>
<b>Oregon</b>				
Apartment	37.8	0.2 %	41.3	0.1 %
	<b>\$ 37.8</b>	<b>0.2 %</b>	<b>\$ 41.3</b>	<b>0.1 %</b>
<b>Pennsylvania</b>				
Retail	63.3	0.2 %	68.1	0.2 %
	<b>\$ 63.3</b>	<b>0.2 %</b>	<b>\$ 68.1</b>	<b>0.2 %</b>
<b>South Carolina</b>				
Apartment	78.6	0.3 %	89.5	0.3 %
Retail	48.4	0.2 %	46.9	0.2 %
	<b>\$ 127.0</b>	<b>0.5 %</b>	<b>\$ 136.4</b>	<b>0.5 %</b>
<b>Tennessee</b>				
Retail	145.2	0.6 %	149.5	0.5 %
Industrial	70.6	0.3 %	73.9	0.3 %
Apartment	37.8	0.1 %	38.6	0.1 %
	<b>\$ 253.6</b>	<b>1.0 %</b>	<b>\$ 262.0</b>	<b>0.9 %</b>
<b>Texas</b>				
Industrial	949.9	3.6 %	936.5	3.2 %
Apartment	667.4	2.6 %	706.9	2.4 %
Office	512.5	2.0 %	591.8	2.0 %

**TIAA REAL ESTATE ACCOUNT**  
**CONDENSED CONSOLIDATED SCHEDULES OF INVESTMENTS**  
(Dollar values shown in millions)

**REAL ESTATE PROPERTIES**

Location/Sector	June 30, 2023		December 31, 2022	
	Fair Value	% of Net Assets	Fair Value	% of Net Assets
Hotel	90.2	0.3 %	87.6	0.3 %
	<b>\$ 2,220.0</b>	<b>8.5 %</b>	<b>\$ 2,322.8</b>	<b>7.8 %</b>
<b>Utah</b>				
Office	96.6	0.4 %	119.5	0.4 %
	<b>\$ 96.6</b>	<b>0.4 %</b>	<b>\$ 119.5</b>	<b>0.4 %</b>
<b>Virginia</b>				
Apartment	398.9	1.5 %	414.0	1.4 %
Retail	149.3	0.6 %	152.7	0.5 %
Office	92.2	0.4 %	114.1	0.4 %
	<b>\$ 640.4</b>	<b>2.5 %</b>	<b>\$ 680.8</b>	<b>2.3 %</b>
<b>Washington</b>				
Industrial	570.1	2.2 %	595.2	2.0 %
Apartment	296.1	1.1 %	327.1	1.1 %
	<b>\$ 866.2</b>	<b>3.3 %</b>	<b>\$ 922.3</b>	<b>3.1 %</b>
<b>Washington D.C.</b>				
Office	1,119.5	4.3 %	1,248.0	4.2 %
Apartment	329.9	1.3 %	353.1	1.2 %
	<b>\$ 1,449.4</b>	<b>5.6 %</b>	<b>\$ 1,601.1</b>	<b>5.4 %</b>
<b>TOTAL REAL ESTATE PROPERTIES</b>				
(Cost: \$14,503.4 and \$14,323.2)	<b>\$ 19,191.3</b>	<b>73.8 %</b>	<b>\$ 20,444.0</b>	<b>68.9 %</b>

**REAL ESTATE JOINT VENTURES**

Location/Sector	June 30, 2023		December 31, 2022	
	Fair Value	% of Net Assets	Fair Value	% of Net Assets
<b>Arizona</b>				
Land	28.0	0.1 %	17.3	0.1 %
	<b>\$ 28.0</b>	<b>0.1 %</b>	<b>\$ 17.3</b>	<b>0.1 %</b>
<b>California</b>				
Office	882.8	3.4 %	1,082.2	3.6 %
Retail	49.2	0.2 %	50.6	0.2 %
	<b>\$ 932.0</b>	<b>3.6 %</b>	<b>\$ 1,132.8</b>	<b>3.8 %</b>
<b>Florida</b>				
Retail	570.3	2.2 %	624.8	2.1 %
	<b>\$ 570.3</b>	<b>2.2 %</b>	<b>\$ 624.8</b>	<b>2.1 %</b>
<b>Georgia</b>				
Land	19.5	0.1 %	—	— %
	<b>\$ 19.5</b>	<b>0.1 %</b>	<b>\$ —</b>	<b>— %</b>
<b>Maryland</b>				
Land	31.5	0.1 %	16.0	— %
Retail	16.4	0.1 %	17.1	0.1 %
	<b>\$ 47.9</b>	<b>0.2 %</b>	<b>\$ 33.1</b>	<b>0.1 %</b>
<b>Massachusetts</b>				
Office	369.7	1.4 %	447.6	1.5 %
	<b>\$ 369.7</b>	<b>1.4 %</b>	<b>\$ 447.6</b>	<b>1.5 %</b>
<b>Nevada</b>				
Retail	489.2	1.9 %	503.9	1.7 %
	<b>\$ 489.2</b>	<b>1.9 %</b>	<b>\$ 503.9</b>	<b>1.7 %</b>

**TIAA REAL ESTATE ACCOUNT**  
**CONDENSED CONSOLIDATED SCHEDULES OF INVESTMENTS**  
(Dollar values shown in millions)

**REAL ESTATE JOINT VENTURES**

Location/Sector	June 30, 2023		December 31, 2022	
	Fair Value	% of Net Assets	Fair Value	% of Net Assets
<b>New York</b>				
Office	79.9	0.3 %	139.7	0.5 %
Industrial	71.8	0.3 %	78.5	0.2 %
Apartment	49.7	0.2 %	51.7	0.2 %
Retail	35.8	0.1 %	32.9	0.1 %
	<b>\$ 237.2</b>	<b>0.9 %</b>	<b>\$ 302.8</b>	<b>1.0 %</b>
<b>North Carolina</b>				
Apartments	100.0	0.4 %	—	— %
Retail	44.9	0.2 %	143.0	0.5 %
Land	29.7	0.1 %	30.8	0.1 %
Office	22.9	0.1 %	49.3	0.2 %
	<b>\$ 197.5</b>	<b>0.8 %</b>	<b>\$ 223.1</b>	<b>0.8 %</b>
<b>South Carolina</b>				
Apartment	61.1	0.2 %	60.0	0.2 %
Land	22.4	0.1 %	8.7	— %
	<b>\$ 83.5</b>	<b>0.3 %</b>	<b>\$ 68.7</b>	<b>0.2 %</b>
<b>Tennessee</b>				
Retail	206.5	0.8 %	225.0	0.8 %
	<b>\$ 206.5</b>	<b>0.8 %</b>	<b>\$ 225.0</b>	<b>0.8 %</b>
<b>Texas</b>				
Office	312.8	1.2 %	348.8	1.2 %
Land	44.7	0.2 %	28.8	0.1 %
Industrial	1.4	— %	53.3	0.2 %
	<b>\$ 358.9</b>	<b>1.4 %</b>	<b>\$ 430.9</b>	<b>1.5 %</b>
<b>Washington</b>				
Office	2.8	— %	135.9	0.5 %
	<b>\$ 2.8</b>	<b>— %</b>	<b>\$ 135.9</b>	<b>0.5 %</b>
<b>Various<sup>(1)</sup></b>				
Storage	1,287.8	4.9 %	1,310.2	4.4 %
Apartment	1,029.1	4.0 %	1,146.4	3.9 %
Office	450.8	1.7 %	471.7	1.6 %
	<b>\$ 2,767.7</b>	<b>10.6 %</b>	<b>\$ 2,928.3</b>	<b>9.9 %</b>
<b>Foreign<sup>(2)</sup></b>				
Land	21.6	0.1 %	20.4	0.1 %
Other <sup>(3)</sup>	9.2	— %	9.0	— %
	<b>\$ 30.8</b>	<b>0.1 %</b>	<b>\$ 29.4</b>	<b>0.1 %</b>
<b>TOTAL REAL ESTATE JOINT VENTURES</b>				
<b>(Cost: \$5,789.6 and \$5,738.1)</b>	<b>\$ 6,341.5</b>	<b>24.4 %</b>	<b>\$ 7,103.6</b>	<b>24.0 %</b>

<sup>(1)</sup> Properties within these investments are located throughout the United States.

<sup>(2)</sup> Property is located outside of the United States.

<sup>(3)</sup> The value represents the equity interest in the joint venture, which does not currently hold any properties.

**TIAA REAL ESTATE ACCOUNT**  
**CONDENSED CONSOLIDATED SCHEDULES OF INVESTMENTS**  
(Dollar values shown in millions)

**MARKETABLE SECURITIES**

	June 30, 2023		December 31, 2022	
	Fair Value	% of Net Assets	Fair Value	% of Net Assets
Corporate bonds	—	— %	536.4	1.8 %
U.S. government agency notes	627.3	2.4 %	902.9	3.0 %
Foreign government agency notes	—	— %	16.9	0.1 %
U.S. treasury securities	12.0	— %	574.0	1.9 %
<b>TOTAL MARKETABLE SECURITIES</b>				
(Cost: \$639.0 and \$2,077.1)	<b>\$ 639.3</b>	<b>2.4 %</b>	<b>\$ 2,030.2</b>	<b>6.8 %</b>
<b>TOTAL REAL ESTATE FUNDS</b>				
(Cost: \$815.8 and \$787.7)	<b>\$ 892.7</b>	<b>3.4 %</b>	<b>\$ 893.4</b>	<b>3.0 %</b>
<b>TOTAL REAL ESTATE OPERATING BUSINESS</b>				
(Cost: \$371.4 and \$355.0)	<b>\$ 653.6</b>	<b>2.5 %</b>	<b>\$ 641.9</b>	<b>2.2 %</b>
<b>TOTAL LOANS RECEIVABLE</b>				
(Cost: \$1,551.1 and \$1,546.0)	<b>\$ 1,264.5</b>	<b>4.9 %</b>	<b>\$ 1,418.7</b>	<b>4.8 %</b>
<b>TOTAL LOANS RECEIVABLE WITH RELATED PARTIES</b>				
(Cost: \$101.0 and \$69.9)	<b>\$ 101.0</b>	<b>0.4 %</b>	<b>\$ 69.9</b>	<b>0.2 %</b>
<b>TOTAL INVESTMENTS</b>				
(Cost: \$23,771.3 and \$24,897.0)	<b>\$ 29,083.9</b>	<b>111.8 %</b>	<b>\$ 32,601.7</b>	<b>109.9 %</b>

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis of the Account's financial condition and results of operations should be read together with the Consolidated Financial Statements and notes contained in this report, the audited Consolidated Financial Statements and accompanying notes contained in the Account's Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 9, 2023 (the "Form 10-K") and with consideration to the sub-section entitled "Forward-Looking Statements," which begins below, and the section entitled "Item 1A. Risk Factors" of the Account's Form 10-K and the section entitled "Item 1.A Risk Factors" of the Account's Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 filed with the SEC on May 5, 2023, as such risk factors may be updated in Item 1A of this Form 10-Q or in subsequent reports. The past performance of the Account is not indicative of future results.*

### **Forward-looking Statements**

*Some statements in this Form 10-Q which are not historical facts may be "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, Section 21E of the Securities Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements about management's expectations, beliefs, intentions or strategies for the future, include the assumptions and beliefs underlying these forward-looking statements, and are based on current expectations, estimates and projections about the real estate industry, domestic and global economic conditions, including conditions in the credit and capital markets, employment rates, the sectors and markets in which the Account invests and operates, and the transactions described in this Form 10-Q. While management believes the assumptions underlying any of its forward-looking statements and information to be reasonable, such information may be subject to uncertainties and may involve certain risks which may be difficult to predict and are beyond management's control. These risks and uncertainties could cause actual results to differ materially from those contained in any forward-looking statement. These risks and uncertainties include, but are not limited to, the risks associated with the following:*

- Acquiring, owning and selling real property and real estate investments, including risks related to general economic and real estate market conditions, the risk that the Account's properties become too concentrated (whether by geography, sector or by tenant mix) and the risk that the sales price of a property might differ from its estimated or appraised value;
- Property valuations, including the fact that the Account's appraisals are generally obtained on a quarterly basis and there may be periods in between appraisals of a property during which the value attributed to the property for purposes of the Account's daily accumulation unit value may be more or less than the actual realizable value of the property;
- Financing the Account's properties, including the risk of default on loans secured by the Account's properties (which could lead to foreclosure);
- Contract owner transactions, in particular that (i) significant net contract owner transfers out of the Account may impair our ability to pursue or consummate new investment opportunities, (ii) significant net contract owner transfers into the Account may result, on a temporary basis, in our cash holdings and/or holdings in liquid non-real estate-related investments exceeding our long-term targeted holding levels and (iii) high levels of cash and liquid non-real estate-related investments in the Account during times of appreciating real estate values can impair the Account's overall return;
- Joint ventures and real estate funds, including the risk that the Account may have limited rights with respect to the joint venture or that a co-venturer or fund manager may have financial difficulties;
- Governmental regulatory matters such as zoning laws, rent control laws, and property and other taxes;
- Potential liability for damage to the environment or injury to individuals caused by hazardous substances used or found on its properties, as well as risks associated with federal and state environmental laws, that may impose restrictions on the manner in which a property may be used;
- Certain catastrophic losses that may be uninsurable, as well as risks related to climate-related changes and hazards, which could adversely impact the Account's investment returns;

- ESG criteria used to assess economic risk or financial opportunity projections in the evaluation of commercial real estate investments may not materialize in the way we have anticipated, resulting in the Account subsequently underperforming relative to other investment vehicles that did not utilize such ESG criteria in selecting and managing portfolio properties;
- Countries with emerging market, foreign commercial real properties, foreign real estate loans, foreign debt investments and foreign securities investments that may experience unique risks such as changes in currency exchange rates, imposition of market controls or currency exchange controls, seizure, expropriation or nationalization of assets, political, social or diplomatic events or unrest, regulatory and taxation risks and risks associated with enforcing judgments in foreign countries that could cause the Account to lose money;
- Investments in REITs, including changes in the value of the underlying properties or by the quality of any credit extended, as well as exposure to market risk due to changing conditions in the financial markets;
- Investments in mortgage-backed securities, which are subject to the same risks inherent in real estate investing, making mortgage loans and investing in debt securities. For example, the underlying mortgage loans may experience defaults, are subject to prepayment risks and are sensitive to economic conditions impacting the credit markets generally;
- Risks associated with the Account's investments in mortgage loans, including (i) borrower default that results in the Account being unable to recover its original investment, (ii) liens that may have priority over the Account's security interest, (iii) a deterioration in the financial condition of tenants, and (iv) changes in interest rates for the Account's variable-rate mortgage loans and other debt instruments;
- Risks associated with the Account's investments in, and leasing of, single-family real estate include risks relating to the condition of the properties, the credit quality and employment stability of the tenants, and compliance with applicable local laws regarding the acquisition and leasing of single family real estate (which may include manufactured housing);
- Investment securities issued by U.S. Government agencies and U.S. Government-sponsored entities, including the risk that the issuer may not have their securities backed by the full faith and credit of the U.S. Government, which could adversely affect the pricing and value of such securities;
- Risks associated with investments in liquid, fixed-income investments and real estate-related liquid assets (which could include, from time to time, registered or unregistered REIT securities and CMBS), and non-real estate-related liquid assets,
- Conflicts of interests associated with TIAA serving as investment manager of the Account and provider of the liquidity guarantee while also serving as an investment manager to other real estate accounts or funds;
- Lending securities, which has the Account bear the market risk with respect to the investment of collateral or a portion of the income generated by interest paid by the securities lending agent on the cash collateral balance;
- The Account's requirement to sell property in the event that TIAA owns too large of a percentage of the Account's accumulation units, which sales could occur at a time or price that is not optimal for the Account's returns; and
- The tax rules applicable to the contracts vary and your rights under a contract may be subject to the terms of your employer's retirement plan itself, regardless of the terms of the contract. We cannot provide detailed information on all tax aspects of owning the contracts. Tax rules may change without notice, and we cannot predict whether, when, or how tax rules could change or what, if any, tax legislation will actually be proposed or enacted.

*More detailed discussions of certain of these risk factors are contained in the section of the Form 10-K entitled "Item 1A. Risk Factors" and "Part II, Item 1A, Risk Factors" in this Report and also in the section below entitled "Quantitative and Qualitative Disclosures About Market Risk." These risks could cause actual results to differ materially from historical experience or management's present expectations.*

*Caution should be taken not to place undue reliance on management's forward-looking statements, which represent management's views only as of the date that this report is filed. Neither management nor the Account undertake any obligation to update publicly or revise any forward-looking statement, whether as a result of new information, changed assumptions, future events or otherwise.*

*Commercial real estate market statistics discussed in this section are obtained by the Account from sources that management considers reliable, but some of the data are preliminary for the period ended June 30, 2023 and may be subsequently revised. Prior period data may have been adjusted to reflect updated calculations. Investors should not rely exclusively on the data presented below in forming a judgment regarding the current or prospective performance of the commercial real estate market generally.*

## **ABOUT THE TIAA REAL ESTATE ACCOUNT**

The Account was established, under the laws of New York, in February 1995 as a separate account of TIAA and interests in the Account were first offered to eligible contract owners on October 2, 1995. The Account offers individual and group accumulating annuity contracts (with contributions made on a pre-tax or after-tax basis), as well as individual lifetime and term-certain variable payout annuity contracts (including the payment of death benefits to beneficiaries). Investors are entitled to transfer funds to or from the Account under certain circumstances. Funds invested in the Account for each category of contract are expressed in terms of units, and unit values will fluctuate depending on the Account's performance.

### **Investment Objective and Strategy**

The Real Estate Account seeks to generate favorable total returns primarily through the rental income and appreciation of a diversified portfolio of directly held, private real estate investments and real estate-related investments, while offering investors guaranteed, daily liquidity.

*Real Estate-Related Investments.* The Account intends to have between 75% and 85% of its net assets invested directly in real estate or real estate-related investments with the goal of producing favorable long-term returns primarily through rental income and appreciation. These investments may consist of:

- Direct ownership interests in domestic and foreign real estate;
- Direct ownership of real estate through interests in joint ventures; or
- Indirect interests in real estate through real estate-related securities, such as:
  - private real estate limited partnerships and limited liability companies (collectively, "real estate funds");
  - real estate operating businesses;
  - investments in equity or debt securities of domestic and foreign companies whose operations involve real estate (i.e., that primarily own, develop or manage real estate) which may not be real estate investment trusts ("REITs");
  - domestic or foreign loans, including conventional commercial mortgage loans, participating mortgage loans, secured domestic and foreign (including U.K.) mezzanine loans, subordinated loans and collateralized mortgage obligations, including commercial mortgage-backed securities ("CMBS"), collateralized mortgage obligations ("CMOs") and other similar investments; and
  - public and/or privately placed, domestic and foreign, registered and unregistered equity investments in REITs, which investments may consist of registered or unregistered common or preferred stock interests.

The Account's principal strategy is to purchase direct ownership interests in income-producing real estate, including the four primary sectors of office, industrial, retail, and multi-family, and alternative real estate sectors (defined as real estate outside of the four primary sectors noted above). The Account targets holding between 65% and 85% of the Account's net assets in such direct ownership interests.

In addition, the Account is authorized to hold up to 25% of its net assets in liquid real estate-related securities, including publicly traded REITs and CMBS. Management intends that the Account will not hold more than 10% of net assets in such securities on a long-term basis. As of June 30, 2023, the Account did not hold any publicly traded REIT securities or CMBS.

In making commercial real estate investments within the Account, TIAA seeks to make investments that are suitable from a financial perspective, taking into account the potential financial impacts associated with industry recognized environmental, social and governance ("ESG") criteria. The Account intends to promote awareness of these criteria to its joint venture partners, vendors and other stakeholders in connection with portfolio related activity involving

commercial real estate transactions. TIAA believes awareness, and, as appropriate, implementation of ESG criteria in commercial real estate holdings is beneficial to total long-term returns for the Account. In its evaluation of commercial real estate opportunities, the Account will take ESG considerations into account as part of the financial assessment of a commercial real estate portfolio asset, and not to achieve a desired outcome or as an investment qualification or screen. Ultimately, the Account will make an investment decision that incorporates ESG criteria only to the extent that the criteria is reasonably expected to enhance our understanding of the investment's ability to achieve desired returns for the Account.

*Liquid, Fixed-Income Investments.* The Account will invest the remaining portion of its assets (targeted to be between 15% and 25% of its net assets) in the following types of liquid, fixed income investments;

- U.S. Treasury or U.S. Government agency securities;
- Intermediate-term or long-term government related instruments, such as bond or other fixed-income securities issued by U.S. Government agencies, U.S. states or municipalities or U.S. Government-sponsored entities as well as foreign governments and their agencies (including those in emerging markets) and supranational or multinational organizations (e.g., European Union);
- Intermediate-term or long-term non-government related instruments, such as corporate debt securities, domestic- or foreign mezzanine or other debt, and structured securities, (e.g. unsecured debt obligations with a return linked to the performance of an underlying asset). Such structured securities may include asset-backed securities (“ABS”) issued by domestic or foreign entities, mortgage backed securities (“MBS”), residential mortgage backed securities (“RMBS”), debt securities of foreign governments, and collateralized debt (“CDO”), collateralized bond (“CBO”) and collateralized loan (“CLO”) obligations, but only if such non-government related instruments are investment-grade securities;
- Money market instruments and other cash equivalents. These will usually be high-quality, short-term debt instruments, including U.S. Government or government agency securities, commercial paper, certificates of deposit, bankers’ acceptances, repurchase agreements, interest-bearing time deposits, and corporate debt securities; and
- To a limited extent, privately issued (or non-publicly traded) debt securities, including Rule 144A securities, issued by domestic and foreign companies that do not primarily own or manage real estate, but only if such domestic and foreign privately issued debt securities are investment-grade securities.

*Liquid Securities Generally.* Primarily due to management’s need to manage fluctuations in cash flows, in particular during and following periods of significant contract owner net transfer activity into or out of the Account, the Account may, on a temporary basis (i) exceed the upper end of its targeted holdings (currently 35% of the Account’s net assets) in liquid securities of all types, including both publicly traded non-real estate-related liquid investments and liquid real estate-related securities, such as REITs, and structured securities including ABS, RMBS, CMBS and MBS, or (ii) be below the low end of its targeted holdings in such liquid securities (currently 15% of the Account’s net assets).

The portion of the Account’s net assets invested in liquid investments of all types may exceed the upper end of its target, for example, if (i) the Account receives a large inflow of money in a short period of time, in particular due to significant contract owner transfer activity into the Account, (ii) the Account receives significant proceeds from sales or financings of direct real estate assets, (iii) there is a lack of attractive direct real estate investments available on the market, and/or (iv) the Account anticipates more near-term cash needs, including to acquire or improve direct real estate investments, pay expenses or repay indebtedness. Conversely, the portion of the Account’s net assets invested in liquid investments of all types may exceed the lower end of its target, for example, during and immediately following periods of significant net contract owner outflows.

*Foreign Investments.* The Account may also make foreign real estate, foreign real estate-related investments and foreign liquid, fixed-income investments. Under the Account’s investment guidelines, investments in direct foreign real estate and real estate loans, together with foreign real estate-related securities and foreign liquid, fixed-income investments may not comprise more than 25% of the Account’s net assets. However, management does not intend such foreign investments, in the aggregate, to exceed 10% of the Account's net assets. As of June 30, 2023, the fair value of the Account's foreign real estate investments was \$30.8 million.

