UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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, 2022

OR

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

Commission File Number: 814-00702

HERCULES CAPITAL, INC.
(Exact Name of Registrant as Specified in its Charter)

Maryland	**74-3113410**
(State or Jurisdiction of Incorporation or Organization)	**(IRS Employer Identification Number)**
400 Hamilton Ave., Suite 310	
Palo Alto, California	**94301**
(Address of Principal Executive Offices)	**(Zip Code)**

(650) 289-3060
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Shares, par value $0.001 per share	HTGC	New York Stock Exchange
6.25% Notes due 2033	HCXY	New York Stock Exchange

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter periods 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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer", "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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 a 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 ☒

On July 22, 2022, there were 127,238,854 shares outstanding of the Registrant's common stock, $0.001 par value.

HERCULES CAPITAL, INC.

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PART I: FINANCIAL INFORMATION

In this Quarterly Report, the "Company," "Hercules," "we," "us" and "our" refer to Hercules Capital, Inc. its wholly owned subsidiaries, and its affiliated securitization trust unless the context otherwise requires.

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

HERCULES CAPITAL, INC.
CONSOLIDATED STATEMENTS OF ASSETS AND LIABILITIES

(in thousands, except per share data)	June 30, 2022 (unaudited)	December 31, 2021
Assets		
Investments, at fair value:		
Non-control/Non-affiliate investments (cost of $2,667,854 and $2,293,398, respectively)	$ 2,632,403	$ 2,351,560
Control investments (cost of $87,228 and $84,039, respectively)	82,875	73,504
Affiliate investments (cost of $8,245 and $13,547, respectively)	3,613	9,458
Total investments, at fair value (cost of $2,763,327 and $2,390,984, respectively; amounts related to a VIE $234,170 and $0, respectively)	2,718,891	2,434,522
Cash and cash equivalents	115,309	133,115
Restricted cash (amounts related to a VIE $3,371 and $0, respectively)	3,371	3,150
Interest receivable	22,112	17,365
Right of use asset	6,349	6,761
Other assets	3,691	5,100
Total assets	$ 2,869,723	$ 2,600,013
Liabilities		
Debt (net of debt issuance costs - Note 5; amounts related to a VIE $147,663 and $0, respectively)	$ 1,498,612	$ 1,236,303
Accounts payable and accrued liabilities	36,711	47,781
Operating lease liability	6,660	7,382
Total liabilities	$ 1,541,983	$ 1,291,466
Net assets consist of:		
Common stock, par value	$ 128	$ 117
Capital in excess of par value	1,242,618	1,091,907
Total distributable earnings	84,994	216,523
Total net assets	$ 1,327,740	$ 1,308,547
Total liabilities and net assets	$ 2,869,723	$ 2,600,013
Shares of common stock outstanding ($0.001 par value and 200,000,000 authorized)	127,285	116,619
Net asset value per share	$ 10.43	$ 11.22

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)

(in thousands, except per share data)	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Investment income:				
Interest income:				
Non-control/Non-affiliate investments	$ 67,511	$ 60,276	$ 127,601	$ 123,258
Control investments	1,144	1,029	2,259	1,828
Affiliate investments	76	1	1,123	2
Total interest income	68,731	61,306	130,983	125,088
Fee income:				
Non-control/Non-affiliate investments	3,367	8,238	6,256	13,207
Control investments	17	15	33	23
Total fee income	3,384	8,253	6,289	13,230
Total investment income	72,115	69,559	137,272	138,318
Operating expenses:				
Interest	12,698	14,490	24,345	29,240
Loan fees	1,492	2,220	3,334	5,020
General and administrative	4,322	4,068	8,140	7,664
Tax expenses	1,821	1,746	2,533	3,184
Employee compensation:				
Compensation and benefits	11,060	8,349	19,389	18,153
Stock-based compensation	3,661	2,926	8,085	5,670
Total employee compensation	14,721	11,275	27,474	23,823
Total gross operating expenses	35,054	33,799	65,826	68,931
Expenses allocated to the Adviser Subsidiary	(3,070)	(1,204)	(4,472)	(2,137)
Total net operating expenses	31,984	32,595	61,354	66,794
Net investment income	40,131	36,964	75,918	71,524
Net realized gain (loss) and net change in unrealized appreciation (depreciation):				
Net realized gain (loss):				
Non-control/Non-affiliate investments	(2,133)	47,861	(4,600)	55,631
Affiliate investments	—	(62,143)	3,772	(62,143)
Loss on debt extinguishment	—	—	(3,686)	—
Total net realized gain (loss)	(2,133)	(14,282)	(4,514)	(6,512)
Net change in unrealized appreciation (depreciation):				
Non-control/Non-affiliate investments	(51,749)	3,075	(90,698)	21,097
Control investments	4,728	(5,255)	6,182	(3,553)
Affiliate investments	(1,295)	62,229	(542)	64,338
Total net change in unrealized appreciation (depreciation)	(48,316)	60,049	(85,058)	81,882
Total net realized gain (loss) and net change in unrealized appreciation (depreciation)	(50,449)	45,767	(89,572)	75,370
Net increase (decrease) in net assets resulting from operations	$ (10,318)	$ 82,731	$ (13,654)	$ 146,894
Net investment income before investment gains and losses per common share:				
Basic	$ 0.32	$ 0.32	$ 0.62	$ 0.62
Change in net assets resulting from operations per common share:				
Basic	$ (0.09)	$ 0.71	$ (0.12)	$ 1.27
Diluted	$ (0.09)	$ 0.65	$ (0.12)	$ 1.21
Weighted average shares outstanding				
Basic	124,255	114,654	121,292	114,480
Diluted	124,255	129,572	121,292	122,188
Distributions paid per common share:				
Basic	$ 0.48	$ 0.39	$ 0.96	$ 0.76

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN NET ASSETS
(unaudited)

(amounts in thousands)	Common Stock		Capital in excess	Distributable Earnings	Net
For the Three Months Ended June 30, 2022	**Shares**	**Par Value**	**of par value**	**(loss)**	**Assets**
Balance as of March 31, 2022	123,194	$ 124	$ 1,178,019	$ 155,305	$ 1,333,448
Net increase (decrease) in net assets resulting from operations	—	—	—	(10,318)	(10,318)
Public offering, net of offering expenses	4,061	4	61,851	—	61,855
Issuance of common stock due to stock option exercises	—	—	—	—	—
Retired shares from net issuance	—	—	—	—	—
Issuance of common stock under restricted stock plan	23	—	—	—	—
Retired shares for restricted stock vesting	(54)	—	(894)	—	(894)
Distributions reinvested in common stock	61	—	921	—	921
Distributions	—	—	—	(59,993)	(59,993)
Stock-based compensation [1]	—	—	2,721	—	2,721
Balance as of June 30, 2022	127,285	$ 128	$ 1,242,618	$ 84,994	$ 1,327,740
For the Six Months Ended June 30, 2022					
Balance as of December 31, 2021	$ 116,619	$ 117	$ 1,091,907	$ 216,523	$ 1,308,547
Net increase (decrease) in net assets resulting from operations	—	—	—	(13,654)	(13,654)
Public offering, net of offering expenses	8,921	9	147,095	—	147,104
Issuance of common stock due to stock option exercises	37	—	454	—	454
Retired shares from net issuance	(2)	—	(32)	—	(32)
Issuance of common stock under restricted stock plan	788	1	(1)	—	—
Retired shares for restricted stock vesting	(180)	—	(4,588)	—	(4,588)
Distributions reinvested in common stock	121	—	1,946	—	1,946
Issuance of common stock from conversion of 2022 Convertible Notes	981	1	(1)	—	—
Distributions	—	—		(117,875)	(117,875)
Stock-based compensation [1]	—	—	5,838	—	5,838
Balance as of June 30, 2022	$ 127,285	$ 128	$ 1,242,618	$ 84,994	$ 1,327,740

(1) Stock-based compensation includes $36 thousand and $76 thousand of restricted stock and option expense related to director compensation for the three and six months ended June 30, 2022, respectively.

(amounts in thousands)	Common Stock		Capital in excess	Distributable Earnings	Net
For the Three Months Ended June 30, 2021	**Shares**	**Par Value**	**of par value**	**(loss)**	**Assets**
Balance as of March 31, 2021	115,768	$ 116	$ 1,160,519	$ 154,759	$ 1,315,394
Net increase (decrease) in net assets resulting from operations	—	—	—	82,731	82,731
Public offering, net of offering expenses	—	—	(3)	—	(3)
Issuance of common stock due to stock option exercises	41	—	888	—	888
Retired shares from net issuance	(12)	—	(486)	—	(486)
Issuance of common stock under restricted stock plan	36	—	—	—	—
Retired shares for restricted stock vesting	(33)	—	(725)	—	(725)
Distributions reinvested in common stock	67	—	1,070	—	1,070
Distributions	—	—	—	(45,158)	(45,158)
Stock-based compensation [1]	—	—	2,647	—	2,647
Balance as of June 30, 2021	115,867	$ 116	$ 1,163,910	$ 192,332	$ 1,356,358
For the Six Months Ended June 30, 2021					
Balance as of December 31, 2020	114,726	$ 115	$ 1,158,198	$ 133,391	$ 1,291,704
Net increase (decrease) in net assets resulting from operations	—	—	—	146,894	146,894
Public offering, net of offering expenses	—	—	(198)	—	(198)
Issuance of common stock due to stock option exercises	263	—	3,633	—	3,633
Retired shares from net issuance	(62)	—	(1,089)	—	(1,089)
Issuance of common stock under restricted stock plan	960	1	(1)	—	—
Retired shares for restricted stock vesting	(154)	—	(3,906)	—	(3,906)
Distributions reinvested in common stock	134	—	2,110	—	2,110
Distributions	—	—	—	(87,953)	(87,953)
Stock-based compensation [1]	—	—	5,163	—	5,163
Balance as of June 30, 2021	115,867	$ 116	$ 1,163,910	$ 192,332	$ 1,356,358

(1) Stock-based compensation includes $25 thousand and $50 thousand of restricted stock and option expense related to director compensation for the three and six months ended June 30, 2021, respectively.

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)

(amounts in thousands)	For the Six Months Ended June 30, 2022	2021
Cash flows used in operating activities:		
Net increase (decrease) in net assets resulting from operations	$ (13,654)	$ 146,894
Adjustments to reconcile net increase in net assets resulting from operations to net cash provided by (used in) operating activities:		
Purchases of investments	(790,706)	(629,146)
Fundings assigned to Adviser Funds	189,806	75,286
Principal and fee repayments received and proceeds from the sale of debt investments	237,178	394,801
Proceeds from the sale of equity investments	7,749	70,596
Net unrealized (appreciation) depreciation	85,058	(81,882)
Net realized (gain) loss on investments	828	6,512
Accretion of paid-in-kind principal	(9,943)	(4,990)
Accretion of loan discounts	(1,982)	(1,789)
Accretion of loan discount on convertible notes	112	336
Accretion of loan exit fees	(12,057)	(11,372)
Change in loan income, net of collections	7,119	14,846
Unearned fees related to unfunded commitments	1,819	(2,503)
Realized loss on debt extinguishment	364	—
Amortization of debt issuance costs	2,570	3,840
Depreciation and amortization	110	187
Stock-based compensation and amortization of restricted stock grants [1]	5,838	5,163
Change in operating assets and liabilities:		
Interest receivable	(4,768)	14
Other assets	482	1,978
Accrued liabilities	(12,630)	(956)
Net cash provided by (used in) operating activities	(306,707)	(12,185)
Cash flows used in investing activities:		
Purchases of capital equipment	(74)	(12)
Net cash used in investing activities	(74)	(12)
Cash flows provided by (used in) financing activities:		
Issuance of common stock	148,721	—
Offering expenses	(1,617)	(198)
Retirement of employee shares, net	(4,166)	(1,362)
Distributions paid	(115,929)	(85,843)
Issuance of debt	1,124,237	590,495
Repayment of debt	(854,374)	(700,658)
Debt issuance costs	(6,076)	(553)
Fees paid for credit facilities and debentures	(1,600)	(3,093)
Net cash provided by (used in) financing activities	289,196	(201,212)
Net increase (decrease) in cash, cash equivalents, and restricted cash	(17,585)	(213,409)
Cash, cash equivalents, and restricted cash at beginning of period	136,265	237,622
Cash, cash equivalents, and restricted cash at end of period	$ 118,680	$ 24,213
Supplemental disclosures of cash flow information and non-cash investing and financing activities:		
Interest paid	$ 22,642	$ 28,711
Income tax, including excise tax, paid	$ 7,281	$ 3,624
Distributions reinvested	$ 1,946	$ 2,110

(1) Stock-based compensation includes $76 thousand and $50 thousand of restricted stock and option expense related to director compensation for the six months ended June 30, 2022 and 2021, respectively.

The following table presents 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 in the Consolidated Statements of Cash Flows:

(Dollars in thousands)	For the Six Months Ended June 30, 2022	2021
Cash and cash equivalents	$ 115,309	$ 18,447
Restricted cash	3,371	5,766
Total cash, cash equivalents, and restricted cash presented in the Consolidated Statements of Cash Flows	$ 118,680	$ 24,213

See “Note 2 – Summary of Significant Accounting Policies” for a description of restricted cash and cash equivalents.

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
June 30, 2022 (unaudited)
(dollars in thousands)

Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Debt Investments							
Communications & Networking							
1-5 Years Maturity							
Aryaka Networks, Inc.	Senior Secured	July 2026	PRIME + 3.25% or Floor rate of 6.75%, PIK Interest 1.05%, 3.55% Exit Fee	$ 5,000	$ 4,921	$ 4,921	(17)(19)
Cytracom Holdings LLC	Senior Secured	February 2025	3-month LIBOR + 9.31% or Floor rate of 10.31%	$ 8,955	8,784	8,732	(11)(17)(18)
Rocket Lab Global Services, LLC	Senior Secured	June 2024	PRIME + 4.90% or Floor rate of 8.15%, PIK Interest 1.25%, 3.40% Exit Fee	$ 84,046	84,334	86,602	(13)(14)(16)
Subtotal: 1-5 Years Maturity					98,039	100,255	
Subtotal: Communications & Networking (7.55%)*					**98,039**	**100,255**	
Consumer & Business Products							
1-5 Years Maturity							
Grove Collaborative, Inc.	Senior Secured	April 2025	PRIME + 5.50% or Floor rate of 8.75%, 8.75% Exit Fee	$ 23,520	23,515	23,897	(19)
Subtotal: 1-5 Years Maturity					23,515	23,897	
Subtotal: Consumer & Business Products (1.80%)*					**23,515**	**23,897**	
Diversified Financial Services							
1-5 Years Maturity							
Gibraltar Business Capital, LLC	Unsecured	September 2026	Interest rate FIXED 14.50%	$ 15,000	14,687	13,434	(7)
	Unsecured	September 2026	FIXED 11.50%	$ 10,000	9,837	9,241	(7)
Total Gibraltar Business Capital, LLC				$ 25,000	24,524	22,675	
Hercules Adviser LLC	Unsecured	June 2025	FIXED 5.00%	$ 12,000	12,000	12,000	(7)
Subtotal: 1-5 Years Maturity					36,524	34,675	
Subtotal: Diversified Financial Services (2.61%)*					**36,524**	**34,675**	
Drug Discovery & Development							
Under 1 Year Maturity							
Chemocentryx, Inc.	Senior Secured	December 2022	PRIME + 3.30% or Floor rate of 8.05%, 6.25% Exit Fee	$ 18,951	20,132	20,132	(10)(13)
Nabriva Therapeutics	Senior Secured	June 2023	PRIME + 4.30% or Floor rate of 9.80%, 9.95% Exit Fee	$ 4,051	4,636	4,636	(5)(10)(13)
Subtotal: Under 1 Year Maturity					24,768	24,768	
1-5 Years Maturity							
Akero Therapeutics, Inc.	Senior Secured	January 2027	PRIME + 3.65% or Floor rate of 7.65%, 5.85% Exit Fee	$ 5,000	4,946	4,946	(10)(17)
Albireo Pharma, Inc.	Senior Secured	July 2024	PRIME + 5.90% or Floor rate of 9.15%, 6.95% Exit Fee	$ 10,000	10,325	10,342	(10)(11)
Aldeyra Therapeutics, Inc.	Senior Secured	October 2023	PRIME + 3.10% or Floor rate of 8.60%, 6.95% Exit Fee	$ 15,000	15,755	15,629	(11)
Applied Genetic Technologies Corporation	Senior Secured	April 2024	PRIME + 6.50% or Floor rate of 9.75%, 6.95% Exit Fee	$ 17,824	18,531	18,358	(13)
Aveo Pharmaceuticals, Inc.	Senior Secured	September 2024	PRIME + 6.40% or Floor rate of 9.65%, 6.95% Exit Fee	$ 40,000	41,235	41,013	(11)(15)
Axsome Therapeutics, Inc.	Senior Secured	October 2026	PRIME + 5.70% or Floor rate of 8.95%, 5.31% Exit Fee	$ 81,725	81,147	80,292	(10)(12)(16)
Bicycle Therapeutics PLC	Senior Secured	October 2024	PRIME + 5.60% or Floor rate of 8.85%, 5.00% Exit Fee	$ 11,500	11,685	11,671	(5)(10)(11)(12)
BiomX, INC	Senior Secured	September 2025	PRIME + 5.70% or Floor rate of 8.95%, 6.55% Exit Fee	$ 9,000	9,076	8,932	(5)(10)(11)
BridgeBio Pharma, Inc.	Senior Secured	November 2026	FIXED 9.00%, 2.00% Exit Fee	$ 36,733	36,352	34,542	(13)(14)
Cellarity, Inc.	Senior Secured	June 2026	PRIME + 5.70% or Floor rate of 8.95%, 3.75% Exit Fee	$ 30,000	29,628	29,469	(13)(15)
Century Therapeutics, Inc.	Senior Secured	April 2024	PRIME + 6.30% or Floor rate of 9.55%, 3.95% Exit Fee	$ 10,000	10,158	10,199	(11)
Chemocentryx, Inc.	Senior Secured	February 2025	PRIME + 3.25% or Floor rate of 8.50%, 7.15% Exit Fee	$ 5,000	5,196	5,039	(10)(13)
Codiak Biosciences, Inc.	Senior Secured	October 2025	PRIME + 5.00% or Floor rate of 8.25%, 5.50% Exit Fee	$ 25,000	25,605	24,880	(11)

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
June 30, 2022 (unaudited)
(dollars in thousands)

Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Corium, Inc.	Senior Secured	September 2026	PRIME + 5.70% or Floor rate of 8.95%, 7.75% Exit Fee	$ 132,675	$ 132,588	$ 134,641	(13)(16)
Eloxx Pharmaceuticals, Inc.	Senior Secured	April 2025	PRIME + 6.25% or Floor rate of 9.50%, 6.55% Exit Fee	$ 12,500	12,595	12,355	(15)
enGene, Inc.	Senior Secured	July 2025	PRIME + 5.00% or Floor rate of 8.25%, 6.35% Exit Fee	$ 11,000	10,913	10,859	(5)(10)(13)
Finch Therapeutics Group, Inc.	Senior Secured	November 2026	PRIME + 4.05% or Floor rate of 7.55%, 5.50% Exit Fee	$ 15,000	14,905	14,905	(17)
G1 Therapeutics, Inc.	Senior Secured	November 2026	PRIME + 5.90% or Floor rate of 9.15%, 9.86% Exit Fee	$ 58,125	58,271	58,517	(11)(12)(15)(17)
Geron Corporation	Senior Secured	October 2024	PRIME + 5.75% or Floor rate of 9.00%, 6.55% Exit Fee	$ 18,500	18,894	18,896	(10)(12)(13)
Hibercell, Inc.	Senior Secured	May 2025	PRIME + 5.40% or Floor rate of 8.65%, 4.95% Exit Fee	$ 17,000	17,175	17,067	(13)(15)
HilleVax, Inc.	Senior Secured	May 2027	PRIME + 1.05% or Floor rate of 4.55%, PIK Interest 2.85%, 7.15% Exit Fee	$ 4,014	4,001	4,001	(14)(15)(17)
Humanigen, Inc.	Senior Secured	March 2025	PRIME + 5.50% or Floor rate of 8.75%, 6.75% Exit Fee	$ 20,000	20,433	19,989	(9)(10)
Kaleido Biosciences, Inc.	Senior Secured	January 2024	PRIME + 6.10% or Floor rate of 9.35%, 7.55% Exit Fee	$ 5,296	6,458	1,838	(8)
Locus Biosciences, Inc.	Senior Secured	July 2025	PRIME + 6.10% or Floor rate of 9.35%, 4.95% Exit Fee	$ 8,000	8,047	7,979	(15)
Madrigal Pharmaceutical, Inc.	Senior Secured	May 2026	PRIME + 3.95% or Floor rate of 7.45%, 5.35% Exit Fee	$ 34,000	33,668	33,668	(10)
Phathom Pharmaceuticals, Inc.	Senior Secured	October 2026	PRIME + 2.25% or Floor rate of 5.50%, PIK Interest 3.35%, 7.50% Exit Fee	$ 93,217	92,866	91,496	(10)(12)(14)(15)(16)(17)(22)
Redshift Bioanalytics, Inc.	Senior Secured	April 2025	PRIME + 4.25% or Floor rate of 7.50%, 3.80% Exit Fee	$ 1,500	1,480	1,480	(15)(17)
Scynexis, Inc.	Senior Secured	March 2025	PRIME + 5.80% or Floor rate of 9.05%, 3.95% Exit Fee	$ 18,667	18,512	18,353	(12)(13)
Seres Therapeutics, Inc.	Senior Secured	October 2024	PRIME + 6.40% or Floor rate of 9.65%, 4.98% Exit Fee	$ 37,500	38,383	38,476	(12)(13)
Syndax Pharmaceutics Inc.	Senior Secured	April 2024	PRIME + 6.00% or Floor rate of 9.25%, 4.99% Exit Fee	$ 20,000	20,745	20,782	(12)(17)
Tarsus Pharmaceuticals, Inc.	Senior Secured	February 2027	PRIME + 5.20% or Floor rate of 8.45%, 4.75% Exit Fee	$ 8,250	8,237	8,237	(10)(13)(17)
TG Therapeutics, Inc.	Senior Secured	January 2026	PRIME + 2.15% or Floor rate of 5.40%, PIK Interest 3.45%, 5.95% Exit Fee	$ 47,150	46,650	46,326	(10)(12)(14)
uniQure B.V.	Senior Secured	December 2025	PRIME + 4.70% or Floor rate of 7.95%, 7.28% Exit Fee	$ 70,000	71,697	72,721	(5)(10)(11)(12)(16)
Unity Biotechnology, Inc.	Senior Secured	August 2024	PRIME + 6.10% or Floor rate of 9.35%, 6.25% Exit Fee	$ 20,000	20,897	20,889	(13)
Valo Health, LLC	Senior Secured	May 2024	PRIME + 6.45% or Floor rate of 9.70%, 3.85% Exit Fee	$ 11,021	11,187	11,122	(11)(13)
Viridian Therapeutics, Inc.	Senior Secured	October 2026	PRIME + 4.20% or Floor rate of 7.45%, 4.76% Exit Fee	$ 2,000	1,997	1,997	(10)(13)(17)
X4 Pharmaceuticals, Inc.	Senior Secured	July 2024	PRIME + 3.75% or Floor rate of 8.75%, 8.80% Exit Fee	$ 32,500	33,240	32,991	(11)(12)(13)
Subtotal: 1-5 Years Maturity					1,003,478	994,897	
Subtotal: Drug Discovery & Development (76.80%)*					**1,028,246**	**1,019,665**	
Healthcare Services, Other							
1-5 Years Maturity							
Better Therapeutics, Inc.	Senior Secured	August 2025	PRIME + 5.70% or Floor rate of 8.95%, 5.95% Exit Fee	$ 12,000	12,024	11,938	(15)
Blue Sprig Pediatrics, Inc.	Senior Secured	November 2026	1-month LIBOR + 5.00% or Floor rate of 6.00%, PIK Interest 4.45%	$ 25,590	25,249	24,805	(13)(14)(17)
Carbon Health Technologies, Inc.	Senior Secured	March 2025	PRIME + 5.60% or Floor rate of 8.85%, 4.61% Exit Fee	$ 46,125	46,219	45,378	(12)(17)(19)
Equality Health, LLC	Senior Secured	February 2026	PRIME + 6.25% or Floor rate of 9.50%, PIK Interest 1.55%	$ 44,473	44,076	43,978	(12)(14)(17)
Subtotal: 1-5 Years Maturity					127,568	126,099	
Subtotal: Healthcare Services, Other (9.50%)*					**127,568**	**126,099**	

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
June 30, 2022 (unaudited)
(dollars in thousands)

Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Information Services							
1-5 Years Maturity							
Capella Space Corp.	Senior Secured	November 2024	PRIME + 5.00% or Floor rate of 8.25%, PIK Interest 1.10%, 7.00% Exit Fee	$ 20,137	$ 20,079	$ 19,870	(14)(15)(19)
Signal Media Limited	Senior Secured	June 2025	PRIME + 5.50% or Floor rate of 9.00%, 3.45% Exit Fee	$ 750	736	736	(5)(10)(17)
Yipit, LLC	Senior Secured	September 2026	1-month LIBOR + 9.08% or Floor rate of 10.08%	$ 31,875	31,318	30,575	(17)(18)
Subtotal: 1-5 Years Maturity					52,133	51,181	
Subtotal: Information Services (3.85%)*					**52,133**	**51,181**	
Internet Consumer & Business Services							
Under 1 Year Maturity							
SeatGeek, Inc.	Senior Secured	June 2023	PRIME + 5.00% or Floor rate of 10.50%, PIK Interest 0.50%	$ 60,761	60,343	60,343	(12)(13)(14)(16)
Subtotal: Under 1 Year Maturity					60,343	60,343	
1-5 Years Maturity							
AppDirect, Inc.	Senior Secured	April 2026	PRIME + 5.50% or Floor rate of 8.75%, 9.70% Exit Fee	$ 30,790	31,589	31,560	(12)(17)
Carwow LTD	Senior Secured	December 2024	PRIME + 4.70% or Floor rate of 7.95%, PIK Interest 1.45%, 4.95% Exit Fee	£ 18,728	25,671	22,672	(5)(10)(14)
Convoy, Inc.	Senior Secured	March 2026	PRIME + 3.20% or Floor rate of 6.45%, PIK Interest 1.95%, 4.55% Exit Fee	$ 73,258	71,826	71,826	(14)(16)(19)
Jobandtalent USA, Inc.	Senior Secured	February 2025	1-month SOFR + 8.75% or Floor rate of 9.75%, 3.00% Exit Fee	$ 14,000	13,746	13,746	(5)(10)
Nextroll, Inc.	Senior Secured	July 2023	PRIME + 3.75% or Floor rate of 7.75%, PIK Interest 2.95%, 1.95% Exit Fee	$ 21,933	21,933	21,933	(12)(19)
Rhino Labs, Inc.	Senior Secured	March 2024	PRIME + 5.50% or Floor rate of 8.75%, PIK Interest 2.25%	$ 16,313	16,034	16,131	(14)(15)
RVShare, LLC	Senior Secured	December 2026	1-month LIBOR + 5.50% or Floor rate of 6.50%, PIK Interest 4.00%	$ 18,302	17,973	17,771	(13)(14)(15)(17)
SeatGeek, Inc.	Senior Secured	May 2026	PRIME + 7.00% or Floor rate of 9.75%, PIK Interest 0.50%	$ 25,009	24,827	25,183	(12)(13)(14)(16)
Skyword, Inc.	Senior Secured	September 2024	PRIME + 3.88% or Floor rate of 9.38%, PIK Interest 1.90%, 4.00% Exit Fee	$ 12,546	12,836	12,693	(14)
Tectura Corporation	Senior Secured	July 2024	PIK Interest 5.00%	$ 10,680	240	—	(7)(8)(14)
	Senior Secured	July 2024	FIXED 8.25%	$ 8,250	8,250	8,208	(7)
	Senior Secured	July 2024	PIK Interest 5.00%	$ 13,023	13,023	—	(7)(8)(14)
Total Tectura Corporation				$ 31,953	21,513	8,208	
Thumbtack, Inc.	Senior Secured	April 2026	PRIME + 4.95% or Floor rate of 8.20%, PIK Interest 1.50%, 3.95% Exit Fee	$ 10,027	9,921	9,921	(12)(14)(17)
Veem, Inc.	Senior Secured	March 2025	PRIME + 4.00% or Floor rate of 7.25%, PIK Interest 1.25%, 4.50% Exit Fee	$ 5,011	4,917	4,917	(13)(14)
	Senior Secured	March 2025	PRIME + 4.50% or Floor rate of 7.95%, PIK Interest 1.50%, 4.50% Exit Fee	$ 5,000	4,883	4,883	
Total Veem, Inc.				$ 10,011	9,800	9,800	
Worldremit Group Limited	Senior Secured	February 2025	3-month LIBOR + 9.25% or Floor rate of 10.25%, 3.00% Exit Fee	$ 94,500	93,829	92,081	(5)(10)(12)(16)(19)
Subtotal: 1-5 Years Maturity					371,498	353,525	
Greater than 5 Years Maturity							
Houzz, Inc.	Convertible Debt	May 2028	PIK Interest 5.50%	$ 21,252	21,252	19,552	(9)(14)
Subtotal: Greater than 5 Years Maturity					21,252	19,552	
Subtotal: Internet Consumer & Business Services (32.64%)*					**453,093**	**433,420**	
Manufacturing Technology							
Under 1 Year Maturity							
Bright Machines, Inc.	Senior Secured	November 2022	PRIME + 5.70% or Floor rate of 8.95%, 6.95% Exit Fee	$ 15,000	15,509	15,509	(11)(19)
Subtotal: Under 1 Year Maturity					15,509	15,509	
1-5 Years Maturity							
MacroFab, Inc.	Senior Secured	March 2026	PRIME + 4.35% or Floor rate of 7.60%, PIK Interest 1.25%, 4.50% Exit Fee	$ 17,029	16,470	16,487	(12)(14)
Ouster, Inc.	Senior Secured	May 2026	PRIME + 6.15% or Floor rate of 9.40%, 7.45% Exit Fee	$ 7,000	6,948	6,948	(10)(13)(17)
Subtotal: 1-5 Years Maturity					23,418	23,435	
Subtotal: Manufacturing Technology (2.93%)*					**38,927**	**38,944**	

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Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Medical Devices & Equipment							
1-5 Years Maturity							
Lucira Health, Inc.	Senior Secured	February 2026	PRIME + 5.50% or Floor rate of 8.75%, 5.25% Exit Fee	$ 15,000	$ 14,865	$ 14,865	(13)
Subtotal: 1-5 Years Maturity					14,865	14,865	
Subtotal: Medical Devices & Equipment (1.12%)*					**14,865**	**14,865**	
Semiconductors							
1-5 Years Maturity							
Fungible, Inc.	Senior Secured	December 2024	PRIME + 5.00% or Floor rate of 8.25%, 4.95% Exit Fee	$ 20,000	19,348	19,363	(15)(19)
Subtotal: 1-5 Years Maturity					19,348	19,363	
Subtotal: Semiconductors (1.46%)*					**19,348**	**19,363**	
Software							
Under 1 Year Maturity							
Delphix Corp.	Senior Secured	February 2023	PRIME + 5.50% or Floor rate of 10.25%, 7.00% Exit Fee	$ 60,000	62,749	64,200	(12)(16)(19)
Khoros (p.k.a Lithium Technologies)	Senior Secured	October 2022	6-month LIBOR + 8.00% or Floor rate of 9.00%	$ 56,208	56,076	56,076	(17)
Pymetrics, Inc.	Senior Secured	October 2022	Interest Rate PRIME + 5.50% or Floor rate of 8.75%, PIK Interest 1.75%, 4.00% Exit Fee	$ 9,191	9,518	9,518	(14)
Subtotal: Under 1 Year Maturity					128,343	129,794	
1-5 Years Maturity							
3GTMS, LLC	Senior Secured	February 2025	3-month LIBOR + 9.28% or Floor rate of 10.28%	$ 10,833	10,671	10,567	(17)(18)
Agilence, Inc.	Senior Secured	October 2026	1-month LIBOR + 9.00% or Floor rate of 10.00%	$ 9,353	9,112	8,914	(12)(17)
Annex Cloud	Senior Secured	February 2027	BSBY + 9.00% or Floor rate of 10.00%	$ 8,500	8,272	8,272	(13)(17)
Brain Corporation	Senior Secured	April 2025	PRIME + 3.70% or Floor rate of 6.95%, PIK Interest 1.00%, 3.95% Exit Fee	$ 15,078	15,052	14,981	(13)(14)(15)(17)
Campaign Monitor Limited	Senior Secured	November 2025	3-month LIBOR + 8.90% or Floor rate of 9.90%	$ 33,000	32,518	33,000	(13)(19)
Catchpoint Systems, Inc.	Senior Secured	June 2026	1-month SOFR + 8.75% or Floor rate of 9.75%	$ 10,200	10,025	10,025	(17)(18)
Ceros, Inc.	Senior Secured	September 2026	6-month LIBOR + 8.89% or Floor rate of 9.89%	$ 17,978	17,518	17,146	(17)(18)
CloudBolt Software, Inc.	Senior Secured	October 2024	PRIME + 6.70% or Floor rate of 9.95%, 3.45% Exit Fee	$ 10,000	9,961	9,938	(11)(12)(19)
Copper CRM, Inc	Senior Secured	March 2025	PRIME + 4.50% or Floor rate of 8.25%, PIK Interest 1.95%, 4.50% Exit Fee	$ 10,044	9,967	9,846	(13)(14)
Cybermaxx Intermediate Holdings, Inc.	Senior Secured	August 2026	6-month LIBOR + 9.28% or Floor rate of 10.28%	$ 8,000	7,819	7,951	(13)(17)
Dashlane, Inc.	Senior Secured	July 2025	PRIME + 3.05% or Floor rate of 7.55%, PIK Interest 1.10%, 4.95% Exit Fee	$ 31,761	32,041	31,972	(11)(13)(14)(17)(19)
Demandbase, Inc.	Senior Secured	August 2025	PRIME + 2.25% or Floor rate of 5.50%, PIK Interest 3.00%, 3.51% Exit Fee	$ 28,125	27,707	27,595	(13)(17)(19)
Eigen Technologies Ltd.	Senior Secured	April 2025	PRIME + 5.10% or Floor rate of 8.35%, 2.95% Exit Fee	$ 1,800	1,789	1,789	(5)(10)(13)(17)
Enmark Systems, Inc.	Senior Secured	September 2026	6-month LIBOR + 6.83% or Floor rate of 7.83%, PIK Interest 2.19%	$ 8,088	7,902	7,836	(11)(14)(17)(18)
Esentire, Inc.	Senior Secured	May 2024	3-month LIBOR + 9.96% or Floor rate of 10.96%	$ 8,500	8,400	8,386	(5)(10)(11)(18)
Esme Learning Solutions, Inc.	Senior Secured	February 2025	PRIME + 5.50% or Floor rate of 8.75%, PIK Interest 1.50%, 3.00% Exit Fee	$ 5,026	4,832	4,768	(14)
Gryphon Networks Corp.	Senior Secured	January 2026	3-month LIBOR + 9.69% or Floor rate of 10.69%	$ 5,232	5,118	5,030	(11)(17)
Ikon Science Limited	Senior Secured	October 2024	3-month LIBOR + 9.00% or Floor rate of 10.00%	$ 6,738	6,577	6,594	(5)(10)(17)(18)

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(dollars in thousands)

Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Imperva, Inc.	Senior Secured	January 2027	3-month LIBOR + 7.75% or Floor rate of 8.75%	$ 20,000	$ 19,863	$ 19,482	(19)
Kazoo, Inc. (p.k.a. YouEarnedIt, Inc.)	Senior Secured	July 2023	3-month SOFR + 10.15% or Floor rate of 11.15%	$ 10,888	10,719	10,698	(18)
Logicworks	Senior Secured	January 2024	PRIME + 7.50% or Floor rate of 10.75%	$ 14,500	14,348	14,330	(12)
Mixpanel, Inc.	Senior Secured	August 2024	PRIME + 4.70% or Floor rate of 7.95%, PIK Interest 1.80%, 3.00% Exit Fee	$ 20,618	20,598	21,394	(12)(14)(19)
Mobile Solutions Services	Senior Secured	December 2025	6-month LIBOR + 9.87% or Floor rate of 10.87%	$ 5,500	5,367	5,342	(17)(18)
	Senior Secured	December 2025	6-month LIBOR + 9.06% or Floor rate of 10.06%	$ 12,168	11,892	11,803	(17)(18)
Total Mobile Solutions Services				$ 17,668	17,259	17,145	
Nuvolo Technologies Corporation	Senior Secured	July 2025	PRIME + 5.25% or Floor rate of 8.25%, 2.04% Exit Fee	$ 17,500	17,489	17,504	(12)(13)(17)(19)
Pollen, Inc.	Senior Secured	November 2023	PRIME + 4.75% or Floor rate of 8.00%, PIK Interest 0.50%, 4.50% Exit Fee	$ 7,476	7,613	7,489	(14)
	Senior Secured	November 2023	PRIME + 5.25% or Floor rate of 8.50%, PIK Interest 1.35%, 4.50% Exit Fee	$ 13,130	13,247	13,380	(14)(15)
Total Pollen, Inc.				$ 20,606	20,860	20,869	
Riviera Partners LLC	Senior Secured	April 2027	3-month SOFR + 7.53% or Floor rate of 8.53%	$ 26,250	25,635	25,635	(17)(18)
ShadowDragon, LLC	Senior Secured	December 2026	3-month LIBOR + 9.00% or Floor rate of 10.00%	$ 6,000	5,842	5,780	(17)(18)
Tact.ai Technologies, Inc.	Senior Secured	February 2024	PRIME + 4.00% or Floor rate of 8.75%, PIK Interest 2.00%, 5.50% Exit Fee	$ 5,238	5,414	5,314	(14)
ThreatConnect, Inc.	Senior Secured	May 2026	3-month LIBOR + 9.00% or Floor rate of 10.00%	$ 11,088	10,803	10,755	(12)(17)(18)
Udacity, Inc.	Senior Secured	September 2024	PRIME + 4.50% or Floor rate of 7.75%, PIK Interest 2.00%, 3.00% Exit Fee	$ 51,412	51,440	52,103	(12)(14)
VideoAmp, Inc.	Senior Secured	February 2025	PRIME + 3.70% or Floor rate of 6.95%, PIK Interest 1.25%, 5.25% Exit Fee	$ 62,787	61,482	61,482	(13)(14)(15)(19)
Zimperium, Inc.	Senior Secured	May 2027	3-month SOFR + 8.95% or Floor rate of 9.95%	$ 16,313	15,960	15,960	(17)(18)
Subtotal: 1-5 Years Maturity					522,993	523,061	
Greater than 5 Years Maturity							
Alchemer LLC	Senior Secured	May 2028	3-month SOFR + 7.89% or Floor rate of 8.89%	$ 15,125	14,767	14,767	(17)(18)
Dispatch Technologies, Inc.	Senior Secured	April 2028	3-month SOFR + 8.01% or Floor rate of 8.76%	$ 7,500	7,281	7,281	(17)(18)
Subtotal: Greater than 5 Years Maturity					22,048	22,048	
Subtotal: Software (50.83%)*					**673,384**	**674,903**	
Sustainable and Renewable Technology							
Under 1 Year Maturity							
Impossible Foods, Inc.	Senior Secured	July 2022	PRIME + 3.95% or Floor rate of 8.95%, 9.00% Exit Fee	$ 2,265	6,764	6,764	(12)
Subtotal: Under 1 Year Maturity					6,764	6,764	
1-5 Years Maturity							
Ampion, PBC.	Senior Secured	May 2025	PRIME + 4.70% or Floor rate of 7.95%, PIK Interest 1.45%, 3.95% Exit Fee	$ 4,008	3,919	3,895	(13)(14)
Pineapple Energy LLC	Senior Secured	December 2024	PIK Interest 10.00%	$ 3,078	3,078	2,940	(6)(14)
Subtotal: 1-5 Years Maturity					6,997	6,835	
Subtotal: Sustainable and Renewable Technology (1.02%)*					**13,761**	**13,599**	
Total: Debt Investments (192.12%)*					**$ 2,579,403**	**$ 2,550,866**	

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HERCULES CAPITAL, INC.
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June 30, 2022 (unaudited)
(dollars in thousands)

Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Equity Investments							
Communications & Networking							
Peerless Network Holdings, Inc.	Equity	10/21/2020	Common Stock	3,328	$ —	$ 18	
	Equity	4/11/2008	Preferred Series A	1,135,000	1,230	6,233	
Total Peerless Network Holdings, Inc.				1,138,328	1,230	6,251	
Subtotal: Communications & Networking (0.47%)*					**1,230**	**6,251**	
Consumer & Business Products							
Grove Collaborative, Inc.	Equity	4/30/2021	Common Stock	61,300	433	221	(4)(20)
TechStyle, Inc.	Equity	4/30/2010	Common Stock	42,989	128	126	
Subtotal: Consumer & Business Products (0.03%)*					**561**	**347**	
Diversified Financial Services							
Gibraltar Business Capital, LLC	Equity	3/1/2018	Common Stock	830,000	1,884	974	(7)
	Equity	3/1/2018	Preferred Series A	10,602,752	26,122	15,415	(7)
Total Gibraltar Business Capital, LLC				11,432,752	28,006	16,389	
Hercules Adviser LLC	Equity	3/26/2021	Member Units	1	35	23,181	(7)
Newfront Insurance Holdings, Inc.	Equity	9/30/2021	Preferred Series D-2	210,282	403	467	
Subtotal: Diversified Financial Services (3.02%)*					**28,444**	**40,037**	
Drug Delivery							
AcelRx Pharmaceuticals, Inc.	Equity	12/10/2018	Common Stock	176,730	1,329	43	(4)
Aytu BioScience, Inc.	Equity	3/28/2014	Common Stock	13,600	1,500	10	(4)
BioQ Pharma Incorporated	Equity	12/8/2015	Preferred Series D	165,000	500	36	
PDS Biotechnology Corporation	Equity	4/6/2015	Common Stock	2,498	309	9	(4)
Subtotal: Drug Delivery (0.01%)*					**3,638**	**98**	
Drug Discovery & Development							
Albireo Pharma, Inc.	Equity	9/14/2020	Common Stock	25,000	1,000	497	(4)(10)
Applied Molecular Transport	Equity	4/6/2021	Common Stock	1,000	42	3	(4)(10)
Avalo Therapeutics, Inc.	Equity	8/19/2014	Common Stock	119,087	1,000	60	(4)
Aveo Pharmaceuticals, Inc.	Equity	7/31/2011	Common Stock	190,179	1,715	1,248	(4)
Axsome Therapeutics, Inc.	Equity	5/9/2022	Common Stock	127,021	4,165	3,992	(4)(10)(16)(20)
Bicycle Therapeutics PLC	Equity	10/5/2020	Common Stock	98,100	1,871	1,646	(4)(5)(10)
BridgeBio Pharma, Inc.	Equity	6/21/2018	Common Stock	231,329	2,255	2,100	(4)
Chemocentryx, Inc.	Equity	6/15/2020	Common Stock	17,241	1,000	427	(4)(10)
Concert Pharmaceuticals, Inc.	Equity	2/13/2019	Common Stock	70,796	1,367	298	(4)(10)
Dare Biosciences, Inc.	Equity	1/8/2015	Common Stock	13,550	1,000	17	(4)
Dynavax Technologies	Equity	7/22/2015	Common Stock	20,000	550	252	(4)(10)
Hibercell, Inc.	Equity	5/7/2021	Preferred Series B	3,466,840	4,250	3,159	(15)
HilleVax, Inc.	Equity	5/3/2022	Common Stock	235,295	4,000	2,572	(4)
Humanigen, Inc.	Equity	3/31/2021	Common Stock	43,243	800	76	(4)(10)
Kaleido Biosciences, Inc.	Equity	2/10/2021	Common Stock	86,585	1,000	—	(4)
NorthSea Therapeutics	Equity	12/15/2021	Preferred Series C	983	2,000	1,539	(5)(10)
Paratek Pharmaceuticals, Inc.	Equity	2/26/2007	Common Stock	76,362	2,744	147	(4)
Rocket Pharmaceuticals, Ltd.	Equity	8/22/2007	Common Stock	944	1,500	13	(4)
Savara, Inc.	Equity	8/11/2015	Common Stock	11,119	203	17	(4)
Sio Gene Therapies, Inc.	Equity	2/2/2017	Common Stock	16,228	1,269	6	(4)
Tarsus Pharmaceuticals, Inc.	Equity	5/5/2022	Common Stock	155,555	2,100	2,271	(4)(10)
Tricida, Inc.	Equity	2/28/2018	Common Stock	68,816	863	666	(4)
uniQure B.V.	Equity	1/31/2019	Common Stock	17,175	332	320	(4)(5)(10)(16)
Valo Health, LLC	Equity	12/11/2020	Preferred Series B	510,308	3,000	4,172	
X4 Pharmaceuticals, Inc.	Equity	11/26/2019	Common Stock	198,277	1,641	191	(4)
Subtotal: Drug Discovery & Development (1.93%)*					**41,667**	**25,689**	
Electronics & Computer Hardware							
Skydio, Inc.	Equity	3/8/2022	Preferred Series E	248,900	1,500	1,207	
Subtotal: Electronics & Computer Hardware (0.09%)*					**1,500**	**1,207**	
Healthcare Services, Other							
23andMe, Inc.	Equity	3/11/2019	Common Stock	825,732	5,094	2,048	(4)
Carbon Health Technologies, Inc.	Equity	3/30/2021	Preferred Series C	217,880	1,687	1,166	
Subtotal: Healthcare Services, Other (0.24%)*					**6,781**	**3,214**	

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Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Information Services							
Planet Labs, Inc.	Equity	6/21/2019	Common Stock	547,880	$ 615	$ 2,373	(4)
Yipit, LLC	Equity	12/30/2021	Preferred Series E	41,021	3,825	2,235	
Zeta Global Corp.	Equity	11/20/2007	Common Stock	295,861	—	1,337	(4)
Subtotal: Information Services (0.45%)*					**4,440**	**5,945**	
Internet Consumer & Business Services							
Black Crow AI, Inc. affiliates	Equity	3/24/2021	Preferred Note	3	3,000	3,000	(21)
Carwow LTD	Equity	12/15/2021	Preferred Series D-4	199,742	1,151	395	(5)(10)
Contentful Global, Inc.	Equity	12/22/2020	Preferred Series C	41,000	138	282	(5)(10)
	Equity	11/20/2018	Preferred Series D	108,500	500	800	(5)(10)
Total Contentful Global, Inc.				149,500	638	1,082	
DoorDash, Inc.	Equity	12/20/2018	Common Stock	81,996	945	5,262	(4)
Lyft, Inc.	Equity	12/26/2018	Common Stock	100,738	5,263	1,338	(4)
Nerdy Inc.	Equity	9/17/2021	Common Stock	100,000	1,000	198	(4)(20)
Nextdoor.com, Inc.	Equity	8/1/2018	Common Stock	1,019,255	4,854	3,374	(4)
OfferUp, Inc.	Equity	10/25/2016	Preferred Series A	286,080	1,663	457	
	Equity	10/25/2016	Preferred Series A-1	108,710	632	174	
Total OfferUp, Inc.				394,790	2,295	631	
Oportun	Equity	6/28/2013	Common Stock	48,365	577	400	(4)
Reischling Press, Inc.	Equity	7/31/2020	Common Stock	1,163	15	—	
Rhino Labs, Inc.	Equity	1/24/2022	Preferred Series B-2	7,063	1,000	954	
Savage X Holding, LLC	Equity	4/30/2010	Class A Units	42,137	13	213	
Tectura Corporation	Equity	5/23/2018	Common Stock	414,994,863	900	—	(7)
	Equity	6/6/2016	Preferred Series BB	1,000,000	—	—	(7)
Total Tectura Corporation				415,994,863	900	—	
TFG Holding, Inc.	Equity	4/30/2010	Common Stock	42,989	89	122	
Uber Technologies, Inc.	Equity	12/1/2020	Common Stock	32,991	318	675	(4)
Subtotal: Internet Consumer & Business Services (1.33%)*					**22,058**	**17,644**	
Medical Devices & Equipment							
Coronado Aesthetics, LLC	Equity	10/15/2021	Common Units	180,000	—	10	(7)
	Equity	10/15/2021	Preferred Series A-2	5,000,000	250	412	(7)
Total Coronado Aesthetics, LLC				5,180,000	250	422	
Flowonix Medical Incorporated	Equity	11/3/2014	Preferred Series AA	221,893	1,500	—	
Gelesis, Inc.	Equity	11/30/2009	Common Stock	1,716,107	1,003	2,616	(4)(20)
ViewRay, Inc.	Equity	12/16/2013	Common Stock	36,457	332	97	(4)
Subtotal: Medical Devices & Equipment (0.24%)*					**3,085**	**3,135**	
Semiconductors							
Achronix Semiconductor Corporation	Equity	7/1/2011	Preferred Series C	277,995	160	416	
Subtotal: Semiconductors (0.03%)*					**160**	**416**	
Software							
3GTMS, LLC	Equity	8/9/2021	Common Stock	1,000,000	1,000	725	
CapLinked, Inc.	Equity	10/26/2012	Preferred Series A-3	53,614	51	13	
Docker, Inc.	Equity	11/29/2018	Common Stock	20,000	4,284	—	
Druva Holdings, Inc.	Equity	10/22/2015	Preferred Series 2	458,841	1,000	1,432	
	Equity	8/24/2017	Preferred Series 3	93,620	300	333	
Total Druva Holdings, Inc.				552,461	1,300	1,765	
HighRoads, Inc.	Equity	1/18/2013	Common Stock	190	307	—	
Lightbend, Inc.	Equity	12/4/2020	Common Stock	38,461	265	10	
Palantir Technologies	Equity	9/23/2020	Common Stock	1,418,337	8,670	12,864	(4)
SingleStore, Inc.	Equity	11/25/2020	Preferred Series E	580,983	2,000	1,322	
	Equity	8/12/2021	Preferred Series F	52,956	280	149	
Total SingleStore, Inc.				633,939	2,280	1,471	
Sprinklr, Inc.	Equity	3/22/2017	Common Stock	700,000	3,748	7,077	(4)
Verana Health, Inc.	Equity	7/8/2021	Preferred Series E	952,562	2,000	1,365	
Subtotal: Software (1.90%)*					**23,905**	**25,290**	

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
June 30, 2022 (unaudited)
(dollars in thousands)

Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Surgical Devices							
Gynesonics, Inc.	Equity	1/18/2007	Preferred Series B	219,298	$ 250	$ —	
	Equity	6/16/2010	Preferred Series C	656,538	282	—	
	Equity	2/8/2013	Preferred Series D	1,991,157	712	—	
	Equity	7/14/2015	Preferred Series E	2,786,367	429	—	
	Equity	12/18/2018	Preferred Series F	1,523,693	118	—	
	Equity	12/18/2018	Preferred Series F-1	2,418,125	150	—	
Total Gynesonics, Inc.				9,595,178	1,941	—	
Subtotal: Surgical Devices (0.00%)*					**1,941**	—	
Sustainable and Renewable Technology							
Impossible Foods, Inc.	Equity	5/10/2019	Preferred Series E-1	188,611	2,000	2,805	
Modumetal, Inc.	Equity	6/1/2015	Common Stock	1,035	500	—	
NantEnergy, LLC	Equity	8/31/2013	Common Units	59,665	102	—	
Pineapple Energy LLC	Equity	12/10/2020	Common Stock	498,978	5,167	673	(4)(6)(20)
Pivot Bio, Inc.	Equity	6/28/2021	Preferred Series D	593,080	4,500	2,919	
Proterra, Inc.	Equity	5/28/2015	Common Stock	457,841	543	2,124	(4)
Subtotal: Sustainable and Renewable Technology (0.64%)*					**12,812**	**8,521**	
Total: Equity Investments (10.38%)*					**$ 152,222**	**$ 137,794**	
Warrant Investments							
Communications & Networking							
Aryaka Networks, Inc.	Warrant	6/28/2022	Common Stock	229,611	$ 123	$ 123	
Spring Mobile Solutions, Inc.	Warrant	4/19/2013	Common Stock	2,834,375	418	—	
Subtotal: Communications & Networking (0.01%)*					**541**	**123**	
Consumer & Business Products							
Gadget Guard, LLC	Warrant	6/3/2014	Common Stock	1,662,441	228	—	
TechStyle, Inc.	Warrant	7/16/2013	Preferred Series B	206,185	1,101	789	
The Neat Company	Warrant	8/13/2014	Common Stock	54,054	365	—	
Whoop, Inc.	Warrant	6/27/2018	Preferred Series C	686,270	18	1,182	
Subtotal: Consumer & Business Products (0.15%)*					**1,712**	**1,971**	
Drug Delivery							
Aerami Therapeutics Holdings, Inc.	Warrant	9/30/2015	Common Stock	110,882	74	—	
BioQ Pharma Incorporated	Warrant	10/27/2014	Common Stock	459,183	1	—	
PDS Biotechnology Corporation	Warrant	8/28/2014	Common Stock	3,929	390	—	(4)
Subtotal: Drug Delivery (0.00%)*					**465**	—	
Drug Discovery & Development							
ADMA Biologics, Inc.	Warrant	12/21/2012	Common Stock	89,750	295	1	(4)
Akero Therapeutics, Inc.	Warrant	6/15/2022	Common Stock	18,360	56	67	(4)(10)
Albireo Pharma, Inc.	Warrant	6/8/2020	Common Stock	5,311	61	29	(4)(10)
Axsome Therapeutics, Inc.	Warrant	9/25/2020	Common Stock	40,396	880	593	(4)(10)(16)(20)
Brickell Biotech, Inc.	Warrant	2/18/2016	Common Stock	9,005	119	1	(4)
Cellarity, Inc.	Warrant	12/8/2021	Preferred Series B	100,000	287	164	(15)
Century Therapeutics, Inc.	Warrant	9/14/2020	Common Stock	16,112	37	12	(4)
Dermavant Sciences Ltd.	Warrant	5/31/2019	Common Stock	223,642	101	132	(5)(10)(12)
enGene, Inc.	Warrant	12/30/2021	Preferred Series 3	133,692	72	28	(5)(10)
Evofem Biosciences, Inc.	Warrant	6/11/2014	Common Stock	520	266	—	(4)
Madrigal Pharmaceutical, Inc.	Warrant	5/9/2022	Common Stock	10,131	177	245	(4)(10)
Myovant Sciences, Ltd.	Warrant	10/16/2017	Common Stock	73,710	460	186	(4)(5)(10)
Paratek Pharmaceuticals, Inc.	Warrant	8/1/2018	Common Stock	426,866	520	26	(4)
Phathom Pharmaceuticals, Inc.	Warrant	9/17/2021	Common Stock	64,687	848	46	(4)(10)(15)(16)
Redshift Bioanalytics, Inc.	Warrant	3/23/2022	Preferred Series E	142,653	7	5	(15)
Scynexis, Inc.	Warrant	5/14/2021	Common Stock	106,035	296	30	(4)
Stealth Bio Therapeutics Corp.	Warrant	6/30/2017	Common Stock	500,000	158	—	(4)(5)(10)
TG Therapeutics, Inc.	Warrant	2/28/2019	Common Stock	231,613	1,033	168	(4)(10)(12)
Tricida, Inc.	Warrant	3/27/2019	Common Stock	31,352	280	21	(4)
Valo Health, LLC	Warrant	6/15/2020	Common Units	102,216	256	324	
X4 Pharmaceuticals, Inc.	Warrant	3/18/2019	Common Stock	108,334	673	7	(4)
Yumanity Therapeutics, Inc.	Warrant	12/20/2019	Common Stock	15,414	110	—	(4)
Subtotal: Drug Discovery & Development (0.16%)*					**6,992**	**2,085**	

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
June 30, 2022 (unaudited)
(dollars in thousands)

Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Electronics & Computer Hardware							
908 Devices, Inc.	Warrant	3/15/2017	Common Stock	49,078	$ 101	$ 436	(4)
Skydio, Inc.	Warrant	11/8/2021	Common Stock	622,255	557	1,674	
Subtotal: Electronics & Computer Hardware (0.16%)*					**658**	**2,110**	
Healthcare Services, Other							
Vida Health, Inc.	Warrant	3/28/2022	Common Stock	100,618	114	60	
Subtotal: Healthcare Services, Other (0.00%)*					**114**	**60**	
Information Services							
Capella Space Corp.	Warrant	10/21/2021	Common Stock	176,200	207	74	(15)
INMOBI Inc.	Warrant	11/19/2014	Common Stock	65,587	82	—	(5)(10)
NetBase Solutions, Inc.	Warrant	8/22/2017	Preferred Series 1	60,000	356	421	
Signal Media Limited	Warrant	6/29/2022	Common Stock	94,857	35	35	(5)(10)
Subtotal: Information Services (0.04%)*					**680**	**530**	
Internet Consumer & Business Services							
Aria Systems, Inc.	Warrant	5/22/2015	Preferred Series G	231,535	74	—	
Carwow LTD	Warrant	12/14/2021	Common Stock	174,163	164	52	(5)(10)
Cloudpay, Inc.	Warrant	4/10/2018	Preferred Series B	6,763	54	233	(5)(10)
Convoy, Inc.	Warrant	3/30/2022	Common Stock	165,456	974	610	(16)
First Insight, Inc.	Warrant	5/10/2018	Preferred Series B	75,917	95	44	
Houzz, Inc.	Warrant	10/29/2019	Common Stock	529,661	20	—	
Landing Holdings Inc.	Warrant	3/12/2021	Common Stock	11,806	116	50	(15)
Lendio, Inc.	Warrant	3/29/2019	Preferred Series D	127,032	39	60	
Rhino Labs, Inc.	Warrant	3/12/2021	Common Stock	13,106	470	450	(15)
RumbleON, Inc.	Warrant	4/30/2018	Common Stock	5,139	88	2	(4)
Savage X Holding, LLC	Warrant	6/27/2014	Class A Units	206,185	—	1,040	
SeatGeek, Inc.	Warrant	6/12/2019	Common Stock	1,379,761	842	2,254	(16)
ShareThis, Inc.	Warrant	12/14/2012	Preferred Series C	493,502	547	—	
Skyword, Inc.	Warrant	8/23/2019	Preferred Series B	444,444	83	3	
Snagajob.com, Inc.	Warrant	4/20/2020	Common Stock	600,000	16	101	(12)
	Warrant	6/30/2016	Preferred Series A	1,800,000	782	209	(12)
	Warrant	8/1/2018	Preferred Series B	1,211,537	62	127	(12)
Total Snagajob.com, Inc.				3,611,537	860	437	
TFG Holding, Inc.	Warrant	6/27/2014	Common Stock	206,185	—	22	
The Faction Group LLC	Warrant	11/3/2014	Preferred Series AA	8,076	234	481	
Thumbtack, Inc.	Warrant	5/1/2018	Common Stock	267,225	844	579	
Veem, Inc.	Warrant	3/31/2022	Common Stock	98,428	126	59	
Worldremit Group Limited	Warrant	2/11/2021	Preferred Series D	77,215	129	845	(5)(10)(16)
	Warrant	8/27/2021	Preferred Series E	1,868	26	14	(5)(10)(16)
Total Worldremit Group Limited				79,083	155	859	
Subtotal: Internet Consumer & Business Services (0.54%)*					**5,785**	**7,235**	
Manufacturing Technology							
Bright Machines, Inc.	Warrant	3/31/2022	Common Stock	196,335	151	67	
MacroFab, Inc.	Warrant	3/23/2022	Common Stock	1,111,111	528	598	
Xometry, Inc.	Warrant	5/9/2018	Common Stock	87,784	47	1,906	(4)
Subtotal: Manufacturing Technology (0.19%)*					**726**	**2,571**	
Media/Content/Info							
Zoom Media Group, Inc.	Warrant	12/21/2012	Preferred Series A	1,204	348	—	
Subtotal: Media/Content/Info (0.00%)*					**348**	—	
Medical Devices & Equipment							
Aspire Bariatrics, Inc.	Warrant	1/28/2015	Common Stock	22,572	455	—	
Flowonix Medical Incorporated	Warrant	11/3/2014	Preferred Series AA	155,325	362	—	(12)
	Warrant	9/21/2018	Preferred Series BB	725,806	351	—	(12)
Total Flowonix Medical Incorporated				881,131	713	—	
Intuity Medical, Inc.	Warrant	12/29/2017	Preferred Series B-1	3,076,323	294	23	
Lucira Health, Inc.	Warrant	2/4/2022	Common Stock	59,642	110	5	(4)
Outset Medical, Inc.	Warrant	9/27/2013	Common Stock	62,794	401	350	(4)
Tela Bio, Inc.	Warrant	3/31/2017	Common Stock	15,712	61	-	(4)
Subtotal: Medical Devices & Equipment (0.03%)*					**2,034**	**378**	

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
June 30, 2022 (unaudited)
(dollars in thousands)

Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Semiconductors							
Achronix Semiconductor Corporation	Warrant	6/26/2015	Preferred Series D-2	750,000	$ 99	$ 932	
Fungible, Inc.	Warrant	12/16/2021	Common Stock	800,000	751	135	(15)
Subtotal: Semiconductors (0.08%)*					**850**	**1,067**	
Software							
Bitsight Technologies, Inc.	Warrant	11/18/2020	Common Stock	29,691	284	552	
Brain Corporation	Warrant	10/4/2021	Common Stock	194,629	165	88	(15)
CloudBolt Software, Inc.	Warrant	9/30/2020	Common Stock	211,342	117	16	
Cloudian, Inc.	Warrant	11/6/2018	Common Stock	477,454	71	15	
Couchbase, Inc.	Warrant	4/25/2019	Common Stock	105,350	462	740	(4)
Dashlane, Inc.	Warrant	3/11/2019	Common Stock	453,641	353	263	
Delphix Corp.	Warrant	10/8/2019	Common Stock	718,898	1,594	2,634	(16)
Demandbase, Inc.	Warrant	8/2/2021	Common Stock	727,047	545	328	
DNAnexus, Inc.	Warrant	3/21/2014	Preferred Series C	909,091	97	50	
DroneDeploy, Inc.	Warrant	6/30/2022	Common Stock	95,911	278	278	
Eigen Technologies Ltd.	Warrant	4/13/2022	Common Stock	250	5	4	(5)(10)
Esme Learning Solutions, Inc.	Warrant	1/27/2022	Common Stock	56,765	198	105	
Evernote Corporation	Warrant	9/30/2016	Common Stock	62,500	107	13	
Lightbend, Inc.	Warrant	2/14/2018	Preferred Series D	89,685	131	—	
Mixpanel, Inc.	Warrant	9/30/2020	Common Stock	82,362	252	333	
Nuvolo Technologies Corporation	Warrant	3/29/2019	Common Stock	70,000	172	218	
Poplicus, Inc.	Warrant	5/28/2014	Common Stock	132,168	—	—	
Pymetrics, Inc.	Warrant	9/15/2020	Common Stock	150,943	77	56	
RapidMiner, Inc.	Warrant	11/28/2017	Preferred Series C-1	4,982	24	7	
Reltio, Inc.	Warrant	6/30/2020	Common Stock	69,120	215	289	
SignPost, Inc.	Warrant	1/13/2016	Series Junior 1 Preferred	474,019	314	—	
SingleStore, Inc.	Warrant	4/28/2020	Preferred Series D	312,596	103	334	
Tact.ai Technologies, Inc.	Warrant	2/13/2020	Common Stock	1,041,667	206	168	
Udacity, Inc.	Warrant	9/25/2020	Common Stock	486,359	218	147	
VideoAmp, Inc.	Warrant	1/21/2022	Common Stock	152,048	1,275	611	(15)
ZeroFox, Inc.	Warrant	5/7/2020	Preferred Series C-1	648,350	101	540	
Subtotal: Software (0.59%)*					**7,364**	**7,789**	
Surgical Devices							
Gynesonics, Inc.	Warrant	12/5/2012	Preferred Series C	33,670	13	—	
TransMedics Group, Inc.	Warrant	11/7/2012	Common Stock	64,440	139	1,044	(4)
Subtotal: Surgical Devices (0.08%)*					**152**	**1,044**	
Sustainable and Renewable Technology							
Agrivida, Inc.	Warrant	6/20/2013	Preferred Series D	471,327	120	—	
Ampion, PBC	Warrant	4/15/2022	Common Stock	18,472	52	46	
Fulcrum Bioenergy, Inc.	Warrant	9/13/2012	Preferred Series C-1	280,897	274	765	
Halio, Inc.	Warrant	4/22/2014	Preferred Series A	325,000	155	97	
	Warrant	4/7/2015	Preferred Series B	131,883	63	32	
Total Halio, Inc.				456,883	218	129	
Polyera Corporation	Warrant	12/11/2012	Preferred Series C	311,612	338	—	
Subtotal: Sustainable and Renewable Technology (0.07%)*					**1,002**	**940**	
Total: Warrant Investments (2.10%)*					**29,423**	**27,903**	
Total Investments in Securities (204.60%)*					**$ 2,761,048**	**$ 2,716,563**	
Investment Funds & Vehicles Investments							
Drug Discovery & Development							
Forbion Growth Opportunities Fund I C.V.	Investment Funds & Vehicles	11/16/2020			2,084	2,136	(5)(10)(17)
Forbion Growth Opportunities Fund II C.V.	Investment Funds & Vehicles	6/23/2022			195	192	(5)(10)(17)
Subtotal: Drug Discovery & Development (0.18%)*					**$ 2,279**	**$ 2,328**	
Total: Investment Funds & Vehicles Investments (0.18%)*					**$ 2,279**	**$ 2,328**	
Total Investments before Cash and Cash Equivalents (204.78%)*					**$ 2,763,327**	**$ 2,718,891**	
Cash & Cash Equivalents							
GS Financial Square Government Fund	Cash & Cash Equivalents		FGTXX/38141W273		51,000	51,000	
JPMorgan U.S. Government Money Market	Cash & Cash Equivalents		Capital (OGVXX)		39,000	39,000	
Total: Investments in Cash & Cash Equivalents (6.78%)*					**$ 90,000**	**$ 90,000**	
Total: Investments after Cash and Cash Equivalents (211.55%)*					**$ 2,853,327**	**$ 2,808,891**	

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
June 30, 2022 (unaudited)
(dollars in thousands)

* Value as a percent of net assets. All amounts are stated in U.S. Dollars unless otherwise noted. The Company uses the Standard Industrial Code for classifying the industry grouping of its portfolio companies.

(1) Interest rate PRIME represents 4.75% as of June 30, 2022. 1-month LIBOR, 3-month LIBOR and 6-month LIBOR represent 1.7867%, 2.2851%, and 2.93514%, respectively, as of June 30, 2022.

(2) Gross unrealized appreciation, gross unrealized depreciation, and net unrealized appreciation for federal income tax purposes totaled $74.5 million, $116.7 million and $(42.3) million, respectively. The tax cost of investments is $2.8 billion.

(3) Preferred and common stock, warrants, and equity interest are generally non-income producing.

(4) Except for warrants in 26 publicly traded companies and common stock in 41 publicly traded companies, all investments are restricted as of June 30, 2022 and were valued at fair value using Level 3 significant unobservable inputs as determined in good faith by the Company's valuation committee (the "Valuation Committee") and approved by the board of directors (the "Board").

(5) Non-U.S. company or the company's principal place of business is outside the United States.

(6) Affiliate investment as defined under the Investment Company Act of 1940, as amended, (the "1940 Act") in which Hercules owns at least 5% but generally less than 25% of the company's voting securities.

(7) Control investment as defined under the 1940 Act in which Hercules owns at least 25% of the company's voting securities or has greater than 50% representation on its board.

(8) Debt is on non-accrual status as of June 30, 2022, and is therefore considered non-income producing. Note that as of June 30, 2022, only the PIK, or payment-in-kind, portion is on non-accrual for the Company's debt investment in Tectura Corporation.

(9) Denotes that all or a portion of the debt investment is convertible debt.

(10) Indicates assets that the Company deems not "qualifying assets" under section 55(a) of 1940 Act. Qualifying assets must represent at least 70% of the Company's total assets at the time of acquisition of any additional non-qualifying assets.

(11) Denotes that all or a portion of the debt investment is pledged as collateral under the SMBC Facility (as defined in "Note 5 — Debt").

(12) Denotes that all or a portion of the investment is pledged as collateral under the MUFG Bank Facility (as defined in "Note 5 — Debt").

(13) Denotes that all or a portion of the debt investment secures the 2031 Asset-Backed Notes (as defined in "Note 5 — Debt").

(14) Denotes that all or a portion of the debt investment principal includes accumulated PIK interest and is net of repayments.

(15) Denotes that all or a portion of the investment in this portfolio company is held by Hercules Capital IV, L.P., the Company's wholly owned small business investment company.

(16) Denotes that the fair value of the Company's total investments in this portfolio company represent greater than 5% of the Company's total net assets as of June 30, 2022.

(17) Denotes that there is an unfunded contractual commitment available at the request of this portfolio company as of June 30, 2022 (Refer to "Note 11 - Commitments and Contingencies").

(18) Denotes unitranche debt with first lien "last-out" senior secured position and security interest in all assets of the portfolio company whereby the "last-out" portion will be subordinated to the "first-out" portion in a liquidation, sale or other disposition.

(19) Denotes second lien senior secured debt.

(20) Denotes all or a portion of the public equity or warrant investment was acquired in a transaction exempt from registration under the Securities Act of 1933 ("Securities Act") and may be deemed to be "restricted securities" under the Securities Act.

(21) Denotes investment in a non-voting security in the form of a promissory note. The terms of the notes provide the Company with a lien on the issuers' shares of Common Stock for Black Crow AI, Inc., subject to release upon repayment of the outstanding balance of the notes. As of June 30, 2022, the Black Crow AI, Inc. affiliates promissory notes had an outstanding balance of $3.0 million.

(22) Denotes the security holds rights to royalty fee income associated with certain products of the portfolio company. The approximate cost and fair value of the royalty contract are $4.6 million and $4.6 million, respectively.