In managing any domestic or foreign mezzanine debt or other domestic or foreign loans or securities, the Account may enter into certain derivatives transactions (including forward currency contracts and swaps, futures contracts, put and call options and other hedging transactions) in order to hedge against the risks of exchange rate uncertainties, interest rate uncertainties and foreign currency or market fluctuations impacting the Account's domestic or foreign investments. The Account does not intend to speculate in such transactions.

## **SECOND QUARTER 2023 U.S. ECONOMIC AND COMMERCIAL REAL ESTATE OVERVIEW**

The Account invests primarily in high-quality, core real estate in order to meet its investment objective of obtaining favorable long-term returns through rental income and the appreciation of its real estate holdings.

### **Economic Overview and Outlook**

<b>Key Macro Economic Indicators*</b>	<b>Actuals</b>		<b>Forecast</b>	
	<b>2022</b>	<b>2Q 2023</b>	<b>2023</b>	<b>2024</b>
<b>Economy<sup>(1)</sup></b>				
Gross Domestic Product ("GDP")	0.9%	1.5%	1.1%	1.6%
Employment Growth <sup>(2)</sup>	399	244	181	40
Unemployment Rate	3.6%	3.5%	3.9%	4.3%
<b>Interest Rates<sup>(3)</sup></b>				
10 Year Treasury	3.9%	3.8%	4.0%	3.9%

Sources: Bloomberg, BEA, Bureau of Labor Statistics ("BLS"), Federal Reserve and Moody's Analytics

\* Data subject to revision

<sup>(1)</sup> GDP growth rates are annual rates. Quarterly unemployment rates are the reported value for the final month of the quarter while annual values represent a twelve-month average.

<sup>(2)</sup> Values presented in thousands. Forecast values represent average monthly employment growth in the respective periods.

<sup>(3)</sup> Treasury rates are an average over the stated period.

Global growth conditions remained fragile in the second quarter of 2023, as elevated inflation and the aggressive policy response to combat inflation remain central issues in most developed economies. Globally, the pace of inflation has clearly moderated after peaking last year but remains elevated by historic standards, and central bank officials in Europe and the U.S. have suggested that tighter monetary policy is necessary to bring inflation in line with policy targets. Economic activity has largely held up in the first half of the year despite tighter policy, but leading indicators signal an elevated risk of recession by 2024.

In the U.S., the Federal Reserve held interest rates steady for the first time in over a year in June, following a string of ten straight rate increases totaling 500 basis points. In late July, the Federal Reserve announced it had raised its benchmark interest rate by 0.25%, to as much as 5.25%-5.50%, the highest level in over 20 years. Yearly inflation was 3.0% at the end of the quarter, but Federal Reserve officials have signaled that one to two more rate hikes are likely in 2023 to bring inflation in line. Economic growth has persisted in this environment, with GDP growing at an estimated 1.5% annualized pace quarter-over-quarter in the second quarter of 2023, as year-over-year growth improved to 2.3%. Job growth moderated in the second quarter but remained solid with 732,000 workers added to payrolls, and the combination of improved income growth, moderating inflation, and rising sentiment has translated to resilient U.S. consumer spending.

Other areas of the U.S. economy have not fared as well. The rapid rate hiking cycle introduced some turmoil into the banking sector at the end of the first quarter, particularly among smaller regional banks. As a result, financial institutions tightened lending standards further during the second quarter, and the combination of elevated interest rates and tighter credit standards has restrained business investment, manufacturing, and housing activity. The strength of the U.S. consumer provides some hope for avoiding a recession, but the risks of a downturn are high, particularly if job growth slows significantly.

### **Real Estate Market Conditions and Outlook**

The rapid increase in long-term interest rates in 2022 put significant pressure on commercial real estate values in the last few quarters, leading to significant repricing in the second half of 2022 into the first half of 2023.

Macroeconomic uncertainty and tighter lending standards have curbed deal activity in recent quarters, continuing into the second quarter. According to preliminary results from Real Capital Analytics, sales of commercial properties in the U.S. fell to \$175.9 billion in the first half of 2023, marking the slowest first half of deal volume in ten years. Long-term interest rates have been volatile but have not increased further in 2023 after surging in 2022, which should bring some stability to pricing in most sectors and lead to increased dealmaking. Fundamentals remain solid in target areas like industrial, alternatives, and pockets of retail and housing, which benefit from low vacancy rates and healthy net operating income growth.

The Account returned -4.60% in the second quarter of 2023 and -9.10% for the last twelve months. Over the last year, borrowing costs have increased in response to inflation, which caused a decrease in transaction activity. As a result of both factors, property values have been adjusted downward. The second quarter net return was negative for the third consecutive quarter for the first time since September 2020 and reflects the impact of these broader economic conditions on property valuations. While the Account has experienced valuation declines, property fundamentals remain strong and the properties within the Account are well positioned. The Account remains focused on transitioning the portfolio to adapt to changing macro-economic trends by increasing its exposure to sectors with stronger growth prospects and lower capital requirements. Over the last year, the Account has been less active from a transaction standpoint due to the ongoing market volatility and liquidity constraints. The Account will closely monitor conditions for the most prudent timing for potential dispositions and acquisitions of commercial properties.

Data for the Account's top five markets in terms of market value as of June 30, 2023 are provided below. The five markets presented below represent 42.0% of the Account's total real estate portfolio. Across all markets, the Account's properties are 91.8% leased.

Top 5 Metro Areas by Fair Market Value <sup>(1)</sup>	Account % Leased Fair Value Weighted <sup>(2)</sup>	Number of Property Investments	Metro Area Fair Value as a % of Total RE Portfolio <sup>(3)</sup>	Metro Area Fair Value as a % of Total Investments
Riverside-San Bernardino-Ontario, CA	100.0%	7	10.1%	8.8%
Washington-Arlington-Alexandria, DC-VA-MD-WV	83.2%	18	9.4%	8.2%
Los Angeles-Long Beach-Anaheim, CA	86.1%	22	9.0%	7.9%
Miami-Fort Lauderdale-West Palm Beach, FL	96.5%	14	7.4%	6.5%
New York-Newark-Jersey City, NY-NJ-PA	86.5%	14	6.1%	5.4%

<sup>(1)</sup> The table above has been standardized to depict metropolitan statistical area ("MSA") definitions.

<sup>(2)</sup> Weighted by fair value, which differs from the calculations provided for market comparisons to CoStar and RealPage data and are used here to reflect the fair value of the Account's monetary investments in those markets.

<sup>(3)</sup> Wholly-owned properties are represented at fair value and gross of any debt, while joint venture properties are represented at the net equity value.

## **Office**

The office sector continued to be challenged in the first half of 2023. Uncertainty surrounding the market has weakened both investor and lessor demand. Most large companies have settled into hybrid working models, and while they are encouraging employees to be present in the office a few days a week, they are still finding themselves with under utilized space. Vacancy is likely to remain elevated throughout 2023.

Vacancy nationwide increased from 12.8% in the first quarter of 2023 to 13.1% in the second quarter, as reported by CoStar. Vacancy rates have remained high in large downtown markets, such as Dallas, Washington D.C. and New York, while suburban markets are experiencing some rent growth. The vacancy rate of the Account's office portfolio increased from 17.4% in the first quarter of 2023 to 18.9% in the second quarter. The above-average vacancy rate in the New York metro area is driven by two properties currently undergoing redevelopment to increase the long term value of the properties. The vacancy rate in the New York metro will remain elevated over the near term as legacy tenants fully vacate the properties and redevelopment efforts continue. The elevated vacancy in the other top markets is due to low market demand. The depth of large tenants is thin which is causing difficulty in re-leasing the space once leases expire. The vacancy increase in the Washington metro area is due to an expiring lease.

Top 5 Office Metropolitan Areas <sup>(1)</sup>	Total Sector by Metro Area (\$M)	% of Total Investments	Account Square Foot Weighted Average Vacancy		Market Vacancy <sup>(2)</sup>	
			Q2 2023	Q1 2023	Q2 2023	Q1 2023
			<b>18.9 %</b>	<b>17.4 %</b>	<b>13.1 %</b>	<b>12.8 %</b>
Washington-Arlington-Alexandria, DC-VA-MD-WV	\$ 1,211.7	4.2 %	19.7 %	16.8 %	15.9 %	15.8 %
Boston-Cambridge-Newton, MA-NH	948.2	3.3 %	19.5 %	20.5 %	10.5 %	10.2 %
New York-Newark-Jersey City, NY-NJ-PA	771.8	2.7 %	23.6 %	23.9 %	13.3 %	13.0 %
San Diego-Carlsbad, CA	612.9	2.1 %	6.2 %	5.6 %	11.2 %	10.9 %
Dallas-Fort Worth-Arlington, TX	512.5	1.8 %	26.8 %	25.9 %	17.9 %	17.9 %

(1) The table above has been standardized to depict MSA definitions.

(2) Source: CoStar. Market vacancy is the percentage of space available for rent. Account vacancy is the square foot-weighted percentage of unleased space. Market vacancy rates are subject to change.

## **Industrial**

The industrial sector faces some short-term headwinds, as weaker economic conditions in manufacturing, trade, and spending on consumer goods have affected demand for industrial space. At the same time, supply growth has accelerated noticeably in recent quarters, leading to rising vacancy rates in most key markets. Despite these recent increases, vacancy in the sector is still well below historic norms which has propelled healthy rent growth in 2023. In addition, industrial still benefits from favorable medium/long-term dynamics, which make it an attractive investment option in upcoming years. New industrial construction has slowed noticeably in recent quarters, suggesting that supply pressures should ease towards the end of 2024. In addition, long-term structural demand tailwinds stemming from supply chain diversification and rising e-commerce share in retail support demand for industrial space, which should keep vacancies relatively low and drive above-average rental growth in the sector in the next few years.

The national industrial availability was 4.6% in the second quarter of 2023, compared to 4.3% in the first quarter, as reported by CoStar. The average vacancy rate of the industrial properties held by the Account increased from 1.7% in the first quarter of 2023 to 2.1% in the second quarter of 2023, due to expiring leases.

Top 5 Industrial Metropolitan Areas <sup>(1)</sup>	Total Sector by Metro Area (\$M)	% of Total Investments	Account Square Foot Weighted Average Vacancy		Market Vacancy <sup>(2)</sup>	
			Q2 2023	Q1 2023	Q2 2023	Q1 2023
Account / Nation			<b>2.1 %</b>	<b>1.7 %</b>	<b>4.6 %</b>	<b>4.3 %</b>
Riverside-San Bernardino-Ontario, CA	\$ 2,459.7	8.5 %	— %	— %	3.6 %	2.8 %
Los Angeles-Long Beach-Anaheim, CA	709.4	2.4 %	4.8 %	5.1 %	3.6 %	3.1 %
Dallas-Fort Worth-Arlington, TX	626.0	2.2 %	5.1 %	3.6 %	7.2 %	6.3 %
Seattle-Tacoma-Bellevue, WA	570.1	2.0 %	— %	— %	5.3 %	4.7 %
Miami-Fort Lauderdale-West Palm Beach, FL	517.2	1.8 %	— %	1.2 %	2.8 %	2.6 %

(1) The table above has been standardized to depict MSA definitions.

(2) Source: CoStar. Market vacancy is the percentage of space available for rent. Account vacancy is the square foot-weighted percentage of unleased space. Market vacancy rates are subject to change.

## **Multi-Family**

The multifamily sector is experiencing a rebound in demand to the highest level seen since the first quarter of 2022. Still, absorption was 30% below the long-term average for previous second quarters, according to RealPage. Demand is not keeping up with new supply, causing a further deceleration in rent growth. Suburban submarkets are

now experiencing rent growth in-line with urban areas. Near-term demand is unlikely to keep up with the record new supply that is set to peak in early 2024. Supply growth is highest across Sunbelt markets, which continue to experience the strongest in-migration. As mortgage interest rates have climbed, many potential buyers are either being priced out of the market or waiting for a more affordable time to buy.

The national apartment vacancy rate remained relatively flat at 5.4%, increasing slight from 5.3% in the first quarter of 2023. The vacancy rate of the Account's apartment properties increased to 7.1% in the second quarter of 2023 as compared to 6.9% in the prior quarter, driven by small declines in occupancy across the Account's properties.

Top 5 Apartment Metropolitan Areas <sup>(1)</sup>	Total Sector by Metro Area (\$M)	% of Total Investments	Account Units Weighted Average Vacancy		Market Vacancy <sup>(2)</sup>	
			Q2 2023	Q1 2023	Q2 2023	Q1 2023
Account / Nation			7.1 %	6.9 %	5.4 %	5.3 %
Washington-Arlington-Alexandria, DC-VA-MD-WV	\$ 812.2	2.8 %	7.8 %	6.9 %	5.1 %	5.2 %
Los Angeles-Long Beach-Anaheim, CA	807.9	2.8 %	6.9 %	9.2 %	4.7 %	4.3 %
Miami-Fort Lauderdale-West Palm Beach, FL	746.9	2.6 %	9.6 %	8.1 %	4.5 %	4.2 %
Atlanta-Sandy Springs-Roswell, GA	418.1	1.4 %	11.7 %	10.3 %	7.2 %	6.9 %
Tampa-St. Petersburg-Clearwater, FL	320.6	1.1 %	6.5 %	6.6 %	6.0 %	5.7 %

(1) The table above has been standardized to depict MSA definitions.

(2) Source: RealPage. Market vacancy is the percentage of units vacant. The Account's vacancy is the percentage of unleased units. Market vacancy rates are subject to change.

## Retail

National vacancy rates remained flat at 4.2% over the first half of 2023; however, the retail sector is facing some short-term demand headwinds from a weakening macroeconomy and shift in consumer preferences towards services, but neighborhood, community, and strip mall centers (particularly grocery-anchored) have proven to be resilient in the cyclical movements in the broader economy. Fundamentals in this area of retail will remain strong, with low vacancy and demand continuing to outpace limited supply growth in the near term. In addition, retail values have been comparatively less sensitive to the recent rise in interest rates than other core property types.

The Account's retail portfolio is composed primarily of high-end lifestyle shopping centers and regional malls in large metropolitan or tourist centers, which tend to have higher vacancy rates than the overall national retail market. The Account has over 1,100 retailers across its portfolio, with its largest retail exposure comprising less than 5.0% of total retail rentable area. The retail portfolio is managed to minimize significant exposure to any single retailer. The Account's retail vacancy decreased to 10.2% in the second quarter of 2023, down from 11.0% in the first quarter of 2023, due to new leases at multiple properties.

	Total Exposure (\$M)	% of Total Investments	Account Units Weighted Average Vacancy		Market Vacancy*	
			Q2 2023	Q1 2023	Q2 2023	Q1 2023
All Retail			10.2 %	11.0 %	4.2 %	4.2 %
Lifestyle & Mall	\$ 1,487.6	5.1 %	14.0 %	15.4 %	9.0 %	8.8 %
Neighborhood, Community & Strip	1,307.6	4.5 %	6.4 %	6.4 %	5.7 %	5.9 %
Power Center**	456.5	1.6 %	12.1 %	13.7 %	4.3 %	4.4 %

\*Source: CoStar. Market vacancy is defined as the percentage of space available for rent. The Account's vacancy is the square foot-weighted percentage of unleased space. Market vacancy rates are subject to change.

\*\*The Power Center designation is reserved for properties with three or more anchor units. Anchor units are leased to large retailers such as department stores, home improvement stores, and warehouse clubs. Properties with the Neighborhood, Community and Strip designation consist of two or less anchor units.

## **Hotel**

Despite inflation and the rising costs of travel, the hotel industry had strong occupancy in the first half of 2023 due primarily to the continued improvement in business travel and other group travel. Growth is expected to continue through the summer months of 2023 as leisure travel increases, eventually tapering off but remaining strong through the end of the year.

The Account's exposure to the hospitality sector is limited to one hotel in the Dallas metro area. The hotel is located in a business park in the Dallas metro area and caters largely to business travelers. Key metrics to track hotel performance include occupancy, the average daily rate ("ADR") and revenue per available room ("RevPAR"). For the quarter ended June 30, 2023, occupancy of the property increased to 62.7%, as compared to 61.5% in the previous quarter. ADR and RevPAR were \$142.18 and \$154.15, respectively, for the second quarter of 2023, as compared to \$148.82 and \$161.31, respectively, in the prior quarter.

## **INVESTMENTS**

As of June 30, 2023, the Account held 87.9% of its total investments in real estate and real estate joint ventures. The Account also held investments in loans receivable, including those with related parties, representing 4.6% of total investments, real estate funds representing 3.1% of total investments, U.S. government agency notes representing 2.2% of total investments, and a real estate operating business representing 2.2% of total investments.

The outstanding principal on loans payable on the Account's wholly-owned real estate portfolio as of June 30, 2023 was \$1.6 billion. The Account's proportionate share of outstanding principal on loans payable within its joint venture investments was \$3.0 billion, which is netted against the underlying properties when determining the joint venture investment's fair value presented on the Consolidated Schedules of Investments. Total outstanding principal on the Account's portfolio as of June 30, 2023, inclusive of loans payable within the joint venture investments, \$325.5 million in loans collateralized by a loan receivable, \$500.0 million of term loans outstanding and \$900.0 million in senior notes payable, was \$6.3 billion, which represented a loan-to-value ratio of 19.6%.

Management believes that the Account's real estate portfolio is diversified by location and property type. The Account does not intend to buy and sell its real estate investments simply to make short-term profits. Rather, the Account's general strategy in selling real estate investments is to dispose of those assets that management believes (i) have maximized in value, (ii) have underperformed or face deteriorating property-specific or market conditions, (iii) need significant capital infusions in the future, (iv) are appropriate to dispose of in order to remain consistent with the Account's intent to diversify the Account by property type and geographic location (including reallocating the Account's exposure to or away from certain property types in certain geographic locations), or (v) otherwise do not satisfy the investment objectives of the Account. Management, from time to time, will evaluate the need to manage liquidity in the Account as part of its analysis as to whether to undertake a particular asset sale. The Account may reinvest any sale proceeds that it does not need to pay operating expenses or to meet debt service or redemption requests (e.g., contract owner withdrawals or benefit payments).

The following table lists the Account's ten largest investments as of June 30, 2023. For information regarding the Account's diversification of real estate assets by region and property type, see *Note 3—Concentrations of Risk*.

### Ten Largest Real Estate Investments

Property Investment Name	Ownership Percentage	City	State	Type	Gross Real Estate Fair Value <sup>(1)</sup>	Debt Fair Value <sup>(2)</sup>	Net Real Estate Fair Value <sup>(3)</sup>	Property as a % of Total Real Estate Portfolio <sup>(4)</sup>	Property as a % of Total Investments <sup>(5)</sup>
Ontario Industrial Portfolio	100%	Ontario	CA	Industrial	\$ 1,236.0	\$ —	\$ 1,236.0	4.3%	3.8%
Simpson Housing Portfolio	80%	Various	USA	Apartment	1,100.6	381.2	719.4	3.9%	3.4%
Fashion Show	50%	Las Vegas	NV	Retail	900.2	417.5	482.7	3.2%	2.8%
The Florida Mall	50%	Orlando	FL	Retail	667.7	297.6	370.1	2.3%	2.1%
1001 Pennsylvania Avenue	100%	Washington	DC	Office	640.2	—	640.2	2.2%	2.0%
Storage Portfolio II	90%	Various	USA	Storage	612.0	165.6	446.4	2.1%	1.9%
701 Brickell Avenue	100%	Miami	FL	Office	500.4	164.8	335.6	1.7%	1.6%
Great West Industrial Portfolio	100%	Rancho Cucamonga	CA	Industrial	475.0	—	475.0	1.7%	1.5%
Lincoln Centre	100%	Dallas	TX	Office	473.5	—	473.5	1.7%	1.5%
Dallas Industrial Portfolio	100%	Dallas	TX	Industrial	418.1	—	418.1	1.5%	1.3%

<sup>(1)</sup> The Account's share of the fair value of the property investment, gross of debt.

<sup>(2)</sup> Debt fair values are presented at the Account's ownership interest.

<sup>(3)</sup> The Account's share of the fair value of the property investment, net of debt.

<sup>(4)</sup> Total real estate portfolio is the aggregate fair value of the Account's wholly-owned properties and the properties held within a joint venture, gross of debt.

<sup>(5)</sup> Total investments are the aggregate fair value of all investments held by the Account, gross of debt. Total investments, as calculated within this table, will vary from total investments, as calculated in the Account's Schedule of Investments, as joint venture investments are presented in the Schedule of Investments at their net equity position in accordance with U.S. Generally Accepted Accounting Principals ("GAAP").

## Results of Operations

Three months ended June 30, 2023 compared to three months ended June 30, 2022

### Net Investment Income

The following table shows the results of operations for the three months ended June 30, 2023 and 2022 and the dollar and percentage changes for those periods (dollars in millions).

	For the Three Months Ended June 30,		Change	
	2023	2022	\$	%
<b>Real estate income, net:</b>				
Rental income	\$ 337.0	\$ 314.1	\$ 22.9	7.3 %
Real estate property level expenses:				
Operating expenses	88.9	71.1	17.8	25.0 %
Real estate taxes	54.4	50.3	4.1	8.2 %
Interest expense	23.3	18.2	5.1	28.0 %
Total real estate property level expenses	166.6	139.6	27.0	19.3 %
Real estate income, net	170.4	174.5	(4.1)	(2.3)%
Income from real estate joint ventures	47.4	42.5	4.9	11.5 %
Income from real estate funds	3.9	5.5	(1.6)	(29.1)%
Interest	38.3	22.3	16.0	71.7 %
<b>TOTAL INVESTMENT INCOME</b>	<b>260.0</b>	<b>244.8</b>	<b>15.2</b>	<b>6.2 %</b>
<b>Expenses:</b>				
Investment management charges	19.8	21.4	(1.6)	(7.5)%
Administrative charges	23.2	8.9	14.3	N/M
Distribution charges	1.3	5.0	(3.7)	(74.0)%
Mortality and expense risk charges	—	0.1	(0.1)	N/M
Liquidity guarantee charges	18.9	22.4	(3.5)	(15.6)%
Interest expense	19.0	3.1	15.9	N/M
<b>TOTAL EXPENSES</b>	<b>82.2</b>	<b>60.9</b>	<b>21.3</b>	<b>35.0 %</b>
<b>INVESTMENT INCOME, NET</b>	<b>\$ 177.8</b>	<b>\$ 183.9</b>	<b>\$ (6.1)</b>	<b>(3.3)%</b>

The following table illustrates and compares rental income, operating expenses and real estate taxes for properties held by the Account for the three months ended June 30, 2023 and 2022. The comparative increases or decreases associated with the acquisition and disposition of properties made in either period is compared to "same property" (dollars in millions).