See notes to consolidated financial statements

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS
December 31, 2021
(dollars in thousands)

Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Debt Investments							
Communications & Networking							
1-5 Years Maturity							
Cytracom Holdings LLC	Senior Secured	February 2025	3-month LIBOR + 9.31% or Floor rate of 10.31%	$ 9,000	$ 8,802	$ 8,725	(11)(16)(17)
Rocket Lab Global Services, LLC	Senior Secured	June 2024	PRIME + 4.90% or Floor rate of 8.15%, PIK Interest 1.25%, 3.25% Exit Fee	$ 88,542	88,286	90,505	(13)(15)
Subtotal: 1-5 Years Maturity					97,088	99,230	
Subtotal: Communications & Networking (7.58%)*					**97,088**	**99,230**	
Consumer & Business Products							
1-5 Years Maturity							
Grove Collaborative, Inc.	Senior Secured	April 2025	PRIME + 5.50% or Floor rate of 8.75%, 6.75% Exit Fee	$ 23,520	23,162	23,298	(18)
Subtotal: 1-5 Years Maturity					23,162	23,298	
Subtotal: Consumer & Business Products (1.78%)*					**23,162**	**23,298**	
Diversified Financial Services							
Under 1 Year Maturity							
Newfront Insurance Holdings, Inc.	Convertible Note	August 2022	PIK Interest 0.19% or Floor rate of 0.19%	$ 403	403	403	(9)
Subtotal: Under 1 Year Maturity					403	403	
1-5 Years Maturity							
Gibraltar Business Capital, LLC	Unsecured	September 2026	FIXED 14.50%	$ 15,000	14,662	13,818	(7)
	Unsecured	September 2026	FIXED 11.50%	$ 10,000	9,823	9,394	(7)
Total Gibraltar Business Capital, LLC				$ 25,000	24,485	23,212	
Hercules Adviser LLC	Unsecured	May 2023	FIXED 5.00%	$ 8,850	8,850	8,850	(7)
Subtotal: 1-5 Years Maturity					33,335	32,062	
Subtotal: Diversified Financial Services (2.48%)*					**33,738**	**32,465**	
Drug Discovery & Development							
Under 1 Year Maturity							
Chemocentryx, Inc.	Senior Secured	December 2022	PRIME + 3.30% or Floor rate of 8.05%, 6.25% Exit Fee	$ 18,951	20,036	20,036	(10)
Subtotal: Under 1 Year Maturity					20,036	20,036	
1-5 Years Maturity							
Albireo Pharma, Inc.	Senior Secured	July 2024	PRIME + 5.90% or Floor rate of 9.15%, 6.95% Exit Fee	$ 10,000	10,229	10,268	(10)(11)
Aldeyra Therapeutics, Inc.	Senior Secured	October 2023	PRIME + 3.10% or Floor rate of 8.60%, 6.95% Exit Fee	$ 15,000	15,639	15,653	
Applied Genetic Technologies Corporation	Senior Secured	April 2024	PRIME + 6.50% or Floor rate of 9.75%, 6.95% Exit Fee	$ 20,000	20,416	20,339	
Aveo Pharmaceuticals, Inc.	Senior Secured	September 2024	PRIME + 6.40% or Floor rate of 9.65%, 6.95% Exit Fee	$ 40,000	40,842	40,776	(11)(14)
Axsome Therapeutics, Inc.	Senior Secured	October 2026	PRIME + 5.70% or Floor rate of 8.95%, 5.82% Exit Fee	$ 50,000	49,542	48,859	(10)(12)
Bicycle Therapeutics PLC	Senior Secured	October 2024	PRIME + 5.60% or Floor rate of 8.85%, 5.00% Exit Fee	$ 24,000	24,271	24,454	(5)(10)(11)(12)(16)
BiomX, INC	Senior Secured	September 2025	PRIME + 5.70% or Floor rate of 8.95%, 6.55% Exit Fee	$ 9,000	8,980	8,980	(5)(10)(11)
BridgeBio Pharma, Inc.	Senior Secured	November 2026	FIXED 9.00%, 2.00% Exit Fee	$ 38,000	37,462	37,462	
Cellarity, Inc.	Senior Secured	June 2026	PRIME + 5.70% or Floor rate of 8.95%, 3.75% Exit Fee	$ 30,000	29,422	29,422	(14)
Center for Breakthrough Medicines Holdings, LLC	Senior Secured	May 2023	PRIME + 5.50% or Floor rate of 8.75%, 7.50% Exit Fee	$ 5,000	5,005	5,005	
Century Therapeutics	Senior Secured	April 2024	PRIME + 6.30% or Floor rate of 9.55%, 3.95% Exit Fee	$ 10,000	10,075	10,361	(11)

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Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Chemocentryx, Inc.	Senior Secured	February 2025	PRIME + 3.25% or Floor rate of 8.50%, 7.15% Exit Fee	$ 5,000	$ 5,161	$ 5,070	(10)
Codiak Biosciences, Inc.	Senior Secured	October 2025	PRIME + 5.00% or Floor rate of 8.25%, 5.50% Exit Fee	$ 25,000	25,459	25,316	(11)
Corium, Inc.	Senior Secured	September 2026	PRIME + 5.70% or Floor rate of 8.95%, 7.75% Exit Fee	$ 91,500	90,997	90,997	(15)
Eloxx Pharmaceuticals, Inc.	Senior Secured	April 2025	PRIME + 6.25% or Floor rate of 9.50%, 6.55% Exit Fee	$ 12,500	12,443	12,443	(14)
enGene, Inc.	Senior Secured	July 2025	PRIME + 5.00% or Floor rate of 8.25%, 6.35% Exit Fee	$ 7,000	6,858	6,858	(5)(10)
G1 Therapeutics, Inc.	Senior Secured	November 2026	PRIME + 5.90% or Floor rate of 9.15%, 9.86% Exit Fee	$ 58,125	57,873	57,874	(10)(11)(12)(14)(16)
Geron Corporation	Senior Secured	October 2024	PRIME + 5.75% or Floor rate of 9.00%, 6.55% Exit Fee	$ 32,500	32,704	32,744	(10)(12)
Hibercell, Inc.	Senior Secured	May 2025	PRIME + 5.40% or Floor rate of 8.65%, 4.95% Exit Fee	$ 17,000	17,041	17,014	(14)
Humanigen, Inc.	Senior Secured	March 2025	PRIME + 5.50% or Floor rate of 8.75%, 6.75% Exit Fee	$ 20,000	20,235	19,985	(9)(10)
Kaleido Biosciences, Inc.	Senior Secured	January 2024	PRIME + 6.10% or Floor rate of 9.35%, 7.55% Exit Fee	$ 22,500	23,505	23,384	(12)
Locus Biosciences	Senior Secured	July 2025	PRIME + 6.10% or Floor rate of 9.35%, 4.95% Exit Fee	$ 8,000	7,977	7,900	(14)
Nabriva Therapeutics	Senior Secured	June 2023	PRIME + 4.30% or Floor rate of 9.80%, 6.95% Exit Fee	$ 5,000	5,500	5,459	(5)(10)
Phathom Pharmaceuticals, Inc.	Senior Secured	October 2026	PRIME + 2.25% or Floor rate of 5.50%, PIK Interest 3.35%, 7.50% Exit Fee	$ 87,116	86,075	86,075	(10)(12)(13)(14)(15)(16)
Scynexis, Inc.	Senior Secured	March 2025	PRIME + 5.80% or Floor rate of 9.05%, 3.95% Exit Fee	$ 16,000	15,826	15,778	
Seres Therapeutics, Inc.	Senior Secured	November 2023	PRIME + 4.40% or Floor rate of 9.65%, 4.85% Exit Fee	$ 24,051	24,777	25,183	
Syndax Pharmaceutics Inc.	Senior Secured	April 2024	PRIME + 6.00% or Floor rate of 9.25%, 4.99% Exit Fee	$ 20,000	20,646	20,653	(12)(16)
TG Therapeutics, Inc.	Senior Secured	January 2026	PRIME + 2.15% or Floor rate of 5.40%, PIK Interest 3.45%, 5.95% Exit Fee	$ 51,450	50,470	50,470	(10)
uniQure B.V.	Senior Secured	December 2025	PRIME + 4.70% or Floor rate of 7.95%, 7.28% Exit Fee	$ 77,500	78,755	78,755	(5)(10)(11)(12)(15)
Unity Biotechnology, Inc.	Senior Secured	August 2024	PRIME + 6.10% or Floor rate of 9.35%, 6.25% Exit Fee	$ 22,701	23,293	23,627	(9)
Valo Health, LLC (p.k.a. Integral Health Holdings, LLC)	Senior Secured	May 2024	PRIME + 6.45% or Floor rate of 9.70%, 3.85% Exit Fee	$ 11,500	11,547	11,492	(11)
X4 Pharmaceuticals, Inc.	Senior Secured	July 2024	PRIME + 3.75% or Floor rate of 8.75%, 8.80% Exit Fee	$ 32,500	34,140	34,085	(11)(12)
Yumanity Therapeutics, Inc.	Senior Secured	January 2024	PRIME + 4.00% or Floor rate of 8.75%, 5.92% Exit Fee	$ 12,732	13,256	13,187	
Subtotal: 1-5 Years Maturity					916,421	915,928	
Subtotal: Drug Discovery & Development (71.53%)*					**936,457**	**935,964**	
Healthcare Services, Other							
1-5 Years Maturity							
Better Therapeutics, Inc.	Senior Secured	August 2025	PRIME + 5.70% or Floor rate of 8.95%, 5.95% Exit Fee	$ 8,000	7,966	7,966	(14)(16)
Blue Sprig Pediatrics, Inc.	Senior Secured	November 2026	3-month LIBOR + 5.00% or Floor rate of 6.00%, PIK Interest 4.45%	$ 25,022	24,653	24,653	(13)(16)
Carbon Health Technologies, Inc.	Senior Secured	March 2025	PRIME + 5.60% or Floor rate of 8.85%, 4.61% Exit Fee	$ 46,125	45,964	45,964	(16)(18)
Equality Health, LLC	Senior Secured	February 2026	PRIME + 6.25% or Floor rate of 9.50%, PIK Interest 1.55%	$ 35,444	35,141	35,056	(12)(13)(16)
Subtotal: 1-5 Years Maturity					113,724	113,639	
Subtotal: Healthcare Services, Other (8.68%)*					**113,724**	**113,639**	
Information Services							
1-5 Years Maturity							
Capella Space	Senior Secured	November 2024	PRIME + 5.00% or Floor rate of 8.25%, PIK Interest 1.10%, 4.00% Exit Fee	$ 20,025	19,751	19,424	(13)(14)(18)
Yipit, LLC	Senior Secured	September 2026	1-month LIBOR + 9.08% or Floor rate of 10.08%	$ 45,900	45,022	45,022	(16)(17)
Subtotal: 1-5 Years Maturity					64,773	64,446	
Subtotal: Information Services (4.93%)*					**64,773**	**64,446**	

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Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Internet Consumer & Business Services							
Under 1 Year Maturity							
Nextroll, Inc.	Senior Secured	June 2022	PRIME + 3.75% or Floor rate of 7.00%, PIK Interest 2.95%, 3.50% Exit Fee	$ 21,555	$ 22,164	$ 22,164	(12)(13)(18)
Subtotal: Under 1 Year Maturity					22,164	22,164	
1-5 Years Maturity							
AppDirect, Inc.	Senior Secured	August 2024	PRIME + 5.90% or Floor rate of 9.15%, 7.95% Exit Fee	$ 30,790	31,416	32,248	
Carwow LTD	Senior Secured	December 2024	PRIME + 4.70% or Floor rate of 7.95%, PIK Interest 1.45%, 4.95% Exit Fee	£ 21,250	28,632	28,632	(5)(10)(13)
ePayPolicy Holdings, LLC	Senior Secured	December 2024	3-month LIBOR + 8.50% or Floor rate of 9.50%	$ 8,169	8,011	7,967	(11)(16)
Houzz, Inc.	Convertible Debt	May 2028	PIK Interest 5.50%	$ 20,676	20,676	20,425	(9)(13)
Rhino Labs, Inc.	Senior Secured	March 2024	PRIME + 5.50% or Floor rate of 8.75%, PIK Interest 2.25%	$ 16,136	15,765	15,876	(13)(14)
RVShare, LLC	Senior Secured	December 2026	1-month LIBOR + 5.50% or Floor rate of 6.50%, PIK Interest 4.00%	$ 15,000	14,701	14,701	(14)(16)
SeatGeek, Inc.	Senior Secured	June 2023	PRIME + 5.00% or Floor rate of 10.50%, PIK Interest 0.50%	$ 60,607	59,983	60,316	(13)
Skyword, Inc.	Senior Secured	September 2024	PRIME + 3.88% or Floor rate of 9.38%, PIK Interest 1.90%, 4.00% Exit Fee	$ 12,426	12,665	12,521	(13)
Tectura Corporation	Senior Secured	July 2024	PIK Interest 5.00%	$ 10,680	240	—	(7)(8)(13)
	Senior Secured	July 2024	FIXED 8.25%	$ 8,250	8,250	8,250	(7)(8)
	Senior Secured	July 2024	PIK Interest 5.00%	$ 13,023	13,023	19	(7)(8)(13)
Total Tectura Corporation				$ 31,953	21,513	8,269	
Thumbtack, Inc.	Senior Secured	September 2023	PRIME + 3.45% or Floor rate of 8.95%, PIK Interest 1.50%, 3.95% Exit Fee	$ 25,618	25,965	26,372	(12)(13)
Zepz (p.k.a. Worldremit Group Limited)	Senior Secured	February 2025	3-month LIBOR + 9.25% or Floor rate of 10.25%, 3.00% Exit Fee	$ 103,000	101,674	100,472	(5)(10)(12)(15)(18)
Subtotal: 1-5 Years Maturity					341,001	327,799	
Subtotal: Internet Consumer & Business Services (26.74%)*					**363,165**	**349,963**	
Manufacturing Technology							
Under 1 Year Maturity							
Bright Machines, Inc.	Senior Secured	November 2022	PRIME + 5.70% or Floor rate of 8.95%, 6.95% Exit Fee	$ 15,000	14,995	14,995	(18)
Subtotal: Under 1 Year Maturity					14,995	14,995	
Subtotal: Manufacturing Technology (1.15%)*					**14,995**	**14,995**	
Semiconductors							
1-5 Years Maturity							
Fungible Inc.	Senior Secured	December 2024	PRIME + 5.00% or Floor rate of 8.25%, 4.95% Exit Fee	$ 20,000	19,072	19,072	(14)(18)
Subtotal: 1-5 Years Maturity					19,072	19,072	
Subtotal: Semiconductors (1.46%)*					**19,072**	**19,072**	
Software							
Under 1 Year Maturity							
Khoros (p.k.a Lithium Technologies)	Senior Secured	October 2022	6-month LIBOR + 8.00% or Floor rate of 9.00%	$ 56,208	55,834	55,834	(16)
Pymetrics, Inc.	Senior Secured	October 2022	PRIME + 5.50% or Floor rate of 8.75%, PIK Interest 1.75%, 4.00% Exit Fee	$ 9,667	9,845	9,845	(13)
Regent Education	Senior Secured	January 2022	FIXED 10.00%, PIK Interest 2.00%, 7.94% Exit Fee	$ 2,951	3,064	2,608	(8)(13)
Subtotal: Under 1 Year Maturity					68,743	68,287	
1-5 Years Maturity							
3GTMS, LLC.	Senior Secured	February 2025	6-Month LIBOR + 9.28% or Floor rate of 10.28%	$ 10,000	9,812	9,656	(16)(17)
Agilence, Inc.	Senior Secured	October 2026	1-month LIBOR + 9.00% or Floor rate of 10.00%	$ 9,400	9,138	9,138	(16)

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Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Brain Corporation	Senior Secured	April 2025	PRIME + 3.70% or Floor rate of 6.95%, PIK Interest 1.00%, 3.95% Exit Fee	$ 10,016	$ 9,943	$ 9,943	(13)(14)(16)
Campaign Monitor Limited	Senior Secured	November 2025	6-month LIBOR + 7.90% or Floor rate of 11.15%	$ 33,000	32,459	33,000	(18)
Ceros, LLC	Senior Secured	September 2026	3-month LIBOR + 8.89% or Floor rate of 9.89%	$ 17,978	17,474	17,474	(16)(17)
Cloud 9 Software	Senior Secured	April 2024	3-month LIBOR + 8.20% or Floor rate of 9.20%	$ 9,953	9,856	9,953	(12)
CloudBolt Software, Inc.	Senior Secured	October 2024	PRIME + 6.70% or Floor rate of 9.95%, 2.95% Exit Fee	$ 10,000	9,923	10,035	(11)(12)(18)
Cybermaxx Intermediate Holdings, Inc.	Senior Secured	August 2026	6-month LIBOR + 9.28% or Floor rate of 10.28%	$ 8,000	7,801	7,801	(16)
Dashlane, Inc.	Senior Secured	July 2025	PRIME + 3.05% or Floor rate of 7.55%, PIK Interest 1.10%, 7.10% Exit Fee	$ 20,719	21,807	21,734	(11)(13)(16)(18)
Delphix Corp.	Senior Secured	February 2023	PRIME + 5.50% or Floor rate of 10.25%, 5.00% Exit Fee	$ 60,000	61,736	62,345	(12)(15)(18)
Demandbase, Inc.	Senior Secured	August 2025	PRIME + 5.25% or Floor rate of 8.50%, 2.00% Exit Fee	$ 16,875	16,463	16,463	(16)(18)
Enmark Systems	Senior Secured	September 2026	6-Month LIBOR + 6.83% or Floor rate of 7.83%, PIK Interest 2.19%	$ 8,000	7,798	7,798	(11)(16)(17)
Esentire, Inc.	Senior Secured	May 2024	3-month LIBOR + 9.96% or Floor rate of 10.96%	$ 21,000	20,699	20,750	(5)(10)(11)(17)
Gryphon Networks Corp.	Senior Secured	January 2026	3-month LIBOR + 9.69% or Floor rate of 10.69%	$ 5,232	5,106	5,088	(11)(16)
Ikon Science Limited	Senior Secured	October 2024	3-month LIBOR + 9.00% or Floor rate of 10.00%	$ 6,913	6,719	6,767	(5)(10)(16)(17)
Kazoo, Inc. (p.k.a. YouEarnedIt, Inc.)	Senior Secured	July 2023	3-month LIBOR + 10.14% or Floor rate of 11.14%	$ 8,571	8,403	8,375	(17)
Logicworks	Senior Secured	January 2024	PRIME + 7.50% or Floor rate of 10.75%	$ 10,000	9,862	9,965	(12)(16)
Mixpanel, Inc.	Senior Secured	August 2024	PRIME + 4.70% or Floor rate of 7.95%, PIK Interest 1.80%, 3.00% Exit Fee	$ 20,431	20,292	21,030	(12)(13)(18)
Mobile Solutions Services	Senior Secured	December 2025	6-month LIBOR + 9.87% or Floor rate of 10.87%	$ 19,074	18,575	18,834	(16)(17)
Nuvolo Technologies Corporation	Senior Secured	July 2025	PRIME + 7.70% or Floor rate of 10.95%, 1.75% Exit Fee	$ 15,000	14,967	15,017	(12)(18)
Pollen, Inc.	Senior Secured	November 2023	PRIME + 4.75% or Floor rate of 8.00%, PIK Interest 0.50%, 4.50% Exit Fee	$ 7,457	7,528	7,314	(13)
	Senior Secured	November 2023	PRIME + 5.25% or Floor rate of 8.50%, PIK Interest 1.35%, 4.50% Exit Fee	$ 13,041	13,005	13,092	(13)(14)
Total Pollen, Inc.				$ 20,498	20,533	20,406	
Reltio, Inc.	Senior Secured	July 2023	PRIME + 5.70% or Floor rate of 8.95%, PIK Interest 1.70%, 4.95% Exit Fee	$ 10,248	10,336	10,542	(13)(18)
ShadowDragon, LLC	Senior Secured	December 2026	3-month LIBOR + 9.00% or Floor rate of 10.00%	$ 6,000	5,828	5,828	(16)(17)
Tact.ai Technologies, Inc.	Senior Secured	February 2024	PRIME + 4.00% or Floor rate of 8.75%, PIK Interest 2.00%, 5.50% Exit Fee	$ 5,185	5,305	5,245	(13)
ThreatConnect, Inc.	Senior Secured	May 2026	3-month LIBOR + 9.00% or Floor rate of 10.00%	$ 11,144	10,831	10,859	(12)(16)(17)
Udacity, Inc.	Senior Secured	September 2024	PRIME + 4.50% or Floor rate of 7.75%, PIK Interest 2.00%, 3.00% Exit Fee	$ 50,895	50,646	51,722	(12)(13)
Zimperium, Inc.	Senior Secured	July 2024	1-month LIBOR + 8.95% or Floor rate of 9.95%	$ 15,633	15,347	15,347	(12)(17)
Subtotal: 1-5 Years Maturity					437,659	441,115	
Greater than 5 Years Maturity							
Imperva, Inc.	Senior Secured	January 2027	3-month LIBOR + 7.75% or Floor rate of 8.75%	$ 20,000	19,851	20,000	(18)
Subtotal: Greater than 5 Years Maturity					19,851	20,000	
Subtotal: Software (40.46%)*					**526,253**	**529,402**	

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Portfolio Company	Type of Investment	Maturity Date	Interest Rate and Floor [1]	Principal Amount	Cost [2]	Value	Footnotes
Sustainable and Renewable Technology							
Under 1 Year Maturity							
Impossible Foods, Inc.	Senior Secured	July 2022	PRIME + 3.95% or Floor rate of 8.95%, 9.00% Exit Fee	$ 15,022	$ 19,379	$ 19,378	(12)
Pineapple Energy LLC	Senior Secured	January 2022	FIXED 10.00%	$ 280	280	247	(6)(9)(16)
Subtotal: Under 1 Year Maturity					19,659	19,625	
1-5 Years Maturity							
Pineapple Energy LLC	Senior Secured	December 2023	PIK Interest 10.00%	$ 7,500	7,500	7,500	(6)(8)(13)(16)
Subtotal: 1-5 Years Maturity					7,500	7,500	
Subtotal: Sustainable and Renewable Technology (2.07%)*					**27,159**	**27,125**	
Total: Debt Investments (168.86%)*					**$ 2,219,586**	**$ 2,209,599**	

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Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Equity Investments							
Communications & Networking							
Peerless Network Holdings, Inc.	Equity	10/21/2020	Common Stock	3,328	$ —	$ 18	
	Equity	4/11/2008	Preferred Series A	1,135,000	1,230	6,242	
Total Peerless Network Holdings, Inc.				1,138,328	1,230	6,260	
Subtotal: Communications & Networking (0.48%)*					**1,230**	**6,260**	
Consumer & Business Products							
TechStyle, Inc. (p.k.a. Just Fabulous, Inc.)	Equity	4/30/2010	Common Stock	42,989	128	447	
Subtotal: Consumer & Business Products (0.03%)*					**128**	**447**	
Diversified Financial Services							
Gibraltar Business Capital, LLC	Equity	3/1/2018	Common Stock	830,000	1,884	1,225	(7)
	Equity	3/1/2018	Preferred Series A	10,602,752	26,122	19,393	(7)
Total Gibraltar Business Capital, LLC				11,432,752	28,006	20,618	
Hercules Adviser LLC	Equity	3/26/2021	Member Units	1	35	11,990	(7)
Subtotal: Diversified Financial Services (2.49%)*					**28,041**	**32,608**	
Drug Delivery							
AcelRx Pharmaceuticals, Inc.	Equity	12/10/2018	Common Stock	176,730	1,329	99	(4)
Aytu BioScience, Inc. (p.k.a. Neos Therapeutics, Inc.)	Equity	3/28/2014	Common Stock	13,600	1,500	18	(4)
BioQ Pharma Incorporated	Equity	12/8/2015	Preferred Series D	165,000	500	168	
PDS Biotechnology Corporation (p.k.a. Edge Therapeutics, Inc.)	Equity	4/6/2015	Common Stock	2,498	309	20	(4)
Subtotal: Drug Delivery (0.02%)*					**3,638**	**305**	
Drug Discovery & Development							
Albireo Pharma, Inc.	Equity	9/14/2020	Common Stock	25,000	1,000	582	(4)(10)
Applied Molecular Transport	Equity	4/6/2021	Common Stock	1,000	42	14	(4)(10)
Avalo Therapeutics, Inc. (p.k.a. Cerecor, Inc.)	Equity	8/19/2014	Common Stock	119,087	1,000	202	(4)
Aveo Pharmaceuticals, Inc.	Equity	7/31/2011	Common Stock	190,179	1,715	892	(4)
Bicycle Therapeutics PLC	Equity	10/5/2020	Common Stock	98,100	1,871	5,971	(4)(5)(10)
BridgeBio Pharma, Inc.	Equity	6/21/2018	Common Stock	231,329	2,255	3,859	(4)
Chemocentryx, Inc.	Equity	6/15/2020	Common Stock	17,241	1,000	628	(4)(10)
Concert Pharmaceuticals, Inc.	Equity	2/13/2019	Common Stock	70,796	1,367	223	(4)(10)
Dare Biosciences, Inc.	Equity	1/8/2015	Common Stock	13,550	1,000	27	(4)
Dynavax Technologies	Equity	7/22/2015	Common Stock	20,000	550	281	(4)(10)
Genocea Biosciences, Inc.	Equity	11/20/2014	Common Stock	27,933	2,000	32	(4)
Hibercell, Inc.	Equity	5/7/2021	Preferred Series B	3,466,840	4,250	3,264	(14)
Humanigen, Inc.	Equity	3/31/2021	Common Stock	43,243	800	161	(4)(10)
Kaleido Biosciences, Inc.	Equity	2/10/2021	Common Stock	86,585	1,000	207	(4)
NorthSea Therapeutics	Equity	12/15/2021	Preferred Series C	983	2,000	2,000	(5)(10)
Paratek Pharmaceuticals, Inc.	Equity	2/26/2007	Common Stock	76,362	2,744	343	(4)
Rocket Pharmaceuticals, Ltd.	Equity	8/22/2007	Common Stock	944	1,500	21	(4)
Savara, Inc.	Equity	8/11/2015	Common Stock	11,119	202	14	(4)
Sio Gene Therapies, Inc. (p.k.a. Axovant Gene Therapies Ltd.)	Equity	2/2/2017	Common Stock	16,228	1,269	21	(4)(10)
Tricida, Inc.	Equity	2/28/2018	Common Stock	68,816	863	658	(4)
uniQure B.V.	Equity	1/31/2019	Common Stock	17,175	332	356	(4)(5)(10)(15)
Valo Health, LLC (p.k.a. Integral Health Holdings, LLC)	Equity	12/11/2020	Preferred Series B	510,308	3,000	4,650	
X4 Pharmaceuticals, Inc.	Equity	11/26/2019	Common Stock	198,277	1,641	454	(4)
Subtotal: Drug Discovery & Development (1.90%)*					**33,401**	**24,860**	
Healthcare Services, Other							
23andMe, Inc.	Equity	3/11/2019	Common Stock	825,732	5,094	5,500	(4)
Carbon Health Technologies, Inc.	Equity	3/30/2021	Preferred Series C	217,880	1,687	1,864	
Subtotal: Healthcare Services, Other (0.56%)*					**6,781**	**7,364**	
Information Services							
Planet Labs, Inc.	Equity	6/21/2019	Common Stock	547,880	615	3,369	(4)
Yipit, LLC	Equity	12/30/2021	Preferred Series E	41,021	3,825	3,825	
Zeta Global Corp.	Equity	11/20/2007	Common Stock	295,861	—	2,220	(4)(19)
Subtotal: Information Services (0.72%)*					**4,440**	**9,414**	

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Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Internet Consumer & Business Services							
Black Crow AI, Inc.	Equity	3/24/2021	Preferred Series Seed	872,797	$ 1,000	$ 1,120	(6)
Black Crow AI, Inc. affiliates	Equity	3/24/2021	Preferred Note	3	3,000	3,000	(20)
Brigade Group, Inc.	Equity	3/1/2013	Common Stock	9,023	93	—	
Carwow LTD	Equity	12/15/2021	Preferred Series D-4	199,742	1,151	608	(5)(10)
Contentful Global, Inc. (p.k.a. Contentful, Inc.)	Equity	12/22/2020	Preferred Series C	41,000	138	506	(5)(10)
	Equity	11/20/2018	Preferred Series D	108,500	500	1,388	(5)(10)
Total Contentful Global, Inc. (p.k.a. Contentful, Inc.)				149,500	638	1,894	
DoorDash, Inc.	Equity	12/20/2018	Common Stock	81,996	945	12,209	(4)
Lyft, Inc.	Equity	12/26/2018	Common Stock	100,738	5,263	4,305	(4)
Nerdy Inc.	Equity	9/17/2021	Common Stock	100,000	1,000	450	(4)
Nextdoor.com, Inc.	Equity	8/1/2018	Common Stock	1,019,255	4,854	6,624	(4)(19)
OfferUp, Inc.	Equity	10/25/2016	Preferred Series A	286,080	1,663	1,791	
	Equity	10/25/2016	Preferred Series A-1	108,710	632	680	
Total OfferUp, Inc.				394,790	2,295	2,471	
Oportun	Equity	6/28/2013	Common Stock	48,365	577	980	(4)
Reischling Press, Inc. (p.k.a. Blurb, Inc.)	Equity	7/31/2020	Common Stock	1,163	15	—	
Savage X Holding, LLC	Equity	4/30/2010	Class A Units	42,137	13	71	
Tectura Corporation	Equity	5/23/2018	Common Stock	414,994,863	900	—	(7)
	Equity	6/6/2016	Preferred Series BB	1,000,000	—	—	(7)
Total Tectura Corporation				415,994,863	900	—	
TFG Holding, Inc.	Equity	4/30/2010	Common Stock	42,989	89	216	
Uber Technologies, Inc. (p.k.a. Postmates, Inc.)	Equity	12/1/2020	Common Stock	32,991	318	1,383	(4)
Subtotal: Internet Consumer & Business Services (2.70%)*					**22,151**	**35,331**	
Medical Devices & Equipment							
Coronado Aesthetics, LLC	Equity	10/15/2021	Common Units	180,000	—	65	(7)
	Equity	10/15/2021	Preferred Series A-2	5,000,000	250	500	(7)
Total Coronado Aesthetics, LLC				5,180,000	250	565	
Flowonix Medical Incorporated	Equity	11/3/2014	Preferred Series AA	221,893	1,500	—	
Gelesis, Inc.	Equity	11/30/2009	Common Stock	227,013	—	3,351	
	Equity	12/30/2011	Preferred Series A-1	243,432	503	3,593	
	Equity	12/31/2011	Preferred Series A-2	191,626	500	2,828	
Total Gelesis, Inc.				662,071	1,003	9,772	
Medrobotics Corporation	Equity	9/12/2013	Preferred Series E	136,798	250	—	
	Equity	10/22/2014	Preferred Series F	73,971	155	—	
	Equity	10/16/2015	Preferred Series G	163,934	500	—	
Total Medrobotics Corporation				374,703	905	—	
ViewRay, Inc.	Equity	12/16/2013	Common Stock	36,457	333	201	(4)
Subtotal: Medical Devices & Equipment (0.81%)*					**3,991**	**10,538**	
Semiconductors							
Achronix Semiconductor Corporation	Equity	7/1/2011	Preferred Series C	277,995	160	725	
Subtotal: Semiconductors (0.06%)*					**160**	**725**	
Software							
3GTMS, LLC.	Equity	8/9/2021	Common Stock	1,000,000	1,000	985	
CapLinked, Inc.	Equity	10/26/2012	Preferred Series A-3	53,614	51	65	

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Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Docker, Inc.	Equity	11/29/2018	Common Stock	20,000	$ 4,284	$ 3	
Druva Holdings, Inc. (p.k.a. Druva, Inc.)	Equity	10/22/2015	Preferred Series 2	458,841	1,000	2,387	
	Equity	8/24/2017	Preferred Series 3	93,620	300	529	
Total Druva Holdings, Inc. (p.k.a. Druva, Inc.)				552,461	1,300	2,916	
HighRoads, Inc.	Equity	1/18/2013	Common Stock	190	307	—	
Lightbend, Inc.	Equity	12/4/2020	Common Stock	38,461	265	5	
Palantir Technologies	Equity	9/23/2020	Common Stock	1,418,337	8,670	25,828	(4)
SingleStore, Inc. (p.k.a. memsql, Inc.)	Equity	11/25/2020	Preferred Series E	580,983	2,000	2,239	
	Equity	8/12/2021	Preferred Series F	52,956	279	240	
Total SingleStore, Inc. (p.k.a. memsql, Inc.)				633,939	2,279	2,479	
Sprinklr, Inc.	Equity	3/22/2017	Common Stock	700,000	3,749	11,109	(4)
Verana Health, Inc.	Equity	7/8/2021	Preferred Series E	952,562	2,000	1,697	
Subtotal: Software (3.45%)*					**23,905**	**45,087**	
Surgical Devices							
Gynesonics, Inc.	Equity	1/18/2007	Preferred Series B	219,298	250	9	
	Equity	6/16/2010	Preferred Series C	656,538	282	26	
	Equity	2/8/2013	Preferred Series D	1,991,157	712	81	
	Equity	7/14/2015	Preferred Series E	2,786,367	429	131	
	Equity	12/18/2018	Preferred Series F	1,523,693	118	123	
	Equity	12/18/2018	Preferred Series F-1	2,418,125	150	173	
Total Gynesonics, Inc.				9,595,178	1,941	543	
Subtotal: Surgical Devices (0.04%)*					**1,941**	**543**	
Sustainable and Renewable Technology							
Impossible Foods, Inc.	Equity	5/10/2019	Preferred Series E-1	188,611	2,000	3,430	
Modumetal, Inc.	Equity	6/1/2015	Common Stock	1,035	500	—	
NantEnergy, LLC (p.k.a. Fluidic, Inc.)	Equity	8/31/2013	Common Units	59,665	102	—	
Pineapple Energy LLC	Equity	12/10/2020	Class A Units	3,000,000	4,767	591	(6)
Pivot Bio, Inc.	Equity	6/28/2021	Preferred Series D	593,080	4,500	3,164	
Proterra, Inc.	Equity	5/28/2015	Common Stock	457,841	543	4,043	(4)
Subtotal: Sustainable and Renewable Technology (0.86%)*					**12,412**	**11,228**	
Total: Equity Investments (14.12%)*					**$ 142,219**	**$ 184,710**	
Warrant Investments							
Communications & Networking							
Spring Mobile Solutions, Inc.	Warrant	4/19/2013	Common Stock	2,834,375	$ 418	$ —	
Subtotal: Communications & Networking (0.00%)*					**418**	**—**	
Consumer & Business Products							
Grove Collaborative, Inc.	Warrant	4/30/2021	Common Stock	83,625	433	326	
Penumbra Brands, LLC (p.k.a. Gadget Guard)	Warrant	6/3/2014	Common Stock	1,662,441	228	—	
TechStyle, Inc. (p.k.a. Just Fabulous, Inc.)	Warrant	7/16/2013	Preferred Series B	206,185	1,101	2,181	
The Neat Company	Warrant	8/13/2014	Common Stock	54,054	365	—	
Whoop, Inc.	Warrant	6/27/2018	Preferred Series C	686,270	18	1,847	
Subtotal: Consumer & Business Products (0.33%)*					**2,145**	**4,354**	
Drug Delivery							
Aerami Therapeutics (p.k.a. Dance Biopharm, Inc.)	Warrant	9/30/2015	Common Stock	110,882	74	—	
BioQ Pharma Incorporated	Warrant	10/27/2014	Common Stock	459,183	1	62	
PDS Biotechnology Corporation (p.k.a. Edge Therapeutics, Inc.)	Warrant	8/28/2014	Common Stock	3,929	390	1	(4)
Subtotal: Drug Delivery (0.00%)*					**465**	**63**	
Drug Discovery & Development							
Acacia Pharma Inc.	Warrant	6/29/2018	Common Stock	201,330	305	6	(4)(5)(10)
ADMA Biologics, Inc.	Warrant	12/21/2012	Common Stock	89,750	295	1	(4)

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Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Albireo Pharma, Inc.	Warrant	6/8/2020	Common Stock	5,311	$ 61	$ 42	(4)(10)
Axsome Therapeutics, Inc.	Warrant	9/25/2020	Common Stock	15,541	681	142	(4)(10)
Brickell Biotech, Inc.	Warrant	2/18/2016	Common Stock	9,005	119	—	(4)
Cellarity, Inc.	Warrant	12/8/2021	Preferred Series B	100,000	287	287	(14)
Century Therapeutics	Warrant	9/14/2020	Common Stock	16,112	37	64	(4)
Concert Pharmaceuticals, Inc.	Warrant	6/8/2017	Common Stock	61,273	178	3	(4)(10)
Dermavant Sciences Ltd.	Warrant	5/31/2019	Common Stock	223,642	101	354	(10)(12)
enGene, Inc.	Warrant	12/30/2021	Preferred Series 3 Class C	84,714	64	64	(5)(10)
Evofem Biosciences, Inc.	Warrant	6/11/2014	Common Stock	7,806	266	—	(4)
Genocea Biosciences, Inc.	Warrant	4/24/2018	Common Stock	41,176	165	1	(4)
Motif Bio PLC	Warrant	1/27/2020	Common Stock	121,337,041	282	—	(10)
Myovant Sciences, Ltd.	Warrant	10/16/2017	Common Stock	73,710	460	267	(4)(10)
Paratek Pharmaceuticals, Inc.	Warrant	6/27/2017	Common Stock	432,240	546	427	(4)
Phathom Pharmaceuticals, Inc.	Warrant	9/17/2021	Common Stock	64,687	848	307	(4)(10)(14)(15)
Scynexis, Inc.	Warrant	5/14/2021	Common Stock	90,887	188	142	(4)
Stealth Bio Therapeutics Corp.	Warrant	6/30/2017	Common Stock	500,000	158	—	(4)(10)
TG Therapeutics, Inc.	Warrant	2/28/2019	Common Stock	231,613	1,033	2,172	(4)(10)(12)
Tricida, Inc.	Warrant	3/27/2019	Common Stock	31,352	280	20	(4)
Valo Health, LLC (p.k.a. Integral Health Holdings, LLC)	Warrant	6/15/2020	Common Units	102,216	256	441	
X4 Pharmaceuticals, Inc.	Warrant	3/18/2019	Common Stock	108,334	673	2	(4)
Yumanity Therapeutics, Inc.	Warrant	12/20/2019	Common Stock	15,414	110	3	(4)
Subtotal: Drug Discovery & Development (0.36%)*					**7,393**	**4,745**	
Electronics & Computer Hardware							
908 Devices, Inc.	Warrant	3/15/2017	Common Stock	49,078	101	618	(4)
Skydio, Inc.	Warrant	11/8/2021	Common Stock	124,451	557	422	
Subtotal: Electronics & Computer Hardware (0.08%)*					**658**	**1,040**	
Information Services							
Capella Space	Warrant	10/21/2021	Common Stock	176,200	207	139	(14)
InMobi Inc.	Warrant	11/19/2014	Common Stock	65,587	82	—	(10)
Netbase Solutions, Inc.	Warrant	8/22/2017	Preferred Series 1	60,000	356	418	
Subtotal: Information Services (0.04%)*					**645**	**557**	
Internet Consumer & Business Services							
Aria Systems, Inc.	Warrant	5/22/2015	Preferred Series G	231,535	74	—	
Carwow LTD	Warrant	12/14/2021	Common Stock	174,163	164	160	(5)(10)
Cloudpay, Inc.	Warrant	4/10/2018	Preferred Series B	6,763	54	348	(5)(10)
First Insight, Inc.	Warrant	5/10/2018	Preferred Series B	75,917	96	105	
Houzz, Inc.	Warrant	10/29/2019	Common Stock	529,661	20	116	
Interactions Corporation	Warrant	6/16/2015	Preferred Series G-3	68,187	204	505	
Landing Holdings Inc.	Warrant	3/12/2021	Common Stock	11,806	116	141	(14)
Lendio, Inc.	Warrant	3/29/2019	Preferred Series D	127,032	39	84	
LogicSource	Warrant	3/21/2016	Preferred Series C	79,625	30	210	
Rhino Labs, Inc.	Warrant	3/12/2021	Common Stock	13,106	470	77	(14)
RumbleON, Inc.	Warrant	4/30/2018	Common Stock	5,139	88	33	(4)
SeatGeek, Inc.	Warrant	6/12/2019	Common Stock	1,379,761	842	1,140	
ShareThis, Inc.	Warrant	12/14/2012	Preferred Series C	493,502	547	—	
Skyword, Inc.	Warrant	8/23/2019	Preferred Series B	444,444	83	7	
Snagajob.com, Inc.	Warrant	4/20/2020	Common Stock	600,000	16	121	(12)
	Warrant	6/30/2016	Preferred Series A	1,800,000	782	171	(12)
	Warrant	8/1/2018	Preferred Series B	1,211,537	62	90	(12)
Total Snagajob.com, Inc.				3,611,537	860	382	
Tapjoy, Inc.	Warrant	7/1/2014	Preferred Series D	748,670	317	443	
The Faction Group LLC	Warrant	11/3/2014	Preferred Series AA	8,076	234	650	

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Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Thumbtack, Inc.	Warrant	5/1/2018	Common Stock	190,953	$ 552	$ 786	
Xometry, Inc.	Warrant	5/9/2018	Common Stock	87,784	47	3,038	(4)
Zepz (p.k.a. Worldremit Group Limited)	Warrant	2/11/2021	Preferred Series D	77,215	129	1,962	(5)(10)(15)
	Warrant	8/27/2021	Preferred Series E	1,868	26	25	(5)(10)(15)
Total Zepz (p.k.a. Worldremit Group Limited)				79,083	155	1,987	
Subtotal: Internet Consumer & Business Services (0.78%)*					**4,992**	**10,212**	
Media/Content/Info							
Zoom Media Group, Inc.	Warrant	12/21/2012	Preferred Series A	1,204	348	—	
Subtotal: Media/Content/Info (0.00%)*					**348**	**—**	
Medical Devices & Equipment							
Aspire Bariatrics, Inc.	Warrant	1/28/2015	Common Stock	22,572	455	—	
Flowonix Medical Incorporated	Warrant	11/3/2014	Preferred Series AA	155,325	363	—	(12)
	Warrant	9/21/2018	Preferred Series BB	725,806	351	—	
Total Flowonix Medical Incorporated				881,131	714	—	
Intuity Medical, Inc.	Warrant	12/29/2017	Preferred Series B-1	3,076,323	294	264	
Medrobotics Corporation	Warrant	3/13/2013	Preferred Series E	455,539	370	—	
Outset Medical, Inc.	Warrant	9/27/2013	Common Stock	62,794	401	1,797	(4)
SonaCare Medical, LLC	Warrant	9/28/2012	Preferred Series A	6,464	188	—	
Tela Bio, Inc.	Warrant	3/31/2017	Common Stock	15,712	61	13	(4)
Subtotal: Medical Devices & Equipment (0.16%)*					**2,483**	**2,074**	
Semiconductors							
Achronix Semiconductor Corporation	Warrant	6/26/2015	Preferred Series D-2	750,000	99	1,950	
Fungible Inc.	Warrant	12/16/2021	Common Stock	800,000	751	751	(14)
Subtotal: Semiconductors (0.21%)*					**850**	**2,701**	
Software							
Bitsight Technologies, Inc.	Warrant	11/18/2020	Common Stock	29,691	284	1,272	
Brain Corporation	Warrant	10/4/2021	Common Stock	194,629	165	132	(14)
CloudBolt Software, Inc.	Warrant	9/30/2020	Common Stock	211,342	117	85	
Cloudian, Inc.	Warrant	11/6/2018	Common Stock	477,454	71	33	
Couchbase, Inc.	Warrant	4/25/2019	Common Stock	105,350	462	1,343	(4)(19)
Dashlane, Inc.	Warrant	3/11/2019	Common Stock	560,536	404	415	
Delphix Corp.	Warrant	10/8/2019	Common Stock	718,898	1,594	3,275	(15)
Demandbase, Inc.	Warrant	8/2/2021	Common Stock	483,248	404	443	
DNAnexus, Inc.	Warrant	3/21/2014	Preferred Series C	909,091	97	102	
Evernote Corporation	Warrant	9/30/2016	Common Stock	62,500	106	65	
Fuze, Inc.	Warrant	6/30/2017	Preferred Series F	256,158	89	—	
Lightbend, Inc.	Warrant	2/14/2018	Preferred Series D	89,685	131	—	
Mixpanel, Inc.	Warrant	9/30/2020	Common Stock	82,362	252	906	
Nuvolo Technologies Corporation	Warrant	3/29/2019	Common Stock	50,000	88	283	
Poplicus, Inc.	Warrant	5/28/2014	Common Stock	132,168	—	—	
Pymetrics, Inc.	Warrant	9/15/2020	Common Stock	150,943	77	218	
RapidMiner, Inc.	Warrant	11/28/2017	Preferred Series C-1	4,982	24	54	
Reltio, Inc.	Warrant	6/30/2020	Common Stock	69,120	215	637	
Signpost, Inc.	Warrant	1/13/2016	Series Junior 1 Preferred	474,019	314	—	
SingleStore, Inc. (p.k.a. memsql, Inc.)	Warrant	4/28/2020	Preferred Series D	312,596	103	704	
Tact.ai Technologies, Inc.	Warrant	2/13/2020	Common Stock	1,041,667	206	162	
Udacity, Inc.	Warrant	9/25/2020	Common Stock	486,359	218	345	
ZeroFox, Inc.	Warrant	5/7/2020	Preferred Series C-1	648,350	101	603	
Zimperium, Inc.	Warrant	7/2/2021	Common Stock	20,563	72	56	
Subtotal: Software (0.85%)*					**5,594**	**11,133**	

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Portfolio Company	Type of Investment	Acquisition Date [4]	Series [3]	Shares	Cost [2]	Value	Footnotes
Surgical Devices							
Gynesonics, Inc.	Warrant	2/8/2012	Preferred Series C	151,123	$ 67	$ 6	
TransMedics Group, Inc. (p.k.a Transmedics, Inc.)	Warrant	11/7/2012	Common Stock	64,440	139	480	(4)
Subtotal: Surgical Devices (0.04%)*					**206**	**486**	
Sustainable and Renewable Technology							
Agrivida, Inc.	Warrant	6/20/2013	Preferred Series D	471,327	120	—	
Fulcrum Bioenergy, Inc.	Warrant	9/13/2012	Preferred Series C-1	280,897	274	699	
Halio, Inc. (p.k.a. Kinestral Technologies, Inc.)	Warrant	4/22/2014	Preferred Series A	325,000	155	249	
	Warrant	4/7/2015	Preferred Series B	131,883	63	86	
Total Halio, Inc. (p.k.a. Kinestral Technologies, Inc.)				456,883	218	335	
Polyera Corporation	Warrant	12/11/2012	Preferred Series C	311,609	338	—	
Subtotal: Sustainable and Renewable Technology (0.08%)*					**950**	**1,034**	
Total: Warrant Investments (2.93%)*					**$ 27,147**	**$ 38,399**	
Total: Investments in Securities (185.91%)*					**$ 2,388,952**	**$ 2,432,708**	
Investment Funds & Vehicles							
Forbion Growth Opportunities Fund I C.V.	Investment Funds & Vehicles	11/16/2020			2,032	1,814	(5)(10)(16)
Total: Investments in Investment Funds & Vehicles (0.14%)*					**$ 2,032**	**$ 1,814**	
Total: Investments (186.05%)*					**$ 2,390,984**	**$ 2,434,522**	

* Value as a percent of net assets. All amounts are stated in U.S. Dollars unless otherwise noted. The Company uses the Standard Industrial Code for classifying the industry grouping of its portfolio companies.

(1) Interest rate PRIME represents 3.25% as of December 31, 2021. 1-month LIBOR, 3-month LIBOR, and 6-month LIBOR represent, 0.14%, 0.24%, and 0.26%, respectively, as of December 31, 2021.

(2) Gross unrealized appreciation, gross unrealized depreciation, and net unrealized depreciation for federal income tax purposes totaled $121.0 million, $75.7 million, and $45.3 million, respectively. The tax cost of investments is $2.4 billion.

(3) Preferred and common stock, warrants, and equity interests are generally non-income producing.

(4) Except for warrants in 26 publicly traded companies and common stock in 36 publicly traded companies, all investments are restricted as of December 31, 2021 and were valued at fair value using Level 3 significant unobservable inputs as determined in good faith by the Company's Board.

(5) Non-U.S. company or the company's principal place of business is outside the United States.

(6) Affiliate investment as defined under the 1940 Act in which Hercules owns at least 5% but generally less than 25% of the company's voting securities.

(7) Control investment as defined under the 1940 Act in which Hercules owns at least 25% of the company's voting securities or has greater than 50% representation on its board.

(8) Debt is on non-accrual status as of December 31, 2021, and is therefore considered non-income producing. Note that only the PIK portion is on non-accrual for the Company's debt investment in Tectura Corporation and Pineapple Energy LLC.

(9) Denotes that all or a portion of the debt investment is convertible debt.

(10) Indicates assets that the Company deems not "qualifying assets" under section 55(a) of 1940 Act. Qualifying assets must represent at least 70% of the Company's total assets at the time of acquisition of any additional non-qualifying assets.

(11) Denotes that all or a portion of the debt investment is pledged as collateral under the SMBC Facility (as defined in "Note 5 — Debt").

(12) Denotes that all or a portion of the investment is pledged as collateral under the Union Bank Facility (as defined in "Note 5 — Debt").

(13) Denotes that all or a portion of the debt investment principal includes accumulated PIK interest and is net of repayments.

(14) Denotes that all or a portion of the investment in this portfolio company is held by HC IV, the Company's wholly owned SBIC subsidiary.

(15) Denotes that the fair value of the Company's total investments in this portfolio company represent greater than 5% of the Company's total net assets as of December 31, 2021.

(16) Denotes that there is an unfunded contractual commitment available at the request of this portfolio company as of December 31, 2021. Refer to "Note 11 — Commitments and Contingencies".

(17) Denotes unitranche debt with first lien "last-out" senior secured position and security interest in all assets of the portfolio company whereby the "last-out" portion will be subordinated to the "first-out" portion in a liquidation, sale or other disposition.

(18) Denotes second lien senior secured debt.

(19) Denotes all or a portion of the public equity or warrant investment was acquired in a transaction exempt from registration under the Securities Act of 1933 ("Securities Act") and may be deemed to be "restricted securities" under the Securities Act.

(20) Denotes investment in a non-voting security in the form of a promissory note. The terms of the notes provide the Company with a lien on the issuers' shares of Common Stock in portfolio company Black Crow AI, Inc., subject to release upon repayment of the outstanding balance of the notes. As of September 30, 2021, the Black Crow AI, Inc. affiliates promissory notes had an outstanding balance of $3.0 million.

See notes to consolidated financial statements

1. Description of Business

Hercules Capital, Inc. (the "Company") is a specialty finance company focused on providing senior secured loans to high-growth, innovative venture capital-backed and institutional-backed companies in a variety of technology, life sciences, and sustainable and renewable technology industries. The Company sources its investments through its principal office located in Palo Alto, CA, as well as through its additional offices in Boston, MA, New York, NY, Bethesda, MD, San Diego, CA, and London, United Kingdom. The Company was incorporated under the General Corporation Law of the State of Maryland in December 2003.

The Company is an internally managed, non-diversified closed-end investment company that has elected to be regulated as a Business Development Company ("BDC") under the Investment Company Act of 1940, as amended (the "1940 Act"). From incorporation through December 31, 2005, the Company was subject to tax as a corporation under Subchapter C of the Internal Revenue Code of 1986, as amended (the "Code"). Effective January 1, 2006, the Company elected to be treated for tax purposes as a Regulated Investment Company ("RIC") under Subchapter M of the Code (see "Note 6 - Income Taxes").

The Company does not currently use Commodity Futures Trading Commission ("CFTC") derivatives. However, to the extent that it uses CFTC derivatives in the future, it intends to do so below prescribed levels and will not market itself as a "commodity pool" or a vehicle for trading such instruments. The Company has claimed an exclusion from the definition of the term "commodity pool operator" under the Commodity Exchange Act ("CEA"), pursuant to Rule 4.5 under the CEA. The Company is not, therefore, subject to registration or regulation as a "commodity pool operator" under the CEA.

Hercules Capital IV, L.P. ("HC IV") is our wholly owned Delaware limited partnership that was formed in December 2010. HC IV received a license to operate as a Small Business Investment Company ("SBIC") under the authority of the Small Business Administration ("SBA") on October 27, 2020. SBICs are subject to a variety of regulations concerning, among other things, the size and nature of the companies in which they may invest and the structure of those investments. Hercules Technology SBIC Management, LLC ("HTM"), is a wholly owned limited liability company subsidiary of the Company, which was formed in November 2003 and serves as the general partner of HC IV.

The Company has also established certain wholly owned subsidiaries, all of which are structured as Delaware corporations or Limited Liability Companies ("LLCs"), to hold portfolio companies organized as LLCs (or other forms of pass-through entities). These subsidiaries are consolidated for financial reporting purposes and in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). These subsidiaries are taxable entities and are not consolidated with Hercules for income tax purposes. The Company's taxable subsidiaries may generate income tax expense, or benefit, and tax assets and liabilities as a result of their ownership of certain portfolio investments.

In May 2020, Hercules Adviser LLC (the "Adviser Subsidiary") was formed as a wholly owned Delaware limited liability subsidiary of the Company to provide investment advisory and related services to investment vehicles ("Adviser Funds") owned by one or more unrelated third-party investors ("External Parties"). The Adviser Subsidiary receives fee income for the services provided to the Adviser Funds. The Company was granted no-action relief by the staff of the Securities and Exchange Commission ("SEC") to allow the Adviser Subsidiary to register as a registered investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act").

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying consolidated interim financial statements have been prepared in conformity with U.S. GAAP for interim financial information, and pursuant to the requirements for reporting on Form 10-Q and Articles 6, 10 and 12 of Regulation S-X. Accordingly, certain disclosures accompanying annual consolidated financial statements prepared in accordance with U.S. GAAP are omitted. In the opinion of management, all adjustments consisting solely of normal recurring accruals considered necessary for the fair statement of consolidated financial statements for the interim periods have been included. The current period's results of operations are not necessarily indicative of results that ultimately may be achieved for the full fiscal year. Therefore, the interim unaudited consolidated financial statements and notes should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2021. The year-end Consolidated Statements of Assets and Liabilities data was derived from audited financial statements but does not include all disclosures required by U.S. GAAP. The Company's functional currency is U.S. dollars ("USD") and these consolidated financial statements have been prepared in that currency.

As an investment company, the Company follows accounting and reporting guidance as set forth in Topic 946 Financial Services – Investment Companies ("ASC Topic 946") of the Financial Accounting Standards Board's ("FASB") Accounting Standards Codification, as amended ("ASC"). As provided under Regulation S-X and ASC Topic 946, the Company will not

consolidate its investment in a portfolio company other than an investment company subsidiary or a controlled operating company whose business consists of providing services to the Company. Rather, an investment company's interest in portfolio companies that are not investment companies should be measured at fair value in accordance with ASC Topic 946. The Adviser Subsidiary is not an investment company as defined in ASC Topic 946 and further, the Adviser Subsidiary provides investment advisory services exclusively to the Adviser Funds which are owned by External Parties. As such pursuant to ASC Topic 946, the Adviser Subsidiary is accounted for as a portfolio investment of the Company held at fair value and is not consolidated.

Financial statements prepared on a U.S. GAAP basis require management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the consolidated financial statements and the reported amounts of income, expenses, gains and losses during the reported periods. Changes in the economic and regulatory environment, financial markets, the credit worthiness of our portfolio companies, other macro-economic developments (for example, global pandemics, natural disasters, terrorism, international conflicts and war), and any other parameters used in determining these estimates and assumptions could cause actual results to differ from these estimates and assumptions.

Principles of Consolidation

The Consolidated Financial Statements include the accounts of the Company, its consolidated subsidiaries, and Variable Interest Entities ("VIE") for which the Company is the primary beneficiary. All intercompany accounts and transactions have been eliminated in consolidation.

A VIE is an entity that either (i) has insufficient equity to permit the entity to finance its activities without additional subordinated financial support or (ii) has equity investors who lack the characteristics of a controlling financial interest. The primary beneficiary of a VIE is the party with both the power to direct the activities of the VIE that most significantly impact the VIE's economic performance and the obligation to absorb the losses or the right to receive benefits that could be significant to the VIE.

To assess whether the Company has the power to direct the activities of a VIE that most significantly impact its economic performance, the Company considers all the facts and circumstances including its role in establishing the VIE and its ongoing rights and responsibilities. This assessment includes identifying the activities that most significantly impact the VIE's economic performance and identifying which party, if any, has power over those activities. In general, the party that makes the most significant decisions affecting the VIE is determined to have the power to direct the activities of a VIE. To assess whether the Company has the obligation to absorb the losses or the right to receive benefits that could potentially be significant to the VIE, the Company considers all of its economic interests, including debt and equity interests, servicing rights and fee arrangements, and any other variable interests in the VIE. If the Company determines that it is the party with the power to make the most significant decisions affecting the VIE, and the Company has a potentially significant interest in the VIE, then it consolidates the VIE.

The Company performs periodic reassessments, usually quarterly, of whether it is the primary beneficiary of a VIE. The reassessment process considers whether the Company has acquired or divested the power to direct the activities of the VIE through changes in governing documents or other circumstances. The Company also reconsiders whether entities previously determined not to be VIEs have become VIEs, based on certain events, and therefore are subject to the VIE consolidation framework.

As of June 30, 2022, the Company's Consolidated Financial Statements included the accounts of the securitization trust, a VIE, formed in conjunction with the issuance of the 2031 Asset-Backed Notes (as defined in "Note 5 – Debt"). The Company held no interests in a VIE as of December 31, 2021. The assets of the Company's securitization VIE are restricted to be used to settle obligations of its consolidated securitization VIE, which are disclosed parenthetically on the Consolidated Statements of Assets and Liabilities. The liabilities are the only obligations of its consolidated securitization VIE, and the creditors (or beneficial interest holders) do not have recourse to the Company's general credit.

Fair Value Measurements

The Company follows guidance in ASC Topic 820, Fair Value Measurement ("ASC Topic 820"), where fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. ASC Topic 820 establishes a framework for measuring the fair value of assets and liabilities and outlines a three-tier hierarchy which maximizes the use of observable market data input and minimizes the use of unobservable inputs to establish a classification of fair value measurements. Inputs refer broadly to the assumptions that market participants would use in pricing the asset or liability, including assumptions about risk, such as the risk inherent in a particular valuation technique used to measure fair value using a pricing model and/or the risk inherent in the inputs for the valuation technique. Inputs may be observable or unobservable. Observable inputs reflect the assumptions market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs reflect the Company's own assumptions about the assumptions market participants would use in pricing the asset or liability based on the information available. The inputs or methodology used for valuing assets or liabilities may not be an indication of the risks associated with investing in those assets or liabilities. ASC Topic 820 also requires disclosure for fair value measurements based on the level within the hierarchy of the information used in the valuation. ASC Topic 820 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value.

The Company categorizes all investments recorded at fair value in accordance with ASC Topic 820 based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels, defined by ASC Topic 820 and directly related to the amount of subjectivity associated with the inputs to fair valuation of these assets and liabilities, are as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets at the measurement date. The types of assets carried at Level 1 fair value generally are equities listed in active markets.

Level 2—Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset in connection with market data at the measurement date and for the extent of the instrument's anticipated life. Fair valued assets that are generally included in this category are publicly held debt investments and warrants held in a public company.

Level 3—Inputs reflect management's best estimate of what market participants would use in pricing the asset at the measurement date. It includes prices or valuations that require inputs that are both significant to the fair value measurement and unobservable. Generally, assets carried at fair value and included in this category are the debt investments and warrants and equities held in a private company.

Valuation of Investments

The most significant estimate inherent in the preparation of the Company's consolidated financial statements is the valuation of investments and the related amounts of unrealized appreciation and depreciation of investments recorded.

As of June 30, 2022, approximately 94.7% of the Company's total assets represented investments in portfolio companies whose fair value is determined in good faith by the Company's Valuation Committee and approved by the Board. Value, as defined in Section 2(a)(41) of the 1940 Act, is (i) the market price for those securities for which a market quotation is readily available and (ii) for all other securities and assets, fair value is as determined in good faith by the valuation designee of the Board. The Company's investments are carried at fair value in accordance with the 1940 Act and ASC Topic 946 and measured in accordance with ASC Topic 820. The Company's debt securities are primarily invested in venture capital-backed and institutional-backed companies in technology-related industries including technology, drug discovery and development, biotechnology, life sciences, healthcare, and sustainable and renewable technology at all stages of development. Given the nature of lending to these types of businesses, substantially all of the Company's investments in these portfolio companies are considered Level 3 assets under ASC Topic 820 because there generally is no known or accessible market or market indexes for these investment securities to be traded or exchanged. As such, the Company values substantially all of its investments at fair value as determined in good faith pursuant to a consistent valuation policy established by the Board in accordance with the provisions of ASC Topic 820 and the 1940 Act. Due to the inherent uncertainty in determining the fair value of investments that do not have a readily available market value, the fair value of the Company's investments determined in good faith by the Company's Valuation Committee and approved by the Board may differ significantly from the value that would have been used had a readily available market existed for such investments, and the differences could be material.

In accordance with procedures established by its Board, the Company values investments on a quarterly basis following a multistep valuation process. Pursuant to the amended SEC Rule 2a-5 of the 1940 Act, the Board has designated the Company's Valuation Committee as the "valuation designee". The quarterly Board approved multi-step valuation process is described below:

(1) The Company's quarterly valuation process begins with each portfolio company being initially valued by the investment professionals responsible for the portfolio investment;

(2) Preliminary valuation conclusions and business-based assumptions, along with any applicable fair value marks provided by an independent firm, are reviewed with the Company's investment committee and certain member(s) of credit group as necessary;

(3) The Valuation Committee reviews the preliminary valuations recommended by the investment committee and certain member(s) of the credit group of each investment in the portfolio and determines the fair value of each investment in the Company's portfolio in good faith and recommends the valuation determinations to the Audit Committee of the Board;

(4) The Audit Committee of the Board provides oversight of the quarterly valuation process in accordance with Rule 2a-5, which includes a review of the quarterly reports prepared by the Valuation Committee, reviews the fair valuation determinations made by the Valuation Committee, and approves such valuations for inclusion in public reporting and disclosures, as appropriate; and

(5) The Board, upon the recommendation of the Audit Committee, discusses valuations and approves the fair value of each investment in the Company's portfolio.

Investments purchased within the preceding two calendar quarters before the valuation date and debt investments with remaining maturities within 12 months or less may each be valued at cost with interest accrued or discount accreted/premium amortized to the date of maturity, unless such valuation, in the judgment of the Company, does not represent fair value. In this case such investments shall be valued at fair value as determined in good faith by the Valuation Committee and approved by the Board. Investments that are not publicly traded or whose market quotations are not readily available are valued at fair value as determined in good faith by the Valuation Committee and approved by the Board.

As part of the overall process noted above, the Company engages one or more independent valuation firm(s) to provide management with assistance in determining the fair value of selected portfolio investments each quarter. In selecting which portfolio investments to engage an independent valuation firm, the Company considers a number of factors, including, but not limited to, the potential for material fluctuations in valuation results, size, credit quality, and the time lapse since the last valuation of the portfolio investment by an independent valuation firm. The scope of services rendered by the independent valuation firm is at the discretion of the Valuation Committee and subject to approval of the Board, and the Company may engage an independent valuation firm to value all or some of our portfolio investments. In determining the fair value of a portfolio investment in good faith, the Company recognizes these determinations are made using the best available information that is knowable or reasonably knowable. In addition, changes in the market environment, portfolio company performance and other events that may occur over the duration of the investments may cause the gains or losses ultimately realized on these investments to be materially different than the valuations currently assigned. The change in fair value of each individual investment is recorded as an adjustment to the investment's fair value and the change is reflected in unrealized appreciation or depreciation.

Debt Investments

The Company's debt securities are primarily invested in venture capital-backed and institutional-backed companies in technology-related industries including technology, drug discovery and development, biotechnology, life sciences, healthcare, and sustainable and renewable technology at all stages of development. Given the nature of lending to these types of businesses, substantially all of the Company's investments in these portfolio companies are considered Level 3 assets under ASC Topic 820 because there generally is no known or accessible market or market indexes for debt instruments for these investment securities to be traded or exchanged. The Company may, from time to time, invest in public debt of companies that meet the Company's investment objectives, and to the extent market quotations or other pricing indicators (i.e. broker quotes) are available, these investments are considered Level 1 or 2 assets in line with ASC Topic 820.

In making a good faith determination of the value of the Company's investments, the Company generally starts with the cost basis of the investment, which includes the value attributed to the original issue discount ("OID"), if any, and payment-in-kind ("PIK") interest or other receivables which have been accrued as earned. The Company then applies the valuation methods as set forth below.

The Company assumes the sale of each debt security in a hypothetical market to a hypothetical market participant where buyers and sellers are willing participants. The hypothetical market does not include scenarios where the underlying security was simply repaid or extinguished, but includes an exit concept. The Company determines the yield at inception for each debt investment. The Company then uses senior secured, leveraged loan yields provided by third party providers to calibrate the change in market yields between inception of the debt investment and the measurement date. Industry specific indices and other relevant market data are used to benchmark and assess market-based movements for reasonableness. As part of determining the fair value, the Company also evaluates the collateral for recoverability of the debt investments. The Company considers each portfolio company's credit rating, security liens and other characteristics of the investment to adjust the baseline yield to derive a credit adjusted hypothetical yield for each investment as of the measurement date. The anticipated future cash flows from each investment are then discounted at the hypothetical yield to estimate each investment's fair value as of the measurement date. The Company's process includes an analysis of, among other things, the underlying investment performance, the current portfolio company's financial condition and market changing events that impact valuation, estimated remaining life, current market yield and interest rate spreads of similar securities as of the measurement date.

The Company values debt securities that are traded on a public exchange at the prevailing market price as of the valuation date. For syndicated debt investments, for which sufficient market data is available and liquidity, the Company values debt securities using broker quotes and bond indices amongst other factors. If there is a significant deterioration of the credit quality of a debt investment, the Company may consider other factors to estimate fair value, including the proceeds that would be received in a liquidation analysis.

The Company records unrealized depreciation on investments when it believes that an investment has decreased in value, including where collection of a debt investment is doubtful or, if under the in-exchange premise, when the value of a debt investment is less than amortized cost of the investment. Conversely, where appropriate, the Company records unrealized appreciation if it believes that the underlying portfolio company has appreciated in value and, therefore, that its investment has also appreciated in value or, if under the in-exchange premise, the value of a debt investment is greater than amortized cost.

When originating a debt instrument, the Company generally receives warrants or other equity securities from the borrower. The Company determines the cost basis of the warrants or other equity securities received based upon their respective fair values on the date of receipt in proportion to the total fair value of the debt and warrants or other equity securities received. Any resulting discount on the debt investments from recordation of the warrant or other equity instruments is accreted into interest income over the life of the debt investment.

Equity Securities and Warrants

Securities that are traded in the over-the-counter markets or on a stock exchange will be valued at the prevailing bid price at period end. The Company has a limited amount of equity securities in public companies. In accordance with the 1940 Act, unrestricted

publicly traded securities for which market quotations are readily available are valued at the closing market quote on the measurement date.

At each reporting date, privately held warrant and equity securities are valued based on an analysis of various factors including, but not limited to, the portfolio company's operating performance and financial condition, general market conditions, price to enterprise value or price to equity ratios, discounted cash flow, valuation comparisons to comparable public companies or other industry benchmarks. When an external event occurs, such as a purchase transaction, public offering, or subsequent equity sale, the pricing indicated by that external event is utilized to corroborate the Company's valuation of the warrant and equity securities. The Company periodically reviews the valuation of its portfolio companies that have not been involved in a qualifying external event to determine if the enterprise value of the portfolio company may have increased or decreased since the last valuation measurement date. Absent a qualifying external event, the Company estimates the fair value of warrants using a Black Scholes OPM. For certain privately held equity securities, the income approach is used, in which the Company converts future amounts (for example, cash flows or earnings) to a net present value. The measurement is based on the value indicated by current market expectations about those future amounts. In following these approaches, the types of factors that the Company may take into account include, as relevant: applicable market yields and multiples, the portfolio company's capital structure, the nature and realizable value of any collateral, the portfolio company's ability to make payments, its earnings and discounted cash flows, and enterprise value among other factors.

Investment Funds & Vehicles

The Company applies the practical expedient provided by the ASC Topic 820 relating to investments in certain entities that calculate net asset value ("NAV") per share (or its equivalent). ASC Topic 820 permits an entity holding investments in certain entities that either are investment companies, or have attributes similar to an investment company, and calculate NAV per share or its equivalent for which the fair value is not readily determinable, to measure the fair value of such investments on the basis of that NAV per share, or its equivalent, without adjustment. Investments which are valued using NAV per share as a practical expedient are not categorized within the fair value hierarchy as per ASC Topic 820.

Cash, Cash Equivalents, and Restricted Cash

Cash and cash equivalents consist solely of funds deposited with financial institutions and short-term liquid investments in money market deposit accounts. Cash and cash equivalents are carried at cost, which approximates fair value. As of June 30, 2022, the Company held $590 thousand (Cost basis $587 thousand) of foreign cash. As of December 31, 2021, the Company held $95 thousand (Cost basis $93 thousand) of foreign cash. Restricted cash includes amounts that are held as collateral securing certain of the Company's financing transactions, including amounts held in a securitization trust by trustees related to our 2031 Asset-Backed Notes (refer to "Note 5 – Debt").

Other Assets

Other assets generally consist of prepaid expenses, debt issuance costs on our Credit Facilities net of accumulated amortization, fixed assets net of accumulated depreciation, deferred revenues and deposits and other assets, including escrow receivables.

Escrow Receivables

Escrow receivables are collected in accordance with the terms and conditions of the escrow agreement. Escrow balances are typically distributed over a period greater than one year and may accrue interest during the escrow period. Escrow balances are measured for collectability on at least a quarterly basis and fair value is determined based on the amount of the estimated recoverable balances and the contractual maturity date. As of both June 30, 2022 and December 31, 2021, there were no material past due escrow receivables. The approximate fair value in accordance with ASC Topic 820 of the escrow receivable balance as of June 30, 2022 and December 31, 2021 was $0.6 million and $0.6 million, respectively.

Leases

The Company determines if an arrangement is a lease at inception. Operating leases are included in right of use ("ROU") assets, and operating lease liability obligations in our Consolidated Statements of Assets and Liabilities. The Company recognizes a ROU asset and an operating lease liability for all leases, with the exception of short-term leases which have a term of 12 months or less. ROU assets represent the right to use an underlying asset for the lease term and operating lease liability obligations represent the obligation to make lease payments arising from the lease. ROU assets and liabilities are recognized at lease commencement date based on the present value of lease payments over the lease term. The Company has lease agreements with lease and non-lease components and has separated these components when determining the ROU assets and the related lease liabilities. As most of the Company's leases do not provide an implicit rate, the Company estimated its incremental borrowing rate based on the information available at the lease commencement date in determining the present value of lease payments. The Company uses the implicit rate when readily determinable. The ROU asset also includes any lease payments made and excludes lease incentives and lease direct costs. The Company's lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense is recognized on a straight-line basis over the lease term. See "Note 11 – Commitments and Contingencies".

Income Recognition

The Company records interest income on an accrual basis and recognizes it as earned in accordance with the contractual terms of the loan agreement, to the extent that such amounts are expected to be collected. OID initially represents the value of detachable equity warrants obtained in conjunction with the acquisition of debt securities and is accreted into interest income over the term of the loan as a yield enhancement. Debt investments are placed on non-accrual status when it is probable that principal, interest or fees will not be collected according to contractual terms. When a debt investment is placed on non-accrual status, the Company ceases to recognize interest and fee income until the portfolio company has paid all principal and interest due or demonstrated the ability to repay its current and future contractual obligations to the Company. The Company may not apply the non-accrual status to a loan where the investment has sufficient collateral value to collect all of the contractual amount due and is in the process of collection. Interest collected on non-accrual investments are generally applied to principal.

Fee income, generally collected in advance, includes loan commitment and facility fees for due diligence and structuring, as well as fees for transaction services and management services rendered by the Company to portfolio companies and other third parties. Loan commitment and facility fees are amortized into income over the contractual life of the loan. Management fees are generally recognized as income when the services are rendered. Loan origination fees are capitalized and then amortized into interest income using the effective interest rate method. In certain loan arrangements, warrants or other equity interests are received from the borrower as additional origination fees. The Company had approximately $50.2 million of unamortized fees as of June 30, 2022, of which approximately $41.1 million was included as an offset to the cost basis of its current debt investments and approximately $9.1 million was deferred contingent upon the occurrence of a funding or milestone. As of December 31, 2021, the Company had approximately $42.9 million of unamortized fees, of which approximately $36.5 million was included as an offset to the cost basis of the Company's current debt investments and approximately $6.4 million was deferred contingent upon the occurrence of a funding or milestone.

The Company recognizes nonrecurring fees amortized over the remaining term of the loan commencing in the quarter relating to specific loan modifications. Certain fees may still be recognized as one-time fee income, including prepayment penalties, fees related to select covenant default, waiver fees and acceleration of previously deferred loan fees and OID related to early loan pay-off or material modification of the specific debt outstanding. The Company recorded approximately $0.5 million and $3.0 million in one-time fee income during the three months ended June 30, 2022 and 2021, respectively. The Company recorded approximately $0.8 million and $4.5 million in one-time fee income during the six months ended June 30, 2022 and 2021, respectively.

In addition, the Company may also be entitled to an exit fee that is amortized into income over the life of the loan. Loan exit fees to be paid at the termination of the loan are accreted into interest income over the contractual life of the loan. As of June 30, 2022, the Company had approximately $41.0 million in exit fees receivable, of which approximately $36.6 million was included as a component of the cost basis of its current debt investments and approximately $4.4 million was a deferred receivable related to expired commitments. As of December 31, 2021, the Company had approximately $35.0 million in exit fees receivable, of which approximately $29.6 million was included as a component of the cost basis of its current debt investments and approximately $5.4 million was a deferred receivable related to expired commitments.

The Company has debt investments in its portfolio that contain a PIK provision. Contractual PIK interest, which represents contractually deferred interest added to the loan balance that is generally due at the end of the loan term, is generally recorded on an accrual basis to the extent such amounts are expected to be collected. The Company will generally cease accruing PIK interest if there is insufficient value to support the accrual or management does not expect the portfolio company to be able to pay all principal and interest due. The Company recorded approximately $5.0 million and $2.6 million in PIK income during the three months ended June 30, 2022 and 2021, respectively. The Company recorded approximately $9.9 million and $5.2 million in PIK income during the six months ended June 30, 2022 and 2021, respectively.

To maintain the Company's RIC status for taxation purposes, PIK and exit fee income generally must be accrued and distributed to stockholders in the form of dividends for U.S. federal income tax purposes even though the cash has not yet been collected. Amounts necessary to pay these distributions may come from available cash or the liquidation of certain investments.