	Rental Income				Operating Expenses				Real Estate Taxes			
			Change				Change				Change	
	2023	2022	\$	%	2023	2022	\$	%	2023	2022	\$	%
Same Property	\$ 322.8	\$ 297.1	\$ 25.7	8.7 %	\$ 85.7	\$ 65.5	\$ 20.2	30.8 %	\$ 52.3	\$ 47.3	\$ 5.0	10.6 %
Properties Acquired	4.7	—	4.7	N/M	0.9	—	0.9	N/M	0.8	0.3	0.5	N/M
Properties Sold	9.5	17.0	(7.5)	(44.1)%	2.3	5.6	(3.3)	(58.9)%	1.3	2.7	(1.4)	(51.9)%
<b>Impact of Properties Acquired/Sold</b>	<b>14.2</b>	<b>17.0</b>	<b>(2.8)</b>	<b>(16.5)%</b>	<b>3.2</b>	<b>5.6</b>	<b>(2.4)</b>	<b>(42.9)%</b>	<b>2.1</b>	<b>3.0</b>	<b>(0.9)</b>	<b>(30.0)%</b>
<b>Total Property Portfolio</b>	<b>\$ 337.0</b>	<b>\$ 314.1</b>	<b>\$ 22.9</b>	<b>7.3 %</b>	<b>\$ 88.9</b>	<b>\$ 71.1</b>	<b>\$ 17.8</b>	<b>25.0 %</b>	<b>\$ 54.4</b>	<b>\$ 50.3</b>	<b>\$ 4.1</b>	<b>8.2 %</b>

N/M—Not meaningful

#### *Rental Income:*

Rental income increased by \$22.9 million, or 7.3%, when compared to the second quarter of 2022, driven by increases across the industrial, office and apartment sectors due to increased markets rents. The office sector also saw increases due to monthly parking fees, as more tenants/employees return to their office. The Account's hotel property continues to experience an increase in income which can be attributed to more group caterings, outlet business, room rentals and short-term corporate bookings, when compared to the second quarter of 2022.

#### *Operating Expenses:*

Operating expenses increased \$17.8 million, or 25.0%, when compared to the second quarter of 2022 due to increased repair and maintenance, utility costs and payroll expenses, across the Account's real estate holdings. The largest increases were seen in the apartment and office sectors.

#### *Real Estate Taxes:*

Real estate taxes increased \$4.1 million, or 8.2%, when compared to the same quarter in 2022, due to higher tax refunds received in the prior year period, as well as taxes for additional parcels from one of the Account's multi-family property located in Fullerton, CA that had not previously been taxed.

#### *Interest Expense:*

Interest expense increased \$5.1 million, or 28.0%, when compared to the same quarter in 2022, as a result of a higher average outstanding principal balance on loans payable.

#### *Income from Real Estate Joint Ventures:*

Income from real estate joint ventures increased \$4.9 million, or 11.5%, when compared to the same quarter in 2022, as a result of higher distributed income from two large retail properties located in Knoxville, TN and Las Vegas, NV.

#### *Income from Real Estate Funds:*

Income from real estate funds decreased \$1.6 million, or 29.1%, when compared to the same quarter in 2022, primarily as a result of lower distributed income from one of the Account's real estate fund investments.

#### *Interest Income:*

Interest income increased \$16.0 million, or 71.7%, in comparison to the same quarter of 2022, due to a higher average outstanding principal balance on loans receivable, as well as a higher effective interest rate on short-term marketable securities.

#### *Expenses:*

Investment management, administrative and distribution costs charged to the Account are associated with managing the Account. Investment management charges are comprised primarily of fixed components, but fluctuate based on the size of the Account's portfolio of investments, whereas administrative and distribution charges are comprised of more variable components that generally correspond with movements in net assets. Both distribution services (pursuant to the Distribution Agreement) and administrative services are provided to the Account by Services and TIAA, respectively, on an at cost basis. These expenses increased \$9.0 million from the comparable quarter of 2022, primarily due to an increase in the administrative charge rate.

Mortality and expense risk and liquidity guarantee expenses are contractual charges to the Account from TIAA for TIAA's assumption of these risks and provision of the liquidity guarantee. The rate for these charges is established annually and are charged at a fixed rate based on the Account's net assets. Mortality and expense risk expenses relatively flat between the comparative periods. Liquidity guarantee expenses were \$3.5 million lower than the comparable period of 2022 as a result of lower average net assets.

Interest expense on the Account's other unsecured debt increased \$15.9 million when compared to the same quarter of 2022, due to a higher average outstanding principal balance on the Account's credit facility and senior notes payable.

## **Net Realized and Unrealized Gains and Losses on Investments and Debt**

The following table shows the net realized and unrealized gains and losses on investments and debt for the three months ended June 30, 2023 and 2022 and the dollar and percentage changes for those periods (dollars in millions).

	<b>For the Three Months Ended June 30,</b>		<b>Change</b>	
	<b>2023</b>	<b>2022</b>	<b>\$</b>	<b>%</b>
<b>NET REALIZED AND UNREALIZED GAIN (LOSS) ON INVESTMENTS AND DEBT</b>				
<i>Net realized gain (loss) on investments:</i>				
Real estate properties	\$ —	\$ 37.9	\$ (37.9)	N/M
Real estate joint ventures	42.1	(37.8)	79.9	N/M
Real estate funds	13.9	—	13.9	N/M
Foreign currency exchange on forward contracts	(2.9)	—	(2.9)	N/M
Marketable securities	(16.5)	(0.3)	(16.2)	N/M
<b>Total realized gain (loss) on investments:</b>	<b>36.6</b>	<b>(0.2)</b>	<b>36.8</b>	<b>N/M</b>
<i>Net change in unrealized gain (loss) on:</i>				
Real estate properties	(945.4)	939.7	(1,885.1)	N/M
Real estate joint ventures	(393.0)	277.1	(670.1)	N/M
Real estate funds	(39.8)	16.3	(56.1)	N/M
Real estate operating business	1.2	140.4	(139.2)	(99.1)%
Foreign currency exchange on forward contracts	2.8	1.6	1.2	75.0 %
Marketable securities	18.4	(9.9)	28.3	N/M
Loans receivable	(116.3)	(83.2)	(33.1)	39.8 %
Loans payable	(15.9)	46.1	(62.0)	N/M
Other unsecured debt	5.6	13.8	(8.2)	(59.4)%
<b>Net change in unrealized (loss) gain on investments and debt</b>	<b>(1,482.4)</b>	<b>1,341.9</b>	<b>(2,824.3)</b>	<b>N/M</b>
<b>NET REALIZED AND UNREALIZED (LOSS) GAIN ON INVESTMENTS AND DEBT</b>	<b><u>\$(1,445.8)</u></b>	<b><u>\$1,341.7</u></b>	<b><u>\$(2,787.5)</u></b>	<b><u>N/M</u></b>

N/M—Not meaningful

### *Real Estate Properties:*

Wholly-owned real estate investments experienced unrealized losses of \$945.4 million during the second quarter of 2023, compared to \$977.6 million of net realized and unrealized gains during the comparable quarter of 2022. Unrealized losses in the second quarter of 2023 were driven by office properties in the Western and Eastern regions, due to decreased market demand, higher concessions and current economic conditions.

### *Real Estate Joint Ventures:*

Real estate joint ventures experienced net realized and unrealized losses of \$350.9 million during the second quarter of 2023, compared to \$239.3 million of net realized and unrealized gains during the second quarter of 2022. Current quarter unrealized losses were seen across the Account's joint venture investments portfolio, with the largest losses seen in the office sector due to decreased market demand, higher concessions and current economic conditions.

### *Real Estate Funds:*

Real estate funds experienced net realized and unrealized losses of \$25.9 million during the second quarter of 2023, compared to \$16.3 million of unrealized gains during the second quarter of 2022. Unrealized losses in the second quarter of 2023 were due to unfavorable valuations of two of the Account's real estate funds, driven by higher capitalization rates.

*Real Estate Operating Business:*

The Account's real estate operating business experienced unrealized gains of \$1.2 million during the second quarter of 2023, compared to \$140.4 million of unrealized gains in the second quarter of 2022 which saw share price growth related to a recapitalization of the business. Unrealized gains in the second quarter of 2023 were the result of a favorable valuation, which is largely based on the prior year's recapitalization of the business, and put the value in line with comparable market transactions.

*Foreign Currency Exchange on Forward Contracts:*

The Account's foreign currency exchange on forward contracts experienced net realized and unrealized losses of \$0.1 million during the second quarter of 2023, compared to unrealized gains of \$1.6 million in the second quarter of 2022 due to unfavorable currency exchange rates at the time of settlement.

*Marketable Securities*

The Account's marketable securities investments experienced net realized and unrealized gains of \$1.9 million in the second quarter of 2023, compared to net realized and unrealized losses of \$10.2 million during the second quarter of 2022. The current period gains are the net result of the ebb and flow of interest and U.S. Treasury rates during the quarter.

*Loans Receivable, including those with related parties:*

Loans receivable, including those with related parties, experienced unrealized losses of \$116.3 million during the second quarter of 2023 compared to \$83.2 million of unrealized losses during the comparable quarter of 2022. The current period losses are attributed to the unfavorable valuations of loans receivable that were delinquent or went into default during the period.

*Loans Payable:*

Loans payable experienced unrealized losses of \$15.9 million in the second quarter of 2023, compared to \$46.1 million of unrealized gains during the comparable quarter of 2022. The unrealized losses in the second quarter of 2023 were attributable to changes in credit spreads and fluctuations in the risk-free yield curve.

*Other Unsecured Debt:*

The Account's other unsecured debt experienced an unrealized gain of \$5.6 million in the second quarter of 2023, attributable to positive changes in the risk-free yield curve.

***Six months ended June 30, 2023 compared to six months ended June 30, 2022***

**Net Investment Income**

The following table shows the results of operations for the six months ended June 30, 2023 and 2022 and the dollar and percentage changes for those periods (dollars in millions).

	For the Six Months Ended June 30,		Change	
	2023	2022	\$	%
<b>INVESTMENT INCOME</b>				
<i>Real estate income, net:</i>				
Rental income	\$ 671.5	\$ 617.8	\$ 53.7	8.7 %
Real estate property level expenses:				
Operating expenses	168.3	144.7	23.6	16.3 %
Real estate taxes	107.8	102.0	5.8	5.7 %
Interest expense	46.5	37.8	8.7	23.0 %
Total real estate property level expenses	322.6	284.5	38.1	13.4 %
Real estate income, net	348.9	333.3	15.6	4.7 %
Income from real estate joint ventures	100.7	103.0	(2.3)	(2.2)%
Income from real estate funds	10.5	11.5	(1.0)	(8.7)%
Interest	78.6	43.0	35.6	82.8 %
Other	—	0.8	(0.8)	N/M
<b>TOTAL INVESTMENT INCOME</b>	<b>538.7</b>	<b>491.6</b>	<b>47.1</b>	<b>9.6 %</b>
<i>Expenses:</i>				
Investment management charges	41.6	43.9	(2.3)	(5.2)%
Administrative charges	35.1	22.4	12.7	56.7 %
Distribution charges	6.1	12.3	(6.2)	(50.4)%
Mortality and expense risk charges	—	0.5	(0.5)	N/M
Liquidity guarantee charges	38.8	45.1	(6.3)	(14.0)%
Interest expense	30.4	4.4	26.0	N/M
<b>TOTAL EXPENSES</b>	<b>152.0</b>	<b>128.6</b>	<b>23.4</b>	<b>18.2 %</b>
<b>INVESTMENT INCOME, NET</b>	<b>\$ 386.7</b>	<b>\$ 363.0</b>	<b>\$ 23.7</b>	<b>6.5 %</b>

The following table illustrates and compares rental income, operating expenses and real estate taxes for properties held by the Account for the six months ended June 30, 2023 and 2022. The comparative increases or decreases associated with the acquisition and disposition of properties made in either period is compared to "same property" (dollars in millions).

	Rental Income				Operating Expenses				Real Estate Taxes			
			Change				Change				Change	
	2023	2022	\$	%	2023	2022	\$	%	2023	2022	\$	%
Same Property	\$ 643.7	\$ 580.5	\$ 63.2	10.9 %	\$ 161.6	\$ 133.1	\$ 28.5	21.4 %	\$ 104.0	\$ 95.9	\$ 8.1	8.4 %
Properties Acquired	9.6	—	9.6	N/M	2.0	—	2.0	N/M	1.4	0.3	1.1	N/M
Properties Sold	18.2	37.3	(19.1)	(51.2)%	4.7	11.6	(6.9)	(59.5)%	2.4	5.8	(3.4)	(58.6)%
<b>Impact of Properties Acquired/Sold</b>	<b>27.8</b>	<b>37.3</b>	<b>(9.5)</b>	<b>(25.5)%</b>	<b>6.7</b>	<b>11.6</b>	<b>(4.9)</b>	<b>(42.2)%</b>	<b>3.8</b>	<b>6.1</b>	<b>(2.3)</b>	<b>(37.7)%</b>
<b>Total Property Portfolio</b>	<b>\$ 671.5</b>	<b>\$ 617.8</b>	<b>\$ 53.7</b>	<b>8.7 %</b>	<b>\$ 168.3</b>	<b>\$ 144.7</b>	<b>\$ 23.6</b>	<b>16.3 %</b>	<b>\$ 107.8</b>	<b>\$ 102.0</b>	<b>\$ 5.8</b>	<b>5.7 %</b>

N/M—Not meaningful

#### *Rental Income:*

Rental income increased by \$53.7 million, or 8.7%, when compared to the first half of 2022, driven by increases across the industrial, office and apartment sectors due to increases in market rent driven by demand and reductions in bad debt expenses and rent concessions. The Account's hotel property also experienced an increase in income which can be attributed to an increase in outlet business and room rental activity.

### *Operating Expenses:*

Operating expenses increased \$23.6 million, or 16.3%, when compared to the first half of 2022. The increase is attributed to increased repair and maintenance costs, as well as utility costs, in the office, industrial and apartment sectors. The Account's hotel property also saw a sizeable increase in operating expenses related to higher occupancy and an increased use of event space.

### *Real Estate Taxes:*

Real estate taxes increased \$5.8 million, or 5.7%, when compared to the same period in 2022, due to tax refunds received in the prior year period, as well as taxes for additional parcels from one of the Account's multi-family property located in Fullerton, CA that had not previously been taxed.

### *Interest Expense:*

Interest expense increased \$8.7 million, or 23.0%, when compared to the same period in 2022, as a result of a higher average outstanding principal balance on loans payable.

### *Income from Real Estate Joint Ventures:*

Income from real estate joint ventures decreased \$2.3 million, when compared to the same period in 2022, as a result of lower distributed income, most notably from one of the Account's retail joint venture investments located in Orlando, Florida, which was partially offset by higher income distributions from two retail properties located in Knoxville, TN and Las Vegas, NV.

### *Income from Real Estate Funds:*

Income from real estate funds decreased \$1.0 million, when compared to the same period in 2022, as a result of slightly lower distributed income received from five of the Account's real estate fund investments.

### *Interest Income:*

Interest income increased \$35.6 million in comparison to the same period of 2022. The increase is due to a higher average outstanding principal balance on loans receivable, as well as a higher effective interest rate on short-term marketable securities.

### *Expenses:*

Investment management, administrative and distribution costs charged to the Account are associated with managing the Account. Investment management charges are comprised primarily of fixed components, but fluctuate based on the size of the Account's portfolio of investments, whereas administrative and distribution charges are comprised of more variable components that generally correspond with movements in net assets. Both distribution services (pursuant to the Distribution Agreement) and administrative services are provided to the Account by Services and TIAA, respectively, on an at cost basis. These expenses increased \$4.2 million over the comparable period of 2022, primarily due to an increase in the administrative charge rate.

Mortality and expense risk and liquidity guarantee expenses are contractual charges to the Account from TIAA for TIAA's assumption of these risks and provision of the liquidity guarantee. The rate for these charges is established annually and are charged at a fixed rate based on the Account's net assets. Mortality and expense risk expenses decreased \$0.5 million over the comparative period of 2022, due to a lower rate charge in effect for the period. Liquidity guarantee expenses were \$6.3 million lower than the comparable period of 2022 as a result of lower average net assets.

Interest expense from the Account's other unsecured debt increased \$26.0 million when compared to the same period of 2022, due to a higher average outstanding principal balance on the Account's credit facility and senior notes payable.

### **Net Realized and Unrealized Gains and Losses on Investments and Debt**

The following table shows the net realized and unrealized gains and losses on investments and debt for the six months ended June 30, 2023 and 2022 and the dollar and percentage changes for those periods (dollars in millions).

	For the Six Months Ended June 30,		Change	
	2023	2022	\$	%
<b>NET REALIZED AND UNREALIZED GAIN (LOSS) ON INVESTMENTS AND DEBT</b>				
<i>Net realized gain (loss) on investments:</i>				
Real estate properties	\$ —	\$ 29.5	\$ (29.5)	N/M
Real estate joint ventures	42.1	13.1	29.0	N/M
Real estate funds	13.9	—	13.9	N/M
Foreign currency exchange on forward contracts	(2.9)	—	(2.9)	N/M
Marketable securities	(35.6)	(1.3)	(34.3)	N/M
<b>Total realized gain on investments:</b>	<b>17.5</b>	<b>41.3</b>	<b>(23.8)</b>	<b>(57.6)%</b>
<i>Net change in unrealized gain (loss) on:</i>				
Real estate properties	(1,432.8)	2,152.1	(3,584.9)	N/M
Real estate joint ventures	(770.3)	349.0	(1,119.3)	N/M
Real estate funds	(28.8)	6.9	(35.7)	N/M
Real estate operating business	(4.7)	200.8	(205.5)	N/M
Foreign currency exchange on forward contracts	2.3	1.6	0.7	43.8 %
Marketable securities	47.1	(38.5)	85.6	N/M
Loans receivable	(159.3)	(82.2)	(77.1)	93.8 %
Loans payable	(22.7)	49.8	(72.5)	N/M
Other unsecured debt	(1.3)	13.8	(15.1)	N/M
<b>Net change in unrealized (loss) gain on investments and debt</b>	<b>(2,370.5)</b>	<b>2,653.3</b>	<b>(5,023.8)</b>	<b>N/M</b>
<b>NET REALIZED AND UNREALIZED (LOSS) GAIN ON INVESTMENTS AND DEBT</b>	<b>\$ (2,353.0)</b>	<b>\$ 2,694.6</b>	<b>\$ (5,047.6)</b>	<b>N/M</b>

N/M—Not meaningful

*Real Estate Properties:*

Wholly-owned real estate investments experienced unrealized losses of \$1.4 billion during the first six months of 2023, compared to \$2.2 billion of net realized and unrealized gains during the comparable period of 2022. While the Account saw depreciation across various real estate sectors during the period, unrealized losses were primarily driven by office properties in the Western and Eastern region due to decreased market demand and current economic conditions.

*Real Estate Joint Ventures:*

Real estate joint ventures experienced net realized and unrealized losses of \$728.2 million during the first six months of 2023, compared to \$362.1 million during the first six months of 2022. Net losses in the first half of 2023 were primarily driven by the Account's joint venture investments in the office sector, which saw a large decrease in valuations, mainly from an investment in Seattle, Washington.

*Real Estate Funds:*

Real estate funds experienced net realized and unrealized losses of \$14.9 million during the first six months of 2023, compared to unrealized gains of \$6.9 million during the first six months of 2022. Current period losses are due to unfavorable valuations of two funds, due to higher capitalization rates.

#### *Real Estate Operating Business:*

The Account's real estate operating business experienced unrealized losses of \$4.7 million during the first six months of 2023, compared to \$200.8 million unrealized gains in the comparable period of 2022. Unrealized losses were primarily attributed to the recent cost of capital trends.

#### *Foreign Currency Exchange on Forward Contracts:*

The Account's foreign currency exchange on forward contracts experienced net realized and unrealized losses of \$0.6 million during the second quarter of 2023 due to unfavorable foreign currency exchange at the time of sale.

#### *Marketable Securities:*

The Account's marketable securities investments experienced net realized and unrealized gains of \$11.5 million in the first six months of 2023, compared to net realized and unrealized losses of \$39.8 million in the comparable period of 2022. Current period gains can be attributed to the net result of rising and falling interest and U.S. Treasury rates during the first half of the year.

#### *Loans Receivable, including those with related parties:*

Loans receivable, including those with related parties, experienced unrealized losses of \$159.3 million during the first six months of 2023, compared to \$82.2 million of net realized and unrealized losses during the comparable period of 2022. Losses in the first six months of 2023 are attributed to unfavorable valuations of four loans receivable that were delinquent or defaulted on the loan terms during the period.

#### *Loans Payable:*

Loans payable experienced unrealized losses of \$22.7 million in the first six months of 2023, compared to \$49.8 million of unrealized gains during the comparable period of 2022. The unrealized losses in the first half of 2023 were attributable to changes in credit spreads and fluctuations in the risk-free yield curve.

#### *Other unsecured debt:*

Other unsecured debt experienced unrealized losses of \$1.3 million in the first half of 2023, attributable to changes in credit spreads and fluctuations in the risk-free yield curve.

### **Liquidity and Capital Resources**

As of June 30, 2023 and December 31, 2022, the Account's cash and cash equivalents and marketable securities had a value of \$721.5 million and \$2.1 billion, respectively, representing 2.8% and 7.1% of the Account's net assets at such dates, respectively. The decrease in liquid assets during the first half of 2023 was largely attributable to continued market volatility and higher contract owner withdrawals driven by unfavorable market trends in the U.S. commercial real estate market, with elevated interest rates negatively impacting property values. The Account's liquid assets continue to be available to purchase suitable real estate properties, meet the Account's debt obligations, expense needs, and contract owner redemption requests (i.e., contract owner transfers, withdrawals or benefit payments). In addition, as disclosed in the Account's Form 10-K for the year ended December 31, 2022, the Account is able to meet its short-term and long-term liquidity needs through cash provided by operating activities and the Liquidity Guarantee provided by TIAA. TIAA's management and the Independent Fiduciary closely monitor the Account's liquidity levels. If contract owner withdrawals continue in line with recent trends, it is likely TIAA will be required to purchase liquidity units pursuant to the Liquidity Guarantee in the third quarter of 2023, depending on the pace of net outflows.

#### *Net Income and Leverage*

The Account's net investment income is a source of liquidity for the Account. Net investment income was \$386.7 million for the six months ended June 30, 2023, as compared to \$363.0 million for the comparable period of 2022. The increase in total net investment income is described more fully in the *Results of Operations* section.

The Account has a \$945.0 million unsecured line of credit, accessible as needed to fund the Account's near-term investment objectives, as further described in *Note 10—Credit Facility*. As of June 30, 2023, the Account had not drawn on the line of credit.

The Account may from time to time borrow money and assume or obtain a mortgage on a property to make leveraged real estate investments. The Account is authorized to borrow money in accordance with its investment guidelines. Under the Account's current investment guidelines, the Account's loan to value ratio (as described below) is to be maintained at or below 30% (measured at the time of incurrence and after giving effect thereto). Such incurrence of debt from time to time may include:

- placing new debt on properties;
- refinancing outstanding debt;
- assuming debt on acquired properties or interests in the Account's properties;
- extending the maturity date of outstanding debt;
- an unsecured line of credit, credit facility or bank loan; or
- the issuance of debt securities.

As of June 30, 2023, the Account's loan-to-value ratio was 19.6%. The Account's loan-to-value ratio at any time is based on the outstanding principal amount of debt to the Account's total gross asset value, and excludes leverage, if any, employed by REITs and real estate funds in which the Account invests. The ratio is measured at the time of any debt incurrence and after giving effect thereto. The Account's total gross asset value, for these purposes, is equal to the total fair value of the Account's assets (including the fair value of the Account's interest in joint ventures), with no reduction associated with any indebtedness on such assets. In calculating outstanding indebtedness, we include only the Account's actual percentage interest in any borrowings on a joint venture investment and not that of any joint venture partner. Also, at the time the Account (or a joint venture in which the Account is a partner) enters into a revolving or other line of credit, management includes only amounts outstanding when calculating outstanding indebtedness.