In certain investment transactions, the Company may provide advisory services. For services that are separately identifiable and external evidence exists to substantiate fair value, income is recognized as earned, which is generally when the investment transaction closes. The Company had no income from advisory services in the three and six months ended June 30, 2022 and 2021.

Equity Offering Expenses

The Company's offering expenses are charged against the proceeds from equity offerings when received as a reduction of capital upon completion of an offering of registered securities.

Debt

The debt of the Company is carried at amortized cost which is comprised of the principal amount borrowed net of any unamortized discount and debt issuance costs. Discounts and issuance costs are accreted to interest expense and loan fees, respectively, using the straight-line method, which closely approximates the effective yield method, over the remaining life of the underlying debt obligations (see "Note 5 – Debt"). Accrued but unpaid interest is included within Accounts payable and accrued liabilities on the Consolidated Statements of Assets and Liabilities. In the event that the debt is extinguished, either partially or in full, before maturity, the Company recognizes the gain or loss in the Consolidated Statement of Operations within net realized gains (losses) as a "Loss on debt extinguishment".

Debt Issuance Costs

Debt issuance costs are fees and other direct incremental costs incurred by the Company in obtaining debt financing and are recognized as prepaid expenses and amortized over the life of the related debt instrument using the effective yield method or the straight-line method, which closely approximates the effective yield method. In accordance with ASC Subtopic 835-30, *Interest – Imputation of Interest*, debt issuance costs are presented as a reduction to the associated liability balance on the Consolidated Statements of Assets and Liabilities, except for debt issuance costs associated with line-of-credit arrangements.

Stock Based Compensation

The Company has issued and may, from time to time, issue stock options, restricted stock, and other stock based compensation awards to employees and directors. Management follows the guidance set forth under ASC Topic 718, to account for stock-based compensation awards granted. Under ASC Topic 718, compensation expense associated with stock-based compensation is measured at the grant date based on the fair value of the award and is recognized over the vesting period. Determining the appropriate fair value model and calculating the fair value of stock-based awards at the grant date requires judgment. This includes certain assumptions such as stock price volatility, forfeiture rate, expected outcome probability, and expected option life, as applicable to each award. In accordance with ASC Topic 480, certain stock awards are classified as a liability. The compensation expense associated with these awards is recognized in the same manner as all other stock-based compensation. The award liability is recorded as deferred compensation and included in Accounts payable and accrued liabilities.

Income Taxes

The Company intends to operate so as to qualify to be subject to tax as a RIC under Subchapter M of the Code and, as such, will not be subject to federal income tax on the portion of taxable income (including gains) distributed as dividends for U.S. federal income tax purposes to stockholders. Taxable income includes the Company's taxable interest, dividend and fee income, reduced by certain deductions, as well as taxable net realized gains. Taxable income generally differs from net income for financial reporting purposes due to temporary and permanent differences in the recognition of income and expenses, and generally excludes net unrealized appreciation or depreciation, as such gains or losses are not included in taxable income until they are realized.

As a RIC, the Company will be subject to a 4% nondeductible U.S. federal excise tax on certain undistributed income unless the Company makes distributions treated as dividends for U.S. federal income tax purposes in a timely manner to its stockholders in respect of each calendar year of an amount at least equal to the Excise Tax Avoidance Requirement, as defined below. The Company will not be subject to this excise tax on any amount on which the Company incurred U.S. federal corporate income tax (such as the tax imposed on a RIC's retained net capital gains).

Depending on the level of taxable income earned in a taxable year, the Company may choose to carry over taxable income in excess of current taxable year distributions treated as dividends for U.S. federal income tax purposes from such taxable income into the next taxable year and incur a 4% excise tax on such taxable income, as required. The maximum amount of excess taxable income that may be carried over for distribution in the next taxable year under the Code is the total amount of distributions treated as dividends for U.S. federal income tax purposes paid in the following taxable year, subject to certain declaration and payment guidelines. To the extent the Company chooses to carry over taxable income into the next taxable year, distributions declared and paid by the Company in a taxable year may differ from the Company's taxable income for that taxable year as such distributions may include the distribution of current taxable year taxable income, the distribution of prior taxable year taxable income carried over into and distributed in the current taxable year, or returns of capital.

We account for income taxes in accordance with the provisions of ASC Topic 740 Income Taxes, under which income taxes are provided for amounts currently payable and for amounts deferred based upon the estimated future tax effects of differences between the financial statements and tax basis of assets and liabilities given the provisions of the enacted tax law. Valuation allowances may be used to reduce deferred tax assets to the amount likely to be realized. We intend to timely distribute to our stockholders substantially all of our annual taxable income for each year, except that we may retain certain net capital gains for reinvestment and, depending upon the level of taxable income earned in a year, we may choose to carry forward taxable income for distribution in the following year and pay any applicable U.S. federal excise tax.

Because federal income tax regulations differ from U.S. GAAP, distributions in accordance with tax regulations may differ from net investment income and net realized gains recognized for financial reporting purposes. Differences may be permanent or

temporary. Permanent differences are reclassified among capital accounts in the financial statements to reflect their appropriate tax character. Permanent differences may also result from the change in the classification of certain items, such as the treatment of short-term gains as ordinary income for tax purposes. Temporary differences arise when certain items of income, expense, gain or loss are recognized at some time in the future. Also, tax legislation requires that income be recognized for tax purposes no later than when recognized for financial reporting purposes, with certain exceptions.

Earnings Per Share ("EPS")

Basic EPS is calculated by dividing net earnings applicable to common stockholders by the weighted average number of common shares outstanding. Common shares outstanding includes common stock and restricted stock for which no future service is required as a condition to the delivery of the underlying common stock. Diluted EPS includes the determinants of basic EPS and, in addition, reflects the dilutive effect of the common stock deliverable pursuant to stock options and to restricted stock for which future service is required as a condition to the delivery of the underlying common stock. In accordance with ASC 260-10-45-60A, the Company uses the two-class method in the computation of basic EPS and diluted EPS, if applicable.

Comprehensive Income

The Company reports all changes in comprehensive income in the Consolidated Statements of Operations. The Company did not have other comprehensive income for the three and six months ended June 30, 2022 or 2021. The Company's comprehensive income is equal to its net increase in net assets resulting from operations.

Distributions

Distributions to common stockholders are approved by the Board on a quarterly basis and the distribution payable is recorded on the ex-dividend date. The Company maintains an "opt out" dividend reinvestment plan that provides for reinvestment of the Company's distribution on behalf of the Company's stockholders, unless a stockholder elects to receive cash. As a result, if the Company declares a distribution, cash distributions will be automatically reinvested in additional shares of its common stock unless the stockholder specifically "opts out" of the dividend reinvestment plan and chooses to receive cash distributions. During the three and six months ended June 30, 2022, the Company issued 61,145 shares and 121,471 shares, respectively, of common stock to stockholders in connection with the dividend reinvestment plan. During the three and six months ended June 30, 2021, the Company issued 66,946 shares and 133,943 shares, of common stock to stockholders in connection with the dividend reinvestment plan.

Segments

The Company lends to and invests in portfolio companies in various technology-related industries including technology, drug discovery and development, biotechnology, life sciences, healthcare, and sustainable and renewable technology. The Company separately evaluates the performance of each of its lending and investment relationships. However, because each of these loan and investment relationships has similar business and economic characteristics, they have been aggregated into a single reportable segment.

Recent Accounting Pronouncements

In March 2022, the FASB issued ASU 2022-02, "Financial Instruments‑Credit Losses (Topic 326)", which is intended to address issues identified during the post-implementation review of ASU 2016-13, "Financial Instruments‑Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments". The amendment, among other things, eliminates the accounting guidance for troubled debt restructurings by creditors in Subtopic 310-40, "Receivables‑Troubled Debt Restructurings by Creditors", while enhancing disclosure requirements for certain loan refinancings and restructurings by creditors when a borrower is experiencing financial difficulty. The new guidance is effective for interim and annual periods beginning after December 15, 2022. The Company does not anticipate the new standard to have a material impact to the consolidated financial statements and related disclosures.

In June 2022, the FASB issued ASU 2022-03, "Fair Value Measurement (Topic 820)‑Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions", which was issued to (1) clarify the guidance in Topic 820, Fair Value Measurement, when measuring the fair value of an equity security subject to contractual restrictions that prohibit the sale of an equity security, (2) to amend a related illustrative example, and (3) to introduce new disclosure requirements for equity securities subject to contractual sale restrictions that are measured at fair value in accordance with Topic 820. The new guidance is effective for interim and annual periods beginning after December 15, 2023. The Company is currently evaluating the impact of the new standard on the Company's consolidated financial statements and related disclosures.

3. Fair Value of Financial Instruments

Fair value estimates are made at discrete points in time based on relevant information. These estimates may be subjective in nature and involve uncertainties and matters of significant judgment and, therefore, cannot be determined with precision. Investments measured at fair value on a recurring basis are categorized in the tables below based upon the lowest level of significant input to the valuations as of June 30, 2022 and December 31, 2021.

(in thousands) Description	Balance as of June 30, 2022	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash equivalents				
Money Market Fund	$ 90,000	$ 90,000	$ —	$ —
Other assets				
Escrow Receivables	$ 642	$ —	$ —	$ 642
Investments				
Senior Secured Debt	$ 2,496,639	$ —	$ —	$ 2,496,639
Unsecured Debt	54,227	—	—	54,227
Preferred Stock	49,858	—	—	49,858
Common Stock	87,936	52,529	7,027	28,380
Warrants	27,903	—	5,913	21,990
	$ 2,716,563	$ 52,529	$ 12,940	$ 2,651,094
Investment Funds & Vehicles measured at Net Asset Value [1]	2,328			
Total Investments excluding cash equivalents	$ 2,718,891			
Total Investments including cash equivalents	$ 2,808,891			

(in thousands) Description	Balance as of December 31, 2021	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Other assets				
Escrow Receivables	$ 561	$ —	$ —	$ 561
Investments				
Senior Secured Debt	$ 2,156,709	$ —	$ —	$ 2,156,709
Unsecured Debt	52,890	—	—	52,890
Preferred Stock	69,439	—	—	69,439
Common Stock	115,271	84,460	8,843	21,968
Warrants	38,399	—	10,922	27,477
	$ 2,432,708	$ 84,460	$ 19,765	$ 2,328,483
Investment Funds & Vehicles measured at Net Asset Value [1]	1,814			
Total Investments excluding cash equivalents	$ 2,434,522			
Total Investments including cash equivalents	$ 2,434,522			

(1) In accordance with U.S. GAAP, certain investments are measured at fair value using the net asset value per share (or its equivalent) as a practical expedient and are not categorized within the fair value hierarchy as per ASC 820. The fair value amounts presented in this table are intended to permit reconciliation of the fair value hierarchy to the amounts presented in the accompanying Consolidated Statement of Assets and Liabilities.

The table below presents a reconciliation of changes for all financial assets and liabilities measured at fair value on a recurring basis, excluding accrued interest components, using significant unobservable inputs (Level 3) for the six months ended June 30, 2022 and 2021.

(in thousands)	Balance as of January 1, 2022	Net Realized Gains (Losses) [1]	Net Change in Unrealized Appreciation (Depreciation) [2]	Purchases [5]	Sales	Repayments [6]	Gross Transfers into Level 3 [3]	Gross Transfers out of Level 3 [3]	Balance as of June 30, 2022
Investments									
Senior Secured Debt	$ 2,156,709	$ (1,883)	$ (16,525)	$ 599,596	$ (73,500)	$ (164,254)	$ —	$ (3,504)	$ 2,496,639
Unsecured Debt	52,890	—	(2,025)	3,362	—	—	—	—	54,227
Preferred Stock	69,439	2,867	(14,157)	2,903	(4,772)	—	—	(6,422)	49,858
Common Stock	21,968	(93)	10,240	—	—	—	207	(3,942)	28,380
Warrants	27,477	409	(8,120)	4,391	(2,167)	—	—	—	21,990
Other Assets									
Escrow Receivable	561	312	—	167	(398)	—	—	—	642
Total	$ 2,329,044	$ 1,612	$ (30,587)	$ 610,419	$ (80,837)	$ (164,254)	$ 207	$ (13,868)	$ 2,651,736

(in thousands)	Balance as of January 1, 2021	Net Realized Gains (Losses) [1]	Net Change in Unrealized Appreciation (Depreciation) [2]	Purchases [5]	Sales	Repayments [6]	Gross Transfers into Level 3 [4]	Gross Transfers out of Level 3 [4]	Balance as of June 30, 2021
Investments									
Senior Secured Debt	$ 2,079,465	$ (1,627)	$ 10,789	$ 536,147	$ —	$ (407,719)	$ —	$ —	$ 2,217,055
Unsecured Debt	14,970	—	(1,258)	12,609	—	—	—	—	26,321
Preferred Stock	58,981	—	50,470	11,514	(61,732)	—	—	(1,267)	57,966
Common Stock	27,398	(60,904)	13,292	3,371	60,900	—	—	(16,025)	28,032
Warrants	21,483	1,593	11,768	1,352	(3,120)	—	—	(1,020)	32,056
Other Assets									
Escrow Receivable	65	584	(1,515)	2,446	(584)	—	—	—	996
Total	$ 2,202,362	$ (60,354)	$ 83,546	$ 567,439	$ (4,536)	$ (407,719)	$ —	$ (18,312)	$ 2,362,426

(1) Included in net realized gains (losses) in the accompanying Consolidated Statements of Operations.
(2) Included in net change in unrealized appreciation (depreciation) in the accompanying Consolidated Statements of Operations.
(3) Transfers out of Level 3 during the six months ended June 30, 2022 related to the initial public offerings of Gelesis, Inc., Pineapple Energy, LLC, and the conversion of Level 3 debt investments into common stock investments. Transfers into Level 3 during the six months ended June 30, 2022 related to the decline of liquidity of Kaleido Biosciences, Inc. shares.
(4) Transfers out of Level 3 during the six months ended June 30, 2021, related to the initial public offerings of Proterra, Inc., 23andMe, Inc., Sprinklr, Inc., Century Therapeutics, and Xometry, Inc.
(5) Amounts listed above are inclusive of loan origination fees received at the inception of the loan which are deferred and amortized into fee income as well as the accretion of existing loan discounts and fees during the period. Escrow receivable purchases may include additions due to proceeds held in escrow from the liquidation of level 3 investments. Amounts are net of purchases assigned to the Adviser Funds.
(6) Amounts listed above include the acceleration and payment of loan discounts and loan fees due to early payoffs or restructures along with regularly scheduled amortization.

For the six months ended June 30, 2022, approximately $14.9 million in net unrealized depreciation and $10.2 million in net unrealized appreciation relating to assets still held at the reporting date were recorded for preferred stock and common stock Level 3 investments, respectively. For the same period, approximately $17.7 million and $8.6 million in net unrealized depreciation was recorded for debt and warrant Level 3 investments, respectively, relating to assets still held at the reporting date.

For the six months ended June 30, 2021, approximately $10.5 million in net unrealized depreciation and $13.3 million in net unrealized appreciation relating to assets still held at the reporting date were recorded for preferred stock and common stock Level 3 investments, respectively. For the same period, approximately $8.5 million and $10.8 million in net unrealized appreciation was recorded for debt and warrant Level 3 investments, respectively, relating to assets still held at the reporting date.

The following tables provide quantitative information about the Company's Level 3 fair value measurements as of June 30, 2022 and December 31, 2021. In addition to the techniques and inputs noted in the tables below, according to the Company's valuation policy, the Company may also use other valuation techniques and methodologies when determining the Company's fair value measurements. The tables below are not intended to be all-inclusive, but rather provide information on the significant Level 3 inputs as they relate to the Company's fair value measurements. See the accompanying Consolidated Schedule of Investments for the fair value of the Company's investments. The methodology for the determination of the fair value of the Company's investments is discussed in "Note 2 – Summary of Significant Accounting Policies". The significant unobservable input used in the fair value measurement of the Company's escrow receivables is the amount recoverable at the contractual maturity date of the escrow receivable.

Investment Type - Level 3 Debt Investments	Fair Value as of June 30, 2022 (in thousands)	Valuation Techniques/Methodologies	Unobservable Input [1]	Range	Weighted Average [2]
Pharmaceuticals	$ 9,717	Originated Within 4-6 Months	Origination Yield	9.95% - 10.67%	10.06%
	931,149	Market Comparable Companies	Hypothetical Market Yield	11.06% - 16.12%	12.94%
			Premium/(Discount)	(1.00%) - 1.00%	(0.08%)
	1,838	Liquidation	Collateral Recoverability	0.00% - 85.00%	85.00%
Technology	161,302	Originated Within 4-6 Months	Origination Yield	10.84% - 12.64%	11.29%
	701,631	Market Comparable Companies	Hypothetical Market Yield	10.43% - 18.21%	13.01%
			Premium/(Discount)	(1.25%) - 1.50%	(0.18%)
	19,552	Convertible Note Analysis	Probability weighting of alternative outcomes	1.00% - 50.00%	35.40%
Sustainable and Renewable Technology	2,940	Market Comparable Companies	Hypothetical Market Yield	12.56%	12.56%
			Premium/(Discount)	0.75%	0.75%
Medical Devices	14,865	Originated Within 4-6 Months	Origination Yield	11.22%	11.22%
Lower Middle Market	275,821	Market Comparable Companies	Hypothetical Market Yield	11.40% - 16.76%	12.54%
			Premium/(Discount)	(2.00%) - 0.75%	(0.56%)
	8,208	Liquidation [3]	Probability weighting of alternative outcomes	20.00% - 80.00%	80.00%
		Debt Investments Where Fair Value Approximates Cost			
	165,940	Debt Investments originated within 3 months			
	64,200	Imminent Payoffs [4]			
	193,703	Debt Investments Maturing in Less than One Year			
	$ 2,550,866	**Total Level 3 Debt Investments**			

(1) The significant unobservable inputs used in the fair value measurement of the Company's debt securities are hypothetical market yields and premiums/(discounts). The hypothetical market yield is defined as the exit price of an investment in a hypothetical market to hypothetical market participants where buyers and sellers are willing participants. The premiums/(discounts) relate to company specific characteristics such as underlying investment performance, security liens, and other characteristics of the investment. Significant increases (decreases) in the inputs in isolation may result in a significantly lower (higher) fair value measurement, depending on the materiality of the investment.

Debt investments in the industries noted in the Company's Consolidated Schedule of Investments are included in the industries noted above as follows:

- Pharmaceuticals, above, is comprised of debt investments in the "Drug Discovery & Development" and "Healthcare Services, Other" industries.
- Technology, above, is comprised of debt investments in the "Communications & Networking", "Information Services", "Internet Consumer & Business Services", "Media/Content/Info" and "Software" industries.
- Lower Middle Market, above, is comprised of debt investments in the "Healthcare Services, Other", "Internet Consumer & Business Services", "Diversified Financial Services", "Sustainable and Renewable Technology", and "Software" industries.

(2) The weighted averages are calculated based on the fair market value of each investment.
(3) The significant unobservable input used in the fair value measurement of impaired debt securities is the probability weighting of alternative outcomes.
(4) Expected realizable value represent debt investments that the Company expects to be fully repaid within the next three months, prior to their scheduled maturity date.

Investment Type - Level 3 Debt Investments	Fair Value as of December 31, 2021 (in thousands)	Valuation Techniques/Methodologies	Unobservable Input [1]	Range	Weighted Average [2]
Pharmaceuticals	$ 206,461	Originated Within 4-6 Months	Origination Yield	11.23% - 12.84%	11.40%
	451,587	Market Comparable Companies	Hypothetical Market Yield	9.69% - 13.89%	11.34%
			Premium/(Discount)	(0.50%) - 0.75%	0.06%
Technology	109,904	Originated Within 4-6 Months	Origination Yield	11.12% - 11.68%	11.39%
	654,320	Market Comparable Companies	Hypothetical Market Yield	8.98% - 14.54%	11.64%
			Premium/(Discount)	(0.50%) - 0.75%	0.12%
	2,608	Liquidation [3]	Probability weighting of alternative outcomes	20.00% - 50.00%	40.48%
	20,425	Convertible Note Analysis	Probability weighting of alternative outcomes	1.00% - 35.00%	32.95%
Sustainable and Renewable Technology	247	Convertible Note Analysis	Probability weighting of alternative outcomes	40.00% - 60.00%	51.84%
	7,500	Expected Realizable Value [4]	Probability weighting of alternative outcomes	100% - 100%	100.00%
Lower Middle Market	3,100	Originated Within 4-6 Months	Origination Yield	5.17% - 5.17%	5.17%
	81,566	Market Comparable Companies	Hypothetical Market Yield	12.23% - 16.01%	13.22%
			Premium/(Discount)	0.00% - 1.50%	0.43%
	90,504	Expected Realizable Value [4]	Probability weighting of alternative outcomes	30.00% - 70.00%	57.74%
			Hypothetical Market Yield	10.64% - 10.64%	10.64%
			Premium/(Discount)	(1.00%) - (1.00%)	(1.00%)
	8,269	Liquidation [3]	Probability weighting of alternative outcomes	20.00% - 80.00%	80.00%
		Debt Investments Where Fair Value Approximates Cost			
	441,524	Debt Investments originated within 3 months			
	131,584	Debt Investments Maturing in Less than One Year			
	$ 2,209,599	**Total Level 3 Debt Investments**			

(1) The significant unobservable inputs used in the fair value measurement of the Company's debt securities are hypothetical market yields and premiums/(discounts). The hypothetical market yield is defined as the exit price of an investment in a hypothetical market to hypothetical market participants where buyers and sellers are willing participants. The premiums/(discounts) relate to company specific characteristics such as underlying investment performance, security liens, and other characteristics of the investment. Significant increases (decreases) in the inputs in isolation may result in a significantly lower (higher) fair value measurement, depending on the materiality of the investment.

Debt investments in the industries noted in the Company's Consolidated Schedule of Investments are included in the industries noted above as follows:

- Pharmaceuticals, above, is comprised of debt investments in the "Drug Discovery & Development" and "Healthcare Services, Other" industries.
- Technology, above, is comprised of debt investments in the "Communications & Networking", "Information Services", "Internet Consumer & Business Services", "Media/Content/Info" and "Software" industries.
- Lower Middle Market, above, is comprised of debt investments in the "Healthcare Services, Other", "Internet Consumer & Business Services", "Diversified Financial Services", "Sustainable and Renewable Technology", and "Software" industries.

(2) The weighted averages are calculated based on the fair market value of each investment.
(3) The significant unobservable input used in the fair value measurement of impaired debt securities is the probability weighting of alternative outcomes.
(4) Expected realizable value represent debt investments that the Company expects to be fully repaid within the next three months, prior to their scheduled maturity date.

Investment Type - Level 3 Equity and Warrant Investments	Fair Value as of June 30, 2022 (in thousands)	Valuation Techniques/ Methodologies	Unobservable Input [1]	Range	Weighted Average [5]
Equity Investments	$ 26,789	Market Comparable Companies	EBITDA Multiple (b)	12.9x - 12.9x	12.9x
			Revenue Multiple [2]	0.6x - 7.3x	4.3x
			Tangible Book Value Multiple [2]	1.9x - 1.9x	1.9x
			Discount for Lack of Marketability [3]	11.1% - 32.97%	18.83%
	18,384	Market Adjusted OPM Backsolve	Market Equity Adjustment [4]	(97.67%) - 39.06%	(6.06%)
	23,181	Discounted Cash Flow	Discount Rate [7]	19.50% - 28.64%	24.30%
	—	Liquidation	Revenue Multiple [2]	2.1x - 2.1x	2.1x
			Discount for Lack of Marketability [3]	84.00% - 84.00%	84.00%
	9,884	Other [6]			
Warrant Investments	12,093	Market Comparable Companies	EBITDA Multiple [2]	12.9x - 12.9x	12.9x
			Revenue Multiple [2]	0.6x - 9.3x	3.5x
			Discount for Lack of Marketability [3]	2.75% - 34.73%	21.29%
	9,357	Market Adjusted OPM Backsolve	Market Equity Adjustment [4]	(97.67%) - 39.06%	(13.96%)
	540	Other[6]			
Total Level 3 Warrant and Equity Investments	$ 100,228				

(1) The significant unobservable inputs used in the fair value measurement of the Company's warrant and equity securities are revenue and/or earnings multiples (e.g. EBITDA, EBT, ARR), market equity adjustment factors, and discounts for lack of marketability. Significant increases/(decreases) in the inputs in isolation would result in a significantly higher/(lower) fair value measurement, depending on the materiality of the investment. For some investments, additional consideration may be given to data from the last round of financing or merger/acquisition events near the measurement date. The significant unobservable input used in the fair value measurement of impaired equity securities is the probability weighting of alternative outcomes.

(2) Represents amounts used when the Company has determined that market participants would use such multiples when pricing the investments.

(3) Represents amounts used when the Company has determined market participants would take into account these discounts when pricing the investments.

(4) Represents the range of changes in industry valuations since the portfolio company's last external valuation event.

(5) Weighted averages are calculated based on the fair market value of each investment.

(6) The fair market value of these investments is derived based on recent private market and merger and acquisition transaction prices.

(7) The discount rate used is based on current portfolio yield adjusted for uncertainty of actual performance and timing in capital deployments.

Investment Type - Level 3 Equity and Warrant Investments	Fair Value as of December 31, 2021 (in thousands)	Valuation Techniques/ Methodologies	Unobservable Input [1]	Range	Weighted Average [5]
Equity Investments	$ 26,587	Market Comparable Companies	EBITDA Multiple [2]	20.6x - 20.6x	20.6x
			Revenue Multiple [2]	1.0x - 18.4x	11.8x
			Tangible Book Value Multiple [2]	2.5x - 2.5x	2.5x
			Discount for Lack of Marketability [3]	18.81% - 34.69%	25.53%
	24,910	Market Adjusted OPM Backsolve	Market Equity Adjustment [4]	(88.67%) - 47.22%	0.81%
	11,990	Discounted Cash Flow	Discount Rate [7]	15.93% - 25.30%	20.46%
	—	Liquidation	Revenue Multiple [2]	2.1x - 2.1x	2.1x
			Discount for Lack of Marketability [3]	84.00% - 84.00%	84.00%
	27,920	Other [6]			
Warrant Investments	14,517	Market Comparable Companies	EBITDA Multiple [2]	20.6x - 26.0x	20.7x
			Revenue Multiple [2]	0.6x - 9.5x	4.5x
			Discount for Lack of Marketability [3]	18.81% - 37.35%	26.93%
	11,914	Market Adjusted OPM Backsolve	Market Equity Adjustment [4]	(88.67%) - 47.22%	(7.76%)
	1,046	Other [6]			
Total Level 3 Warrant and Equity Investments	$ 118,884				

(1) The significant unobservable inputs used in the fair value measurement of the Company's warrant and equity securities are revenue and/or earnings multiples (e.g. EBITDA, EBT, ARR), market equity adjustment factors, and discounts for lack of marketability. Significant increases/(decreases) in the inputs in isolation would result in a significantly higher/(lower) fair value measurement, depending on the materiality of the investment. For some investments, additional consideration may be given to data from the last round of financing or merger/acquisition events near the measurement date. The significant unobservable input used in the fair value measurement of impaired equity securities is the probability weighting of alternative outcomes.
(2) Represents amounts used when the Company has determined that market participants would use such multiples when pricing the investments.
(3) Represents amounts used when the Company has determined market participants would take into account these discounts when pricing the investments.
(4) Represents the range of changes in industry valuations since the portfolio company's last external valuation event.
(5) Weighted averages are calculated based on the fair market value of each investment.
(6) The fair market value of these investments is derived based on recent market transactions.
(7) The discount rate used is based on current portfolio yield adjusted for uncertainty of actual performance and timing in capital deployments.

The Company believes that the carrying amounts of its financial instruments, other than investments and debt, which consist of cash and cash equivalents, receivables including escrow receivables, accounts payable and accrued liabilities, approximate the fair values of such items due to the short maturity of such instruments. The debt obligations of the Company are recorded at amortized cost and not at fair value on the Consolidated Statements of Assets and Liabilities. The fair value of the Company's outstanding debt obligations are based on observable market trading prices or quotations and unobservable market rates as applicable for each instrument.

As of June 30, 2022, the 2033 Notes were trading on the New York Stock Exchange ("NYSE") at $25.24 per unit at par value. The par value at underwriting for the 2033 Notes was $25.00 per unit. Based on market quotations on or around June 30, 2022, the 2031 Asset-Backed Notes were quoted for 0.995. The fair values of the SBA debentures, July 2024 Notes, February 2025 Notes, June 2025 Notes, June 2025 3-Year Notes, March 2026 A Notes, March 2026 B Notes, September 2026, and January 2027 Notes are calculated based on the net present value of payments over the term of the notes using estimated market rates for similar notes and remaining terms. The fair values of the outstanding debt under the MUFG Bank Facility and the SMBC Facility are equal to their outstanding principal balances as of June 30, 2022.

The following tables provide additional information about the approximate fair value and level in the fair value hierarchy of the Company's outstanding borrowings as of June 30, 2022 and December 31, 2021:

	June 30, 2022				
(in thousands) Description	Carrying Value	Approximate Fair Value	Identical Assets (Level 1)	Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
SBA Debentures	$ 169,442	$ 173,814	$ —	$ —	$ 173,814
July 2024 Notes	104,385	102,907	—	—	102,907
February 2025 Notes	49,694	47,673	—	—	47,673
June 2025 Notes	69,515	65,332	—	—	65,332
June 2025 3-Year Notes	49,479	48,745	—	—	48,745
March 2026 A Notes	49,653	46,748	—	—	46,748
March 2026 B Notes	49,621	46,836	—	—	46,836
September 2026 Notes	320,867	277,061	—	—	277,061
January 2027 Notes	343,939	306,563	—	—	306,563
2031 Asset-Backed Notes	147,663	149,250	—	149,250	—
2033 Notes	38,772	40,384	—	40,384	—
MUFG Bank Facility[1]	82,000	82,000	—	—	82,000
SMBC Facility	23,582	23,582	—	—	23,582
Total	$ 1,498,612	$ 1,410,895	$ —	$ 189,634	$ 1,221,261

	December 31, 2021				
(in thousands) Description	Carrying Value	Approximate Fair Value	Identical Assets (Level 1)	Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
SBA Debentures	$ 145,498	$ 151,471	$ —	$ —	$ 151,471
2022 Notes	149,563	152,906	—	152,906	—
July 2024 Notes	104,238	110,496	—	—	110,496
February 2025 Notes	49,637	51,983	—	—	51,983
June 2025 Notes	69,433	72,031	—	—	72,031
March 2026 A Notes	49,605	52,646	—	—	52,646
March 2026 B Notes	49,570	52,751	—	—	52,751
September 2026 Notes	320,376	315,495	—	—	315,495
2033 Notes	38,718	42,672	—	42,672	—
2022 Convertible Notes	229,740	236,049	—	236,049	—
Union Bank Facility[1]	—	—	—	—	—
SMBC Facility	29,925	29,925	—	—	29,925
Total	$ 1,236,303	$ 1,268,425	$ —	$ 431,627	$ 836,798

(1) The June 2022 amendment of the MUFG Bank Facility replaced the Union Bank Facility via an amendment which changed the lead lender.

4. Investments

Control and Affiliate Investments

As required by the 1940 Act, the Company classifies its investments by level of control. "Control investments" are defined in the 1940 Act as investments in those companies that the Company is deemed to "control". Under the 1940 Act, the Company is generally deemed to "control" a company in which it has invested if it owns 25% or more of the voting securities of such company or has greater than 50% representation on its board. "Affiliate investments" are investments in those companies that are "affiliated companies" of the Company, as defined in the 1940 Act, which are not control investments. The Company is deemed to be an "affiliate" of a company in which it has invested if it owns 5% or more, but generally less than 25%, of the voting securities of such company. "Non-control/non-affiliate investments" are investments that are neither control investments nor affiliate investments. For purposes of determining the classification of its investments, the Company has included consideration of any voting securities or board appointment rights held by the Adviser Funds.

The following table summarizes the Company's realized gains and losses and changes in unrealized appreciation and depreciation on control and affiliate investments for the three and six months ended June 30, 2022 and 2021.

(in thousands)			Three Months Ended June 30, 2022				Six Months Ended June 30, 2022			
Portfolio Company[1]	Type	Fair Value as of June 30, 2022	Interest Income	Fee Income	Net Change in Unrealized Appreciation (Depreciation)	Realized Gain (Loss)	Interest Income	Fee Income	Net Change in Unrealized Appreciation (Depreciation)	Realized Gain (Loss)
Control Investments										
Coronado Aesthetics, LLC	Control	$ 422	$ —	$ —	$ (192)	$ —	$ —	$ —	$ (143)	$ —
Gibraltar Business Capital, LLC	Control	39,064	844	17	(3,578)	—	1,678	33	(4,805)	—
Hercules Adviser LLC	Control	35,181	128	—	8,637	—	239	—	11,191	—
Tectura Corporation	Control	8,208	172	—	(139)	—	342	—	(61)	—
Total Control Investments		$ 82,875	$ 1,144	$ 17	$ 4,728	$ —	$ 2,259	$ 33	$ 6,182	$ —
Affiliate Investments										
Black Crow AI, Inc.	Affiliate	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ (120)	$ 3,772
Pineapple Energy LLC	Affiliate	3,613	76	—	(1,295)	—	1,123	—	(422)	—
Total Affiliate Investments		$ 3,613	$ 76	$ —	$ (1,295)	$ —	$ 1,123	$ —	$ (542)	$ 3,772
Total Control & Affiliate Investments		$ 86,488	$ 1,220	$ 17	$ 3,433	$ —	$ 3,382	$ 33	$ 5,640	$ 3,772

(in thousands)			Three Months Ended June 30, 2021				Six Months Ended June 30, 2021			
Portfolio Company	Type	Fair Value as of June 30, 2021	Interest Income	Fee Income	Net Change in Unrealized Appreciation (Depreciation)	Realized Gain (Loss)	Interest Income	Fee Income	Net Change in Unrealized Appreciation (Depreciation)	Realized Gain (Loss)
Control Investments										
Gibraltar Business Capital, LLC	Control	$ 44,194	$ 843	$ 15	$ (6,125)	$ —	$ 1,472	$ 23	$ (14,215)	$ —
Hercules Adviser LLC	Control	13,923	14	—	1,019	—	14	—	10,888	—
Tectura Corporation	Control	8,374	172	—	(149)	—	342	—	(226)	—
Total Control Investments		$ 66,491	$ 1,029	$ 15	$ (5,255)	$ —	$ 1,828	$ 23	$ (3,553)	$ —
Affiliate Investments										
Black Crow AI, Inc.	Affiliate	$ 1,309	$ —	$ —	$ 54	$ —	$ —	$ —	$ 2,094	$ —
Pineapple Energy LLC	Affiliate	8,441	1	—	32	—	2	—	61	—
Solar Spectrum Holdings LLC (p.k.a. Sungevity, Inc.)	Affiliate	—	—	—	62,143	(62,143)	—	—	62,183	(62,143)
Total Affiliate Investments		$ 9,750	$ 1	$ —	$ 62,229	$ (62,143)	$ 2	$ —	$ 64,338	$ (62,143)
Total Control & Affiliate Investments		$ 76,241	$ 1,030	$ 15	$ 56,974	$ (62,143)	$ 1,830	$ 23	$ 60,785	$ (62,143)

(1) In accordance with Rules 3-09, 4-08(g), and Rule 10-01(b)(1) of Regulation S-X, ("Rule 3-09", "Rule 4-08(g)", and "Rule 10-01(b)(1)", respectively), the Company must determine if its unconsolidated subsidiaries are considered "significant subsidiaries". As of June 30, 2022, the Hercules Adviser, LLC qualified as a significant subsidiary pursuant to Rule 10-01(b)(1). The total revenue, operating income, and net income were $3.5 million and $0.2 million, $(1.9) million and $(2.3) million, and $(1.8) million and $(1.8) million, respectively, for the six months ended June 30, 2022 and 2021. As of June 30, 2021, there were no unconsolidated subsidiaries that are considered "significant subsidiaries".

Portfolio Composition

The following table shows the fair value of the Company's portfolio of investments by asset class as of June 30, 2022 and December 31, 2021:

	June 30, 2022		December 31, 2021	
(in thousands)	Investments at Fair Value	Percentage of Total Portfolio	Investments at Fair Value	Percentage of Total Portfolio
Senior Secured Debt	$ 2,496,639	91.8 %	$ 2,156,709	88.6 %
Unsecured Debt	54,227	2.0 %	52,890	2.2 %
Preferred Stock	49,858	1.9 %	69,439	2.8 %
Common Stock	87,936	3.2 %	115,271	4.7 %
Warrants	27,903	1.0 %	38,399	1.6 %
Investment Funds & Vehicles	2,328	0.1 %	1,814	0.1 %
Total	$ 2,718,891	100.0 %	$ 2,434,522	100.0 %

A summary of the Company's investment portfolio, at value, by geographic location as of June 30, 2022 and December 31, 2021 is shown as follows:

(in thousands)	June 30, 2022 Investments at Fair Value	June 30, 2022 Percentage of Total Portfolio	December 31, 2021 Investments at Fair Value	December 31, 2021 Percentage of Total Portfolio
United States	$ 2,455,229	90.4%	$ 2,138,184	87.8%
United Kingdom	152,699	5.6%	169,407	7.0%
Netherlands	76,908	2.8%	82,925	3.4%
Canada	19,273	0.7%	27,673	1.1%
Israel	8,932	0.3%	8,980	0.4%
Ireland	4,636	0.2%	5,459	0.2%
Germany	1,082	0.0%	1,894	0.1%
Other	132	0.0%	—	0.0%
Total	$ 2,718,891	100.0%	$ 2,434,522	100.0%

The following table shows the fair value of the Company's portfolio by industry sector as of June 30, 2022 and December 31, 2021:

(in thousands)	June 30, 2022 Investments at Fair Value	June 30, 2022 Percentage of Total Portfolio	December 31, 2021 Investments at Fair Value	December 31, 2021 Percentage of Total Portfolio
Drug Discovery & Development	$ 1,049,767	38.6%	$ 967,383	39.7%
Software	707,982	26.0%	585,622	24.1%
Internet Consumer & Business Services	458,299	16.8%	395,506	16.3%
Healthcare Services, Other	129,373	4.3%	121,003	5.0%
Communications & Networking	106,629	3.9%	105,490	4.3%
Diversified Financial Services	74,712	2.8%	65,073	2.7%
Information Services	57,656	2.1%	74,417	3.1%
Manufacturing Technology	41,515	1.0%	14,995	1.2%
Consumer & Business Products	26,215	1.5%	28,099	0.6%
Sustainable and Renewable Technology	23,060	0.9%	39,387	1.6%
Semiconductors	20,846	1.2%	22,498	0.5%
Medical Devices & Equipment	18,378	0.8%	12,612	0.9%
Electronics & Computer Hardware	3,317	0.1%	1,040	0.0%
Surgical Devices	1,044	0.0%	1,029	0.0%
Drug Delivery	98	0.0%	368	0.0%
Total	$ 2,718,891	100.0%	$ 2,434,522	100.0%

No single portfolio investment represents more than 10% of the fair value of the Company's total investments as of June 30, 2022 or December 31, 2021.

Concentrations of Credit Risk

The Company's customers are primarily privately held companies and public companies which are active in the "Drug Discovery & Development", "Software", "Internet Consumer & Business Services", "Healthcare Services, Other", and "Communications & Networking" sectors. These sectors are characterized by high margins, high growth rates, consolidation and product and market extension opportunities. Value for companies in these sectors is often vested in intangible assets and intellectual property.

Industry and sector concentrations vary as new loans are recorded and loans are paid off. Loan revenue, consisting of interest, fees, and recognition of gains on equity and warrant or other equity interests, can fluctuate materially when a loan is paid off or a related warrant or equity interest is sold. Revenue recognition in any given year can be highly concentrated among several portfolio companies.

For the six months ended June 30, 2022 and the year ended December 31, 2021, the Company's ten largest portfolio companies represented approximately 31.4% and 30.5% of the total fair value of the Company's investments in portfolio companies, respectively. As of June 30, 2022 and December 31, 2021, the Company had nine and six portfolio companies, respectively, that represented 5% or more of the Company's net assets. As of June 30, 2022, the Company had four equity investments representing approximately 43.2% of the total fair value of the Company's equity investments, and each represented 5% or more of the total fair value of the Company's equity investments. As of December 31, 2021, the Company had six equity investments which represented approximately 49.6% of the total fair value of the Company's equity investments, and each represented 5% or more of the total fair value of such investments.

Investment Collateral

In the majority of cases, the Company collateralizes its investments by obtaining a first priority security interest in a portfolio company's assets, which may include its intellectual property. In other cases, the Company may obtain a negative pledge covering a company's intellectual property. As of June 30, 2022, approximately 74.3% of the Company's debt investments at fair value were in a senior secured first lien position, with 37.1% secured by a first priority security in all of the assets of the portfolio company, including its intellectual property, 29.0% secured by a first priority security in all of the assets of the portfolio company and the portfolio company was prohibited from pledging or encumbering its intellectual property, and 8.2% of the Company's debt investments at fair value were in a first lien "last-out" senior secured position with a security interest in all of the assets of the portfolio company, whereby the "last-out" loans will be subordinated to the "first-out" portion of the unitranche loan in a liquidation, sale or other disposition. Another 23.6% of the Company's debt investments at fair value were secured by a second priority security interest in the portfolio company's assets, and 2.1% were unsecured.

As of December 31, 2021, approximately 77.0% of the Company's debt investments at fair value were in a senior secured first lien position, with 37.5% secured by a first priority security in all of the assets of the portfolio company, including its intellectual property, 31.6% secured by a first priority security in all of the assets of the portfolio company and the portfolio company was prohibited from pledging or encumbering its intellectual property and 7.9% of the Company's debt investments at fair value were in a first lien "last-out" senior secured position with security interest in all of the assets of the portfolio company, whereby the "last-out" loans will be subordinated to the "first-out" portion of the unitranche loan in a liquidation, sale or other disposition. Another 20.6% of the Company's debt investments at fair value were secured by a second priority security interest in the portfolio company's assets, and 2.4% were unsecured.

5. Debt

As of June 30, 2022 and December 31, 2021, the Company had the following available and outstanding debt:

	June 30, 2022			December 31, 2021		
(in thousands)	**Total Available**	**Principal**	**Carrying Value [1]**	**Total Available**	**Principal**	**Carrying Value [1]**
SBA Debentures	$ 175,000	$ 175,000	$ 169,442	$ 175,000	$ 150,500	$ 145,498
2022 Notes	—	—	—	150,000	150,000	149,563
July 2024 Notes	105,000	105,000	104,385	105,000	105,000	104,238
February 2025 Notes	50,000	50,000	49,694	50,000	50,000	49,637
June 2025 Notes	70,000	70,000	69,515	70,000	70,000	69,433
June 2025 3-Year Notes	50,000	50,000	49,479	—	—	—
March 2026 A Notes	50,000	50,000	49,653	50,000	50,000	49,605
March 2026 B Notes	50,000	50,000	49,621	50,000	50,000	49,570
September 2026 Notes	325,000	325,000	320,867	325,000	325,000	320,376
January 2027 Notes	350,000	350,000	343,939	—	—	—
2031 Asset-Backed Notes	150,000	150,000	147,663	—	—	—
2033 Notes	40,000	40,000	38,772	40,000	40,000	38,718
2022 Convertible Notes	—	—	—	230,000	230,000	229,740
MUFG Bank Facility [2][3]	545,000	82,000	82,000	400,000	—	—
SMBC Facility [2]	225,000	23,582	23,582	100,000	29,925	29,925
Total	$ 2,185,000	$ 1,520,582	$ 1,498,612	$ 1,745,000	$ 1,250,425	$ 1,236,303

(1) Except for the SMBC Facility and MUFG Bank Facility (f.k.a. Union Bank Facility), all carrying values represent the principal amount outstanding less the remaining unamortized debt issuance costs and unaccreted premium or discount, if any, associated with the debt as of the balance sheet date.
(2) Availability subject to the Company meeting the borrowing base requirements.
(3) The June 2022 amendment of the MUFG Bank Facility replaced the Union Bank Facility via an amendment which changed the lead lender.

Debt issuance costs, net of accumulated amortization, were as follows as of June 30, 2022 and December 31, 2021:

(in thousands)	June 30, 2022	December 31, 2021
SBA Debentures	$ 5,558	$ 5,002
2022 Notes	—	300
July 2024 Notes	615	762
February 2025 Notes	306	363
June 2025 Notes	485	567
June 2025 3-Year Notes	521	—
March 2026 A Notes	347	395
March 2026 B Notes	379	430
September 2026 Notes	4,133	4,624
January 2027 Notes	6,061	—
2031 Asset-Backed Notes	2,337	—
2033 Notes	1,228	1,282
2022 Convertible Notes	—	149
MUFG Bank Facility [(1)]	1,587	1,239
SMBC Facility [(1)]	1,649	922
Total	$ 25,206	$ 16,035

(1) The MUFG Bank Facility (f.k.a. Union Bank Facility) and SMBC Facility, are line-of-credit arrangements, the debt issuance costs associated with these instruments are included within Other assets on the Consolidated Statements of Assets and Liabilities in accordance with ASC Subtopic 835-30.

For the three and six months ended June 30, 2022, the components of interest expense, related fees, losses on debt extinguishment and cash paid for interest expense for debt were as follows:

	Three Months Ended June 30, 2022					Six Months Ended June 30, 2022				
(in thousands) Description	Interest expense[(1)]	Amortization of debt issuance cost (loan fees)	Unused facility and other fees (loan fees)	Total interest expense and fees	Cash paid for interest expense	Interest expense[(1)]	Amortization of debt issuance cost (loan fees)[(2)]	Unused facility and other fees (loan fees)	Total interest expense and fees	Cash paid for interest expense
SBA Debentures	$ 1,138	$ 146	$ —	$ 1,284	$ —	$ 1,688	$ 286	$ —	$ 1,974	$ 749
2022 Notes	—	—	—	—	—	1,011	50	—	1,061	2,293
July 2024 Notes	1,252	74	—	1,326	—	2,504	148	—	2,652	2,504
February 2025 Notes	535	28	—	563	—	1,070	57	—	1,127	1,070
June 2025 Notes	755	41	—	796	1,509	1,509	81	—	1,590	1,509
June 2025 3-Year Notes	67	4	—	71	—	67	4	—	71	-
March 2026 A Notes	562	24	—	586	—	1,125	48	—	1,173	1,125
March 2026 B Notes	568	26	—	594	—	1,137	52	—	1,189	1,138
September 2026 Notes	2,175	204	—	2,379	—	4,349	408	—	4,757	4,266
January 2027 Notes	3,078	207	—	3,285	—	5,473	368	—	5,841	-
2031 Asset-Backed Notes	169	9	—	178	—	169	9	—	178	-
2033 Notes	625	27	—	652	625	1,250	54	—	1,304	1,250
2022 Convertible Notes	—	—	—	—	—	923	149	—	1,072	5,004
MUFG Bank Facility[(2)]	1,369	175	395	1,939	1,215	1,483	412	962	2,857	1,215
SMBC Facility	405	64	68	537	283	587	113	133	833	519
Total	$ 12,698	$ 1,029	$ 463	$ 14,190	$ 3,632	$ 24,345	$ 2,239	$ 1,095	$ 27,679	$ 22,642

(1) Interest expense includes amortization of original issue discounts for the three months ended June 30, 2022 of $42 thousand, $126 thousand, and $4 thousand related to the September 2026 Notes, January 2027 Notes, and 2031 Asset-Backed Notes, respectively. For the six months ended June 30, 2022, $23 thousand, $112 thousand, $84 thousand, $223 thousand, and $4 thousand related to the 2022 Notes, 2022 Convertible Notes, September 2026 Notes, January 2027 Notes, and 2031 Asset-Backed Notes, respectively.

(2) The June 2022 amendment of the MUFG Bank Facility replaced the Union Bank Facility via an amendment which changed the lead lender.

For the three and six months ended June 30, 2021, the components of interest expense and related fees and cash paid for interest expense for debt were as follows:

	Three Months Ended June 30, 2021					Six Months Ended June 30, 2021				
(in thousands) Description	Interest expense[1]	Amortization of debt issuance cost (loan fees)	Unused facility and other fees (loan fees)	Total interest expense and fees	Cash paid for interest expense	Interest expense[1]	Amortization of debt issuance cost (loan fees)	Unused facility and other fees (loan fees)	Total interest expense and fees	Cash paid for interest expense
SBA Debentures	$ 521	$ 102	$ —	$ 623	$ 536	$ 1,113	$ 317	$ —	$ 1,430	$ 2,089
2022 Notes	1,775	90	—	1,865	3,468	3,551	180	—	3,731	3,469
July 2024 Notes	1,252	74	—	1,326	—	2,504	148	—	2,652	2,504
February 2025 Notes	535	29	—	564	—	1,070	57	—	1,127	1,070
April 2025 Notes[2]	984	95	—	1,079	984	1,969	190	—	2,159	1,968
June 2025 Notes	754	40	—	794	1,509	1,509	81	—	1,590	1,509
March 2026 A Notes	563	24	—	587	—	1,125	46	—	1,171	750
March 2026 B Notes	569	26	—	595	—	739	34	—	773	—
2033 Notes	625	27	—	652	625	1,250	54	—	1,304	1,250
2027 Asset-Backed Notes[2]	1,474	204	—	1,678	1,492	3,249	850	—	4,099	3,329
2028 Asset-Backed Notes[2]	2,567	283	—	2,850	2,600	5,459	616	—	6,075	5,529
2022 Convertible Notes	2,684	223	—	2,907	—	5,367	446	—	5,813	5,031
Wells Facility[2]	—	44	157	201	—	—	88	313	401	—
MUFG Bank Facility[3]	187	327	475	989	138	335	653	947	1,935	213
Total	$ 14,490	$ 1,588	$ 632	$ 16,710	$ 11,352	$ 29,240	$ 3,760	$ 1,260	$ 34,260	$ 28,711

(1) Interest expense includes amortization of original issue discounts of $41 thousand and $168 thousand relate to the 2022 Notes and 2022 Convertible Notes, respectively, for the three months ended June 30, 2021; and $82 thousand and $336 thousand for the 2022 Notes and 2022 Convertible Notes, respectively, for the six months ended June 30, 2021.

(2) The April 2025 Notes, 2027 Asset-Backed Notes and 2028 Asset-Backed Notes were retired on July 1, 2021 and October 20, 2021, respectively. The Wells Facility was terminated on November 29, 2021.

(3) The June 2022 amendment of the MUFG Bank Facility replaced the Union Bank Facility via an amendment which changed the lead lender.

As of June 30, 2022 and December 31, 2021, the Company was in compliance with the terms of all borrowing arrangements. There are no sinking fund requirements for any of the Company's debt.

SBA Debentures

The Company reported the following SBA debentures outstanding principal balances as of June 30, 2022 and December 31, 2021:

(in thousands) Issuance/Pooling Date	Maturity Date	Interest Rate [1]	June 30, 2022	December 31, 2021
March 26, 2021	September 1, 2031	1.58%	$ 37,500	$ 37,500
June 25, 2021	September 1, 2031	1.58%	16,200	16,200
July 28, 2021	September 1, 2031	1.58%	5,400	5,400
August 20, 2021	September 1, 2031	1.58%	5,400	5,400
October 21, 2021	March 1, 2032	3.21%	14,000	14,000
November 1, 2021	March 1, 2032	3.21%	21,000	21,000
November 15, 2021	March 1, 2032	3.21%	5,200	5,200
November 30, 2021	March 1, 2032	3.21%	20,800	20,800
December 20, 2021	March 1, 2032	3.21%	10,000	10,000
December 23, 2021	March 1, 2032	3.21%	10,000	10,000
December 28, 2021	March 1, 2032	3.21%	5,000	5,000
January 14, 2022	March 1, 2032	3.21%	4,500	—
January 21, 2022	March 1, 2032	3.21%	20,000	—
Total SBA Debentures			$ 175,000	$ 150,500

(1) Interest rates are fixed rates set based on the pooling date of each debenture. The rates shown above are inclusive of annual SBA charges.

SBICs are subject to a variety of regulations and oversight by the SBA concerning the size and nature of the companies in which they may invest as well as the structures of those investments. The SBA as part of its oversight periodically examines and audits to determine SBICs compliance with SBA regulations. Our SBIC was in compliance with all SBIC terms, including those pertaining to the SBA Debentures as of June 30, 2022 and December 31, 2021.

HC IV received its license to operate as a SBIC on October 27, 2020. The license has a 10-year term. Through the license, HC IV has access to $175.0 million of capital through the SBA debenture program, that is in addition to the Company's regulatory capital commitment of $87.5 million to HC IV. As of June 30, 2022, HC IV has issued a total of $175.0 million in SBA guaranteed debentures and has paid the SBA commitment fees and facility fees of approximately $1.75 million and $4.2 million, respectively.

As of June 30, 2022, the Company held investments in HC IV in 17 companies with a fair value of approximately $272.9 million, accounting for approximately 10.0% of the Company's total investment portfolio. Further, HC IV held approximately $278.4 million in tangible assets which accounted for approximately 9.7% of the Company's total assets as of June 30, 2022.

2022 Notes

On October 23, 2017, the Company issued $150.0 million in aggregate principal amount of 4.625% interest-bearing unsecured notes that mature on October 23, 2022 (the "2022 Notes"), unless repurchased in accordance with their terms. Interest on the 2022 Notes is due semiannually in arrears on April 23 and October 23 of each year, commencing on April 23, 2018. On February 22, 2022, pursuant to the redemption terms of the 2025 Notes indenture, the Company fully repaid the aggregate outstanding $150.0 million of principal and $2.3 million of accrued interest. In addition, the Company paid $3.3 million of prepayment premium fees, which together with the accelerated recognition of $0.3 million of debt issuance costs was recognized as a realized loss on extinguishment of the debt.

2022 Convertible Notes

On January 25, 2017, the Company issued $230.0 million in aggregate principal amount of 4.375% interest-bearing unsecured notes due on February 1, 2022 (the "2022 Convertible Notes"), unless previously converted or caused to repurchase the notes in accordance with their terms by the holders of the 2022 Convertible Notes. The $230.0 million issued aggregate principal of the 2022 Convertible Notes includes an additional $30.0 million aggregate principal amount issued pursuant to the initial purchaser's exercise in full of its overallotment option. Interest on the 2022 Convertible Notes is due semiannually in arrears on February 1 and August 1 of each year. On February 1, 2022, the Company fully repaid the aggregate outstanding $230.0 million principal, $5.0 million of accrued interest and fees, and issued 981,169 shares related to noteholders who elected to convert pursuant to the redemption terms of the 2022 Convertible Notes indenture.

July 2024 Notes

On July 16, 2019, the Company issued $105.0 million in aggregate principal amount of 4.77% interest-bearing unsecured notes due on July 16, 2024 (the "July 2024 Notes"), unless repurchased in accordance with their terms, to qualified institutional investors in a private placement notes offering. Interest on the July 2024 Notes is due semiannually. The July 2024 Notes are general unsecured obligations of the Company that rank pari passu with all outstanding and future unsecured unsubordinated indebtedness issued by the Company.

February 2025 Notes

On February 5, 2020, the Company issued $50.0 million in aggregate principal amount of 4.28% interest-bearing unsecured notes due February 5, 2025 (the "February 2025 Notes"), unless repurchased in accordance with their terms, to qualified institutional investors in a private placement notes offering. Interest on the February 2025 Notes is due semiannually. The February 2025 Notes are general unsecured obligations of the Company that rank pari passu with all outstanding and future unsecured unsubordinated indebtedness issued by the Company.

June 2025 Notes

On June 3, 2020, the Company issued $70.0 million in aggregate principal amount of 4.31% interest-bearing unsecured notes due June 3, 2025 (the "June 2025 Notes"), unless repurchased in accordance with their terms, to qualified institutional investors in a private placement notes offering. Interest on the June 2025 Notes is due semiannually. The June 2025 Notes are general unsecured obligations of the Company that rank pari passu with all outstanding and future unsecured unsubordinated indebtedness issued by the Company.

June 2025 3-Year Notes

On June 23, 2022, the Company issued $50.0 million in aggregate principal amount of 6.00% interest-bearing unsecured notes due June 23, 2025 (the "June 2025 3-Year Notes"), unless repurchased in accordance with their terms, to qualified institutional investors in a private placement notes offering. Interest on the June 2025 3-Year Notes is due semiannually. The June 2025 3-Year Notes are general unsecured obligations of the Company that rank pari passu with all outstanding and future unsecured unsubordinated indebtedness issued by the Company.

March 2026 A Notes

On November 4, 2020, the Company issued $50.0 million in aggregate principal amount of 4.5% interest-bearing unsecured notes due March 4, 2026 (the "March 2026 A Notes"), unless repurchased in accordance with their terms, to qualified institutional investors in a private placement notes offering. Interest on the March 2026 A Notes is due semiannually. The March 2026 A Notes are general unsecured obligations of the Company that rank pari passu with all outstanding and future unsecured unsubordinated indebtedness issued by the Company.

March 2026 B Notes

On March 4, 2021, the Company issued $50.0 million in aggregate principal amount of 4.55% interest-bearing unsecured notes due March 4, 2026 (the "March 2026 B Notes"), unless repurchased in accordance with their terms, to qualified institutional investors in a private placement pursuant note offering. The sale of the March 2026 B Notes generated net proceeds of approximately $49.5 million. Aggregate offering expenses in connection with the transaction, including fees and commissions, were approximately $0.5 million. Interest on the March 2026 B Notes is due semiannually. The March 2026 B Notes are general unsecured obligations of the Company that rank pari passu with all outstanding and future unsecured unsubordinated indebtedness issued by the Company.

September 2026 Notes

On September 16, 2021, the Company issued $325.0 million in aggregate principal amount of 2.625% interest-bearing unsecured notes due September 16, 2026 (the "September 2026 Notes"), unless repurchased in accordance with the terms of the Seventh Supplemental Indenture, dated September 16, 2021. The issuance of the September 2026 Notes generated net proceeds of approximately $320.1 million. The aggregate offering expenses in connection with the transaction, including the underwriter's discount and commissions, were approximately $4.1 million of costs and $0.8 million related to the discount. Interest on the September 2026 Notes is payable semi-annually in arrears on March 16 and September 16 of each year, commencing on March 16, 2022. The September 2026 Notes are general unsecured obligations and rank pari passu, or equally in right of payment, with all outstanding and future unsecured unsubordinated indebtedness issued by the Company. The Company may redeem some or all of the September 2026 Notes at any time, or from time to time, at the redemption price set forth under the terms of the September 2026 Notes Indenture.

January 2027 Notes

On January 20, 2022, the Company issued $350.0 million in aggregate principal amount of 3.375% interest-bearing unsecured notes due January 20, 2027 (the "January 2027 Notes"), unless repurchased in accordance with the terms of the Eight Supplemental Indenture, dated January 20, 2022. The issuance of the January 2027 Notes generated net proceeds of approximately $343.4 million. The aggregate offering expenses in connection with the transaction, including the underwriter's discount and commissions, were approximately $4.1 million of costs and $2.5 million related to the discount. Interest on the January 2027 Notes is payable semi-annually in arrears on January 20 and July 20 of each year, commencing on July 20, 2022. The January 2027 Notes are general unsecured obligations and rank pari passu, or equally in right of payment, with all outstanding and future unsecured unsubordinated indebtedness issued by the Company. The Company may redeem some or all of the January 2027 Notes at any time, or from time to time, at the redemption price set forth under the terms of the January 2027 Notes Indenture.

2031 Asset-Backed Notes

On June 22, 2022, the Company completed a term debt securitization in connection with which an affiliate of the Company issued $150.0 million in aggregate principal amount of 4.95% interest-bearing asset-backed notes due on July 20, 2031 (the "2031 Asset-Backed Notes"). The 2031 Asset-Backed Notes were issued by Hercules Capital Funding Trust 2022-1 LLC (the "2022 Securitization Issuer") pursuant to a note purchase agreement, dated as of June 22, 2022, by and among the Company, Hercules Capital Funding 2022-1 LLC, as trust depositor, the 2022 Securitization Issuer, and U.S. Bank Trust Company, N. A., as trustee, and are backed by a pool of senior loans made to certain portfolio companies of the Company and secured by certain assets of those portfolio companies and are to be serviced by the Company. Interest on the 2031 Asset-Backed Notes will be paid, to the extent of funds available.

Under the terms of the 2031 Asset-Backed Notes, the Company is required to maintain a reserve cash balance, funded through proceeds from the sale of the 2031 Asset-Backed Notes and through interest and principal collections from the underlying securitized debt portfolio, which may be used to pay monthly interest and principal payments on the 2031 Asset-Backed Notes. The Company has segregated these funds and classified them as restricted cash. As of June 30, 2022, there was approximately $3.4 million and none as of December 31, 2021 of funds segregated as restricted cash related to the 2031 Asset-Backed Notes.

2033 Notes

On September 24, 2018, the Company issued $40.0 million in aggregate principal amount of 6.25% interest-bearing unsecured notes due October 30, 2033 (the "2033 Notes"), unless repurchased in accordance with the terms of the Sixth Supplemental Indenture to the Base Indenture, dated September 24, 2018. Interest on the 2033 Notes is payable quarterly in arrears on January 30, April 30, July 30, and October 30 of each year. The 2033 Notes trade on the NYSE under the symbol "HCXY." The 2033 Notes are general unsecured obligations and rank pari passu, or equally in right of payment, with all outstanding and future unsecured unsubordinated indebtedness issued by the Company. The Company may redeem some or all of the 2033 Notes at any time, or from time to time, at the redemption price set forth under the terms of the 2033 Notes Indenture after October 30, 2023.

Credit Facilities

As of June 30, 2022 and December 31, 2021, the Company has two available credit facilities, the MUFG Bank Facility and the SMBC Facility (together, the "Credit Facilities"). For the six months ended June 30, 2022 and year ended December 31, 2021, the

weighted average interest rate was 3.42% and 2.54%, respectively, and the average debt outstanding under the Credit Facilities was $121.0 million and $28.8 million, respectively.

MUFG Bank Facility

On June 10, 2022, the Company entered into a second amended credit facility agreement, which amends the agreement dated as of February 20, 2020. The Company, through a special purpose wholly owned subsidiary, Hercules Funding IV LLC ("Hercules Funding IV"), as borrower, entered into the credit facility (the "MUFG Bank Facility") with MUFG Bank Ltd. (formerly MUFG Union Bank and known as the "Union Bank Facility") as the arranger and administrative agent, and the lenders party to the MUFG Bank Facility from time to time.

Under the MUFG Bank Facility, the lenders have made commitments of $545.0 million, which is an increase from $400.0 million as of December 31, 2021. The MUFG Bank Facility contains an accordion feature, in which the Company can increase the credit line up to an aggregate of $600.0 million, funded by existing or additional lenders and with the agreement of MUFG Bank and subject to other customary conditions. There can be no assurances that additional lenders will join the MUFG Bank Facility to increase available borrowings. Debt under the MUFG Bank Facility generally bears interest at a rate per annum equal to SOFR plus 2.60% for SOFR loans with a one-month interest period and 2.65% for SOFR loans with a three-month interest period. The MUFG Bank Facility matures on February 22, 2024, unless sooner terminated in accordance with its terms. The MUFG Bank Facility is secured by all of the assets of Hercules Funding IV. The MUFG Bank Facility requires payment of a non-use fee during the revolving credit availability period.

The MUFG Bank Facility also includes financial and other covenants applicable to the Company and the Company's subsidiaries, in addition to those applicable to Hercules Funding IV, including covenants relating to certain changes of control of Hercules Funding IV. Among other things, these covenants require the Company to maintain certain financial ratios, including a minimum interest coverage ratio with respect to Hercules Funding IV and a minimum tangible net worth in an amount that is in excess of $723.0 million.

The MUFG Bank Facility provides for customary events of default, including with respect to payment defaults, breach of representations and covenants, servicer defaults, certain key person provisions, cross default provisions to certain other debt, lien and judgment limitations, and bankruptcy.

SMBC Facility

On June 14, 2022, the Company entered into a second amendment to a revolving credit agreement, which amends the revolving credit agreement, dated as of November 9, 2021, with Sumitomo Mitsui Banking Corporation (the "SMBC Facility"), as administrative agent, and the lenders and issuing banks to the SMBC Facility. As of June 30, 2022, the SMBC Facility provides for borrowings in U.S. dollars and certain agreed upon foreign currencies of up to $225.0 million, from which the Company may access subject to certain conditions. As of December 31, 2021, the Company had access to $100.0 million, subject to certain conditions. Additionally, the SMBC Facility provides for the issuance of letters of credit on the account of the Company or its designee in U.S. dollars and certain agreed upon foreign currencies in an aggregate face amount not to exceed $15.0 million. The Company's obligations under the SMBC Facility may in the future be guaranteed by certain of the Company's subsidiaries and primarily secured by a first priority security interest (subject to certain exceptions) in only certain specified property and assets of the Company and the subsidiary guarantors thereunder. Availability under the SMBC Facility will terminate on November 7, 2025, and the outstanding loans under the SMBC Facility will mature on November 9, 2026. Borrowings under the SMBC Facility are subject to compliance with a borrowing base and an aggregate portfolio balance.

Interest under the SMBC Facility is determined by the nature and denomination of the borrowing. Interest rates are determined by the appropriate benchmark rate (SOFR, EURIBOR, Prime, CDOR, or TIBOR) as applicable for the type of borrowing plus an applicable margin adjustment which can range from 0.875% to 2.0% per annum subject to certain conditions. In addition to interest, the SMBC Facility is subject to a non-usage fee of 0.375% per annum (based on the immediately preceding period's average usage) on the unused portion of the commitment under the SMBC Facility during the revolving period. The Company is required to pay letter of credit participation fees and a fronting fee on the average daily amount of any lender's exposure with respect to any letters of credit issued under the SMBC Facility.

The SMBC Facility contains customary events of default with customary cure and notice provisions, including, without limitation, nonpayment, misrepresentation of representations and warranties in a material respect, breach of covenant, cross-default and cross-acceleration to other indebtedness and bankruptcy. The SMBC Facility also includes financial and other covenants applicable to the Company and the Company's subsidiaries, including covenants relating to minimum stockholders' equity, asset coverage ratios, and our status as a RIC.

6. Income Taxes

To qualify and be subject to tax as a RIC, the Company is required to meet certain income and asset diversification tests in addition to distributing dividends of an amount generally at least equal to 90% of its investment company taxable income, as defined by the Code and determined without regard to any deduction for distributions paid, to its stockholders. The amount to be paid out as a distribution is determined by the Board each quarter and is based upon the annual earnings estimated by the management of the Company. To the extent that the Company's earnings fall below the amount of dividend distributions declared, however, a portion of the total amount of the Company's distributions for the fiscal year may be deemed a return of capital for tax purposes to the Company's stockholders.

As previously noted, federal income tax regulations differ from U.S. GAAP, distributions in accordance with tax regulations may differ from net investment income and realized gains recognized for financial reporting purposes. Permanent differences are reclassified among capital accounts in the financial statements to reflect their appropriate tax character. Permanent differences may also result from the change in the classification of short-term gains as ordinary income for tax purposes. Temporary differences arise when certain items of income, expense, gain or loss are recognized at some time in the future. Also, income is required to be recognized for tax purposes no later than when recognized for financial reporting purposes, with certain exceptions.

As a RIC, the Company will be subject to a 4% nondeductible U.S. federal excise tax on certain undistributed income unless the Company makes distributions treated as dividends for U.S. federal income tax purposes in a timely manner to its stockholders in respect of each calendar year of an amount at least equal to the sum of (1) 98% of its ordinary income (taking into account certain deferrals and elections) for each calendar year, (2) 98.2% of its capital gain net income (adjusted for certain ordinary losses) for the 1-year period ending October 31 of each such calendar year and (3) any ordinary income and capital gain net income realized, but not distributed, in preceding calendar years (the "Excise Tax Avoidance Requirement"). The Company will not be subject to this excise tax on any amount on which the Company incurred U.S. federal corporate income tax (such as the tax imposed on a RIC's retained net capital gains).

Depending on the level of taxable income earned in a taxable year, the Company may choose to carry over taxable income in excess of current taxable year distributions from such taxable income into the next taxable year and incur a 4% excise tax on such taxable income, as required. The maximum amount of excess taxable income that may be carried over for distribution in the next taxable year under the Code is the total amount of distributions paid in the following taxable year, subject to certain declaration and payment guidelines. To the extent the Company chooses to carry over taxable income into the next taxable year, distributions declared and paid by the Company in a taxable year may differ from the Company's taxable income for that taxable year as such distributions may include the distribution of current taxable year taxable income, the distribution of prior taxable year taxable income carried over into and distributed in the current taxable year, or returns of capital.

The Company has taxable subsidiaries which hold certain portfolio investments in an effort to limit potential legal liability and/or comply with source-income type requirements contained in the RIC tax provisions of the Code. These taxable subsidiaries are consolidated for U.S. GAAP and the portfolio investments held by the taxable subsidiaries are included in the Company's consolidated financial statements and are recorded at fair value. These taxable subsidiaries are not consolidated with the Company for income tax purposes and may generate income tax expense, or benefit, and tax assets and liabilities as a result of their ownership of certain portfolio investments. Any income generated by these taxable subsidiaries generally would be subject to tax at normal corporate tax rates based on its taxable income.

Taxable income for the three months ended June 30, 2022, was approximately $40.0 million or $0.32 per share. Taxable net realized gains for the same period were $(1.7) million or approximately $(0.02) per share. Taxable income for the three months ended June 30, 2021, was approximately $47.2 million or $0.41 per share. Taxable net realized gains for the same period were $48.6 million or approximately $0.42 per share.

Taxable income for the six months ended June 30, 2022, was approximately $73.1 million or $0.60 per share. Taxable net realized gains for the same period were $2.0 million or approximately $0.02 per share. Taxable income for the six months ended June 30, 2021, was approximately $82.1 million or $0.72 per share. Taxable net realized gains for the same period were $57.5 million or approximately $0.50 per share.

For the three and six months ended June 30, 2022, the Company paid approximately $0.2 million and $7.3 million of income tax, respectively, including excise tax, and had $2.4 million of accrued but unpaid tax expense as of June 30, 2022. For the three and six months ended June 30, 2021, the Company paid approximately $0.1 million and $3.6 million of income tax, including excise tax, and had $2.6 million accrued but unpaid tax expense as of June 30, 2021.

The Company intends to timely distribute to its stockholders substantially all of its annual taxable income for each year, except that it may retain certain net capital gains for reinvestment and, depending upon the level of taxable income earned in a year, may choose to carry forward taxable income for distribution in the following year and pay any applicable U.S. federal excise tax.

During the three and six months ended June 30, 2022, the Company declared and paid distributions of $0.48 and $0.96 per share, respectively. The determination of the tax attributes of the Company's distributions is made annually as of the end of the Company's taxable year generally based upon its taxable income for the full taxable year and distributions paid for the full taxable year. As a result, a determination made on a quarterly basis may not be representative of the actual tax attributes of the Company's distributions for a full taxable year. If the Company had determined the tax attributes of its distributions taxable year-to-date as of June 30, 2022, 100% would be from its current and accumulated earnings and profits. However, there can be no certainty to stockholders that this determination is representative of what the actual tax attributes of the Company's fiscal year of 2022 distributions to stockholders will be.

7. Stockholders' Equity

On May 9, 2022, the Company entered into an At-The-Market ("ATM") equity distribution agreement with JMP Securities LLC ("JMP") and Jefferies LLC ("Jeffries") (the "2022 Equity Distribution Agreement"). The 2022 Equity Distribution Agreement provides that the Company may offer and sell up to 17.5 million shares of its common stock from time to time through JMP or Jeffries, as its sales agents. Sales of the Company's common stock, if any, may be made in negotiated transactions or transactions that are deemed to be "at the market," as defined in Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), including sales made directly on the NYSE or similar securities exchange or sales made to or through a market maker other than on an exchange, at prices related to the prevailing market prices or at negotiated prices. The 2022 Equity Distribution Agreement replaces the ATM equity distribution agreement between the Company and JMP executed on July 2, 2020 (the "2020 Equity Distribution Agreement").

Under the 2020 Equity Distribution Agreement, the Company sold approximately 0.7 million and 5.6 million shares, respectively, of common stock under during the three and six months ended June 30, 2022. From the sale of shares under the 2020 Equity Distribution Agreement, the Company received total accumulated net proceeds of approximately $13.3 million and $98.5 million, including $0.2 million and $1.6 million of offering expenses, respectively for each period. Under the 2022 Equity Distribution agreement the Company sold approximately 3.3 million of common stock for both the three and six months ended June 30, 2022. From the sale of shares, the Company received total accumulated net proceeds of approximately $48.6 million including $0.5 million of offering expenses for both the three and six months ended June 30, 2022. During the three and six months ended June 30, 2021, there were no shares sold under the existing equity distribution agreement.