The Account may borrow up to 70% of the then-current value of a property, although construction loans may be for 100% of costs incurred in developing the property. Except for construction loans, any mortgage loans on a property will be non-recourse to the Account. For this purpose, non-recourse means that if there is a default on a loan in respect to a specific property, the lender will have recourse to (i.e., be able to foreclose on) only the property encumbered (or the joint venture owning the property), or to other specific Account properties that may have been pledged as security for the defaulted loan, but not to any other assets of the Account. Currently, TIAA, on behalf of the Account, maintains a credit agreement with a syndicate of third-party bank lenders, including JPMorgan Chase Bank, N.A. (the "Credit Agreement"), comprised of an unsecured revolving line of credit and term loans. The Account may use the proceeds of borrowings under the Credit Agreement for funding general organizational purposes of the Account in the ordinary course of business, including financing certain real estate portfolio investments. The Account may enter into additional unsecured lines of credit, credit facilities and term bank loans underwritten by one or more third-party lenders. In addition, from time to time, the Account may borrow capital for operating or other needs by offering debt securities.

As of June 30, 2023, there were six mortgage obligations secured by real estate investments wholly-owned by the Account, totaling \$310.4 million, that were scheduled to mature within the next twelve months. Three of these obligations, totaling \$106.9 million, were repaid by the Account in July 2023. The Account has sufficient liquidity to meet its mortgage obligations.

#### *Statements of Cash Flows*

The following table sets forth the Account's sources and uses of cash flows for the six months ended June 30, 2023 and 2022 (in millions):

	<b>As of June 30,</b>	
	<b>2023</b>	<b>2022</b>
Cash flows provided by (used for):		
Operating activities	\$ 1,539.7	(767.6)
Financing activities	\$ (1,538.8)	\$ 781.5

The following provides information regarding the Account's cash flows from operating and financing activities for the six months ended June 30, 2023.

*Operating Activities:* The Account's operating cash flows are primarily impacted by net investment income and the purchase or sale of investments and debt. Cash provided by operating activities for the six months ended June 30, 2023 as compared to the prior year period, increased by approximately \$2.3 billion, primarily driven by:

- \$1.4 billion cash inflow from the sale of marketable securities.
- \$386.7 million of net investment income.

*Financing Activities:* The Account's financing cash flows are primarily impacted by contract owner transactions, proceeds from debt and repayments of debt. For the period ended June 30, 2023, key drivers were:

- Net contract owner outflows totaled \$1.7 billion.
- The Account repaid \$345.1 million of mortgage loans.
- The Account received \$100.0 million of proceeds from new mortgage loans obtained.
- The Account received \$400.0 million of proceeds from the issuance of Series C senior notes.

### *Long-Term Financing and Capital Needs*

The Account expects to meet its long-term liquidity requirements, such as debt maturities, property acquisitions and financing of development activities, through the use of unsecured debt and credit facilities, proceeds received from the disposition of certain properties and joint ventures, along with cash generated from operations after all distributions. The Account has a significant number of unencumbered properties available to secure additional mortgage borrowings should unsecured capital be unavailable or the cost of alternative sources of capital be too high. The value of and cash flow from these unencumbered properties are in excess of the requirements the Account must maintain in order to comply with covenants under its unsecured notes and credit facility.

A summary of the Account's outstanding debt is as follows (in millions):

	June 30, 2023		December 31, 2022	
	Principal Balance	% of Total	Principal Balance	% of Total
Secured	\$ 1,923.5	57.9 %	\$ 2,168.7	68.4 %
Unsecured	1,400.0	42.1 %	1,000.0	31.6 %
<b>Total</b>	<b>\$ 3,323.5</b>	<b>100.0 %</b>	<b>\$ 3,168.7</b>	<b>100.0 %</b>
<i>Fixed Rate Debt:</i>				
Secured	\$ 1,493.1	44.9 %	\$ 1,799.2	56.8 %
Unsecured	900.0	27.1 %	500.0	15.8 %
<b>Fixed Rate Debt</b>	<b>\$ 2,393.1</b>	<b>72.0 %</b>	<b>\$ 2,299.2</b>	<b>72.6 %</b>
<i>Floating Rate Debt:</i>				
Secured	430.4	13.0 %	369.5	11.6 %
Unsecured	500.0	15.0 %	500.0	15.8 %
<b>Floating Rate Debt</b>	<b>\$ 930.4</b>	<b>28.0 %</b>	<b>\$ 869.5</b>	<b>27.4 %</b>
<b>Total</b>	<b>\$ 3,323.5</b>	<b>100.0 %</b>	<b>\$ 3,168.7</b>	<b>100.0 %</b>

### **Recent Transactions**

*The following describes transactions occurring during the second quarter of 2023 related to real estate properties, real estate joint ventures, real estate funds, loans receivable, and loans payable. Except as noted, expenses for operating the properties purchased are either borne or reimbursed, in whole or in part, by the property tenants, although the terms vary under each lease. Dollar amounts are shown in millions.*

## Sales

Property Name	Transaction Date	Ownership Percentage	Sector	Location	Net Sales Price <sup>(1)</sup>	Realized Gain on Sale <sup>(2)</sup>
I-35 Logistics Center	04/26/2023	95.00%	Industrial	Fort Worth, TX	\$ 55.4	\$ 20.4
9625 Towne Centre	06/21/2023	49.90%	Office	San Diego, CA	\$ 80.1	\$ 32.8

<sup>(1)</sup> Represents the sales price, less selling expenses.

<sup>(2)</sup> Majority of the realized gain (loss) has been previously recognized as unrealized gains (losses) in the Account's Consolidated Statements of Operations.

## Financings

### Debt Payoff

Description	Transaction Date	Interest Rate	Sector	Maturity Date	Amount
1001 Pennsylvania Ave	06/01/2023	3.70%	Office	06/01/2023	\$ (298.2)

## Loan Receivable

### Originations

Description	Transaction Date	Interest Rate	Maturity Date	Amount
Park on Morton	06/15/2023	6.10%	06/30/2026	\$ 27.8

## Critical Accounting Estimates

Management's discussion and analysis of the Account's financial condition and results of operations is based on the Account's Consolidated Financial Statements, which have been prepared in accordance with GAAP. The preparation of the Account's financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, income and expenses. Management considers the valuation of real estate properties and valuation of real estate joint ventures to be critical accounting estimates because they involve a significant level of estimation uncertainty and have a material impact on the Account's financial condition and results of operations.

There have been no material changes to the Account's critical accounting policies described in the Account's Annual Report on Form 10-K for the year ended December 31, 2022.

## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Account's real estate holdings, including real estate joint ventures, funds, an operating business and loans receivable, including those with related parties, which, as of June 30, 2023, represented 97.8% of the Account's total investments, expose the Account to a variety of risks. These risks include, but are not limited to:

- General Real Estate Risk—The risk that the Account's property values or rental and occupancy rates could go down due to general economic conditions, a weak market for real estate generally, disruptions in the credit and/or capital markets, or changing supply and demand for certain types of properties;
- Appraisal Risk—The risk that the sale price of an Account property (i.e., the value that would be determined by negotiations between independent parties) might differ substantially from its estimated or appraised value, leading to losses or reduced profits to the Account upon sale;
- Risk Relating to Property Sales—The risk that the Account might not be able to sell a property at a particular time for its full value, particularly in a poor market. This might make it difficult to raise cash quickly and also could lead to Account losses;
- Risks of Borrowing—The risk that interest rate changes may impact Account returns if the Account borrows against a credit facility, takes out a mortgage on a property, buys a property subject to a mortgage or holds a

property subject to a mortgage, and hedging against such interest rate changes, if undertaken by the Account, may entail additional costs and be unsuccessful; and

- Foreign Currency Risk—The risk that the value of the Account’s foreign investments, related debt, or rental income could increase or decrease due to changes in foreign currency exchange rates or foreign currency exchange control regulations, and hedging against such currency changes, if undertaken by the Account, may entail additional costs and be unsuccessful.

The Account believes the diversification of its real estate portfolio, both geographically and by sector, along with its quarterly valuation procedure, helps manage the real estate and appraisal risks described above.

As of June 30, 2023, 2.2% of the Account’s total investments were comprised of marketable securities. Marketable securities include high-quality debt instruments (i.e., government agency notes and corporate bond securities) and, when applicable, REIT securities. The Account’s Consolidated Statements of Investments sets forth the general financial terms of these instruments, along with their fair values, as determined in accordance with procedures described in *Note 1—Organization and Significant Accounting Policies* to the Account’s Consolidated Financial Statements of the Account’s 2022 Form 10-K. As of June 30, 2023, the Account does not invest in derivative financial instruments, although it does engage in hedging activity related to foreign currency denominated investments.

Risks associated with investments in real estate-related liquid assets (which could include, from time to time, REIT securities and CMBS), and non-real estate-related liquid assets, include the following:

- Financial/Credit Risk—The risk, for debt securities, that the issuer will not be able to pay principal and interest when due (and/or declare bankruptcy or be subject to receivership) and, for equity securities such as common or preferred stock, that the issuer’s current earnings will fall or that its overall financial soundness will decline, reducing the security’s value.
- Market Volatility Risk—The risk that the Account’s investments will experience price volatility due to changing conditions in the financial markets regardless of the credit quality or financial condition of the underlying issuer. This risk is particularly acute to the extent the Account holds equity securities, which have experienced significant short-term price volatility over the past year. Also, to the extent the Account holds debt securities, changes in overall interest rates can cause price fluctuations.
- Interest Rate Volatility—The risk that interest rate volatility may affect the Account’s current income from an investment.
- Deposit/Money Market Risk—The risk that, to the extent the Account’s cash held in bank deposit accounts exceeds federally insured limits as to that bank, the Account could experience losses if banks fail. The Account does not believe it has exposure to significant concentration of deposit risk. In addition, there is some risk that investments held in money market accounts can suffer losses.

In addition, to the extent the Account were to hold MBS (including CMBS) these securities are subject to prepayment risk or extension risk (i.e., the risk that borrowers will repay the loans earlier or later than anticipated). If the underlying mortgage assets experience faster than anticipated repayments of principal, the Account could fail to recoup some or all of its initial investment in these securities, since the original price paid by the Account was based in part on assumptions regarding the receipt of interest payments. If the underlying mortgage assets are repaid later than anticipated, the Account could lose the opportunity to reinvest the anticipated cash flows at a time when interest rates might be rising. The rate of prepayment depends on a variety of geographic, social and other functions, including prevailing market interest rates and general economic factors. The fair value of these securities is also highly sensitive to changes in interest rates. Note that the potential for appreciation, which could otherwise be expected to result from a decline in interest rates, may be limited by any increased prepayments. These securities may be harder to sell than other securities.

In addition to these risks, real estate equity securities (such as REIT securities and MBS) would be subject to many of the same general risks inherent in real estate investing, making mortgage loans and investing in debt securities. For more information on the risks associated with all of the Account’s investments, see Item 1A. Risk Factors, of the Form 10-K for the year ended December 31, 2022, as such risk factors may be updated in Item 1A of this Form 10-Q or in subsequent reports.

## **ITEM 4. CONTROLS AND PROCEDURES**

(a) The registrant maintains a system of disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in the registrant's reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including the registrant's Principal Executive Officer ("PEO") and the Principal Financial Officer ("PFO"), as appropriate, to allow timely decisions regarding required disclosure.

Under the supervision and participation of the registrant's management, including the registrant's PEO and PFO, the registrant conducted an evaluation of the effectiveness of the registrant's disclosure controls and procedures as defined in Rule 13a-15(e) under the Exchange Act as of June 30, 2023. Based upon management's review, the PEO and PFO concluded that the registrant's disclosure controls and procedures, as of the end of the period covered by this report, were effective to provide reasonable assurance that the objectives of disclosure controls and procedures are met.

(b) There have been no changes in the registrant's internal control over financial reporting that occurred during the registrant's last fiscal quarter that materially affected, or are reasonably likely to materially affect, the registrant's internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS.**

In the normal course of business, the Account may be named, from time to time, as a defendant or may be involved in various legal actions, including arbitration, class actions and other litigation.

The Account establishes an accrual for all litigation and regulatory matters when it believes it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. Once established, accruals are adjusted, as appropriate, in light of additional information. The amount of loss ultimately incurred in relation to those matters may be higher or lower than the amounts accrued for those matters.

As of the date of this report, management of the Account does not believe that the results of any such claims or litigation, individually or in the aggregate, will have a material effect on the Account's business, financial position or results of operations.

### **ITEM 1A. RISK FACTORS.**

*Continued liquidity challenges could adversely impact the Account's operations, financial condition, growth and prospects and possibly trigger the Account's Liquidity Guarantee*

The Account requires sufficient liquidity to fund ongoing Account-level loan and debt commitments to make payments on its debt obligations as they become due, satisfy contract owner redemption requests, fund purchases and maintenance of portfolio properties, and meet other cash and contractual commitments. Although the Account's liquid assets continue to be available to purchase suitable real estate properties, meet the Account's debt obligations, expense needs, and contract owner redemption requests (i.e., contract owner withdrawals or benefit payments), as noted above the Account has experienced a sustained decrease in liquid assets during the first half of 2023. The decrease in liquid assets during the first half of 2023 was largely attributable to continued market volatility and higher contract owner withdrawals driven by unfavorable market trends in the U.S. commercial real estate market, with elevated interest rates negatively impacting property values. If net outflows continue in line with recent trends, that could impair the Account's ability to fund its operations and meet its obligations as they become due. In such event, it is likely TIAA will be required to purchase liquidity units pursuant to the Liquidity Guarantee in the third quarter of 2023, depending on the pace of net outflows, and this could have a material adverse effect on the Account's business, financial condition and results of operations.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.**

Not applicable.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES.**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES.**

Not applicable.

**ITEM 5. OTHER INFORMATION.**

Not applicable.

## ITEM 6. EXHIBITS

- (1) (A) [Distribution Agreement for the Contracts Funded by the TIAA Real Estate Account, dated as of January 1, 2008, by and among Teachers Insurance and Annuity Association of America, for itself and on behalf of the Account, and TIAA-CREF Individual & Institutional Services, LLC](#)<sup>1</sup>
- (3) (A) [Restated Charter of TIAA \(as amended\)](#)<sup>2</sup>
- (B) [Amended Bylaws of TIAA](#)<sup>3</sup>
- (4) (A) [Forms of RA, GRA, GSRA, SRA, IRA Real Estate Account Endorsements, Keogh Contract, Retirement Choice and Retirement Choice Plus Contracts and Retirement Select and Retirement Select Plus Contracts and Endorsements](#)<sup>4</sup>
- (B) [Forms of Income-Paying Contracts](#)<sup>4</sup>
- (C) (1) [Form of Contract Endorsement for Internal Transfer Limitation](#)<sup>7</sup>
- (2) [Form of Contract Endorsement for Internal Transfer Limitation](#)<sup>24</sup>
- (D) (1) [Form of Non-ERISA Retirement Choice Plus Contract](#)<sup>9</sup>
- (2) [Form of Non-ERISA Retirement Choice Plus Certificate](#)<sup>9</sup>
- (E) (1) [Form of Trust Company Retirement Choice Contract](#)<sup>10</sup>
- (2) [Form of Trust Company Retirement Choice Certificate](#)<sup>10</sup>
- (3) [Form of Trust Company Retirement Choice Contract](#)<sup>25</sup>
- (4) [Form of Trust Company Retirement Choice Certificate](#)<sup>26</sup>
- (F) (1) [Form of Trust Company Retirement Choice Plus Certificate](#)<sup>11</sup>
- (2) [Form of Trust Company Retirement Choice Plus Contract](#)<sup>11</sup>
- (3) [Form of Trust Company Retirement Choice Plus Certificate](#)<sup>27</sup>
- (4) [Form of Trust Company Retirement Choice Plus Contract](#)<sup>28</sup>
- (G) [Form of Income Test Drive Endorsement for Retirement Annuity Contracts, After-Tax Retirement Annuity Contracts, Supplemental Retirement Annuity Contracts and IRA Contracts \(including Rollover IRA, Contributory IRA, Roth IRA, OneIRA\)](#)<sup>12</sup>
- (H) [Form of Income Test Drive Endorsement for Group Retirement Annuity Certificates, Group Supplemental Retirement Annuity Certificates, Keogh Certificates, Retirement Choice Certificates, Retirement Choice Plus Certificates, Non-ERISA Retirement Choice Plus Certificates, Trust Retirement Choice Certificates, and Trust Retirement Choice Plus Certificates](#)<sup>13</sup>
- (I) [Form of OneIRA Non-Qualified Deferred Annuity Contract \(and Rate Schedule\)](#)<sup>14</sup>
- (J) (1) [Form of Endorsement to Retirement Choice and Retirement Choice Plus Contracts for Custom Portfolios](#)<sup>16</sup>
- (2) [Form of Endorsement to Retirement Choice and Retirement Choice Plus Certificates for Custom Portfolios](#)<sup>16</sup>
- (K) [Form of Endorsement to Group Supplemental Retirement Annuity \(GSRA\) Certificate](#)<sup>17</sup>
- (L) (1) [Form of Contract, Rate Schedule and Certificate for Multiple Employer Plan Retirement Choice Annuity Contract](#)<sup>18</sup>
- (2) [Form of Contract, Rate Schedule and Certificate for Multiple Employer Plan Retirement Choice Plus Annuity Contract](#)<sup>18</sup>
- (M) [Form of Retirement Plan Loan Endorsement to Group Retirement Annuity Certificate](#)<sup>19</sup>
- (N) [Form of Retirement Plan Loan Endorsement to Retirement Annuity Contract](#)<sup>20</sup>
- (O) [Form of Retirement Plan Loan Endorsement to Supplemental Retirement Annuity Contract](#)<sup>21</sup>
- (P) [Form of Required Minimum Distribution Endorsement to All Annuity Contracts](#)<sup>22</sup>
- (Q) [Form of Required Minimum Distribution Endorsement to All Annuity Contracts](#)<sup>23</sup>
- (10) (A) [Engagement Letter Agreement with Independent Fiduciary, dated February 10, 2022, between TIAA, on behalf of the Registrant, and SitusAMC Real Estate Valuation Services, LLC](#)<sup>15</sup>
- (B) [Custodian Agreement, dated as of March 3, 2008, by and between TIAA, on behalf of the registrant, and State Street Bank and Trust Company, N.A.](#)<sup>8</sup>
- (C) [Form of Note Purchase agreement, dated as of March 21, 2023, by and between TIAA, on behalf of the registrant, and the purchasers party thereto.](#)<sup>\*</sup>
- (31) [Rule 13\(a\)Rule 13\(a\)-15\(e\)/ Rule 13a-15\(e\)/15d-15\(e\) Certifications\\*\(e\)/ Rule 13a-15\(e\)/15d-15\(e\) Certifications\\*](#)
- (32) [Section 1350 Certifications\\*](#)

- (101) The following financial information from the Quarterly Report on Form 10-Q for the period ended June 30, 2023 (Unaudited), formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Statements of Assets and Liabilities as of June 30, 2023 (Unaudited), (ii) the Consolidated Statements of Operations for the three and six months ended June 30, 2023 and 2022 (Unaudited), (iii) the Consolidated Statements of Changes in Net Assets for the three and six months ended June 30, 2023 and 2022 (Unaudited), (iv) the Consolidated Statements of Cash Flows for the six months ended June 30, 2023 and 2022 (Unaudited), and (v) the Notes to the Consolidated Financial Statements (Unaudited).\*\*
- (104) Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).\*\*
- \* Filed herewith.  
\*\* Furnished electronically herewith.
- (1) Previously filed and incorporated herein by reference to Exhibit 1(A) to the Account's Registration Statement on Form S-1, filed with the Commission on March 15, 2013 (File No. 333-187309).
  - (2) Previously filed and incorporated herein by reference to Exhibit 3(A) to the Account's Registration Statement on Form S-1, filed with the Commission on April 22, 2015 (File No. 333-202583).
  - (3) Previously filed and incorporated herein by reference to Exhibit 3(B) to the Account's Registration Statement on Form S-1, filed with the Commission on April 22, 2015 (File No. 333-202583).
  - (4) Previously filed and incorporated herein by reference to the Account's Post-Effective Amendment No. 2 to the Registration Statement on Form S-1, filed with the Commission on April 30, 1996 (File No. 33-92990).
  - (5) Previously filed and incorporated herein by reference to Exhibit 4(A) to the Account's Post-Effective Amendment No. 1 to the Registration Statement on Form S-1, filed with the Commission on May 2, 2005 (File No. 333-121493).
  - (6) Previously filed and incorporated herein by reference to the Account's Pre-Effective Amendment No. 1 to the Registration Statement on Form S-1, filed with the Commission on April 29, 2004 (File No. 333-113602).
  - (7) Previously filed and incorporated by reference to Exhibit 4(C) to the Account's Quarterly Report on Form 10-Q for the quarter ended September 30, 2010 and filed with the Commission on November 12, 2010 (File No. 33-92990).
  - (8) Previously filed and incorporated herein by reference to Exhibit 10(B) to the Account's Annual Report on Form 10-K for the fiscal year ended December 31, 2012 and filed with the Commission on March 14, 2013 (File No. 33-92990).
  - (9) Previously filed and incorporated herein by reference to Exhibit 4(D)(1) and 4(D)(2) to the Account's Registration Statement on Form S-1, filed with the Commission on March 21, 2017 (File No. 333-216849).
  - (10) Previously filed and incorporated herein by reference to Exhibit 4(E)(1) and 4(E)(2) to the Account's Registration Statement on Form S-1, filed with the Commission on March 21, 2017 (File No. 333-216849).
  - (11) Previously filed and incorporated herein by reference to Exhibit 4(F)(1) and 4(F)(2) to the Account's Registration Statement on Form S-1, filed with the Commission on March 21, 2017 (File No. 333-216849).
  - (12) Previously filed and incorporated herein by reference to Exhibit 4(G) to the Account's Annual Report on Form 10-K, filed with the Commission on March 15, 2018 (File No. 333-216849).
  - (13) Previously filed and incorporated herein by reference to Exhibit 4(H) to the Account's Annual Report on Form 10-K, filed with the Commission on March 15, 2018 (File No. 333-216849).
  - (14) Previously filed and incorporated herein by reference to Exhibit 4(I) to the Account's Annual Report on Form 10-K, filed with the Commission on March 15, 2018 (File No. 333-216849).
  - (15) Previously filed and incorporated by reference to Exhibit 10.1 to the Account's Current Report on Form 8-K, filed with the Commission on February 16, 2022 (File No. 33-92990).
  - (16) Previously filed and incorporated herein by reference to Exhibit 4(J)(1) and 4(J)(2) to the Account's Current Report on Form 10-K, filed with the Commission on March 14, 2019 (File No. 33-92990).
  - (17) Previously filed and incorporated herein by reference to Exhibit 4(K) to the Account's Current Report on Form 10-K, filed with the Commission on March 14, 2019 (File No. 33-92990).
  - (18) Previously filed and incorporated herein by reference to Exhibit 4(L)(1) and 4(L)(2) to the Account's Current Report on Form 10-K, filed with the Commission on March 12, 2020 (File No. 33-92990).
  - (19) Previously filed and incorporated herein by reference to Exhibit 4(M) to the Account's Current Report on Form 10-K, filed with the Commission on March 11, 2021 (File No. 33-92990).
  - (20) Previously filed and incorporated herein by reference to Exhibit 4(N) to the Account's Current Report on Form 10-K, filed with the Commission on March 11, 2021 (File No. 33-92990).
  - (21) Previously filed and incorporated herein by reference to Exhibit 4(O) to the Account's Current Report on Form 10-K, filed with the Commission on March 11, 2021 (File No. 33-92990).
  - (22) Previously filed and incorporated herein by reference to Exhibit 4(P) to the Account's Current Report on Form 10-K, filed with the Commission on March 11, 2021 (File No. 33-92990).
  - (23) Previously filed and incorporated herein by reference to Exhibit 4(Q) to the Account's Current Report on Form 10-K, filed with the Commission on March 11, 2021 (File No. 33-92990).

- <sup>(24)</sup> Previously filed and incorporated herein by reference to Exhibit 4(C)(2) to the Account's Current Report on Form 10-K, filed with the Commission on March 9, 2023 (File No. 33-92990).
- <sup>(25)</sup> Previously filed and incorporated herein by reference to Exhibit 4(E)(3) to the Account's Current Report on Form 10-K, filed with the Commission on March 9, 2023 (File No. 33-92990).
- <sup>(26)</sup> Previously filed and incorporated herein by reference to Exhibit 4(E)(4) to the Account's Current Report on Form 10-K, filed with the Commission on March 9, 2023 (File No. 33-92990).
- <sup>(27)</sup> Previously filed and incorporated herein by reference to Exhibit 4(F)(3) to the Account's Current Report on Form 10-K, filed with the Commission on March 9, 2023 (File No. 33-92990).
- <sup>(28)</sup> Previously filed and incorporated herein by reference to Exhibit 4(F)(4) to the Account's Current Report on Form 10-K, filed with the Commission on March 9, 2023 (File No. 33-92990).

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant, TIAA Real Estate Account, has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 4th day of August 2023.

### TIAA REAL ESTATE ACCOUNT

By: TEACHERS INSURANCE AND ANNUITY  
ASSOCIATION OF AMERICA

By: /s/ Colbert Narcisse

August 4, 2023

---

Colbert Narcisse  
Senior Executive Vice President, Chief Product & Business  
Development Officer, Teachers Insurance and Annuity  
Association of America (Principal Executive Officer)

August 4, 2023

By: /s/ Christopher Baraks

---

Christopher Baraks  
Senior Vice President, Chief Accounting Officer and  
Corporate Controller of Teachers Insurance and Annuity  
Association of America (Principal Financial and Accounting  
Officer)

**TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA,  
ON BEHALF OF THE REAL ESTATE ACCOUNT**

\$400,000,000 5.50% Series C Senior Notes due May 30, 2027

---

**NOTE PURCHASE AGREEMENT**

---

Dated March 21, 2023

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 1. AUTHORIZATION OF NOTES; LIMITED RECOURSE.....	1
SECTION 2. SALE AND PURCHASE OF NOTES.....	2
SECTION 3. CLOSINGS.....	2
SECTION 4. CONDITIONS TO CLOSING.....	2
Section 4.1. Representations and Warranties.....	2
Section 4.2. Performance; No Default.....	2
Section 4.3. Compliance Certificates.....	2
Section 4.4. Opinions of Counsel.....	3
Section 4.5. Purchase Permitted By Applicable Law, Etc.....	3
Section 4.6. Sale of Other Notes.....	3
Section 4.7. Payment of Special Counsel Fees.....	3
Section 4.8. Private Placement Number.....	3
Section 4.9. Changes in Corporate Structure.....	3
Section 4.10. Funding Instructions.....	4
Section 4.11. Proceedings and Documents.....	4
SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.....	4
Section 5.1. Organization; Power and Authority.....	4
Section 5.2. Authorization, Etc.....	5
Section 5.3. Disclosure.....	5
Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates.....	5
Section 5.5. Financial Statements; Material Liabilities.....	6
Section 5.6. Compliance with Laws, Other Instruments, Etc.....	6
Section 5.7. Governmental Authorizations, Etc.....	6
Section 5.8. Litigation; Observance of Statutes and Orders.....	6
Section 5.9. Taxes.....	7
Section 5.10. Title to Property; Leases; Qualified Assets.....	7
Section 5.11. Licenses, Permits, Etc.....	8
Section 5.12. Compliance with Employee Benefit Plans.....	8
Section 5.13. Private Offering by the Company.....	9
Section 5.14. Use of Proceeds; Margin Regulations.....	9
Section 5.15. Existing Indebtedness.....	9
Section 5.16. Foreign Assets Control Regulations, Etc.....	10
Section 5.17. Status under Certain Statutes.....	10
Section 5.18. Separate Account.....	11
Section 5.19. Environmental Matters.....	11
SECTION 6. REPRESENTATIONS OF THE PURCHASERS.....	12
Section 6.1. Purchase for Investment.....	12
Section 6.2. Source of Funds.....	12
Section 6.3. Investment Experience; Access to Information.....	14

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
<b>Section 6.4. Authorization</b> .....	14
<b>Section 6.5. Restricted Securities</b> .....	15
<b>Section 6.6. No Public Market</b> .....	15
<b>Section 6.7. Legends</b> .....	15
<b>SECTION 7. INFORMATION AS TO COMPANY</b> .....	15
<b>Section 7.1. Financial and Business Information</b> .....	15
<b>Section 7.2. Officer's Certificate</b> .....	18
<b>Section 7.3. Visitation</b> .....	19
<b>Section 7.4. Electronic Delivery</b> .....	19
<b>SECTION 8. PAYMENT AND PREPAYMENT OF THE NOTES</b> .....	20
<b>Section 8.1. Maturity</b> .....	20
<b>Section 8.2. Optional Prepayments with Make-Whole Amount</b> .....	20
<b>Section 8.3. Allocation of Partial Prepayments</b> .....	20
<b>Section 8.4. Maturity; Surrender, Etc</b> .....	20
<b>Section 8.5. Purchase of Notes</b> .....	21
<b>Section 8.6. Make-Whole Amount</b> .....	21
<b>Section 8.7. Offer of Prepayment Upon Change in Control</b> .....	22
<b>Section 8.8. Payments Due on Non-Business Days</b> .....	23
<b>SECTION 9. AFFIRMATIVE COVENANTS</b> .....	23
<b>Section 9.1. Compliance with Laws</b> .....	23
<b>Section 9.2. Insurance</b> .....	24
<b>Section 9.3. Maintenance of Properties</b> .....	24
<b>Section 9.4. Payment of Taxes</b> .....	24
<b>Section 9.5. Corporate Existence, Etc</b> .....	24
<b>Section 9.6. Books and Records</b> .....	25
<b>Section 9.7. Subsidiary Guarantors</b> .....	25
<b>Section 9.8. Maintenance of Separate Account Status</b> .....	26
<b>Section 9.9. Investment Policies</b> .....	26
<b>SECTION 10. NEGATIVE COVENANTS</b> .....	27
<b>Section 10.1. Transactions with Affiliates</b> .....	27
<b>Section 10.2. Merger, Consolidation, Etc</b> .....	27
<b>Section 10.3. Line of Business</b> .....	28
<b>Section 10.4. Economic Sanctions, Etc</b> .....	29
<b>Section 10.5. Liens</b> .....	29
<b>Section 10.6. Financial Covenants</b> .....	29
<b>Section 10.7. Modifications of Certain Documents</b> .....	29
<b>SECTION 11. EVENTS OF DEFAULT</b> .....	30
<b>SECTION 12. REMEDIES ON DEFAULT, ETC</b> .....	32

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>Section 12.1. Acceleration</b> .....	32
<b>Section 12.2. Other Remedies</b> .....	33
<b>Section 12.3. Rescission</b> .....	33
<b>Section 12.4. No Waivers or Election of Remedies, Expenses, Etc</b> .....	34
<b>SECTION 13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES</b> .....	34
<b>Section 13.1. Registration of Notes</b> .....	34
<b>Section 13.2. Transfer and Exchange of Notes</b> .....	34
<b>Section 13.3. Replacement of Notes</b> .....	35
<b>SECTION 14. PAYMENTS ON NOTES</b> .....	35
<b>Section 14.1. Place of Payment</b> .....	35
<b>Section 14.2. Payment by Wire Transfer</b> .....	35
<b>Section 14.3. FATCA Information</b> .....	36
<b>Section 14.4. Withholding Taxes</b> .....	36
<b>SECTION 15. EXPENSES, ETC</b> .....	36
<b>Section 15.1. Transaction Expenses</b> .....	36
<b>Section 15.2. Certain Taxes</b> .....	37
<b>Section 15.3. Survival</b> .....	37
<b>SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT</b> .....	37
<b>SECTION 17. AMENDMENT AND WAIVER</b> .....	38
<b>Section 17.1. Requirements</b> .....	38
<b>Section 17.2. Solicitation of Holders of Notes</b> .....	38
<b>Section 17.3. Binding Effect, Etc</b> .....	39
<b>Section 17.4. Notes Held by Company, Etc</b> .....	39
<b>SECTION 18. NOTICES</b> .....	39
<b>SECTION 19. REPRODUCTION OF DOCUMENTS</b> .....	40
<b>SECTION 20. CONFIDENTIAL INFORMATION</b> .....	40
<b>SECTION 21. SUBSTITUTION OF PURCHASER</b> .....	41
<b>SECTION 22. MISCELLANEOUS</b> .....	42
<b>Section 22.1. Successors and Assigns</b> .....	42
<b>Section 22.2. Accounting Terms</b> .....	42
<b>Section 22.3. Severability</b> .....	42
<b>Section 22.4. Construction, Etc</b> .....	42
<b>Section 22.5. Counterparts; Electronic Signatures</b> .....	43
<b>Section 22.6. Governing Law</b> .....	43
<b>Section 22.7. Jurisdiction and Process; Waiver of Jury Trial</b> .....	43
<b>Section 22.8. Division</b> .....	44

## TABLE OF CONTENTS

(continued)

SCHEDULE A	—	DEFINED TERMS
SCHEDULE 1.1	—	FORM OF SERIES C NOTE
SCHEDULE 4.4(a)	—	FORM OF OPINION OF SPECIAL COUNSEL FOR THE COMPANY
SCHEDULE 5.3	—	DISCLOSURE MATERIALS
SCHEDULE 5.4	—	SUBSIDIARIES OF THE COMPANY AND OWNERSHIP OF SUBSIDIARY STOCK
SCHEDULE 5.5	—	FINANCIAL STATEMENTS
SCHEDULE 5.10	—	QUALIFIED ASSETS
SCHEDULE 5.15	—	EXISTING INDEBTEDNESS OF THE COMPANY AND ITS SUBSIDIARIES
EXHIBIT 14.4	—	FORM OF U.S. TAX COMPLIANCE CERTIFICATES

**TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA,  
ON BEHALF OF THE REAL ESTATE ACCOUNT  
C/O TIAA  
730 THIRD AVENUE  
NEW YORK, NEW YORK 10017**

\$400,000,000 5.50% Series C Senior Notes due May 30, 2027

March 21, 2023

To Each of the Purchasers Listed in  
the Purchaser Schedule Hereto:

Ladies and Gentlemen:

**TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA**, a New York insurance company (“**TIAA**”), on behalf of **THE REAL ESTATE ACCOUNT**, a separate account of TIAA (the “**Company**”), agrees with each of the Purchasers as follows:

**SECTION 1. AUTHORIZATION OF NOTES; LIMITED RECOURSE**

**Section 1.1. Authorization of Notes.** The Company will authorize the issue and sale of \$400,000,000 aggregate principal amount of its 5.50% Series C Senior Notes due May 30, 2027 (the “**Notes**”). The Notes shall be substantially in the form set out in Schedule 1.1. Certain capitalized and other terms used in this Agreement are defined in Schedule A and, for purposes of this Agreement, the rules of construction set forth in Section 22.4 shall govern.

**Section 1.2. Limited Recourse.** In no event whatsoever will any of the Company’s partners, members, shareholders, directors, officers, employees or agents, (collectively, the “**Protected Persons**”) be subject to any lien, levy, execution or any other enforcement procedure relating directly or indirectly to this Agreement or any of the other Financing Documents or any obligations hereunder or thereunder. Without limitation of the foregoing, the Purchasers agree that in any action, suit or other proceeding brought by any of them with respect to or under this Agreement or any other Financing Document, the applicable Purchaser shall name only the Company (unless otherwise required by law to enforce the Purchasers’ rights with respect to the Company) and not any of the Protected Persons. In addition, notwithstanding anything contained in this Agreement or any other Financing Document, any liability of the Company shall be satisfied solely from the assets and properties of the Teachers Insurance and Annuity Association of America’s Real Estate Account established as a separate investment account of TIAA under New York law on February 22, 1995, and under the regulation of the State of New York Insurance Department (the “**Separate Account**”) (including all assets and properties allocated to or held for the account of the Separate Account), and in no event shall any recourse be had to any assets or properties held by TIAA in its general investment account or in any other of its existing or future separate accounts other than the Separate Account.

## **SECTION 2. SALE AND PURCHASE OF NOTES.**

Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in Section 3, Notes in the principal amount specified opposite such Purchaser's name in the Purchaser Schedule at the purchase price of 100% of the principal amount thereof. The Purchasers' obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.

## **SECTION 3. CLOSINGS.**

The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York 10178-0060, at 10:00 a.m., New York City time, at a closing (the "**Closing**") on May 30, 2023. At the Closing the Company will deliver to each Purchaser the Notes to be purchased by such Purchaser in the form of a single Note (or such greater number of Notes in denominations of at least \$100,000 as such Purchaser may request) dated the date of the Closing and registered in such Purchaser's name (or in the name of its nominee), against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company in accordance with the wire transfer instructions delivered by the Company to the Purchasers pursuant to Section 4.10. If at the Closing the Company shall fail to tender such Notes to any Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to such Purchaser's satisfaction, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure by the Company to tender such Notes or any of the conditions specified in Section 4 not having been fulfilled to such Purchaser's satisfaction.

## **SECTION 4. CONDITIONS TO CLOSING.**

Each Purchaser's obligation to purchase and pay for the Notes to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions:

**Section 4.1. Representations and Warranties.** The representations and warranties of the Company in this Agreement shall be correct when made and at the Closing.

**Section 4.2. Performance; No Default.** The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing and from the date of this Agreement to the Closing assuming that Sections 9 and 10 are applicable from the date of this Agreement. From the date of this Agreement until the Closing, before and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.14), no Default or Event of Default shall have occurred and be continuing.

**Section 4.3. Compliance Certificates.**

(a) *Officer's Certificate.* The Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled.

(b) *Secretary's Certificate.* The Company shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to (i) the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Financing Documents to which the Company is a party and (ii) the Company's organizational documents as then in effect.

**Section 4.4. Opinions of Counsel.** Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Dechert LLP, counsel for the Company, substantially in the form attached hereto as Schedule 4.4(a) (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers) and (b) from Morgan, Lewis & Bockius LLP, the Purchasers' special counsel in connection with such transactions, substantially in the form agreed with such Purchaser and covering such other matters incident to such transactions as such Purchaser may reasonably request.

**Section 4.5. Purchase Permitted By Applicable Law, Etc.** On the date of the Closing, such Purchaser's purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

**Section 4.6. Sale of Other Notes.** Contemporaneously with the Closing, the Company shall sell to each other Purchaser and each other Purchaser shall purchase the Notes to be purchased by it at the Closing as specified in the Purchaser Schedule.

**Section 4.7. Payment of Special Counsel Fees.** Without limiting Section 15.1, the Company shall have paid on or before the Closing the reasonable and documented out-of-pocket fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the Closing.

**Section 4.8. Private Placement Number.** A Private Placement Number issued by PPN CUSIP Unit of CUSIP Global Services (in cooperation with the SVO) shall have been obtained for the Notes.

**Section 4.9. Changes in Corporate Structure.** The Company shall not have changed its jurisdiction of incorporation or organization, as applicable, or been a party to any merger or

consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

#### **Section 4.10. Funding Instructions.**

(a) At least five Business Days prior to the date of the Closing, each Purchaser shall have received written instructions signed by a Responsible Officer on letterhead of the Company specifying (i) the name and address of the transferee bank, (ii) such transferee bank's ABA number and (iii) the account name and number into which the purchase price for the Notes is to be deposited, which account shall be fully opened and able to receive micro deposits in accordance with this Section at least five (5) Business Days prior to the date of Closing.

(b) An identifiable Responsible Officer of the Company shall confirm the written instructions by a live videoconference made available to the Purchasers no later than two (2) Business Days prior to the Closing.

(c) Each Purchaser has the right, but not the obligation, upon written notice (which may be by email) to the Company, to elect to deliver a micro deposit (less than \$51.00) to the account identified in the written instructions no later than two (2) Business Days prior to the date of Closing. If a Purchaser delivers a micro deposit, a Responsible Officer must verbally verify the receipt and amount of the micro deposit to such Purchaser on a telephone call initiated by such Purchaser prior to the date of Closing. The Company shall not be obligated to return the amount of the micro deposit, nor will the amount of the micro deposit be netted against the Purchaser's purchase price of the Notes.

**Section 4.11. Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

### **SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.**

The Company represents and warrants to each Purchaser that:

**Section 5.1. Organization; Power and Authority.** TIAA and each Subsidiary Guarantor is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and is duly qualified as a foreign legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Obligor has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver the Financing Documents to which it is a party and to perform the provisions hereof and thereof.

**Section 5.2. Authorization, Etc.** Each of the Financing Documents to which an Obligor is a party has been duly authorized by all necessary corporate or equivalent action on the part of such Obligor, and constitutes, or, in the case of each Financing Document other than this Agreement, upon execution and delivery thereof will constitute, a legal, valid and binding obligation of each Obligor, as the case may be, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 5.3. Disclosure.** The Company, through its agent, J.P. Morgan Securities LLC, has delivered to each Purchaser a copy of an Investor Presentation, dated January 2023 (the "**Presentation**"), relating to the transactions contemplated hereby. This Agreement, the other Financing Documents, the Presentation, the financial statements listed in Schedule 5.5 and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company prior to February 15, 2023 in connection with the transactions contemplated hereby and identified in Schedule 5.3 (collectively, the "**Disclosure Documents**"), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since December 31, 2022, there has been no change in the financial condition, operations, business or properties of the Company or any Subsidiary except changes that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates.**

(a) Schedule 5.4 contains (except as noted therein) complete and correct lists of (i) the Company's Subsidiaries, showing, as to each Subsidiary, the name thereof, the jurisdiction of its organization, the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary and whether such Subsidiary is a Subsidiary Guarantor and (ii) the Company's directors and senior officers.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in Schedule 5.4 as being owned by the Company and its Subsidiaries have been validly issued and, to the extent applicable, are fully paid and non-assessable and are owned by the Company or another Subsidiary free and clear of any Lien that is prohibited by this Agreement.

(c) Each Subsidiary is a corporation or other legal entity duly organized, validly existing and, where applicable, in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and, where applicable, is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under

lease and to transact the business it transacts and proposes to transact, except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) No Subsidiary is subject to any legal, regulatory, contractual or other restriction (other than the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law or similar statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Company or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

**Section 5.5. Financial Statements; Material Liabilities.** The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5. All of such financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments and lack of footnotes); provided that with respect to all or any portion of such financial statements that are financial projections, pro forma financial information and other forward-looking information, the Company represents only that such information was prepared in good faith based upon assumptions and, in the case of financial projections and pro forma financial information, good faith estimates, in each case, believed to be reasonable at the time made. The Company and its Subsidiaries do not have any Material liabilities that are not disclosed in the Disclosure Documents.

**Section 5.6. Compliance with Laws, Other Instruments, Etc.** The execution, delivery and performance by each Obligor of the Financing Documents to which such Obligor is party will not (a) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of any Company Party under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter, regulations or by-laws, shareholders agreement or any other agreement or instrument to which any Company Party is bound or by which any Company Party or any of their respective properties may be bound or affected, (b) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to any Company Party or (c) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to any Company Party.

**Section 5.7. Governmental Authorizations, Etc.** No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by any Obligor of the Financing Documents to which such Obligor is party, other than any filing required under the Securities Exchange Act of 1934 or the rules and regulations promulgated thereunder on Form 8-K, Form 10-Q or Form 10-K.

**Section 5.8. Litigation; Observance of Statutes and Orders.**

(a) There are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Company, threatened against or affecting any Company Party or any property of any Company Party in any court or before any arbitrator of any kind or before or by any Governmental Authority that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any other Company Party is (i) in violation of any order, judgment, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (ii) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including Environmental Laws, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 5.16), which violation would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 5.9. Taxes.** The Company Parties have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (a) the amount of which, individually or in the aggregate, is not Material or (b) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the applicable Company Party, as the case may be, has established adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Company Parties in respect of U.S. federal, state or other taxes for all fiscal periods are adequate. The U.S. federal income tax liabilities of the Company Parties have been finally determined (whether by reason of completed audits or the statute of limitations having run) for all fiscal years up to and including the fiscal year ended December 31, 2017.

**Section 5.10. Title to Property; Leases; Qualified Assets.**

(a) The Company Parties have good and sufficient title to their respective Material properties, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by any Company Party after such date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement, except for those defects in title and Liens that, individually or in the aggregate, would not have a Material Adverse Effect.

(b) Each Qualified SPE which is a Company Party has good title to, or valid leasehold interest in, each Qualified Asset owned by such Qualified SPE. Schedule 5.10(b) sets out, as of the date of this Agreement, (i) all of the real property interests held by the Company and (ii) a correct and complete list of Qualified Assets, indicating in each case whether the respective property is owned or leased, the identity of the owner or lessee and the location of the respective property. Each of the Qualified Assets included by the Company in calculation of the Unencumbered Asset Value satisfies all of the requirements contained in this Agreement for the same to be included therein.

**Section 5.11. Licenses, Permits, Etc.** The Company Parties own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not have a Material Adverse Effect.

**Section 5.12. Compliance with Employee Benefit Plans.**

(a) Each Obligor and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Obligor nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that would, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by any Obligor or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of any Obligor or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities by an amount that would reasonably be expected to result in a Material Adverse Effect. The term "**benefit liabilities**" has the meaning specified in section 4001 of ERISA and the terms "**current value**" and "**present value**" have the meaning specified in section 3 of ERISA.

(c) No Obligor nor any of its ERISA Affiliates have incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries would not reasonably be expected to result in a Material Adverse Effect.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406(a) of ERISA or in connection with which a tax could be imposed pursuant to

section 4975(c)(1)(A)-(D) of the Code. The representation by the Obligors to each Purchaser in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of such Purchaser's representation in Section 6.2 as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

(f) The Company and its Subsidiaries do not have any Non-U.S. Plans.

**Section 5.13. Private Offering by the Company.** No Obligor nor anyone acting on its behalf has offered the Notes or any similar Securities for sale to, or solicited any offer to buy the Notes or any similar Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than 70 other Institutional Investors, each of which has been offered the Notes at a private sale for investment. No Obligor nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue sky laws of any applicable jurisdiction.

**Section 5.14. Use of Proceeds; Margin Regulations.** The Company will apply the proceeds of the sale of the Notes for general corporate purposes. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any Securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 25% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute more than 25% of the value of such assets. As used in this Section, the terms “margin stock” and “purpose of buying or carrying” shall have the meanings assigned to them in said Regulation U.

**Section 5.15. Existing Indebtedness.**

(a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Indebtedness of the Company and its Subsidiaries in an aggregate amount in excess of \$25,000,000 as of December 31, 2022 (provided that the aggregate amount of all such Indebtedness not listed on Schedule 5.15 does not exceed \$100,000,000 as of December 31, 2022) (including descriptions of the obligors and obligees, principal amounts outstanding, any collateral therefor and any Guaranty thereof), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of the Company or its Subsidiaries. Neither the Company nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Company or such Subsidiary and no event or condition exists with respect to any Indebtedness of the Company or any Subsidiary the outstanding principal amount of which exceeds \$10,000,000 that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Neither the Company nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Company or such Subsidiary, any agreement relating thereto or any other agreement (including its charter or any other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Company, except the Financing Documents and as disclosed in Schedule 5.15.