The Company generally uses net proceeds from these offerings to make investments, to repurchase or pay down liabilities and for general corporate purposes. As of June 30, 2022, approximately 14.2 million shares remain available for issuance and sale under the 2022 Equity Distribution Agreement. The 2020 Equity Distribution Agreement is no longer effective. The Company has issued stock options for common stock subject to future issuance, of which 194,571 and 210,569 were outstanding as of June 30, 2022 and December 31, 2021, respectively.

8. Equity Incentive Plans

The Company grants equity-based awards to employees and non-employee directors for the purpose of attracting and retaining the services of its executive officers, key employees, and members of the Board. The Company's equity-based awards are granted under the 2018 Equity Incentive Plan (the "2018 Plan") for employees and 2018 Non-Employee Director Plan (the "Director Plan") for non-employee directors. The 2018 Plan and the Director Plan were approved by stockholders on June 28, 2018, and authorize us to issue up to 18.7 million shares of common stock and 300,000 shares of restricted stock under the 2018 Plan and Director Plan, respectively. Unless earlier terminated by the Board, the 2018 Plan and Director Plan will terminate on May 12, 2028. Outstanding awards issued under plans that precede the 2018 Plan and Director Plan remain outstanding, unchanged and subject to the terms of such plans and their respective award agreements, until the vesting, expiration or lapse of such awards in accordance with their terms.

The Company has received exemptive relief from the SEC that permits it to issue restricted stock to non-employee directors under the Director Plan and restricted stock and restricted stock units to certain of its employees, officers, and directors (excluding non-employee directors) under the 2018 Plan. The exemptive order also allows participants in the Director Plan and the 2018 Plan to (i) elect to have the Company withhold shares of its common stock to pay for the exercise price and applicable taxes with respect to an option exercise ("net issuance exercise") and/or (ii) permit the holders of restricted stock to elect to have the Company withhold shares of its stock to pay the applicable taxes due on restricted stock at the time of vesting. Each individual employee would be able to make a cash payment to satisfy applicable tax withholding at the time of option exercise or vesting on restricted stock.

The Company has granted equity-based awards that have service and performance conditions. Certain of the Company's equity-based awards are classified as liability awards in accordance with ASC Topic 718, Compensation – Stock Compensation. All of the Company's equity-based awards require future service, and are expensed over the relevant service period. The Company does not estimate forfeitures, and reverses all unvested costs associated with equity-based awards in the period they are forfeited. For the three months ended June 30, 2022, and 2021, the Company recognized $3.7 million and $2.9 million of stock based compensation expense in the Consolidated Statement of Operations, respectively. For the six months ended June 30, 2022, and 2021, the Company recognized $8.1 million and $5.7 million of stock based compensation expense in the Consolidated Statement of Operations,

respectively. As of June 30, 2022, and 2021, approximately $19.1 million and $20.6 million of total unrecognized compensation costs expected to be recognized over the next 2.0 and 2.0 years, respectively.

Service-Vesting Awards

The Company grants equity-based awards which have service conditions, and generally begin to vest one-third after one year after the date of grant and ratably over the succeeding 2 years in accordance with the individual award terms (the "Service Vesting Awards"). The grant date fair value of Service Vesting Awards granted during the six months ended June 30, 2022, and 2021, were approximately $10.7 million, and $11.1 million, respectively.

The Company has granted restricted stock equity awards in the form of restricted stock awards and restricted stock units. The Company determines the grant date fair values of restricted stock equity awards using the grant date stock close price. The activities for the Company's unvested restricted stock equity awards for each of the six months ended June 30, 2022, and 2021, are summarized below:

	Six Months Ended June 30,			
	2022		2021	
	Shares	Weighted Average Grant Date Fair Value per Share	Shares	Weighted Average Grant Date Fair Value per Share
Unvested Shares Beginning of Period	1,037,848	$ 14.51	989,100	$ 13.69
Granted	610,541	$ 17.39	745,087	$ 14.76
Vested [(1)]	(463,408)	$ 14.39	(411,576)	$ 13.74
Forfeited	(17,108)	$ 15.89	(47,445)	$ 14.40
Unvested Shares End of Period	1,167,873	$ 16.05	1,275,166	$ 14.32

(1) With respect to certain restricted stock equity awards granted prior to January 1, 2019, receipt of the shares of the Company's common stock underlying vested restricted stock equity awards will be deferred for four years from grant date unless certain conditions are met. Accordingly, such vested restricted stock equity awards will not be issued as common stock upon vesting until the completion of the deferral period.

In addition to the restricted stock equity based awards, the Company has also issued stock options to certain employees. The fair value of options granted during the six months ended June 30, 2022 and 2021, was approximately $83,000 and $40,000, respectively. During the six months ended June 30, 2022 and 2021, approximately $30,000, and $14,000, of share-based cost due to stock option grants was expensed, respectively.

Performance-Vesting Awards

The Company has granted equity-based awards, which have market and performance conditions in addition to a service condition ("Performance Awards"). The value of these awards may increase dependent on increases to the Company's total stockholder return ("TSR"). The total compensation will be determined by the Company's TSR relative to specified BDCs during a specified performance period. Depending on the results achieved during the specified performance period, the actual number of shares that a grant recipient receives at the end of the period may range from 0% to 200% of the target shares granted. The Performance Awards typically vest after four years, and generally may not be disposed until one year post vesting. The Company determines the fair values of the Performance Awards at the grant date using a Monte-Carlo simulation multiplied by the target payout level and is recognized over the service period. During the six months ended June 30, 2022, all 487,409 Performance Award shares vested. Additionally, 241,770 distribution equivalent units ("DEUs") were issued with a grant date fair value of $4.0 million. During the six months ended June 30, 2021, there were no Performance Awards or DEUs granted or vested. As of June 30, 2022 and 2021, there were no and 487,409 shares of unvested Performance Awards.

Liability Classified Awards

The Company has granted equity-based awards which are subject to both service and performance conditions. These awards are settled either in cash or a fixed dollar value of shares, subject to the terms of each individual award, and therefore classified as liability awards (the "Liability Awards"). The remaining maximum total potential value of the Liability Awards granted is $5.2 million, which assumes all performance conditions are met for each Liability award. If the performance conditions are not met, the total compensation expense related to the Liability Awards may be less than the maximum granted value of the awards. The awards are recorded as deferred compensation within Accounts Payable and Accrued Liabilities included on the Consolidated Statement of Assets and Liabilities.

Certain Liability Awards are structured similar to the Performance Awards, and increase in value with corresponding increases to the Company's TSR and vest after four years. The Company remeasures the value of these awards each period based on the Company's TSR achieved to date. Certain other Liability Awards are linked to attainment of investment funding goals. The Company determines the fair value of these Liability Awards based on the expected probability of the performance conditions being met and recognized over the service period. As of June 30, 2022, the Company determined that the weighted average expected probability of the performance conditions being met within each Liability Award was 100%. The expected probability is re-evaluated each period, and may be adjusted to reflect changes in this assumption. These other Liability Awards vest over a three year service term.

As of June 30, 2022, all Liability Awards are unvested and there was approximately $3.2 million of total unrecognized compensation costs expected to be recognized over a weighted average period of 1.8 years. For the six months ended June 30, 2022, there was approximately $2.3 million of compensation expense related to the Liability Awards recognized in the Consolidated Statement of Operations and $2.0 million accrued within Accounts Payable and Accrued Liabilities in the Consolidated Statements of Assets and Liabilities. During the six months ended June 30, 2022 and 2021, $6.0 million and $0 of the Liability Awards vested.

As of June 30, 2021, all Liability Awards are unvested and there was approximately $3.9 million of total unrecognized compensation costs expected to be recognized over a weighted average period of 2.3 years. For the six months ended June 30, 2021, there was approximately $0.6 million of compensation expense related to the Liability Awards recognized in the Consolidated Statement of Operations and $4.6 million accrued within Accounts Payable and Accrued Liabilities in the Consolidated Statements of Assets and Liabilities. No Liability Awards vested during the periods presented.

9. Earnings Per Share

Shares used in the computation of the Company's basic and diluted earnings per share are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
(in thousands, except per share data)	**2022**	**2021**	**2022**	**2021**
Numerator				
Net (decrease) increase in net assets resulting from operations	$ (10,318)	$ 82,731	$ (13,654)	$ 146,894
Less: Distributions declared-common and restricted shares	(59,993)	(45,158)	(117,875)	(87,953)
(Over-)Undistributed earnings (loss)	(70,311)	37,573	(131,529)	58,941
Undistributed earnings-common shares	(70,311)	37,200	(131,529)	58,341
Add: Distributions declared-common shares	59,431	44,710	116,693	87,059
Numerator for basic and diluted change in net assets per common share	$ (10,880)	$ 81,910	$ (14,836)	$ 145,400
Add: Income impact of assumed conversion of 2022 Convertible Notes	—	2,906	—	2,906
Numerator for basic and diluted change in net assets per common share	$ (10,880)	$ 84,816	$ (14,836)	$ 148,306
Denominator				
Basic weighted average common shares outstanding	124,255	114,654	121,292	114,480
Incremental shares from assumed conversion of 2022 Convertible Notes	—	14,189	—	7,094
Common shares issuable	—	729	—	614
Weighted average common shares outstanding assuming dilution	124,255	129,572	121,292	122,188
Change in net assets per common share				
Basic	$ (0.09)	$ 0.71	$ (0.12)	$ 1.27
Diluted	$ (0.09)	$ 0.65	$ (0.12)	$ 1.21

In the table above, unvested share-based payment awards that have non-forfeitable rights to distributions or distribution equivalents are treated as participating securities for calculating earnings per share. Unvested common stock options and restricted stock units are also considered for the purpose of calculating diluted earnings per share. For the three and six months ended June 30, 2022, as the Company had a net loss, the effect of unvested stock options, restricted stock units and awards, and Performance Awards were anti-dilutive, and therefore have been excluded from the calculation of diluted loss per share.

As disclosed in "Note 5 – Debt", on February 1, 2022, the Company fully repaid the 2022 Convertible Notes. As these notes were fully repaid, there is no dilutive impact for the current period ended June 30, 2022. For the three and six months ended June 30, 2021, the average closing price of the Company's common stock was higher than the conversion price of the 2022 Convertible Notes and therefore, the effect of the 2022 Convertible Notes was dilutive and, accordingly, was included in the calculation of diluted earnings per share using the if-converted method.

The calculation of change in net assets resulting from operations per common share assuming dilution, excludes all anti-dilutive shares. For the three and six months ended June 30, 2022, and 2021, the number of anti-dilutive shares, as calculated based on the weighted average closing price of the Company's common stock for the periods, are as follows:

(in thousands)	Three months ended June 30,		Six Months Ended June 30,	
Anti-dilutive Securities	**2022**	**2021**	**2022**	**2021**
2022 Convertible Notes	—	—	—	—
Unvested common stock options	16	—	24	88
Restricted stock units*	2	—	17	—
Unvested restricted stock awards	—	—	—	725
Performance awards*	1,685	—	1,116	—

*Included in these amounts are shares related to certain equity-based awards, which are fully-vested but have not been delivered and thus not outstanding for purposes of calculating earnings per share.

As of both June 30, 2022 and December 31, 2021, the Company was authorized to issue 200.0 million shares of common stock with a par value of $0.001. Each share of common stock entitles the holder to one vote.

10. Financial Highlights

Following is a schedule of financial highlights for the six months ended June 30, 2022 and 2021:

	Six Months Ended June 30,	
	2022	2021
Per share data [1]:		
Net asset value at beginning of period	$ 11.22	$ 11.26
Net investment income	0.62	0.62
Net realized gain (loss)	(0.04)	(0.06)
Net unrealized appreciation (depreciation)	(0.70)	0.71
Total from investment operations	(0.12)	1.27
Net increase (decrease) in net assets from capital share transactions [1]	0.23	(0.11)
Distributions of net investment income [6]	(0.96)	(0.76)
Stock-based compensation expense included in investment income [2]	0.06	0.05
Net asset value at end of period	$ 10.43	$ 11.71
Ratios and supplemental data (in thousands, except per share data):		
Per share market value at end of period	$ 13.49	$ 17.06
Total return [3]	(13.72)%	23.66%
Shares outstanding at end of period	127,285	115,867
Weighted average number of common shares outstanding	121,292	114,480
Net assets at end of period	$ 1,327,740	$ 1,356,358
Ratio of total expense to average net assets [4]	9.13%	10.12%
Ratio of net investment income before investment gains and losses to average net assets [4]	11.30%	10.84%
Portfolio turnover rate [5]	8.88%	19.26%
Weighted average debt outstanding	$ 1,386,242	$ 1,267,032
Weighted average debt per common share	$ 11.43	$ 11.07

(1) All per share activity is calculated based on the weighted average shares outstanding for the relevant period, except net increase (decrease) in net assets from capital share transactions, which is based on the common shares outstanding as of the relevant balance sheet date.

(2) Stock option expense is a non-cash expense that has no effect on net asset value. Pursuant to ASC Topic 718, net investment income includes the expense associated with the granting of stock options which is offset by a corresponding increase in paid-in capital.

(3) The total return for the six months ended June 30, 2022, and 2021, equals the change in the ending market value over the beginning of the period price per share plus distributions paid per share during the period, divided by the beginning price assuming the distribution is reinvested on the date of the distribution. As such, the total return is not annualized. The total return does not reflect any sales load that must be paid by investors.

(4) The ratios are calculated based on weighted average net assets for the relevant period and are annualized.

(5) The portfolio turnover rate for the six months ended June 30, 2022, and 2021, equals the lesser of investment portfolio purchases or sales during the period, divided by the average investment portfolio value during the period. As such, portfolio turnover rate is not annualized.

(6) Includes distributions on unvested restricted stock awards.

11. Commitments and Contingencies

The Company's commitments and contingencies consist primarily of unfunded commitments to extend credit in the form of loans to the Company's portfolio companies. A portion of these unfunded contractual commitments as of June 30, 2022, are dependent upon the portfolio company reaching certain milestones before the debt commitment becomes available. Furthermore, the Company's credit agreements with its portfolio companies generally contain customary lending provisions which allow the Company relief from funding obligations for previously made unfunded commitments in instances where the underlying portfolio company experiences materially adverse events that affect its financial condition or business outlook. Since a portion of these commitments may expire without being drawn, unfunded contractual commitments do not necessarily represent future cash requirements. As such, the Company's disclosure of unfunded contractual commitments includes only those which are available at the request of the portfolio company and unencumbered by future or unachieved milestones.

As of June 30, 2022, and December 31, 2021, the Company had approximately $488.9 million and $286.8 million, respectively, of unfunded commitments, including undrawn revolving facilities, which were available at the request of the portfolio company and unencumbered by future or unachieved milestones. These amounts also exclude unfunded commitments related to the portion of portfolio company investments assigned to or directly committed by the Adviser Funds as described in "Note -12 Related Party Transactions".

The fair value of the Company's unfunded commitments is considered to be immaterial as the yield determined at the time of underwriting is expected to be materially consistent with the yield upon funding, given that interest rates are generally pegged to market indices and given the existence of milestones, conditions and/or obligations imbedded in the borrowing agreements.

As of June 30, 2022, and December 31, 2021, the Company's unfunded contractual commitments available at the request of the portfolio company, including undrawn revolving facilities, and unencumbered by milestones were as follows:

(in thousands)	Unfunded Commitments [1] as of	
Portfolio Company	**June 30, 2022**	**December 31, 2021**
Debt Investments:		
Phathom Pharmaceuticals, Inc.	$ 66,500	$ 43,250
Thumbtack, Inc.	40,000	—
Vida Health	40,000	—
Skydio, Inc.	37,500	37,500
HilleVax, Inc.	36,000	—
Aryaka Networks, Inc.	20,000	—
Blue Sprig Pediatrics, Inc.	20,000	30,000
Finch Therapeutics Group, Inc.	20,000	—
G1 Therapeutics, Inc.	19,375	19,375
Locus Robotics Corporation	18,281	—
Syndax Pharmaceutics Inc.	15,000	30,000
Dronedeploy, Inc.	12,500	—
Carbon Health Technologies, Inc.	11,625	11,625.0
RVShare, LLC	10,500	13,500.0
AppDirect, Inc.	10,000	—
Dashlane, Inc.	10,000	19,300.0
Nuvolo Technologies Corporation	10,000	—
Equality Health, LLC	8,750	17,500
Tarsus Pharmaceuticals, Inc.	8,250	—
Viridian Therapeutics, Inc.	8,000	—
Ouster, Inc.	7,000	—
Akero Therapeutics, Inc.	5,001	—
Alamar Biosciences, Inc.	5,000	—
Brain Corporation	5,000	20,000
Ceros, Inc.	3,845	3,845
Signal Media Limited	3,750	—
Demandbase, Inc.	3,750	9,375
Riviera Partners LLC	3,500	—
Redshift Bioanalytics, Inc.	3,500	—
Catchpoint Systems, Inc.	3,400	—
Yipit, LLC	2,250	2,250
Eigen Technologies Ltd.	1,950	—
Khoros (p.k.a Lithium Technologies)	1,811	1,812
ThreatConnect, Inc.	1,600	1,600
Dispatch Technologies, Inc.	1,250	—
Zimperium, Inc.	1,088	—
Ikon Science Limited	1,050	1,050
Alchemer LLC	890	—
3GTMS, LLC	833	1,583
Agilence, Inc.	800	800
Mobile Solutions Services	743	424
Cybermaxx Intermediate Holdings, Inc.	471	471
Enmark Systems, Inc.	457	457
Annex Cloud	386	—
ShadowDragon, LLC	333	333
Gryphon Networks Corp.	268	268
Cytracom Holdings LLC	225	225
Bicycle Therapeutics PLC	—	10,000
Better Therapeutics, Inc.	—	4,000
Logicworks	—	2,000
ePayPolicy Holdings, LLC	—	250
Pineapple Energy LLC	—	120
Total Unfunded Debt Commitments:	482,432	282,913
Investment Funds & Vehicles:[2]		
Forbion Growth Opportunities Fund I C.V.	3,456	3,839
Forbion Growth Opportunities Fund II C.V.	3,039	—
Total Unfunded Commitments in Investment Funds & Vehicles:	6,495	3,839
Total Unfunded Commitments	$ 488,927	$ 286,752

(1) For debt investments, amounts represent unfunded commitments, including undrawn revolving facilities, which are available at the request of the portfolio company. Amount excludes unfunded commitments which are unavailable due to the borrower having not met certain milestones. These amounts also exclude

$127.6 million and $34.9 million of unfunded commitments as of June 30, 2022, and December 31, 2021, respectively, to portfolio companies related to loans assigned to or directly committed by the Adviser Funds as described in "Note -12 Related Party Transactions".

(2) For investment funds and vehicles, the amount represents uncalled capital commitments in a private equity fund.

The following table provides additional information on the Company's unencumbered unfunded commitments regarding milestones, expirations and type:

(in thousands)	**June 30, 2022**	**December 31, 2021**
Unfunded Debt Commitments:		
Expiring during:		
2022	$ 236,843	$ 199,681
2023	131,575	43,675
2024	93,575	25,800
2025	1,801	2,232
2026	11,525	11,525
2027	4,974	—
2028	2,139	—
Total Unfunded Debt Commitments	482,432	282,913
Unfunded Commitments in Investment Funds & Vehicles:		
Expiring during:		
2030	3,456	3,839
2032	3,039	—
Total Unfunded Commitments in Investment Funds & Vehicles	6,495	3,839
Total Unfunded Commitments	$ 488,927	$ 286,752

The following tables provide the Company's contractual obligations as of June 30, 2022 and December 31, 2021:

As of June 30, 2022:	**Payments due by period (in thousands)**				
Contractual Obligations [1]	**Total**	**Less than 1 year**	**1 - 3 years**	**3 - 5 years**	**After 5 years**
Debt [2][3]	$ 1,520,582	$ —	$ 357,000	$ 798,582	$ 365,000
Lease and License Obligations [4]	7,438	3,185	2,352	1,901	—
Total	$ 1,528,020	$ 3,185	$ 359,352	$ 800,483	$ 365,000

As of December 31, 2021:	**Payments due by period (in thousands)**				
Contractual Obligations [1]	**Total**	**Less than 1 year**	**1 - 3 years**	**3 - 5 years**	**After 5 years**
Debt [5][3]	$ 1,250,425	$ 380,000	$ 105,000	$ 574,925	$ 190,500
Lease and License Obligations [4]	8,283	3,120	2,958	1,427	778
Total	$ 1,258,708	$ 383,120	$ 107,958	$ 576,352	$ 191,278

(1) Excludes commitments to extend credit to the Company's portfolio companies and uncalled capital commitments in an investment fund.

(2) Includes $175.0 million in principal outstanding under the SBA Debentures, $105.0 million of the July 2024 Notes, $50.0 million of the February 2025 Notes, $70.0 million of the June 2025 Notes, $50.0 million of the June 2025 3-Year Notes, $50.0 million of the March 2026 A Notes, $50.0 million of the March 2026 B Notes, $150.0 million of the 2031 Asset-Backed Notes, $40.0 million of the 2033 Notes, $325.0 million of the September 2026 Notes and $350.0 million of the January 2027 Notes as of June 30, 2022. There was also $23.6 million outstanding under the SMBC Facility and $82.0 million outstanding under the MUFG Bank Facility as of June 30, 2022.

(3) Amounts represent future principal repayments and not the carrying value of each liability. See "Note 5 – Debt".

(4) Facility leases and licenses including short-term leases.

(5) Includes $150.5 million in principal outstanding under the SBA Debentures, $150.0 million of the 2022 Notes, $105.0 million of the July 2024 Notes, $50.0 million of the February 2025 Notes, $70.0 million of the June 2025 Notes, $50.0 million of the March 2026 A Notes, $50.0 million of the March 2026 B Notes, $40.0 million of the 2033 Notes, $325.0 million of the September 2026 Notes, and $230.0 million of the 2022 Convertible Notes as of December 31, 2021. There was also $29.9 million outstanding under the SMBC Facility and no amounts outstanding under the Union Facility as of December 31, 2021.

Certain premises are leased or licensed under agreements which expire at various dates through December 2028. For the three and six months ended June 30, 2022, total rent expense, including short-term leases, amounted to approximately $0.8 million and $1.6 million, respectively. For the three and six months ended June 30, 2021, total rent expense, including short-term leases, amounted to approximately $0.8 million and $1.6 million, respectively. The Company recognizes an operating lease liability and a ROU asset for all leases, with the exception of short-term leases. The lease payments on short-term leases are recognized as rent expense on a straight-line basis. The discount rate applied to measure each ROU asset and lease liability is based on the Company's incremental weighted average cost of debt. The Company considers the general economic environment and its credit rating and factors in various financing and asset specific adjustments to ensure the discount rate applied is appropriate to the intended use of the underlying lease. While some of the leases contained options to extend and terminate, it is not reasonably certain that either option will be utilized and therefore, only the payments in the initial term of the leases were included in the lease liability and ROU asset.

The following table sets forth information related to the measurement of the Company's operating lease liabilities and supplemental cash flow information related to operating leases as of June 30, 2022, and 2021:

(in thousands)	Three Months Ended June 30, 2022	Three Months Ended June 30, 2021	Six Months Ended June 30, 2022	Six Months Ended June 30, 2021
Total operating lease cost	$ 744	$ 738	$ 1,441	$ 1,476
Cash paid for amounts included in the measurement of lease liabilities	$ 1,175	$ 578	$ 1,769	$ 1,737

	As of June 30, 2022	As of June 30, 2021
Weighted-average remaining lease term (in years)	4.18	3.79
Weighted-average discount rate	4.61 %	5.41 %

The following table shows future minimum lease payments under the Company's operating leases and a reconciliation to the operating lease liability as of June 30, 2022:

(in thousands)	As of June 30, 2022
2022	$ 1,876
2023	2,500
2024	848
2025	887
Thereafter	1,804
Total lease payments	7,915
Less: imputed interest	(1,255)
Total operating lease liability	$ 6,660

The Company may, from time to time, be involved in litigation arising out of its operations in the normal course of business or otherwise. Furthermore, third parties may try to seek to impose liability on the Company in connection with the activities of its portfolio companies. While the outcome of any current legal proceedings cannot at this time be predicted with certainty, the Company does not expect any current matters will materially affect the Company's financial condition or results of operations; however, there can be no assurance whether any pending legal proceedings will have a material adverse effect on the Company's financial condition or results of operations in any future reporting period.

12. Related Party Transactions

As disclosed in "Note 2 – Summary of Significant Accounting Policies", the Adviser Subsidiary is accounted for as a portfolio investment of the Company held at fair value. Refer to "Note 4 – Investments" for information related to income, gains and losses recognized related to the Company's investment.

In 2021, the Adviser Subsidiary entered into investment management agreements with its privately-offered Adviser Funds, and it receives management fees based on the assets under management of the Adviser Funds and may receive incentive fees based on the performance of the Adviser Funds. Additionally, the Company entered into a shared services agreement ("Sharing Agreement") with the Adviser Subsidiary, through which the Adviser Subsidiary will utilize human capital resources (including administrative functions) and other resources and infrastructure (including office space and technology) of the Company. Under the terms of the Sharing Agreement, the Company allocates the related expenses of shared services to the Adviser Subsidiary based on direct time spent, investment activity, and proportion of assets under management depending on the nature of the expense. The Company's total expenses for the three and six months ended June 30, 2022, are net of expenses allocated to the Adviser Subsidiary of $3.1 million and $4.5 million, respectively. As of June 30, 2022, the Company owed $0.2 million to the Adviser Subsidiary. The Company's total expenses for the three and six months ended June 30, 2021, are net of expenses allocated to the Adviser Subsidiary of $1.2 million and $2.1 million, respectively. As of December 31, 2021, there was $0.1 million receivable from the Adviser Subsidiary.

In addition, the Company may from time-to-time make investments alongside the Adviser Funds or assign a portion of investments to the Adviser Funds in accordance with the Company's allocation policy. During the six months ended June 30, 2022, $440.0 million of all investment commitments of the Company and the Adviser Subsidiary were assigned to or directly committed by the Adviser Funds. During the six months ended June 30, 2022, fundings of $189.8 million were assigned to, directly originated, or funded by the Adviser Funds. The Company received $88.2 million from the Adviser Funds relating to the assigned investments during the six months ended June 30, 2022. Additionally, on May 31, 2022, the Company sold $73.5 million of assets to the Adviser Funds and realized a $0.1 million gain.

During the six months ended June 30, 2021, $104.8 million of all investment commitments of the Company and the Adviser Subsidiary were assigned to or directly committed by the Adviser Funds, respectively. During the six months ended June 30, 2021, fundings of $79.9 million were assigned to, directly originated, or funded by the Adviser Funds. The Company received $75.6 million from the Adviser Funds relating to the assigned investments during the six months ended June 30, 2021.

13. Subsequent Events

Dividend Distribution Declaration

On July 20, 2022, the Board declared a cash distribution of $0.35 per share to be paid on August 16, 2022 to stockholders of record as of August 9, 2022. In addition to the cash distribution, and as part of the declared supplemental cash distribution of $0.60 per share to be paid in four quarterly distributions of $0.15, the Board declared a supplemental cash distribution of $0.15 per share to be paid on August 16, 2022 to stockholders of record as of August 9, 2022. Including the $0.15 per share supplemental cash distribution paid to stockholders of record as of March 9, 2022 and May 17, 2022, the Board has declared a total of $0.45 per share of the $0.60 per share supplemental cash distribution declared on July 20, 2022.

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

Forward-Looking Statements

The matters discussed in this report, as well as in future oral and written statements by management of Hercules Capital, Inc., that are forward-looking statements are based on current management expectations that involve substantial risks and uncertainties which could cause actual results to differ materially from the results expressed in, or implied by, these forward-looking statements. Forward-looking statements relate to future events or our future financial performance. We generally identify forward-looking statements by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. Important assumptions include our ability to originate new investments, achieve certain margins and levels of profitability, the availability of additional capital, and the ability to maintain certain debt to asset ratios. In light of these and other uncertainties, the inclusion of a projection or forward-looking statement in this report should not be regarded as a representation by us that our plans or objectives will be achieved. The forward-looking statements contained in this report include statements as to:

- our current and future management structure;
- our future operating results;
- our business prospects and the prospects of our prospective portfolio companies;
- the impact of investments that we expect to make;
- our informal relationships with third parties including in the venture capital industry;
- the expected market for venture capital investments and our addressable market;
- the dependence of our future success on the general economy and its impact on the industries in which we invest;
- our ability to access debt markets and equity markets;
- the occurrence and impact of macro-economic developments (for example, global pandemics, natural disasters, terrorism, international conflicts and war) on us and our portfolio companies;
- the ability of our portfolio companies to achieve their objectives;
- our expected financings and investments;
- our regulatory structure and tax status;
- our ability to operate as a BDC, a SBIC, and a RIC;
- the adequacy of our cash resources and working capital;
- the timing of cash flows, if any, from the operations of our portfolio companies;
- the timing, form and amount of any distributions;
- the impact of fluctuations in interest rates on our business;
- the valuation of any investments in portfolio companies, particularly those having no liquid trading market; and
- our ability to recover unrealized depreciation on investments.

You should not place undue reliance on these forward-looking statements. The forward-looking statements made in this report relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statement to reflect events or circumstances occurring after the date of this report.

The following discussion should be read in conjunction with our consolidated financial statements and related notes and other financial information appearing elsewhere in this report. In addition to historical information, the following discussion and other parts of this report contain forward-looking information that involves risks and uncertainties. Our actual results could differ materially from those anticipated by such forward-looking information due to the factors discussed under Item 1A— "Risk Factors" of Part II of this quarterly report on Form 10-Q, Item 1A— "Risk Factors" of our annual report on Form 10-K filed with the SEC on February 22, 2022 and under "Forward-Looking Statements" of this Item 2.

Use of Non-GAAP Measures

Throughout this MD&A, we present our financial condition and results of operations in the way we believe will be most meaningful and representative of our business results. Some of the measurements we use are "non-GAAP financial measures" under SEC rules and regulations. GAAP is the acronym for "generally accepted accounting principles" in the United States. The non-GAAP financial measures we present may not be comparable to similarly-named measures reported by other companies.

Overview

We are a specialty finance company focused on providing senior secured loans to high-growth, innovative venture capital-backed and institutional-backed companies in a variety of technology, life sciences, and sustainable and renewable technology industries. Our goal is to be the leading structured debt financing provider for venture capital-backed and institutional-backed companies in a variety of technology-related industries requiring sophisticated and customized financing solutions. Our strategy is to evaluate and invest in a broad range of technology-related industries including technology, drug discovery and development, biotechnology, life sciences, healthcare, and sustainable and renewable technology and to offer a full suite of growth capital products. We invest primarily in structured debt with warrants and, to a lesser extent, in senior debt and equity investments. Our portfolio is comprised of, and we anticipate that our portfolio will continue to be comprised of, investments primarily in technology related companies at various stages of their development.

We are structured as an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a BDC under the 1940 Act. As a BDC, we are required to comply with certain regulatory requirements. For instance, we generally have to invest at least 70% of our total assets in "qualifying assets," which includes securities of private U.S. companies, cash, cash equivalents, and high-quality debt investments that mature in one year or less. Consistent with requirements under the 1940 Act, we invest primarily in United-States based companies and to a lesser extent in foreign companies. We source our investments through our principal office located in Palo Alto, CA, as well as through our additional offices in Boston, MA, New York, NY, Bethesda, MD, San Diego, CA, and London, United Kingdom.

We have elected to be treated for tax purposes as RIC under Subchapter M of the Code. As a RIC, we generally will not be subject to U.S. federal income tax on the portion of our investment company taxable income and net capital gain (i.e., net realized long-term capital gains in excess of net realized short-term capital losses) that we distribute (or are deemed to distribute) as dividends for U.S. federal income tax purposes to stockholders with respect to that taxable year. We will be subject to a 4% non-deductible U.S. federal excise tax on certain undistributed taxable income and capital gains unless we make distributions treated as dividends for U.S. federal income tax purposes in a timely manner to our stockholders in respect of each calendar year subject to certain requirements as defined for RICs. In order to qualify as a RIC requires that we must comply with provisions contained in Subchapter M of the Code. For example, as a RIC we must earn 90% or more of our gross income during each taxable year from qualified sources, typically referred to as "good income," as well as satisfy certain quarterly asset diversification and annual income distribution requirements.

We have established Hercules Adviser LLC, a wholly owned registered investment adviser subsidiary. The Adviser Subsidiary provides investment advisory and related services to the Adviser Funds and External Parties. The Adviser Subsidiary is not consolidated for reporting purposes as noted in "Note 1 Description of Business". In addition to the Adviser Subsidiary, we have established other wholly owned subsidiaries which are consolidated for reporting. However, certain of these subsidiaries are not consolidated for income tax purposes and may generate income tax expense or benefit, as well as tax assets and liabilities as a result of their ownership of certain portfolio investments.

Our primary business objectives are to increase our net income, net investment income, and NAV by investing in debt, typically with warrants or equity, of venture capital-backed and institutional-backed companies in a variety of technology-related industries at attractive current yields and the potential for equity appreciation and realized gains. We aim to achieve our business objectives by maximizing our portfolio total return through generation of current income from our debt investments and capital appreciation from our warrant and equity investments. Our equity ownership in our portfolio companies may exceed 25% of the voting securities of such companies, which represents a controlling interest under the 1940 Act. In some cases, we receive the right to make additional equity investments in our portfolio companies in connection with future equity financing rounds. Capital that we provide is generally used for growth and general working capital purposes as well as in select cases for acquisitions or recapitalizations. We invest primarily in private companies but also have investments in public companies.

We invest primarily in structured debt with warrants and, to a lesser extent, in senior debt and equity investments. We use the term "structured debt with warrants" to refer to any debt investment, such as a senior or subordinated secured loan, that is coupled with an equity component, including warrants, options or other rights to purchase or convert into common or preferred stock. Our structured debt with warrants investments typically are secured by some or all of the assets of the portfolio company. We also invest in "unitranche" loans, which are loans that combine both senior and mezzanine debt, generally in a first lien position. In addition to our debt investments, we regularly engage in discussions with third parties with respect to various potential transactions to explore all alternatives. Through such alternatives we may acquire an investment, a portfolio of investments, an entire company, or sell portions of our portfolio on an opportunistic basis.

We, our subsidiaries or our affiliates, may also agree to manage certain other funds that invest in debt, equity or provide other financing or services to companies in a variety of industries for which we may earn management or other fees for our services. We may also invest in the equity of these funds, along with other third parties, from which we would seek to earn a return and/or future incentive allocations. Some of these transactions could be material to our business. Consummation of any such transaction will be subject to completion of due diligence, finalization of key business and financial terms (including price) and negotiation of final definitive documentation as well as a number of other factors and conditions which may include, depending on the transaction and without limitation, the approval of our Board, required regulatory or third-party consents, and/or the approval of our stockholders.

Accordingly, there can be no assurance that any such transaction would be consummated. Any of these transactions or funds may require significant management resources either during the transaction phase or on an ongoing basis depending on the terms of the transaction.

Portfolio and Investment Activity

The total fair value of our investment portfolio was approximately $2.7 billion and $2.4 billion as of June 30, 2022 and December 31, 2021, respectively. The fair value of our debt investment portfolio as of June 30, 2022 was approximately $2.6 billion, compared to a fair value of approximately $2.2 billion at December 31, 2021. The fair value of the equity portfolio as of June 30, 2022 was approximately $137.8 million, compared to a fair value of approximately $184.7 million as of December 31, 2021. The fair value of the warrant portfolio as of June 30, 2022 was approximately $27.9 million, compared to a fair value of approximately $38.4 million as of December 31, 2021.

Portfolio Activity

Our investments in portfolio companies take a variety of forms, including unfunded contractual commitments and funded investments. Not all debt commitments represent future cash requirements. Unfunded contractual commitments depend upon a portfolio company reaching certain milestones before the debt commitment is available to the portfolio company, which is expected to affect our funding levels. These commitments are subject to the same underwriting and ongoing portfolio maintenance as the on-balance sheet financial instruments that we hold. Debt commitments generally fund over the two succeeding quarters from close. From time to time, unfunded contractual commitments may expire without being drawn and thus do not represent future cash requirements.