**Section 5.16. Foreign Assets Control Regulations, Etc.**

(a) No Obligor nor any Controlled Entity (i) is a Blocked Person, (ii) has been notified that its name appears or may in the future appear on a State Sanctions List or (iii) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) No Obligor nor any Controlled Entity (i) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) to the Company's knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No part of the proceeds from the sale of the Notes hereunder:

(i) constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by any Obligor or any Controlled Entity, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (B) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (C) otherwise in violation of any U.S. Economic Sanctions Laws;

(ii) will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

(iii) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

(d) Each Obligor has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that such Obligor and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

**Section 5.17. Status under Certain Statutes.** No Obligor nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 2005, the ICC Termination Act of 1995, or the Federal Power Act.

### **Section 5.18. Separate Account.**

(a) The Company is a “separate account” established by TIAA, in accordance with and pursuant to Section 4240 of the New York Insurance Law (the “NYIL”). Income and gains or losses, realized or unrealized, from assets allocated to the Company are credited to or charged against, and accounted for separately from, other income, gains or losses of TIAA. The portions of the contracts attributable to the Company are without any guaranty, including any index guaranty of the dollar amounts of benefits or other payments thereunder or of the value of such portions.

(b) Assets of the Company are held by TIAA in accordance with the NYIL. These assets are not subject to general creditors of TIAA and are subject only to liabilities specifically incurred by TIAA with respect to the Company.

(c) Company is an “insurance company pooled separate account” (within the meaning of PTE 90-1), and there is no “employee benefit plan” (as defined in Section 3(3) of the ERISA which is subject to Title I of ERISA, or “plan” as defined in the Code which is subject to section 4975 of the Code, treating as a single plan all plans maintained by the same employer or employee organization, which has assets in such pooled separate account that exceed ten percent (10%) of the total assets of that account. The issuance of the Notes by Company pursuant to this Agreement is, accordingly, an exempt transaction covered by the pooled separate account exemption, PTE 90-1, and none of the transactions contemplated by the Financing Documents will cause the Company to engage in a transaction in violation of section 406(b) of ERISA or section 4975(c)(1)(E) or (F) of the Code that could subject the Purchasers to any tax or penalty on prohibited transactions imposed under section 4975 of the Code or section 502(i) of ERISA.

(d) The consummation of this Agreement and the subsequent issuance of the Notes and payment and performance of the obligations hereunder, which are limited to the assets of the Company and the Qualified Assets and are evidenced by the Financing Documents are within the business purposes of TIAA in establishing the Company, are consistent with the documents under which the Company was established and is maintained and are in compliance with applicable law.

(e) Both TIAA and the Company are in compliance with the Plan of Operation.

**Section 5.19. Environmental Matters.** The Company has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted, except to the extent failure to have any such permit, license or authorization could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect. For each Qualified SPE which is a Company Party, such Person has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business with respect to the Qualified Asset as now being or as proposed to be conducted, except to the extent failure to have any such permit, license or authorization could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect. To the Company’s knowledge, each of such permits, licenses and authorizations is in full force and effect and each of

the Company Parties is in compliance with the terms and conditions thereof, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except to the extent failure to comply therewith could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

In addition, to the Company's knowledge, no written notice, notification, demand, request for information, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any Governmental Authority with respect to any alleged failure by the Company Parties to have any environmental, health or safety permit, license or other authorization required under any Environmental Law in connection with the conduct of the business of the Company Parties (and, with respect to the Qualified SPE, only with respect to the Qualified Asset) or with respect to any generation, treatment, storage, recycling, transportation, discharge or disposal, or any release of any Hazardous Materials generated with respect to any of the Company Parties' properties, which failure, if not remedied, could reasonably be expected to have a Material Adverse Effect.

## **SECTION 6. REPRESENTATIONS OF THE PURCHASERS.**

**Section 6.1. Purchase for Investment.** Each Purchaser severally represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

**Section 6.2. Source of Funds.** Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "**Source**") to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

- (a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("**PTE**") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the "**NAIC Annual Statement**")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c) at least four (4) Business Days prior to the date such Purchaser purchases Notes, no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an "investment fund" (within the meaning of Part VI of PTE 84-14 (the "**QPAM Exemption**")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan's assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be "related" within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (d) at least four (4) Business Days prior to the date such Purchaser purchases Notes; or

(e) the Source constitutes assets of a "plan(s)" (within the meaning of Part IV(h) of PTE 96-23 (the "**INHAM Exemption**")) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e) at least four (4) Business Days prior to the date such Purchaser purchases Notes; or

(f) the Source is a governmental plan; or

(g) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA or section 4975 of ERISA.

As used in this Section 6.2, the terms “**employee benefit plan,**” “**governmental plan,**” and “**separate account**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

With respect to any disclosure by a Purchaser to the Company pursuant to this Section 6.2, if the Company notifies such Purchaser promptly (but in no event later than two (2) Business Days prior to the proposed purchase of the Notes) after receiving such disclosure, that it could not make the representation in Section 5.12(e) with respect to such employee benefit plan(s), such Purchaser will not purchase Notes with plan assets of such employee benefit plan and such purchase shall not be effectuated until such time, if any, as the Purchaser represents that it is relying on another clause of Section 6.2 or the Company reasonably determines that the proposed transfer would not be prohibited by Section 406 of ERISA. For the avoidance of doubt, references in this paragraph to “Purchaser” shall refer to each Purchaser, each Substitute Purchaser and each transferee of a Note pursuant to Section 13.2.

**Section 6.3. Investment Experience; Access to Information.** Each Purchaser (for itself and for each account for which such Purchaser is acquiring the Notes) (a) is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act or a Qualified Institutional Buyer, (b) either alone or together with its representatives has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of this investment and make an informed decision to so invest, and has so evaluated the risks and merits of such investment, (c) has the ability to bear the economic risks of this investment and can afford a complete loss of such investment, (d) understands the terms of and risks associated with the purchase of the Notes, including, without limitation, a lack of liquidity, pricing availability and risks associated with the industry in which the Company operates, (e) has had the opportunity to review (i) the Disclosure Documents, (ii) the financial statements set forth on Schedule 5.5 and (iii) such other disclosure regarding the Company Parties, their business, their management and their financial affairs and condition as such Purchaser has determined to be necessary in connection with the purchase of the Notes, and (f) has had an opportunity to ask such questions and make such inquiries concerning the conditions of the offering of the Notes, the Company Parties, their business, the management and their financial affairs and condition, and has had an opportunity to review the Company’s facilities, in each case Purchaser has deemed appropriate in connection with such purchase and to receive satisfactory answers to such questions and inquiries.

**Section 6.4. Authorization.** Each Purchaser has full power and authority to enter into this Agreement. This Agreement, when executed and delivered by such Purchaser, will constitute valid and legally binding obligations of such Purchaser, enforceable in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and any other laws of general application affecting enforcement of creditors’ rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

**Section 6.5. Restricted Securities.** Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

**Section 6.6. No Public Market.** Each Purchaser understands that no public market now exists for the Notes, and that the Company has made no assurances that a public market will ever exist for the Notes.

**Section 6.7. Legends.** Each Purchaser understands that the Notes may be notated with the following legend:

“THE NOTE REPRESENTED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR UNLESS AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933 IS AVAILABLE.”

## **SECTION 7. INFORMATION AS TO COMPANY.**

**Section 7.1. Financial and Business Information.** The Company shall deliver to each Purchaser and each holder of a Note that is an Institutional Investor:

(a) *Quarterly Statements* — within 60 days (or such shorter period as is the earlier of (x) 15 days greater than the period applicable to the filing of the Company’s Quarterly Report on Form 10-Q (the “Form 10-Q”) with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income, changes in shareholders’ equity and cash flows of the Company and its Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies

being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments and the absence of footnotes;

(b) *Annual Statements* — within 120 days (or such shorter period as is the earlier of (x) 15 days greater than the period applicable to the filing of the Company’s Annual Report on Form 10-K (the “Form 10-K”) with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each fiscal year of the Company, duplicate copies of

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such year, and

(ii) consolidated statements of income, changes in shareholders’ equity and cash flows of the Company and its Subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon (without a “going concern” or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances;

(c) *SEC and Other Reports* — promptly upon their becoming available, one copy of (i) each financial statement, report, notice, proxy statement or similar document sent by the Company or any Subsidiary (x) to its creditors under any Material Credit Facility (excluding information sent to such creditors in the ordinary course of administration of a credit facility, such as information relating to pricing and borrowing availability) or (y) to its public Securities holders generally, and (ii) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such Purchaser or holder), and each prospectus and all amendments thereto filed by the Company or any Subsidiary with the SEC;

(d) *Notice of Default or Event of Default* — promptly, and in any event within 5 days after a Responsible Officer becoming aware of the existence of any Default or Event of Default, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(e) *Employee Benefits Matters* — promptly, and in any event within 5 days after a Responsible Officer becoming aware of any of the following, a written notice setting

forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof;

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan;

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, would reasonably be expected to have a Material Adverse Effect; or

(iv) receipt of notice of the imposition of a Material financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans;

(f) *Resignation or Replacement of Auditors* — within 10 days following the date on which the Company's auditors resign or the Company elects to change auditors, as the case may be, notification thereof, together with such further information as the Required Holders may request;

(g) *Environmental* - with reasonable promptness, the assertion of a claim of any Environmental Liability by any Person against, or with respect to any activities of, the Company Parties (provided, with respect to a Qualified SPE, only as to a Qualified Asset), and any alleged violation of or noncompliance by or on behalf of any Company Party with any Environmental Laws or any permits, licenses or authorizations, other than any claim of Environmental Liability or alleged violation that, if adversely determined, would not reasonably be expected to (either individually or in the aggregate) have a Material Adverse Effect;

(h) *Legal Status* - with reasonable promptness, any change in the Company's status as a separate account of TIAA under applicable law; and

(i) *Requested Information* — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time

may be reasonably requested by the Required Holders, in each case to the extent reasonably available to the Company.

**Section 7.2. Officer's Certificate.** Each set of financial statements delivered to a Purchaser or a holder of a Note pursuant to Section 7.1(a) or Section 7.1(b) shall be accompanied by a certificate of a Senior Financial Officer:

(a) *Covenant Compliance* — (i) setting forth (A) the information from such financial statements that is required in order to establish whether the Company was in compliance with the requirements of Section 10 during the quarterly or annual period covered by the financial statements then being furnished, (including with respect to each such provision measured as of the end of the applicable quarter, as applicable, that involves mathematical calculations, the information from such financial statements that is required to perform such calculations) and detailed calculations of the maximum or minimum amount, ratio or percentage measured at the end of the applicable quarter, as applicable, as the case may be, permissible under the terms of such Section, and the calculation of the amount, ratio or percentage then in existence, (B) whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in 7.1(b) and, if any such change has occurred, specifying the effect of such change on the financial statements, and (C) solely to the extent required to be delivered under any Material Credit Facility, an updated Schedule 5.10 listing all Qualified Assets and (ii) certifying that (A) all Qualified Assets so listed on such updated Schedule 5.10 fully qualify as such under the applicable criteria for inclusion as Qualified Assets, and (B) all acquisitions, dispositions or other removals of Qualified Assets completed during such quarterly accounting period, calendar year, or other fiscal period were permitted under this Agreement, and (C) the acquisition cost or principal balance of any Qualified Assets, as applicable, acquired during such period and any other information that the Required Holders may require to determine the Unencumbered Asset Value of such Qualified Asset, and the Qualified Asset Value of any Qualified Assets removed during such period. In the event that the Company or any Subsidiary has made an election to measure any financial liability using fair value (which election is being disregarded for purposes of determining compliance with this Agreement pursuant to Section 22.2) as to the period covered by any such financial statement, such Senior Financial Officer's certificate as to such period shall include a reconciliation from GAAP with respect to such election;

(b) *Event of Default* — certifying that such Senior Financial Officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto; and

(c) *Subsidiary Guarantors* — setting forth a list of all Subsidiaries that are Subsidiary Guarantors and certifying that each Subsidiary that is required to be a

Subsidiary Guarantor pursuant to Section 9.7 is a Subsidiary Guarantor, in each case, as of the date of such certificate of Senior Financial Officer.

**Section 7.3. Visitation.** The Company shall permit the representatives of each Purchaser and each holder of a Note that is an Institutional Investor:

(a) *No Event of Default* — if no Event of Default then exists, at the expense of such Purchaser or such holder and upon reasonable prior notice to the Company, to visit the principal executive office of the Company, to discuss the affairs, finances and accounts of the Company and the other Company Parties with the Company's officers, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each other Company Party, all at such reasonable times and as often as may be reasonably requested in writing; may only be exercised once per calendar year for all holders of the Notes collectively and

(b) *Default or Event of Default* — if a Default or Event of Default then exists, at the expense of the Company and upon at least five (5) Business Days prior notice to the Company to visit and inspect any of the offices or properties of the Company or any other Company Party, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and the other Company Parties), all at such times and as often as may be reasonably requested.

**Section 7.4. Electronic Delivery.** Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be delivered by the Company pursuant to Sections 7.1(a), (b) or (c) and Section 7.2 shall be deemed to have been delivered if the Company satisfies any of the following requirements with respect thereto:

(a) such financial statements satisfying the requirements of Section 7.1(a) or (b) and related Officer's Certificate satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c) are delivered to each Purchaser or holder of a Note by e-mail at the e-mail address set forth in such holder's Purchaser Schedule or as communicated from time to time in a separate writing delivered to the Company;

(b) the Company shall have timely filed such Form 10-Q or Form 10-K, satisfying the requirements of Section 7.1(a) or Section 7.1(b), as the case may be, with the SEC on EDGAR;

(c) the Company shall have timely filed any of the items referred to in Section 7.1(c) with the SEC on EDGAR;

*provided however*, that in no case shall access to such financial statements, other information and Officer's Certificates be conditioned upon any waiver or other agreement or consent (other than confidentiality provisions consistent with Section 21 of this Agreement); *provided further*, that in the case of any of clauses (b) or (c), the Company shall have given each holder of a Note prior

written notice, which may be by e-mail or in accordance with Section 19, of such posting or filing in connection with each delivery, *provided further*, that upon request of any holder to receive paper copies of such forms, financial statements, other information and Officer's Certificates or to receive them by e-mail, the Company will promptly e-mail them or deliver such paper copies, as the case may be, to such holder.

## **SECTION 8. PAYMENT AND PREPAYMENT OF THE NOTES.**

**Section 8.1. Maturity.** As provided therein, the entire unpaid principal balance of each Note shall be due and payable on the Maturity Date thereof.

**Section 8.2. Optional Prepayments with Make-Whole Amount.** The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in an amount not less than 5% of the aggregate principal amount of the Notes then outstanding in the case of a partial prepayment, at 100% of the principal amount so prepaid, and the Make-Whole Amount determined for the prepayment date with respect to such principal amount; provided that so long as no Default or Event of Default shall have occurred and be continuing no Make-Whole Amount shall be due if such Notes are prepaid during the last 90 days prior to the applicable Maturity Date of such Notes. The Company will give each holder of Notes written notice of each optional prepayment under this Section 8.2 not less than 10 days and not more than 60 days prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to Section 17. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 8.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount, if any, due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of Notes a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount, if any, as of the specified prepayment date.

**Section 8.3. Allocation of Partial Prepayments.** In the case of each partial prepayment of the Notes pursuant to Section 8.2, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

**Section 8.4. Maturity; Surrender, Etc.** In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

**Section 8.5. Purchase of Notes.** The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except (a) upon the payment or prepayment of the Notes in accordance with this Agreement and the Notes or (b) pursuant to an offer to purchase made by the Company or an Affiliate pro rata to the holders of all Notes at the time outstanding upon the same terms and conditions. Any such offer shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least 20 Business Days. If the holders of more than 50% of the principal amount of the Notes then outstanding accept such offer, the Company shall promptly notify the remaining holders of such fact and the expiration date for the acceptance by holders of Notes of such offer shall be extended by the number of days necessary to give each such remaining holder at least 10 Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

**Section 8.6. Make-Whole Amount.**

The term **“Make-Whole Amount”** means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

**“Called Principal”** means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**“Discounted Value”** means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

**“Reinvestment Yield”** means, with respect to the Called Principal of any Note, the sum of (a) 0.50% plus (b) the yield to maturity implied by the **“Ask Yield(s)”** reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as **“Page PX1”** (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (**“Reported”**) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (i) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between the **“Ask Yields”** Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment

Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then “**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the sum of (x) 0.50% plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

“**Remaining Average Life**” means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year comprised of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“**Remaining Scheduled Payments**” means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2 or Section 12.1.

“**Settlement Date**” means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

#### **Section 8.7. Offer of Prepayment Upon Change in Control.**

(a) *Notice of Change in Control.* The Company will, within 10 Business Days after any Responsible Officer has knowledge of the occurrence of any Change in Control, give written notice of such Change in Control to each holder of Notes. Such notice shall contain and constitute an offer to prepay Notes as described in clause (b) of this Section 8.7 and shall be accompanied by the certificate described in clause (e) of this Section 8.7.

(b) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by clause (a) of this Section 8.7 shall be an offer to prepay, in accordance with and subject to this Section 8.7, all, but not less than all, the Notes held by each holder on a date specified in such offer (the “**Proposed Prepayment Date**”) which date shall be not less than 30 days and not more than 60 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 45th day after the date of such offer).

(c) *Acceptance/Rejection.* A holder of Notes may accept the offer to prepay made pursuant to this Section 8.7 by causing a notice of such acceptance to be delivered to the Company at least 15 days prior to the Proposed Prepayment Date. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.7 shall be deemed to constitute a rejection of such offer by such holder.

(d) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 8.7 shall be at 100% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment but without payment of any Make-Whole Amount with respect thereto. The prepayment shall be made on the Proposed Prepayment Date.

(e) *Officer's Certificate.* Each offer to prepay the Notes pursuant to this Section 8.7 shall be accompanied by a certificate, executed by a Senior Financial Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.7; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this Section 8.7 have been fulfilled; and (vi) in reasonable detail, the nature and date or proposed date of the Change in Control.

**Section 8.8. Payments Due on Non-Business Days.** Anything in this Agreement or the Notes to the contrary notwithstanding, (x) except as set forth in clause (y), any payment of interest on any Note that is due on a date that is not a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; and (y) any payment of principal of or Make-Whole Amount on any Note (including principal due on the Maturity Date of such Note) that is due on a date that is not a Business Day shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

## **SECTION 9. AFFIRMATIVE COVENANTS.**

From the date of this Agreement until the Closing and thereafter, so long as any of the Notes are outstanding, the Company covenants that:

**Section 9.1. Compliance with Laws.** Without limiting Section 10.4, the Company will, and will cause each of the other Company Parties to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject (including ERISA,

Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 5.16) and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.2. Insurance.** The Company will, and will cause each of the other Company Parties to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

**Section 9.3. Maintenance of Properties.** The Company will, and will cause each of the other Company Parties to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section 9.3 shall not prevent the Company or any other Company Party from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.4. Payment of Taxes.** The Company will, and will cause each of the other Company Parties to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges or levies payable by any of them, to the extent the same have become due and payable and before they have become delinquent, *provided* that neither the Company nor any other Company Party need pay any such tax, assessment, charge or levy if (a) the amount, applicability or validity thereof is contested by the Company or such other Company Party on a timely basis in good faith and in appropriate proceedings, and the Company or another Company Party has established adequate reserves therefor in accordance with GAAP on the books of the Company or such other Company Party or (b) the nonpayment of all such taxes, assessments, charges and levies would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.5. Corporate Existence, Etc.** Subject to Section 10.2, the Company will at all times preserve and keep its corporate or other legal existence in full force and effect. Subject to Sections 10.2, the Company will at all times preserve and keep in full force and effect the corporate existence of each of the other Company Parties (unless merged into the Company or a Wholly-Owned Subsidiary) and all rights and franchises of the Company and the other Company Parties unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such corporate or other legal existence, right or franchise would not, individually or in the aggregate, have a Material Adverse Effect.

**Section 9.6. Books and Records.** The Company will, and will cause each of the other Company Parties to, maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Company or such other Company Party, as the case may be. The Company will, and will cause each of the other Company Parties to, keep books, records and accounts which, in reasonable detail, accurately reflect all transactions and dispositions of assets. The Company and the other Company Parties have devised a system of internal accounting controls sufficient to provide reasonable assurances that their respective books, records, and accounts accurately reflect all transactions and dispositions of assets and the Company will, and will cause each of the other Company Parties to, continue to maintain such system.

**Section 9.7. Subsidiary Guarantors.**

(a) The Company will cause each of its Subsidiaries that guarantees or otherwise becomes liable at any time, whether as a borrower or an additional or co-borrower or otherwise, for or in respect of any Indebtedness under any Material Credit Facility to concurrently therewith:

(i) enter into an agreement in form and substance satisfactory to the Required Holders providing for the guaranty by such Subsidiary, on a joint and several basis with all other such Subsidiaries, of (x) the prompt payment in full when due of all amounts payable by the Company pursuant to the Notes (whether for principal, interest, Make-Whole Amount or otherwise) and this Agreement, including all indemnities, fees and expenses payable by the Company thereunder and (y) the prompt, full and faithful performance, observance and discharge by the Company of each and every covenant, agreement, undertaking and provision required pursuant to the Notes or this Agreement to be performed, observed or discharged by it (a “**Subsidiary Guaranty**”); and

(ii) solely to the extent provided in connection with a guaranty provided under any Material Credit Facility, deliver the following to each holder of a Note:

(A) a certificate signed by an authorized responsible officer of such Subsidiary containing representations and warranties on behalf of such Subsidiary to the same effect, *mutatis mutandis*, as those contained in Sections 5.1 (Organization; Power and Authority), 5.2 (Authorization, Etc.), 5.6 (Compliance with Laws, Other Instruments, Etc.), 5.7 (Government Authorizations, Etc.), 5.8 (Litigation; Observance of Statutes and Orders), 5.9 (Taxes), 5.10 (Title to Property; Leases; Qualified Assets), 5.11 (Licenses, Permits, Etc.), 5.16 (Foreign Assets Control Regulations, Etc.), 5.17 (Status Under Certain Statutes) and 5.19 (Environmental Matters) of this Agreement (but with respect to such Subsidiary and such Subsidiary Guaranty rather than the Company), but solely with respect to those items required by the applicable Material Credit Facility;

(B) all documents as may be reasonably requested by the Required Holders to evidence the due organization, continuing existence

and, where applicable, good standing of such Subsidiary and the due authorization by all requisite action on the part of such Subsidiary of the execution and delivery of such Subsidiary Guaranty, as applicable, and the performance by such Subsidiary of its obligations thereunder; and

(C) an opinion of counsel reasonably satisfactory to the Required Holders covering such matters relating to such Subsidiary and the Subsidiary Guaranty as the Required Holders may reasonably request.

(b) At the election of the Company and by written notice to each holder of Notes, any Subsidiary Guarantor may be discharged from all of its obligations and liabilities under its Subsidiary Guaranty and shall be automatically released from its obligations thereunder without the need for the execution or delivery of any other document by the holders, *provided* that (i) if such Subsidiary Guarantor is a guarantor or is otherwise liable for or in respect of any Material Credit Facility, then such Subsidiary Guarantor has been released and discharged (or will be released and discharged concurrently with the release of such Subsidiary Guarantor under its Subsidiary Guaranty) under such Material Credit Facility, (ii) at the time of, and after giving effect to, such release and discharge, no Default or Event of Default shall be existing, (iii) no amount is then due and payable under such Subsidiary Guaranty, (iv) if in connection with such Subsidiary Guarantor being released and discharged under any Material Credit Facility, any fee or other form of consideration is given to any holder of Indebtedness under such Material Credit Facility for such release, the holders of the Notes shall receive equivalent consideration substantially concurrently therewith and (v) each holder shall have received a certificate of a Responsible Officer certifying as to the matters set forth in clauses (i) through (iv).

**Section 9.8. Maintenance of Separate Account Status.** The Company shall at all times be maintained as a separate account of TIAA under applicable law such that the assets of the Company are not subject to the claims of TIAA's creditors for TIAA's obligations unrelated to the Company. In furtherance thereof, at all times all assets of the Company shall be held separate from other assets of TIAA that are not for the account of the Company. If there shall be any changes of fact or law that may reasonably be expected to cause any change in the Company's status as a separate account of TIAA under applicable law, the Company shall deliver to each holder of Notes an updated opinion of counsel to the Company addressing such changes, in form and substance reasonably satisfactory to the Required Holders.

**Section 9.9. Investment Policies.** The Company shall comply with all investment and debt restrictions set forth in its organizational documents, except (other than in respect of entering into this Agreement and the other Financing Documents) where the failure to comply would not reasonably be expected to have a Material Adverse Effect.

Although it will not be a Default or an Event of Default if the Company fails to comply with any provision of Section 9 on or after the date of this Agreement and prior to the Closing, if such a failure occurs, then any of the Purchasers may elect not to purchase the Notes on the date of Closing that is specified in Section 3.

## SECTION 10. NEGATIVE COVENANTS.

From the date of this Agreement until the Closing and thereafter, so long as any of the Notes are outstanding, the Company covenants that:

**Section 10.1. Transactions with Affiliates.** The Company will not, and will not permit any other Company Party to, enter into directly or indirectly any transaction or group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Company Party), except:

- (a) transactions in the ordinary course of business at prices and on terms and conditions not less favorable than could be obtained on an arm's length basis from unrelated third parties;
- (b) sales of units in the Company to TIAA in connection with any liquidity guarantee and any distributions related thereto;
- (c) payment or transfers with respect to investment management, administration, distribution and similar services provided to the Company by any Affiliate to the extent permitted under the Company's organizational documents and any prospectus filed by the Company with the SEC; and
- (d) provision of services and payment of fees contemplated by any prospectus filed by the Company with the SEC.

**Section 10.2. Merger, Consolidation, Etc.** The Company will not, and will not permit any Subsidiary Guarantor to, consolidate with or merge with any other Person or convey, transfer or lease all or substantially all of its assets in a single transaction or series of transactions to any Person unless:

- (a) in the case of any such transaction involving the Company, the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer or lease all or substantially all of the assets of the Company as an entirety, as the case may be, shall be a solvent corporation or limited liability company organized and existing under the laws of the United States or any state thereof (including the District of Columbia), and, if the Company is not such corporation or limited liability company, (i) such corporation or limited liability company shall have executed and delivered to each holder of any Notes its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and the Notes and (ii) such corporation or limited liability company shall have caused to be delivered to each holder of any Notes an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Required Holders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof;
- (b) in the case of any such transaction involving a Subsidiary Guarantor, the successor formed by such consolidation or the survivor of such merger or the Person that

acquires by conveyance, transfer or lease all or substantially all of the assets of such Subsidiary Guarantor as an entirety, as the case may be, shall be (1) the Company, such Subsidiary Guarantor or another Subsidiary Guarantor; or (2) a solvent corporation or limited liability company (other than the Company or another Subsidiary Guarantor) that is organized and existing under the laws of the United States or any state thereof (including the District of Columbia) and, if such Subsidiary Guarantor is not such corporation or limited liability company, (A) such corporation or limited liability company shall have executed and delivered to each holder of Notes its assumption of the due and punctual performance and observance of each covenant and condition of the Subsidiary Guaranty of such Subsidiary Guarantor and (B) the Company shall have caused to be delivered to each holder of Notes an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Required Holders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof;

(c) in the case of the sale, transfer or other disposition of the equity interests of any Subsidiary Guarantor, all of such equity interests are acquired by another Obligor;

(d) in the case of liquidation or dissolution of any Subsidiary Guarantor, any and all of the assets of such Subsidiary Guarantor are distributed or otherwise transferred to another Obligor in connection with such liquidation or dissolution;

(e) each Subsidiary Guarantor under any Subsidiary Guaranty that is outstanding at the time such transaction or each transaction in such a series of transactions occurs reaffirms its obligations under such Subsidiary Guaranty in writing at such time pursuant to documentation that is reasonably acceptable to the Required Holders; and

(f) at the time of signing the definitive transaction agreement for such transaction or each transaction in any such series of transactions, no Default or Event of Default shall have occurred and be continuing.

No such conveyance, transfer or lease of substantially all of the assets of the Company or any Subsidiary Guarantor shall have the effect of releasing the Company or such Subsidiary Guarantor, as the case may be, or any successor corporation or limited liability company that shall theretofore have become such in the manner prescribed in this Section 10.2, from its liability under (x) this Agreement or the Notes (in the case of the Company) or (y) the Subsidiary Guaranty (in the case of any Subsidiary Guarantor), unless, in the case of the conveyance, transfer or lease of substantially all of the assets of a Subsidiary Guarantor, such Subsidiary Guarantor is released from its Subsidiary Guaranty in accordance with Section 9.7(b) in connection with or immediately following such conveyance, transfer or lease.

**Section 10.3. Line of Business.** The Company will not and will not permit any other Company Party to engage in any business if, as a result, the general nature of the business in which the Company and the other Company Parties, taken as a whole, would then be engaged would be substantially changed from the general nature of the business in which the Company and the other Company Parties, taken as a whole, are engaged on the date of this Agreement as described in the Disclosure Documents.

**Section 10.4. Economic Sanctions, Etc.** The Company will not, and will not permit any Controlled Entity to (a) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any Purchaser or holder or any affiliate of such Purchaser or holder to be in violation of, or subject to sanctions under, any law or regulation applicable to such holder, or (ii) is prohibited by or subject to sanctions under any U.S. Economic Sanctions Laws.

**Section 10.5. Liens.** The Company will not, and will not permit any other Company Party to, directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise) any Lien on or with respect to any property or asset (including any document or instrument in respect of goods or accounts receivable) of the Company or any such other Company Party, whether now owned or held or hereafter acquired, or any income or profits therefrom, or assign or otherwise convey any right to receive income or profits, except for Permitted Liens; *provided*, that notwithstanding the foregoing, the Company shall not, and shall not permit any other Company Party to, secure any Indebtedness outstanding under or pursuant to any Material Credit Facility unless and until the Notes (and any guaranty delivered in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Required Holders in substance and in form, including an intercreditor agreement and opinions of counsel to the Company and/or any such other Company Party, as the case may be, from counsel that is reasonably acceptable to the Required Holders.

**Section 10.6. Financial Covenants.**

(a) *Maximum Total Leverage Ratio.* The Company will not permit the Total Leverage Ratio to exceed 50% as of the last day of any fiscal quarter of the Company.

(b) *Fixed Charges Ratio.* The Company will not permit the Fixed Charges Ratio to be less than 2.00 to 1.00 as of the last day of any fiscal quarter of the Company.

(c) *Unencumbered Leverage Ratio.* The Company will not permit the Unencumbered Leverage Ratio to exceed 50% as of the last day of any fiscal quarter of the Company.

(d) *Minimum Unsecured Interest Coverage Ratio.* The Company will not permit the Unsecured Interest Coverage Ratio to be less than 2.00 to 1.00 as of the last day of any fiscal quarter of the Company.

(e) *Maximum Secured Debt.* The Company will not, and will not permit any other Company Party to, directly or indirectly, create, incur, assume or otherwise become directly or indirectly liable with respect to any Secured Indebtedness if the Total Secured Outstanding Indebtedness to Total Asset Value would exceed 40% at the time of such creation, incurrence or assumption.

**Section 10.7. Modifications of Certain Documents.** Without the prior written consent of Required Holders, the Company will not, and will not permit, any other Person to, modify any

of the terms or provisions in its organizational documents, except: (a) any modifications necessary for the Company to issue more equity interests (provided such issuance does not otherwise violate the terms of this Agreement); or (b) modifications necessary to clarify existing provisions of such organizational documents; or (c) modifications which would have no adverse, substantive effect on the rights or interests of the holders in conjunction with the Notes or under the Financing Documents; or (d) modifications which would not reasonably be expected to have a Material Adverse Effect.

Although it will not be a Default or an Event of Default if the Company fails to comply with any provision of Section 10 before or after giving effect to the issuance of the Notes on a pro forma basis, if such a failure occurs, then any of the Purchasers may elect not to purchase the Notes on the date of Closing that is specified in Section 3.

## **SECTION 11. EVENTS OF DEFAULT.**

An “**Event of Default**” shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or

(c) the Company defaults in the performance of or compliance with any term contained in Section 7.1(d) or Section 10; or

(d) the Company or any Subsidiary Guarantor defaults in the performance of or compliance with any term contained herein (other than those referred to in Sections 11(a), (b) and (c)) or in any other Financing Document and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this Section 11(d)); or

(e) (i) any representation or warranty made in writing by or on behalf of the Company or by any officer of the Company in any Financing Document or any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made, or (ii) any representation or warranty made in writing by or on behalf of any Subsidiary Guarantor or by any officer of such Subsidiary Guarantor in any Financing Document or any writing furnished in connection with such Financing Document proves to have been false or incorrect in any material respect on the date as of which made; or

(f) (i) the Company or any Significant Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount

of at least \$100,000,000 (or its equivalent in the relevant currency of payment) beyond any period of grace provided with respect thereto, or (ii) the Company or any Significant Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$100,000,000 (or its equivalent in the relevant currency of payment) or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition, such Indebtedness has become or has been declared due and payable before its stated maturity or before its regularly scheduled dates of payment; or

(g) the Company, TIAA or any Significant Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or other Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company, TIAA or any of its Significant Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company, TIAA or any of its Significant Subsidiaries, or any such petition shall be filed against the Company or any of its Significant Subsidiaries and such petition shall not be dismissed within 60 days; or

(i) any event occurs with respect to the Company, TIAA or any Significant Subsidiary which under the laws of any jurisdiction is analogous to any of the events described in Section 11(g) or Section 11(h), *provided* that the applicable grace period, if any, which shall apply shall be the one applicable to the relevant proceeding which most closely corresponds to the proceeding described in Section 11(g) or Section 11(h); or

(j) one or more final judgments or orders for the payment of money aggregating in excess of \$100,000,000 (or its equivalent in the relevant currency of payment) (to the extent not covered by independent third-party insurance or enforceable indemnity as to which the insurer does not deny coverage), including any such final order enforcing a binding arbitration decision, are rendered against one or more of the Company and its Significant Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(k) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of

any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) there is any “amount of unfunded benefit liabilities” (within the meaning of section 4001(a)(18) of ERISA) under one or more Plans, determined in accordance with Title IV of ERISA, (iv) the aggregate present value of accrued benefit liabilities under all funded Non-U.S. Plans exceeds the aggregate current value of the assets of such Non-U.S. Plans allocable to such liabilities, (v) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (vi) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, (vii) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder, (viii) the Company or any Subsidiary fails to administer or maintain a Non-U.S. Plan in compliance with the requirements of any and all applicable laws, statutes, rules, regulations or court orders or any Non-U.S. Plan is involuntarily terminated or wound up, or (ix) the Company or any Subsidiary becomes subject to the imposition of a financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans; and any such event or events described in clauses (i) through (ix) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Effect. As used in this Section 11(k), the terms “**employee benefit plan**” and “**employee welfare benefit plan**” shall have the respective meanings assigned to such terms in section 3 of ERISA;

(l) any Financing Document shall cease to be in full force and effect, any Obligor or any Person acting on behalf of any Obligor shall contest in any manner the validity, binding nature or enforceability of any Financing Document, or the obligations of any Obligor under any Financing Document are not or cease to be legal, valid, binding and enforceable in accordance with the terms of such Financing Document; or

(m) any event shall occur which gives rise to a nonexempt prohibited transaction (as such term is defined in section 4975 of the Code or section 406 of ERISA) involving any benefit plan investor (as such term is defined in the Plan Asset Regulation) that is the Company or an investor or partner in the Company, other than an event arising from a breach of any Financing Document by the holders, that could reasonably be expected to subject the holders, on account of any Note or any other transaction contemplated by the Financing Documents, to any tax or penalty on prohibited transactions imposed under section 4975 of the Code or section 502(i) of ERISA.

## **SECTION 12. REMEDIES ON DEFAULT, ETC.**

### **Section 12.1. Acceleration.**

(a) If an Event of Default with respect to any Obligor or TIAA described in Section 11(g), (h) or (i) (other than an Event of Default described in clause (i) of Section 11(g) or described in clause (vi) of Section 11(g) by virtue of the fact that such clause encompasses clause (i) of Section 11(g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in Section 11(a) or (b) has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon (including interest accrued thereon in respect of the Notes at the Default Rate, if applicable) and (y) the Make-Whole Amount determined in respect of such principal amount, shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

**Section 12.2. Other Remedies.** If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note or in any other Financing Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

**Section 12.3. Rescission.** At any time after any Notes have been declared due and payable pursuant to Section 12.1(b) or (c), the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant

to Section 17, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

**Section 12.4. No Waivers or Election of Remedies, Expenses, Etc.** No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or any other Financing Document upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all reasonable and documented out-of-pocket costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including reasonable and documented out-of-pocket attorneys' fees, expenses and disbursement of one special counsel for, collectively, the holders of Notes.

### **SECTION 13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.**

**Section 13.1. Registration of Notes.** The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. If any holder of one or more Notes is a nominee, then (a) the name and address of the beneficial owner of such Note or Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Agreement. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

**Section 13.2. Transfer and Exchange of Notes.** Upon surrender of any Note to the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)), for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof), within 10 Business Days thereafter, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of such Note as set forth in Schedule 1.1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes.

Notes shall not be transferred in denominations of less than \$100,000, provided that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

**Section 13.3. Replacement of Notes.** Upon receipt by the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$50,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within 10 Business Days thereafter, the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

## **SECTION 14. PAYMENTS ON NOTES.**

**Section 14.1. Place of Payment.** Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

**Section 14.2. Payment by Wire Transfer.** So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all other amounts becoming due hereunder by the method and at the address specified for such purpose below such Purchaser's name in the Purchaser Schedule, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon

the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchasers have made in this Section 14.2.

**Section 14.3. FATCA Information.** By acceptance of any Note, the holder of such Note agrees that such holder will with reasonable promptness duly complete and deliver to the Company, or to such other Person as may be reasonably requested by the Company, from time to time (a) in the case of any such holder that is a United States Person, such holder's United States tax identification number or other Forms reasonably requested by the Company necessary to establish such holder's status as a United States Person under FATCA and as may otherwise be necessary for the Company to comply with its obligations under FATCA and (b) in the case of any such holder that is not a United States Person, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for the Company to comply with its obligations under FATCA and to determine that such holder has complied with such holder's obligations under FATCA or to determine the amount (if any) to deduct and withhold from any such payment made to such holder. Nothing in this Section 14.3 shall require any holder to provide information that is confidential or proprietary to such holder unless the Company is required to obtain such information under FATCA and, in such event, the Company shall treat any such information it receives as confidential.

**Section 14.4. Withholding Taxes.** Except as otherwise required by applicable law or regulation, the Company agrees that it will not withhold from any applicable payment to be made to a holder of a Note that is not a United States Person any U.S. federal income tax so long as such holder shall have delivered to the Company (in such number of copies as shall be requested) on or about the date on which such holder becomes a holder under this Agreement (and from time to time thereafter upon the reasonable request of the Company), executed copies of IRS Form W-8BEN, or IRS Form W-8BEN-E, or IRS Form W-8IMY, or other applicable form, as well as the applicable "U.S. Tax Compliance Certificate" substantially in the form attached as Exhibit 14.4, in both cases correctly completed and executed and kept current.

## **SECTION 15. EXPENSES, ETC.**

**Section 15.1. Transaction Expenses.** Whether or not the transactions contemplated hereby are consummated, the Company will pay all reasonable and documented out-of-pocket costs and expenses (but limited, in the case of attorneys' fees and expenses, to the reasonable and documented out-of-pocket attorneys' fees of one special counsel for, collectively, the Purchasers and each other holder of a Note, taken as a whole, and, if reasonably required by the Required Holders, one local counsel in each applicable jurisdiction for all such holders, taken as a whole) incurred by the Purchasers and each other holder of a Note in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement or any other Financing Document (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement any other Financing

Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement any other Financing Document, or by reason of being a holder of any Note, (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the other Financing Documents and (c) the costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO provided, that such costs and expenses under this clause (c) shall not exceed \$5,000. If required by the NAIC, the Company shall obtain and maintain at its own cost and expense a Legal Entity Identifier (LEI).

The Company will pay, and will save each Purchaser and each other holder of a Note harmless from, (i) all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes), (ii) any and all wire transfer fees that any bank or other financial institution deducts from any payment under such Note to such holder or otherwise charges to a holder of a Note with respect to a payment under such Note and (iii) any judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense (including reasonable attorneys' fees and expenses) or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Notes by the Company, in each case, other than to the extent arising from (x) the bad faith, gross negligence or willful misconduct by such Purchaser or such holder of a Note as determined in a final non-appealable judgment from a court of competent jurisdiction or (y) a claim between any Purchaser or holder of a Note, on the one hand, and any other Purchaser or holder of a Note, on the other hand (other than claims arising out of any act or omission by the Company and/or its Affiliates).

**Section 15.2. Certain Taxes.** The Company agrees to pay all stamp, documentary or similar taxes or fees which may be payable in respect of the execution and delivery or the enforcement of this Agreement or any other Financing Document or the execution and delivery (but not the transfer) or the enforcement of any of the Notes in the United States or any other jurisdiction where the Company or any Subsidiary Guarantor has assets or of any amendment of, or waiver or consent under or with respect to, this Agreement or any other Financing Document, and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Company pursuant to this Section 15, and will save each holder of a Note to the extent permitted by applicable law harmless against any loss or liability resulting from nonpayment or delay in payment of any such tax or fee required to be paid by the Company hereunder.

**Section 15.3. Survival.** The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or any other Financing Document, and the termination of this Agreement.

## **SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by any Purchaser of any Note

or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement and each other Financing Document embody the entire agreement and understanding between each Purchaser and each Obligor and supersede all prior agreements and understandings relating to the subject matter hereof.

## **SECTION 17. AMENDMENT AND WAIVER.**

**Section 17.1. Requirements.** This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), only with the written consent of the Company and the Required Holders, except that:

(a) no amendment or waiver of any of Sections 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing; and

(b) no amendment or waiver may, without the written consent of each Purchaser and the holder of each Note at the time outstanding, (i) subject to Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of (x) interest on the Notes or (y) the Make-Whole Amount, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any amendment or waiver or the principal amount of the Notes that the Purchasers are to purchase pursuant to Section 2 upon the satisfaction of the conditions to Closing that appear in Section 4, or (iii) amend any of Sections 8 (except as set forth in the second sentence of Section 8.2), 11(a), 11(b), 12, 17 or 20.

### **Section 17.2. Solicitation of Holders of Notes.**

(a) *Solicitation.* The Company will provide each Purchaser and each holder of a Note with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Purchaser and such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes or any other Financing Document. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 17 or any other Financing Document to each Purchaser and each holder of a Note promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Purchasers or holders of Notes.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any Purchaser or holder of a Note as consideration for or as an inducement to the entering into by such Purchaser

or holder of any waiver or amendment of any of the terms and provisions hereof or of any other Financing Document or any Note unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each Purchaser and each holder of a Note even if such Purchaser or holder did not consent to such waiver or amendment.

(c) *Consent in Contemplation of Transfer.* Any consent given pursuant to this Section 17 or any other Financing Document by a holder of a Note that has transferred or has agreed to transfer its Note to (i) the Company, (ii) any Subsidiary or any other Affiliate or (iii) any other Person in connection with, or in anticipation of, such other Person acquiring, making a tender offer for or merging with the Company and/or any of its Affiliates, in each case in connection with such consent, shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

**Section 17.3. Binding Effect, Etc.** Any amendment or waiver consented to as provided in this Section 17 or any other Financing Document applies equally to all Purchasers and holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and any Purchaser or holder of a Note and no delay in exercising any rights hereunder or under any Note or any other Financing Document shall operate as a waiver of any rights of any Purchaser or holder of such Note.

**Section 17.4. Notes Held by Company, Etc.** Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or any other Financing Document, or have directed the taking of any action provided herein or in any other Financing Document to be taken upon the direction of the holders of all or a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

## **SECTION 18. NOTICES.**

Except to the extent otherwise provided in Section 7.4, all notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by an internationally recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by an internationally recognized overnight delivery service (charges prepaid). Any such notice must be sent:

(i) if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in the Purchaser Schedule, or at such

other address as such Purchaser or nominee shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or if to the Company, to the Company at its address set forth at the beginning hereof to the attention of Mark Kaltenborn and Arman Boroumand, Scott Thomas, William Miller, Justin Capozzi, Shawn Kaufman, Paul Choi, Chris Burk, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 18 will be deemed given only when actually received. Notwithstanding anything to the contrary contained herein, any notice to be given by the Company (other than an Officer's Certificate) shall be prepared by the Company and may be delivered by an agent or sub-agent of the Company.

#### **SECTION 19. REPRODUCTION OF DOCUMENTS.**

This Agreement and all documents relating thereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

#### **SECTION 20. CONFIDENTIAL INFORMATION.**

For the purposes of this Section 20, "**Confidential Information**" means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, provided that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser's behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, provided that such

Purchaser may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), (ii) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (v) any Person from which it offers to purchase any Security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser's investment portfolio, or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes, this Agreement or any other Financing Document. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying this Section 20.

In the event that as a condition to receiving access to information relating to the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement or any other Financing Document any Purchaser or holder of a Note is required to agree to a confidentiality undertaking (whether through Intralinks, another secure website, a secure virtual workspace or otherwise) which is different from this Section 20, this Section 20 shall not be amended thereby and, as between such Purchaser or such holder and the Company, this Section 20 shall supersede any such other confidentiality undertaking.

## **SECTION 21. SUBSTITUTION OF PURCHASER.**

Each Purchaser shall have the right to substitute any one of its Affiliates or another Purchaser or any one of such other Purchaser's Affiliates (a "**Substitute Purchaser**") as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Substitute Purchaser, shall contain such Substitute Purchaser's agreement to be bound by this Agreement and shall contain a confirmation by such Substitute Purchaser of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 21), shall be deemed to refer to such Substitute Purchaser in lieu of such original Purchaser. In the event that such Substitute Purchaser is so substituted as a Purchaser hereunder and such Substitute Purchaser thereafter transfers to such original Purchaser all of the Notes then held by such Substitute Purchaser, upon receipt by the Company of notice of

such transfer, any reference to such Substitute Purchaser as a “Purchaser” in this Agreement (other than in this Section 21), shall no longer be deemed to refer to such Substitute Purchaser, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

## **SECTION 22. MISCELLANEOUS.**

**Section 22.1. Successors and Assigns.** All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Note) whether so expressed or not, except that, subject to Section 10.2, the Company may not assign or otherwise transfer any of its rights or obligations hereunder, under the Notes or under any other Financing Document without the prior written consent of each holder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

**Section 22.2. Accounting Terms.** All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (i) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (ii) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including Section 9, Section 10 and the definition of “Indebtedness”), any election by the Company to measure any financial liability using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 – *Fair Value Option*, International Accounting Standard 39 – *Financial Instruments: Recognition and Measurement* or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

**Section 22.3. Severability.** Any provision of this Agreement that is 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 hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 22.4. Construction, Etc.** Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Defined terms herein 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

(a) 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, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein) and, for purposes of the Notes, shall also include any such notes issued in substitution therefor pursuant to Section 13, (b) subject to Section 22.1, any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) 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, (d) all references herein to Sections and Schedules shall be construed to refer to Sections of, and Schedules to, this Agreement, and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

**Section 22.5. Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement and the other Financing Documents (other than with respect to the Notes) shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other state laws based on the Uniform Electronic Transactions Act, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means. Notwithstanding the foregoing, if any holder of a Note shall request manually signed counterpart signatures this Agreement or any Financing Document, the Company hereby agrees to provide (or cause the applicable Obligor to provide) such manually signed signature pages as soon as reasonably practicable.

**Section 22.6. Governing Law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**Section 22.7. Jurisdiction and Process; Waiver of Jury Trial.**

(a) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement or the Notes or any other Financing Document. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 22.7(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

(c) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in Section 22.7(a) by mailing a copy thereof by registered, certified priority or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Section 18 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(d) Nothing in this Section 22.7 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(e) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, THE NOTES, ANY OTHER FINANCING DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HERewith OR THEREWITH.

**Section 22.8. Division.** For all purposes hereunder, and under the other Financing Documents, if in connection with any division or plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act law (or any comparable event under a different jurisdiction's laws) (a "**Division**"): (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized by the holders of its equity interests at such time. Any reference herein or therein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a Division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a limited liability company shall constitute a separate Person hereunder and thereunder (and each Division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person) on the first date of its existence.

*[Remainder of page intentionally left blank. Signature pages follow.]*

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

**TEACHERS INSURANCE AND ANNUITY  
ASSOCIATION OF AMERICA, on behalf of  
THE REAL ESTATE ACCOUNT**

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

Name:

Title:

This Agreement is hereby  
accepted and agreed to as  
of the date hereof.

[ADD PURCHASER SIGNATURE BLOCKS]

## Schedule A

### DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**“Affiliate”** means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

**“Agreement”** means this Note Purchase Agreement, including all Schedules attached to this Agreement.

**“Alternative Investments”** means Assets that do not represent direct or indirect investments (through joint ventures or otherwise) in private Projects, including investments in (a) property debt instruments of Persons in which the Company does not have an equity or debt ownership interest, (b) public company equity or debt securities or (c) equity or debt securities issued by a private company that is substantially engaged in an operating business (other than any such Person that is controlled by the Company); provided that Alternative Investments shall not include Assets that are (x) participating mortgages granted by a non-public Person or (y) debt instruments that are convertible to equity at the option of the Company.

**“Anti-Corruption Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

**“Anti-Money Laundering Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

**“Asset”** means, with respect to any Company Party, any individual real property or other investment asset (or related group of assets which is treated by the Company as a single investment) owned directly or indirectly by a Company Party from time to time.

**“Blocked Person”** means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

**“Capital Lease Obligations”** means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Change in Control”** means any material change, direct or indirect, in the management of the Company or another Company Party, provided, notwithstanding the foregoing, (a) any merger, consolidation or reorganization permitted under Section 10.2 shall not constitute such a change in the management of the Company, or (b) any change in the Company’s independent fiduciary shall not constitute a “Change in Control” for purposes of this Agreement and any change in the personnel (including, without limitation, any portfolio managers) or ancillary services provided by TIAA or any Affiliate thereof shall not constitute a “Change in Control” for purposes of this Agreement.

**“Closing”** is defined in Section 3.

**“Code”** means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder from time to time.

**“Company”** is defined in the first paragraph of this Agreement.

**“Company Parties”** means, collectively, the Company, the Subsidiary Guarantors and each other Qualified SPE owning a Qualified Asset (but only so long as such Qualified SPE owns such Qualified Asset and such asset is a Qualified Asset hereunder).

**“Compliance Certificate”** means a certificate delivered pursuant to Section 7.2(a).

**“Confidential Information”** is defined in Section 20.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms **“Controlled”** and **“Controlling”** shall have meanings correlative to the foregoing.

**“Controlled Entity”** means any of the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates.

**“Default”** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** means that rate of interest per annum for the Notes that is the greater of (a) 2.00% above the rate of interest stated in clause (a) of the first paragraph of the Notes or (b) 2.00% over the rate of interest publicly announced by JPMorgan Chase Bank, N.A. in New York, New York as its “base” or “prime” rate.

**“Disclosure Documents”** is defined in Section 5.3.

**“Division”** is defined in Section 22.8.

**“EDGAR”** means the SEC’s Electronic Data Gathering, Analysis and Retrieval System or any successor SEC electronic filing system for such purposes.

**“Environmental Laws”** means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company or any Company Party directly or indirectly, resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement (other than the Financing Documents) pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“ERISA”** means the Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder from time to time in effect.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

**“Event of Default”** is defined in Section 11.

**“FATCA”** means (a) sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

**“Financing Documents”** means, collectively, this Agreement, the Notes, the Subsidiary Guaranty and any other agreement, certificate and/or instrument executed and/or delivered in connection therewith, each as may be amended, restated or otherwise modified from time to time.

**“Fixed Charges Ratio”** means, as at any date, the ratio of (a) Investment Income, Net for the most recent four fiscal quarters ending on or most recently ended prior to such date to (b) Interest Expense (as such term is reported on Company’s financial statements) for such period plus scheduled amortization (excluding balloon payments due at maturity) on Total Outstanding

Indebtedness for the most recent fiscal quarter ending on or most recently ended prior to such date, *multiplied by four (4)*; provided that, with respect to such scheduled amortization amounts, Company shall set forth in the Compliance Certificate, as applicable, delivered to the holders of Notes for the applicable period of determination: the name, and corresponding amount of amortization included in the calculation of Fixed Charges Ratio; provided further that, notwithstanding anything to the contrary contained herein, any calculation of Interest Expense or scheduled amortization with respect to any Subsidiaries of Company that are not Wholly-Owned by Company shall be determined on an ‘at share’ basis.

“**Form 10-K**” is defined in Section 7.1(b).

“**Form 10-Q**” is defined in Section 7.1(a).

“**GAAP**” means (a) generally accepted accounting principles as in effect from time to time in the United States of America and (b) for purposes of Section 9.6, with respect to any Company Party (other than then Company), generally accepted accounting principles (including International Financial Reporting Standards, as applicable) as in effect from time to time in the jurisdiction of organization of such Subsidiary.

“**Governmental Authority**” means

(a) the government of

(i) the United States of America or any state or other political subdivision thereof, or

(ii) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

“**Governmental Official**” means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

“**Guaranty**” means, with respect to any Person (the “**guarantor**”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof,

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

**“Hazardous Materials”** means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized by any applicable law, including asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

**“holder”** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1, *provided, however*, that if such Person is a nominee, then for the purposes of Sections 7, 12, 17.2 and 18 and any related definitions in this Schedule A, **“holder”** shall mean the beneficial owner of such Note whose name and address appears in such register.

**“INHAM Exemption”** is defined in Section 6.2(e).

**“Indebtedness”** with respect to any Person means, at a particular time, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid (excluding trade accounts in the ordinary course of business so long as such trade accounts are timely paid or contested within the ordinary course of business), (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, provided that for purposes of calculating Indebtedness for this clause (g), any customary non-recourse carve-out Guarantees that are not being enforced and for which no demand has been made thereunder shall be valued at \$0, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances and (k) all obligations under or in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

**“Individual Unencumbered Asset Value”** has the meaning given in the definition of Unencumbered Asset Value.

**“Institutional Investor”** means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any Related Fund of any holder of any Note.

**“Investment Income, Net”** means as defined/disclosed in either of the publicly issued TIAA Real Estate Account Filings: 10-Q Report (Quarterly Report Pursuant To Section 13 Or 15(D) Of The Securities Exchange Act Of 1934) and/or 10-K Report (Annual Report Pursuant To Section 13 Or 15(D) Of The Securities Exchange Act Of 1934), as adjusted by the Company in accordance with its prior practice to exclude property-level and corporate-level interest expenses incurred.

**“Lien”** means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or capital lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

**“Make-Whole Amount”** is defined in Section 8.6.

**“Material”** means material in relation to the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, (b) the ability of any Obligor to perform its obligations under any Financing Document to which such Obligor is party, or (c) the validity or enforceability of this Agreement, the Notes or any other Financing Document.

**“Material Credit Facility”** means, as to the Company and its Subsidiaries,

(a) that certain Note Purchase Agreement, dated as of June 10, 2022, by and among the Company and the purchasers party thereto, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(b) that certain Credit Agreement, dated as of September 16, 2022, by and among, among others, TIAA, on behalf of the Company, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof; and

(c) any other agreement(s) creating or evidencing indebtedness for borrowed money (other than Nonrecourse Indebtedness) entered into on or after the date of Closing by the Company or any Subsidiary, or in respect of which the Company or any Subsidiary is an obligor or otherwise provides a guarantee or other credit support (“**Credit Facility**”), in a principal amount outstanding or available for borrowing equal to or greater than \$100,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency); and if no Credit Facility or Credit Facilities equal or exceed such amounts, then the largest Credit Facility shall be deemed to be a Material Credit Facility.

“**Maturity Date**” is defined in the first paragraph of each Note.

“**Multiemployer Plan**” means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“**NAIC**” means the National Association of Insurance Commissioners.

“**Nonrecourse Indebtedness**” means, with respect to a Person, Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, and other similar customary exceptions to nonrecourse liability) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness.

“**Non-U.S. Plan**” means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by the Company or any Subsidiary primarily for the benefit of employees of the Company or one or more Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and (b) is not subject to ERISA or the Code.

“**Notes**” is defined in Section 1.1.

“**NYIL**” is defined in Section 5.18.

“**Obligors**” means, collectively, the Company and each Subsidiary Guarantor.

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

“**OFAC Sanctions Program**” means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

“**Officer’s Certificate**” means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“**Permitted Liens**” means:

(a) Liens imposed by law for taxes that are not yet due or (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the applicable Company Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect;

(b) Liens of carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the applicable Company Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect;

(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 11(j) or Liens on cash and cash equivalents securing obligations with respect to letters of credit that support any such judgments; and

(f) easements, zoning restrictions, rights of way, covenants and restrictions and similar encumbrances on real property imposed by law or Governmental Authority or existing at the time such real property was acquired by an Company Party or arising in the ordinary course of business that do not secure any monetary obligations and do not materially diminish the value of the affected property or materially interfere with the ordinary conduct of business of such Company Party;

(g) other Liens incurred in the ordinary course of business that could not reasonably be expected to have a Material Adverse Effect or which are not individually or collectively reasonably likely to result in a property-level material adverse effect;

*provided* that the term “Permitted Liens” shall not include any Lien securing Indebtedness (other than as permitted in clause (e) and (g) above).

“**Person**” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

**“Plan”** means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

**“Plan Asset Regulation”** means Department of Labor Regulation Section 2510.3-101, 29 C.F.R. § 2510.3-101 as modified by Section 3(42) of ERISA, and any successor statutory or regulatory provisions.

**“Plan of Operation”** means the Teachers Insurance and Annuity Association of America (TIAA) Plan of Operation for Separate Account Business, which was approved by the New York Insurance Department, as amended, restated, supplemented or otherwise modified from time to time.

**“Presentation”** is defined in Section 5.3.

**“Project”** has the meaning assigned to such term in the definition of “Qualified Assets”.

**“property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“Proposed Prepayment Date”** is defined in Section 8.7(b).

**“Protected Persons”** is defined in Section 1.3.

**“PTE”** is defined in Section 6.2(a).

**“Purchaser”** or **“Purchasers”** means each of the purchasers that has executed and delivered this Agreement to the Company and such Purchaser’s successors and assigns (so long as any such assignment complies with Section 14.2), *provided, however*, that any Purchaser of a Note that ceases to be the registered holder or a beneficial owner (through a nominee) of such Note as the result of a transfer thereof pursuant to Section 14.2 shall cease to be included within the meaning of “Purchaser” of such Note for the purposes of this Agreement upon such transfer.

**“Purchaser Schedule”** means the Purchaser Schedule to this Agreement listing the Purchasers of the Notes and including their notice and payment information.

**“Qualified Assets”** shall mean each real estate Asset (each, a **“Project”**) accepted as a Qualified Asset on the date of this Agreement or otherwise pursuant to this Agreement (and which has not been subsequently removed) and satisfies all of the following requirements:

(a) such Project is of a Target Property Type located within one of the 48 contiguous states of the United States, the District of Columbia, Alaska or Hawaii;

(b) such Project is Wholly-Owned by the Company or by a Wholly-Owned Subsidiary of the Company (a “**Qualified SPE**”) which has good fee or permitted leasehold title to the Project;

(c) (i) such Project is subject to no Lien (other than Permitted Liens (other than any Lien permitted pursuant to clause (g) of the definition of “Permitted Liens”)) and (ii) such Project or the applicable Qualified SPE has no secured or unsecured indebtedness (other than current trade payables);

(d) such Project is not subject to any agreement which prohibits or limits the ability of the Company or any Qualified SPE to create or incur any Lien (other than Permitted Liens) upon such Project, including, without limitation, a negative pledge or similar covenant or restriction;

(e) such Project is not subject to any agreement which entitles any entity to the benefit of any Lien (other than Permitted Lien) on such Projects upon the occurrence of any contingency (including, without limitation, pursuant to an “equal and ratable” clause);

(f) such Project has no material recognized environmental condition except for conditions which are not individually or collectively reasonably likely to result in a property-level material adverse effect;

(g) such Project is in material compliance with all laws, regulations and orders of any Governmental Authority applicable to it (including all applicable zoning laws) except for any non-compliance which is not individually or collectively reasonably likely to result in a property-level material adverse effect;

(h) at least 70% of the net lettable area of such Project is leased, provided that such 70% test shall not need to be satisfied so long as the (a) the amount obtained by adding together the following amounts obtained for each Qualified Asset then in the Unencumbered Asset Pool (and including any Project then being proposed for inclusion in the Unencumbered Asset Pool): (i) the Individual Unencumbered Asset Value for a Project multiplied by (ii) the percentage of such Project’s net lettable area which is leased divided by (b) the then Unencumbered Asset Value for the Unencumbered Asset Pool (and including any Project then being proposed for inclusion in the Unencumbered Asset Pool), is at least 80%;

(i) such Project is not an Alternative Investment; and

(j) such Project has been designated as a “Qualified Asset” on Schedule 5.10 as such Schedule as such Schedule is updated from time to time pursuant to Section 7.2(a).

Upon any Qualified Asset ceasing to qualify as a Qualified Asset for any reason, such Qualified Asset shall no longer be included in the calculation of the Unencumbered Asset Value. For the avoidance of confusion, none of the required criteria set forth above shall be deemed modified or waived to the extent of any representation, warranty or covenant contained in this Agreement which may be broader in scope as applied to the Company, its Subsidiaries or their properties generally.

**“Qualified SPE”** has the meaning assigned to such term in the definition of “Qualified Assets”.

**“Qualified Institutional Buyer”** means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

**“QPAM Exemption”** is defined in Section 6.2(d).

**“Related Fund”** means, with respect to any holder of any Note, any fund or entity that (a) invests in Securities or bank loans, and (b) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

**“Required Holders”** means at any time (i) prior to the Closing, the Purchasers and (ii) on or after the Closing, the holders of more than 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

**“Responsible Officer”** means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

**“SEC”** means the Securities and Exchange Commission of the United States of America.

**“Secured Indebtedness”** means any Indebtedness secured by a Lien.

**“Securities”** or **“Security”** shall have the meaning specified in section 2(1) of the Securities Act.

**“Securities Act”** means the Securities Act of 1933 and the rules and regulations promulgated thereunder from time to time in effect.

**“Senior Financial Officer”** means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company, including senior accounting professionals of TIAA with responsibility for financial reporting for the Company.

**“Separate Account”** is defined in Section 1.3.

**“Significant Subsidiary”** means at any time any Subsidiary that would at such time constitute a “significant subsidiary” (as such term is defined in Regulation S-X of the SEC as in effect on the date of the Closing) of the Company.

**“Source”** is defined in Section 6.2.

**“State Sanctions List”** means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

**“Subsidiary”** means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Company.

**“Subsidiary Guarantor”** means each Subsidiary that has executed and delivered a Subsidiary Guaranty.

**“Subsidiary Guaranty”** is defined in Section 9.7(a).

**“Substitute Purchaser”** is defined in Section 21.

**“SVO”** means the Securities Valuation Office of the NAIC.

**“Target Property Type”** means each of the following property types (with each such classification reasonably determined by the Company): industrial, multi-family (including but not limited to senior housing), hotel, self-storage, office and retail.

**“TIAA”** is defined in the first paragraph of this Agreement.

**“Total Asset Value”** means, as at any date, (a) Total Assets minus (b) an amount equal to any value (determined in the same manner as described in the definition of “Total Assets”) relating to any portion of Total Assets owned by a Subsidiary of the Company, which Subsidiary is subject to certain events of default resulting from acceleration of recourse indebtedness, bankruptcy or insolvency events, inability or failure to pay debts when due or judgments; provided that, notwithstanding anything to the contrary contained herein, any such calculation pursuant to the foregoing clause (b) with respect to any Subsidiaries of the Company that are not Wholly-Owned by the Company shall be determined on an ‘at share’ basis; provided, further that, notwithstanding anything to the contrary contained in this Agreement, the value of the following shall be excluded from any calculation of Total Asset Value at any time:

(i) investments in joint ventures to the extent in excess of 25% of Total Asset Value at any time;

(ii) investments in debt and securities investments to the extent in excess of 20% of Total Asset Value at any time;

(iii) investments in assets other than real property interest, cash and accrued investment income to the extent in excess of 5% of Total Asset Value at any time;

- (iv) investments in land to the extent in excess of 5% of Total Asset Value at any time;
- (v) investments in developments to the extent in excess of 5% of Total Asset Value at any time; and
- (vi) the sum of investments in (i), (ii), (iii), (iv) and (v) to the extent in excess of 40% of Total Asset Value at any time.

**“Total Assets”** means, as at any date, the aggregate value of all assets of the Company, including on a consolidated basis, any Subsidiaries of the Company, as determined by the Company in accordance with Company’s ordinary course of business, but not in excess of the “as is” value of any asset determined pursuant to a third party appraisal performed by a third party appraiser retained by Company in Company’s reasonable discretion, provided that all such appraisals must contain an “as is” valuation. Notwithstanding anything to the contrary contained herein, any calculation of Total Assets with respect to any Subsidiaries of Company that are not Wholly-Owned by Company shall be determined on an ‘at share’ basis.

**“Total Leverage Ratio”** means, as at any date, the percentage obtained by dividing Total Outstanding Indebtedness by the value of the Total Assets.

**“Total Outstanding Indebtedness”** means, as at any date, the principal amount of aggregate outstanding Indebtedness of the Company and its Subsidiaries (as reported in the then current financial statements of the Company on a consolidated basis, without regard to the market value adjustment included therein and without duplication).

**“Total Secured Outstanding Indebtedness”** means, as of any date, the portion of Total Outstanding Indebtedness that is Secured Indebtedness.

**“Total Unsecured Indebtedness”** means, as at any date, all of the unsecured Indebtedness of Company (as reported in the then current financial statements of the Company on a consolidated basis, without regard to the market value adjustment included therein and without duplication), and for the purposes hereof such term shall include the aggregate outstanding principal amount of the Notes on such date.

**“United States Person”** has the meaning set forth in Section 7701(a)(30) of the Code.

**“Unencumbered Asset Pool”** means the Qualified Assets identified on Schedule 5.10 attached hereto, as the same may be modified in accordance with Section 7.2(a) hereto, each of which is owned by the Company or the Qualified SPE indicated thereon.

**“Unencumbered Asset Value”** mean the aggregate value of the Unencumbered Asset Pool as determined by the Company prior to the date of this Agreement and, from time to time, in accordance with Company’s ordinary course of business, but not in excess of the “as is” value of any asset determined pursuant to a third party appraisal performed by a third party appraiser retained by Company in Company’s reasonable discretion. The value of any individual Asset

determined in accordance with the foregoing shall be referred to as an “Individual Unencumbered Asset Value”.

**“Unencumbered Leverage Ratio”** means, as at any date, the percentage obtained by dividing Total Unsecured Indebtedness as of such date by Unencumbered Asset Value as of such date.

**“Unsecured Interest Coverage Ratio”** means, as at any date, the ratio of net operating income attributable to all Qualified Assets for the period of four consecutive fiscal quarters ended on such date to Unsecured Interest Expense for such period.

**“Unsecured Interest Expense”** means, for any fiscal period, an amount equal to the sum of the following with respect to Total Unsecured Indebtedness: (a) total interest expense, accrued in accordance with GAAP plus (b) all capitalized interest determined in accordance with GAAP, plus (c) the amortization of deferred financing costs (including in the case of (a) through (c), the Company’s pro rata share thereof for unconsolidated Subsidiaries and joint ventures).

**“USA PATRIOT Act”** means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 and the rules and regulations promulgated thereunder from time to time in effect.

**“U.S. Economic Sanctions Laws”** means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

**“Wholly-Owned”** means, with respect to any Project, equity interest, or other property owned or leased, that 100% of the title to such property is held directly or indirectly by, or 100% of such property is leased directly or indirectly by, the Company or a Subsidiary of the Company.

**“Wholly-Owned Subsidiary”** means, at any time, any Subsidiary all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company’s other Wholly-Owned Subsidiaries at such time.

## CERTIFICATIONS

I, Colbert Narcisse, certify that:

1. I have reviewed this quarterly report on Form 10-Q of the TIAA Real Estate Account;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 4, 2023

/s/ Colbert Narcisse

Colbert Narcisse

Senior Executive Vice President, Chief Product & Business  
Development Officer, Teachers Insurance and Annuity  
Association of America (Principal Executive Officer)  
(Principal Executive Officer)

I, Christopher Baraks, certify that:

1. I have reviewed this quarterly report on Form 10-Q of the TIAA Real Estate Account;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal (the registrant's fourth fiscal quarter in the case of an annual report) quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 4, 2023

/s/ Christopher Baraks

---

Christopher Baraks

Senior Vice President, Chief Accounting Officer and  
Corporate Controller of Teachers Insurance and Annuity  
Association of America

(Principal Financial and Accounting Officer)

**CERTIFICATION**  
**PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of Teachers Insurance and Annuity Association of America, do hereby certify, to such officer's knowledge, that:

The quarterly report on Form 10-Q of the TIAA Real Estate Account (the "Account") for the quarter ended June 30, 2023 (the "Form 10-Q") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Account.

August 4, 2023

/s/ Colbert Narcisse

---

Colbert Narcisse

Senior Executive Vice President, Chief Product & Business  
Development Officer, Teachers Insurance and Annuity  
Association of America (Principal Executive Officer)  
(Principal Executive Officer)

August 4, 2023

/s/ Christopher Baraks

---

Christopher Baraks

Senior Vice President, Chief Accounting Officer and  
Corporate Controller of Teachers Insurance and Annuity  
Association of America  
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 has been provided to the TIAA Real Estate Account and will be retained by the Account and furnished to the Securities and Exchange Commission or its staff upon request.