Prior to entering into a contractual commitment, we generally issue a non-binding term sheet to a prospective portfolio company. Non-binding term sheets are subject to completion of our due diligence and final investment committee approval process, as well as the negotiation of definitive documentation with the prospective portfolio companies. These non-binding term sheets generally convert to contractual commitments in approximately 90 days from signing and some portion may be assigned or allocated to or directly originated by the Adviser Funds prior to or after closing. Not all non-binding term sheets are expected to close and do not necessarily represent future cash requirements.

During the six months ended June 30, 2022, Hercules and the Adviser Funds directly committed or originated an aggregate total of $1,659.2 million of investment commitments. Of the aggregated total directly committed or originated by Hercules and the Adviser Funds, $440.0 million of investment commitments were directly committed or originated by the Adviser Funds. Of the aggregate total direct fundings or originations, $189.8 million of debt, equity, and warrant fundings during the period, were assigned to, directly funded or originated by the Adviser Funds.

During the six months ended June 30, 2021, Hercules and the Adviser Funds directly committed or originated an aggregate total of $971.8 million of investment commitments. Of the aggregated total directly committed or originated by Hercules and the Adviser Funds, $104.8 million of investment commitments were directly committed or originated by the Adviser Funds. Of the aggregate total direct fundings or originations, $79.9 million of debt, equity, and warrant fundings during the period, were assigned to, directly funded or originated by the Adviser Funds.

Our portfolio activity for the six months ended June 30, 2022 and June 30, 2021 was comprised of the following:

(in millions)	June 30, 2022	June 30, 2021
Gross Debt Commitments Originated by Hercules Capital and the Adviser Funds [1]		
New portfolio company	$ 1,290.5	$ 639.7
Existing portfolio company	349.0	316.7
Sub-total	$ 1,639.5	$ 956.4
Less: Debt commitments assigned to or directly committed by the Adviser Funds [3]	(436.8)	(102.8)
Net Total Debt Commitments	$ 1,202.7	$ 853.6
Gross Debt Fundings by Hercules Capital and the Adviser Funds [2]		
New portfolio company	$ 508.7	$ 442.8
Existing portfolio company	265.4	174.9
Sub-total	$ 774.1	$ 617.7
Less: Debt fundings assigned to or directly funded by the Adviser Funds [3]	(186.6)	(77.9)
Net Total Debt Fundings	$ 587.5	$ 539.8
Equity Investments and Investment Funds and Vehicles Fundings by Hercules Capital and the Adviser Funds		
New portfolio company	$ 5.0	$ 13.3
Existing portfolio company	11.6	2.9
Sub-total	$ 16.6	$ 16.2
Less: Equity fundings assigned to or directly funded by the Adviser Funds [3]	(3.2)	(2.0)
Net Total Equity and Investments Funds and Vehicle Fundings	$ 13.4	$ 14.2
Unfunded Contractual Commitments [4]		
Total	$ 488.9	$ 327.3
Non-Binding Term Sheets		
New portfolio company	$ 387.5	$ 154.5
Existing portfolio company	1.0	3.0
Total	$ 388.5	$ 157.5

(1) Includes restructured loans and renewals in addition to new commitments.
(2) Funded amounts include borrowings on revolving facilities.
(3) Commitments and fundings include amounts assigned to, directly committed or originated, funded by the Adviser Funds, as applicable.
(4) Amount represents unfunded commitments, including undrawn revolving facilities, which are available at the request of the portfolio company. Amount excludes unfunded commitments which are unavailable due to the borrower having not met certain milestones. This excludes $127.6 million and $7.8 million, of unfunded commitments as of June 30, 2022, and 2021, respectively, to portfolio companies related to loans assigned to or directly committed by the Adviser Funds.

We receive principal payments on our debt investment portfolio based on scheduled amortization of the outstanding balances. In addition, we receive principal repayments for some of our loans prior to their scheduled maturity date. The frequency or volume of these early principal repayments may fluctuate significantly from period to period. During the six months ended June 30, 2022, we received approximately $161.5 million in aggregate principal repayments. Of the approximately $161.5 million of aggregate principal repayments, approximately $43.6 million were scheduled principal payments and approximately $117.9 million were early principal repayments related to 14 portfolio companies. $17.5 million of the early principal repayments was an early repayment due to merger and acquisition transaction of one portfolio company. Additionally, on May 31, 2022, we sold $73.5 million of assets and realized a $0.1 million gain.

Total portfolio investment activity (inclusive of unearned income and excluding activity related to taxes payable and escrow receivables) as of and for the six months ended June 30, 2022 and June 30, 2021 was as follows:

(in millions)	June 30, 2022	June 30, 2021
Beginning portfolio	$ 2,434.5	$ 2,354.1
New fundings and restructures	790.7	634.0
Fundings assigned to or directly funded by the Adviser Funds[1]	(189.8)	(79.9)
Warrants not related to current period fundings	0.8	0.8
Principal repayments received on investments	(43.6)	(37.8)
Early payoffs	(117.9)	(359.4)
Proceeds from sale of debt investments	(73.5)	—
Proceeds from sale of equity investments	(9.8)	(70.1)
Accretion of loan discounts and paid-in-kind principal	26.3	21.1
Net acceleration of loan discounts and loan fees due to early payoff or restructure	(2.7)	(10.5)
New loan fees	(6.8)	(7.4)
Gain (loss) on investments due to sales or write offs	(1.3)	(7.2)
Net change in unrealized appreciation (depreciation)	(88.0)	83.4
Ending portfolio	$ 2,718.9	$ 2,521.1

(1) Funded amounts include $101.6 million and $4.3 million direct fundings of investments made by the Adviser Funds, for the six months ended June 30, 2022 and June 30, 2021, respectively.

As of June 30, 2022, we held debt, warrants, or equity positions in one company that has filed a registration statement on Form S-1 with the SEC in contemplation of a potential initial public offering, and one company that has filed a definitive agreement for a reverse merger initial public offering with a special purpose acquisition company. There can be no assurance that companies that have yet to complete their initial public offerings will do so in a timely manner or at all.

The following table presents certain selected information regarding our debt investment portfolio as of June 30, 2022 and December 31, 2021:

	June 30, 2022	December 31, 2021
Number of portfolio companies with debt outstanding	110	92
Percentage of debt bearing a floating rate	94.9 %	94.0 %
Percentage of debt bearing a fixed rate	5.1 %	6.0 %
Weighted average core yield [(1)]	11.3 %	11.4 %
Weighted average effective yield [(2)]	11.5 %	12.9 %
Prime rate at the end of the period	4.75 %	3.25 %

(1) The core yield is a Non-GAAP financial measure. The core yield on our debt investments excludes the effects of fee and income accelerations attributed to early payoffs, restructuring, loan modifications, other one-time events, and includes income from expired commitments. Please refer to the "Portfolio Yield" section below for further discussion of this measure.

(2) The effective yield on our debt investments includes the effects of fee and income accelerations attributed to early payoffs, restructuring, loan modifications, and other one-time events. The effective yield is derived by dividing total investment income by the weighted average earning investment portfolio assets outstanding during the year, excluding non-interest earning assets such as warrants and equity investments.

Income from Portfolio

We generate revenue in the form of interest income, primarily from our investments in debt securities, and fee income, which is primarily comprised of commitment and facility fees. Interest income is recognized in accordance with the contractual terms of the loan agreement to the extent that such amounts are expected to be collected. Fees generated in connection with our debt investments are recognized over the life of the loan or, in some cases, recognized as earned. In addition, we generate revenue in the form of capital gains, if any, on warrants or other equity securities that we acquire from our portfolio companies. Our investments generally range from $15.0 million to $40.0 million, although we may make investments in amounts above or below that range. As of June 30, 2022, our debt investments generally have a term of between two and five years and typically bear interest at a rate ranging from approximately 5.8% to approximately 12.3%. In addition to the cash yields received on our debt investments, in some instances, our debt investments may also include any of the following: exit fees, balloon payment fees, commitment fees, success fees, PIK provisions or prepayment fees which may be required to be included in income prior to receipt.

Interest on debt securities is generally payable monthly, with amortization of principal typically occurring over the term of the investment. In addition, our loans may include an interest-only period ranging from three to eighteen months or longer. In limited instances in which we choose to defer amortization of the loan for a period of time from the date of the initial investment, the principal amount of the debt securities and any accrued but unpaid interest become due at the maturity date.

Loan origination and commitment fees are generally received in full at the inception of a loan are deferred and amortized into fee income as an enhancement to the related loan’s yield over the contractual life of the loan. We recognize nonrecurring fees amortized over the remaining term of the loan commencing in the quarter relating to specific loan modifications. We had approximately $50.2 million of unamortized fees as of June 30, 2022, of which approximately $41.1 million was included as an offset to the cost basis of our current debt investments and approximately $9.1 million was deferred contingent upon the occurrence of a funding or milestone. As of December 31, 2021, we had approximately $42.9 million of unamortized fees, of which approximately $36.5 million was included as an offset to the cost basis of our current debt investments and approximately $6.4 million was deferred contingent upon the occurrence of a funding or milestone.

Loan exit fees to be paid at the termination of the loan are accreted into interest income over the contractual life of the loan. As of June 30, 2022, we had approximately $41.0 million in exit fees receivable, of which approximately $36.6 million was included as a component of the cost basis of our current debt investments and approximately $4.4 million was a deferred receivable related to expired commitments. As of December 31, 2021, we had approximately $35.0 million in exit fees receivable, of which approximately $29.6 million was included as a component of the cost basis of our current debt investments and approximately $5.4 million was a deferred receivable related to expired commitments.

We have debt investments in our portfolio that earn PIK interest. The PIK interest, computed at the contractual rate specified in each loan agreement, is recorded as interest income and added to the principal balance of the loan on specified capitalization dates. To maintain our status as a RIC, the non-cash PIK income must be distributed to stockholders with other sources of income in the form of dividend distributions even though we have not yet collected any cash from the borrower. Amounts necessary to pay these distributions may come from available cash or the liquidation of certain investments. We recorded approximately $5.0 million and $2.6 million in PIK income during the three months ended June 30, 2022 and 2021, respectively. We recorded approximately $9.9 million and $5.2 million in PIK income during the six months ended June 30, 2022 and 2021, respectively.

Portfolio Yield

We report our financial results on a GAAP basis. We monitor the performance of our total investment portfolio and total debt portfolio using both GAAP and Non-GAAP financial measures. In particular, we evaluate performance through monitoring the portfolio yields as we consider them to be effective indicators, for both management and stockholders, of the financial performance of our total investment portfolio and total debt portfolio. The key metrics that we monitor with respect to yields are as described below:

- "Total Yield" - The total yield is derived by dividing GAAP basis 'Total investment income' by the weighted average GAAP basis value of investment portfolio assets outstanding during the year, including non-interest earning assets such as warrants and equity investments at amortized cost.
- "Effective Yield" on total debt investments - The effective yield is derived by dividing GAAP basis 'Total investment income' by the weighted average GAAP basis value of debt investment portfolio assets at amortized cost outstanding during the year.
- "Core Yield" on total debt investments – The core yield is a Non-GAAP financial measure. The core yield is derived by dividing "Core investment income" by the weighted average GAAP basis value of debt investment portfolio assets at amortized cost outstanding during the year. "Core investment income" adjusts GAAP basis 'Total investment income' to exclude fee and other income accelerations attributed to early payoffs, deal restructuring, loan modifications, and other one-time income events, but includes income from expired commitments.

	Three months ended	
	June 30, 2022	**June 30, 2021**
Total Yield	10.8 %	11.8 %
Effective Yield	11.5 %	12.7 %
Core Yield (Non-GAAP)	11.3 %	11.5 %

We believe that these measures are useful for our stockholders as it provides the yield of our portfolio to allow a more meaningful comparison with our competitors. As noted above, Core Yield, a Non-GAAP financial measure, is derived by dividing Core investment income, as defined above, by the weighted average GAAP basis value of debt investment portfolio assets at amortized cost outstanding. The reconciliation to calculate "Core investment income" from GAAP basis 'Total investment income' are as follows:

(in thousands)	Three months ended	
	June 30, 2022	**June 30, 2021**
GAAP Basis:		
Total investment income	$ 72,115	$ 69,560
Less: fee and income accelerations attributed to early payoffs, restructuring, loan modifications, and other one-time events, but including income from expired commitments	(1,322)	(6,870)
Non-GAAP Basis:		
Core investment income	$ 70,793	$ 62,690

We believe the Core Yield is useful for our investors as it provides the yield at which our debt investments are originated and eliminates one-off items that can fluctuate significantly from period to period, thereby allowing for a more meaningful comparison over time. Although the Core Yield, a Non-GAAP financial measure, is intended to enhance our stockholders' understanding of our performance, the Core Yield should not be considered in isolation from or as an alternative to the GAAP financial metrics presented. The aforementioned Non-GAAP financial measure may not be comparable to similar Non-GAAP financial measures used by other companies.

Another financial measure that we monitor is the total return for our investors, was approximately (13.7)% and 23.7% during the six months ended June 30, 2022 and 2021, respectively. The total return equals the change in the ending market value over the beginning of the period price per share plus distributions paid per share during the period, divided by the beginning price assuming the distribution is reinvested on the date of the distribution. The total return does not reflect any sales load that may be paid by investors. See "Note 10 – Financial Highlights" included in the notes to our consolidated financial statements appearing elsewhere in this report.

Portfolio Composition

Our portfolio companies are primarily privately held companies and public companies which are active in sectors characterized by high margins, high growth rates, consolidation and product and market extension opportunities.

The following table presents the fair value of the Company's portfolio by industry sector as of June 30, 2022 and December 31, 2021:

	June 30, 2022		December 31, 2021	
(in thousands)	**Investments at Fair Value**	**Percentage of Total Portfolio**	**Investments at Fair Value**	**Percentage of Total Portfolio**
Drug Discovery & Development	$ 1,049,767	38.6%	$ 967,383	39.7%
Software	707,982	26.0%	585,622	24.1%
Internet Consumer & Business Services	458,299	16.8%	395,506	16.3%
All other industries [1]	502,843	18.6%	486,011	19.9%
Total	$ 2,718,891	100.0%	$ 2,434,522	100.0%

(1) See "Note 4 – Investments" for complete list of industry sectors and corresponding amounts of investments at fair value as a percentage of the total portfolio. As of June 30, 2022, the fair value as a percentage of total portfolio does not exceed 5.0% for any individual industry sector other than "Drug Discovery & Development", "Software", or "Internet Consumer & Business Services".

Industry and sector concentrations vary as new loans are recorded and loans are paid off. Loan revenue, consisting of interest, fees, and recognition of gains on equity and warrants or other equity interests, can fluctuate materially when a loan is paid off or a warrant or equity interest is sold. Revenue recognition in any given year can be highly concentrated in several portfolio companies.

For the six months ended June 30, 2022 and the year ended December 31, 2021, our ten largest portfolio companies represented approximately 31.4% and 30.5% of the total fair value of our investments in portfolio companies, respectively. As of June 30, 2022 and December 31, 2021, we had nine and six investments that represented 5% or more of our net assets, respectively. As of June 30, 2022, we had four equity investments representing approximately 43.2% of the total fair value of our equity investments, and each represented 5% or more of the total fair value of our equity investments. As of December 31, 2021, we had six equity investments which represented approximately 49.6% of the total fair value of our equity investment portfolio, and each represented 5% or more of the total fair value of our equity investments. No single portfolio investment represented more than 10% of the fair value of our total investments as of June 30, 2022 and December 31, 2021.

As of June 30, 2022 and December 31, 2021, approximately 94.9% and 94.0% of the debt investment portfolio was priced at floating interest rates or floating interest rates with a Prime, LIBOR, SOFR, or BSBY-based interest rate floor, respectively. Changes in interest rates, including Prime, LIBOR, SOFR, BSBY rates, may affect the interest income and the value of our investment portfolio for portfolio investments with floating rates.

Our investments in structured debt have detachable equity enhancement features, typically in the form of warrants or other equity securities designed to provide us with an opportunity for capital appreciation. These features are treated as OID and are accreted into interest income over the term of the loan as a yield enhancement. Our warrant coverage generally ranges from 3% to 20% of the principal amount invested in a portfolio company, with a strike price generally equal to the most recent equity financing round. As of June 30, 2022, we held warrants in 103 portfolio companies, with a fair value of approximately $27.9 million. The fair value of our warrant portfolio decreased by approximately $10.5 million, as compared to a fair value of $38.4 million as of December 31, 2021, primarily related to the decrease in fair value of the portfolio companies.

Our existing warrant holdings would require us to invest approximately $69.9 million to exercise such warrants as of June 30, 2022. Warrants may appreciate or depreciate in value depending largely upon the underlying portfolio company's performance and overall market conditions. As attractive investment opportunities arise, we may exercise certain of our warrants to purchase stock, and could ultimately monetize our investments. Of the warrants that we have monetized since inception, we have realized multiples in the range of approximately 1.02x to 42.71x based on the historical rate of return on our investments. We may also experience losses from our warrant portfolio in the event that warrants are terminated or expire unexercised.

Portfolio Grading

We use an investment grading system, which grades each debt investment on a scale of 1 to 5 to characterize and monitor our expected level of risk on the debt investments in our portfolio with 1 being the highest quality. The following table shows the distribution of our outstanding debt investments on the 1 to 5 investment grading scale at fair value as of June 30, 2022 and December 31, 2021, respectively:

(in thousands)	June 30, 2022			December 31, 2021		
Investment Grading	**Number of Companies**	**Debt Investments at Fair Value**	**Percentage of Total Portfolio**	**Number of Companies**	**Debt Investments at Fair Value**	**Percentage of Total Portfolio**
1	16	$ 484,015	19.0%	15	$ 408,975	18.5%
2	58	1,312,243	51.4%	47	1,208,323	54.7%
3	33	739,794	29.0%	28	581,424	26.3%
4	2	12,976	0.5%	1	8,269	0.4%
5	1	1,838	0.1%	1	2,608	0.1%
	110	$ 2,550,866	100.0%	92	$ 2,209,599	100.0%

As of June 30, 2022, our debt investments had a weighted average investment grading of 2.13 on a cost basis, as compared to 2.10 as of December 31, 2021. Changes in a portfolio company's investment grading may be a result of changes in portfolio company's performance and/or timing of expected liquidity events. For instance, we may downgrade a portfolio company if it is not meeting our financing criteria or are underperforming relative to their respective business plans. We may also downgrade a portfolio company as it approaches a point in time when it will require additional equity capital to continue operations. Conversely, we may upgrade a portfolio company's investment grading when it is exceeding our financial performance expectations and/or is expected to mature/repay in full due to a liquidity event. The overall downgrade of the portfolio's weighted average investment grading is reflective of the impact the current macroeconomic environment.

As the recent macro-economic events continue to cause disruption in the capital markets and to businesses, we are continuing to monitor and work with the management teams and stakeholders of our portfolio companies to navigate the significant market, operational, and economic challenges created by these events. This includes increasing our proactive assessments of credit performance, in an effort to manage potential risks across our debt investment portfolio.

Non-accrual Investments

The following table shows the amortized cost of our performing and non-accrual investments as of June 30, 2022 and December 31, 2021:

	As of June 30, 2022		As of December 31, 2021	
(in millions)	**Amortized Cost**	**Percentage of Total Portfolio at Amortized Cost**	**Amortized Cost**	**Percentage of Total Portfolio at Amortized Cost**
Performing	$ 2,743	99.3%	$ 2,367	99.0%
Non-accrual	20	0.7%	24	1.0%
Total Investments	$ 2,763	100.0%	$ 2,391	100.0%

Debt investments are placed on non-accrual status when it is probable that principal, interest, or fees will not be collected according to contractual terms. When a debt investment is placed on non-accrual status, we cease to recognize interest and fee income until the portfolio company has paid all principal and interest due or demonstrated the ability to repay our current and future contractual obligations. We may not apply the non-accrual status to a loan where the investment has sufficient collateral value to collect all of the contractual amount due and is in the process of collection. Interest collected on non-accrual investments are generally applied to principal.

Macroeconomic Market Developments

Our investment portfolio continues to be focused on industries and sectors that are generally expected to be more resilient to economic cycles. However, the U.S and global capital markets continue to evolve as a result of the increasing market volatility caused by the ongoing COVID-19 pandemic, recent geopolitical events, and the related supply chain and inflation issues. We are continuing to closely monitor the impact of these macro market developments on all aspects of our business, including impacts to our portfolio companies, employees, due diligence and underwriting processes, and financial markets. As a result, pressure on liquidity and financial results to certain of our portfolio companies have persisted, and our portfolio companies may draw on most, if not all, of the unfunded portion of any revolving or delayed draw term loans made by us, subject to availability under the terms of such loans. The extent to which the ongoing macroeconomic market events will continue to affect the financial condition and liquidity of our portfolio companies' results of operations are highly uncertain and cannot be predicted.

Equally the extent of the impact of the COVID-19 pandemic, geopolitical events, and related supply chain and inflation issues have on our own operational and financial performance, including our ability to execute our business strategies and initiatives in the expected time frame, will depend to a large extent on future developments regarding the duration and severity of these matters. Inflation has not historically had a significant effect on our results of operations in any of the reporting periods presented herein. However, the impact that these macroeconomic events have on our portfolio companies could have a negative impact on the fair value of our investments in these portfolio companies. Further, an extended period of global supply chain and economic disruption, including inflation, could materially affect our business, results of operations, access to sources of liquidity and financial condition. Given the fluidity of these market events, neither our management nor our Board is able to predict the full impact of the current macroeconomic events on our business, future results of operations, financial position, or cash flows at this time.

Results of Operations

Refer below for a discussion of our operating results for three and six months ended June 30, 2022 as compared to the same periods for 2021.

Investment Income

Total investment income for the three and six months ended June 30, 2022 was approximately $72.1 million and $137.3 million, respectively as compared to approximately $69.6 million and $138.3 million, respectively for the three and six months ended June 30,

2021. Investment income is primarily composed of interest income earned on our debt investments and fee income from commitments, facilities, and other loan related fees.

Interest Income

The following table summarizes the components of interest income for the three and six months ended June 30, 2022 and 2021:

	Three Months Ended June 30,		Six Months Ended June 30,	
(in thousands)	**2022**	**2021**	**2022**	**2021**
Contractual interest income	$ 56,063	$ 51,083	$ 105,607	$ 100,303
Exit fee interest income	6,655	6,754	13,381	17,571
PIK interest income	4,968	2,650	9,943	5,211
Other interest income [(1)]	1,045	819	2,052	2,003
Total interest income	$ 68,731	$ 61,306	$ 130,983	$ 125,088

(1) Other interest income includes OID interest income and interest recorded on other assets.

Interest income for the three months ended June 30, 2022 totaled approximately $68.7 million as compared to approximately $61.3 million for the three months ended June 30, 2021. Interest income for the six months ended June 30, 2022 total approximately $131.0 million as compared to approximately $125.1 million for the six months ended June 30, 2021. The increase in interest income for the three and six months ended June 30, 2022 as compared to the same periods ended June 30, 2021, was primarily attributable to a higher weighted average principal outstanding.

Interest income is comprised of recurring interest income from the contractual servicing of loans and non-recurring interest income that is related to the acceleration of income due to early loan repayments and other one-time events during the period. The following table summarizes recurring and non-recurring interest income for the three and six months ended June 30, 2022 and 2021:

	Three Months Ended June 30,		Six Months Ended June 30,	
(in thousands)	**2022**	**2021**	**2022**	**2021**
Recurring interest income	$ 68,453	$ 60,039	$ 129,495	$ 118,167
Non-recurring interest income	278	1,267	1,488	6,921
Total interest income	$ 68,731	$ 61,306	$ 130,983	$ 125,088

The following table shows the PIK-related activity for the six months ended June 30, 2022 and 2021, at cost:

	Six Months Ended June 30,	
(in thousands)	**2022**	**2021**
Beginning PIK interest receivable balance	$ 11,801	$ 14,817
PIK interest income during the period	9,943	5,211
Payments received from PIK loans	(4,159)	(2,793)
Realized gain (loss)	(367)	(49)
Ending PIK interest receivable balance	$ 17,218	$ 17,186

The increase in PIK interest income during the six months ended June 30, 2022 as compared to the six months ended June 30, 2021 is primarily due to an increase in the weighted average principal outstanding of loans which earn PIK interest. PIK accrued (capitalized) to principal but not recorded as income during the six months ended June 30, 2022 and 2021 includes the portion of PIK receivable that is capitalized as principal on the restructuring of loans, as applicable. Payments on PIK loans are normally received only in the event of payoffs. As of both June 30, 2022 and December 31, 2021 represented less than 1% of total debt investments.

Fee Income

Fee income from commitment, facility and loan related fees for the three and six months ended June 30, 2022 totaled approximately $3.4 million and $6.3 million, respectively, as compared to approximately $8.3 million and $13.2 million, for the three and six months ended June 30, 2021, respectively. The decrease in fee income for the three and six months ended June 30, 2022 is primarily due to a decrease in the acceleration of unamortized fees, and one-time fees as a result of a lower volume of early repayments on our loan portfolio.

Fee income is comprised or recurring fee income from commitment, facility, and loan related fees, acceleration of fee income due to expired commitments, and acceleration of fee income due to early loan repayments during the period. The following table summarizes the components of fee income for the three and six months ended June 30, 2022 and 2021:

	Three Months Ended June 30,		Six Months Ended June 30,	
(in thousands)	**2022**	**2021**	**2022**	**2021**
Recurring fee income	$ 1,907	$ 1,856	$ 3,686	$ 3,722
Accelerated fee income - expired commitments	433	702	521	1,318
Accelerated fee income - early repayments	1,044	5,695	2,082	8,190
Total fee income	$ 3,384	$ 8,253	$ 6,289	$ 13,230

In certain investment transactions, we may earn income from advisory services; however, we had no income from advisory services in the three and six months ended June 30, 2022 or 2021.

Operating Expenses

Our operating expenses are comprised of interest and fees on our debt borrowings, general and administrative expenses, and employee compensation and benefits. During the three and six months ended June 30, 2022 and 2021, our net operating expenses totaled approximately $32.0 million and $32.6 million, respectively for the three month periods, and approximately $61.4 million and $66.8 million, respectively for the six months.

Interest and Fees on our Debt

Interest and fees on our debt totaled approximately $14.2 million and $16.7 million for the three months ended June 30, 2022 and 2021, respectively. Our lower weighted average borrowing costs during the three months ended June 30, 2022, resulted in a decline of interest and fee expenses as compared to the three months ended June 30, 2021. Interest and fees on our debt totaled approximately $27.7 million and $34.3 million for the six months ended June 30, 2022 and 2021, respectively. Our lower weighted average borrowing costs during the six months ended June 30, 2022, resulted in a decline of interest and fee expenses as compared to the six months ended June 30, 2021.

We had a weighted average cost of debt of approximately 4.0% and 5.4% for the three months ended June 30, 2022 and 2021, respectively and 4.0% and 5.4%, for the six months ended June 30, 2022, and 2021, respectively. The weighted average cost of debt includes interest and fees on our debt, but excludes the impact of fee accelerations due to the extinguishment of debt. The decrease in the weighted average cost of debt for the three months ended June 30, 2022, as compared to 2021, was attributable to our refinancing activities undertaken over the past 18 months.

General and Administrative Expenses and Tax Expenses

General and administrative expenses include legal fees, consulting fees, accounting fees, printer fees, insurance premiums, rent, expenses associated with the workout of underperforming investments, and various other expenses. Our general and administrative expenses increased to $4.3 million from $4.1 million for the three months ended June 30, 2022 and 2021, respectively and increased to $8.1 million from $7.7 million for the six months ended. The increase in general and administrative expenses for the three and six months ended June 30, 2022 is primarily attributable to an increase in information technology related expenses. Tax expenses primarily relate to excise tax accruals. Tax expenses were $1.8 million and $1.7 million during the three months ended June 30, 2022 and 2021, respectively and $2.5 million and $3.2 million for six months ended June 30, 2022 and 2021, respectively.

Employee Compensation

Employee compensation and benefits totaled approximately $11.1 million and $19.4 million, for the three and six months ended June 30, 2022 as compared to approximately $8.3 million and $18.2 million respectively, for the three and six months ended June 30, 2021. The increase between the three and six months ended June 30, 2022 and 2021 was primarily due to a increase in variable compensation.

Employee stock-based compensation totaled approximately $3.7 million and $8.1 million, for the three and six months ended June 30, 2022 as compared to approximately $2.9 million and $5.7 million, respectively for the three and six months ended June 30, 2021. The increase between the comparative periods was primarily attributable to the issuance of additional stock-based compensation awards and higher weighted average grant date fair value.

Expenses allocated to the Adviser Subsidiary

In March 2021, we entered into a shared services agreement with the Adviser Subsidiary (the "Sharing Agreement"), pursuant to which the Adviser Subsidiary utilizes our human capital resources, including deal professional, finance, and administrative functions, as well as other resources including infrastructure assets such as office space and technology. Under the terms of the Sharing Agreement, we allocate the related expenses of shared services to the Adviser Subsidiary. Our total net operating expenses for the three months ended June 30, 2022 and 2021, are net of expenses allocated to the Adviser Subsidiary of $3.1 million and $1.2 million, respectively and $4.5 million and $2.1 million for six months ended June 30, 2022 and 2021, respectively. The increase in expenses allocated to the Adviser Subsidiary is a result of higher average assets under management and higher allocations to the Adviser Funds. As of June 30, 2022, $0.2 million was payable to the Adviser Subsidiary related to investment transaction related allocations during the period. As of December 31, 2021, $0.1 million was due from the Adviser Subsidiary.

Net Realized Gains and Losses and Net Change in Unrealized Appreciation and Depreciation

Realized gains or losses on investments are measured by the difference between the net proceeds from the repayment or sale and the cost basis of an investment without regard to unrealized appreciation or depreciation previously recognized, and includes investments written off during the period, net of recoveries. Realized loss on debt extinguishment relates to additional fees, costs, and accelerated recognition of remaining debt issuance costs, which are recognized in the event debt is extinguished before its stated maturity. The net change in unrealized appreciation or depreciation on investments primarily reflects the change in portfolio investment values during the reporting period, including the reversal of previously recorded unrealized appreciation or depreciation when gains or losses are realized.

A summary of net realized gains and losses for the three and six months ended June 30, 2022 and 2021 is as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
(in thousands)	**2022**	**2021**	**2022**	**2021**
Realized gains	$ 1,170	$ 47,861	$ 6,213	$ 57,365
Realized losses	(3,249)	(62,143)	(6,987)	(63,877)
Realized foreign exchange gains (losses)	(54)	—	(54)	—
Realized loss on debt extinguishment	—	—	(3,686)	—
Net realized gains (losses)	$ (2,133)	$ (14,282)	$ (4,514)	$ (6,512)

During the three and six months ended June 30, 2022, we recognized net realized losses of $2.1 million and $4.5 million. The net realized loss was comprised of gross realized gains of $1.2 million and $6.2 million primarily from the sale of our equity position in Black Crow AI, Inc. Our gains were offset by gross realized losses of $3.2 million and $7.0 million primarily from the write-off of our investments in Regent Education, Medrobotics Corporation, and Genocea Biosciences, Inc. during the period. In addition, as part of the retirement of the 2022 Notes in Q1 2022, we incurred a $3.7 million loss on debt extinguishment. The realized loss on debt extinguishment was related to fees, accrued interest, and the acceleration of debt issuance costs amortization, and is included as a realized loss within the "Loss on debt extinguishment" on the Consolidated Statement of Operations.

During the three and six months ended June 30, 2021, we recognized net realized losses of $14.3 million and $6.5 million on the portfolio, respectively. The net realized losses were comprised of gross realized gains of $47.9 million and $57.4 million, respectively, primarily from the sale of DoorDash, Inc. and TransMedics Group, Inc. Our gains were offset by gross realized losses of $62.1 million and $63.9 million, respectively, primarily from the write-off of our investment in Solar Spectrum Holdings, LLC, during the period. There were no debt extinguishment losses recognized during the three and six months ended June 30, 2021.

The net change in unrealized appreciation and depreciation on investments is based on the fair value of each investment determined in good faith by our Valuation Committee and approved by the Board. The following table summarizes the movements in net change in unrealized appreciation or depreciation for the three and six months ended June 30, 2022 and 2021:

	For the three months ended June 30,		Six Months Ended June 30,	
(in thousands)	**2022**	**2021**	**2022**	**2021**
Gross unrealized appreciation	$ 19,274	$ 56,815	$ 38,814	$ 114,071
Gross unrealized depreciation	(70,283)	(24,589)	(127,456)	(53,040)
Reversal of prior period net unrealized appreciation (depreciation) upon a realization event	2,867	29,338	3,894	22,366
Net unrealized appreciation (depreciation) on debt, equity, warrant and fund investments	(48,142)	61,564	(84,748)	83,397
Other net unrealized appreciation (depreciation)	(174)	(1,515)	(310)	(1,515)
Total net unrealized appreciation (depreciation)	$ (48,316)	$ 60,049	$ (85,058)	$ 81,882

During the three months ended June 30, 2022 and 2021, we recorded approximately $48.3 million of net unrealized depreciation and $60.0 million of net unrealized appreciation on our investments, respectively. During the six months ended June 30, 2022, and 2021, we recorded approximately $85.0 million of net unrealized depreciation and $81.9 million of net unrealized appreciation on our investments, respectively. The following table summarizes the key drivers of change in net unrealized appreciation (depreciation) of investments for the three months ended June 30, 2022 and 2021:

	For the three months ended June 30,						For the Six Months Ended June 30,					
	2022			2021			2022			2021		
(in thousands)	**Debt**	**Equity, Warrants and Investment Funds**	**Total**	**Debt**	**Equity, Warrants and Investment Funds**	**Total**	**Debt**	**Equity, Warrants and Investment Funds**	**Total**	**Debt**	**Equity, Warrants and Investment Funds**	**Total**
Valuation appreciation (depreciation)	$ (7,544)	$ (43,465)	$ (51,009)	$ (4,646)	$ 36,872	$ 32,226	$ (15,507)	$ (73,135)	$ (88,642)	$ 2,414	$ 58,617	$ 61,031
Reversal of prior period net unrealized appreciation (depreciation) upon a realization event	(14)	2,881	2,867	6,111	23,227	29,338	(164)	4,058	$ 3,894	7,116	15,250	22,366
Other net unrealized appreciation (depreciation)	13	(187)	(174)	—	(1,515)	(1,515)	35	(345)	(310)	—	(1,515)	(1,515)
Net realized appreciation (depreciation)	$ (7,545)	$ (40,771)	$ (48,316)	$ 1,465	$ 58,584	$ 60,049	$ (15,636)	$ (69,422)	$ (85,058)	$ 9,530	$ 72,352	$ 81,882

Income and Excise Taxes

We account for income taxes in accordance with the provisions of ASC Topic 740 Income Taxes, under which income taxes are provided for amounts currently payable and for amounts deferred based upon the estimated future tax effects of differences between the financial statements and tax basis of assets and liabilities given the provisions of the enacted tax law. Valuation allowances may be used to reduce deferred tax assets to the amount likely to be realized. We intend to timely distribute to our stockholders substantially all of our annual taxable income for each year, except that we may retain certain net capital gains for reinvestment and, depending upon the level of taxable income earned in a year, we may choose to carry forward taxable income for distribution in the following year and pay any applicable U.S. federal excise tax.

Because federal income tax regulations differ from U.S. GAAP, distributions in accordance with tax regulations may differ from net investment income and realized gains recognized for financial reporting purposes. Differences may be permanent or temporary. Permanent differences are reclassified among capital accounts in the financial statements to reflect their appropriate tax character. Permanent differences may also result from the classification of certain items, such as the treatment of short-term gains as ordinary income for tax purposes. Temporary differences arise when certain items of income, expense, gain or loss are recognized at some time in the future.

Net Change in Net Assets Resulting from Operations and Earnings Per Share

For the three months ended June 30, 2022 and 2021, we had net changes in net assets of approximately $10.3 million decrease and a $82.7 million increase resulting from operations, respectively. For the six months ended June 30, 2022 and 2021, our net changes in net assets were approximately $13.7 million decrease and a $146.9 million increase resulting from operations, respectively. For the three and six months ended June 30, 2022, the basic net change in net assets per common share was $(0.09) and $(0.12) per share, and for the three and six months ended June 30, 2021 $0.71 and $1.27 per share. On a fully diluted basis, the net change in net assets per common share was $(0.09) and $(0.12) per share and $0.65 and $1.21 per share, for the same periods each respectively.

Hercules Adviser LLC

Hercules Adviser LLC, the Adviser Subsidiary, receives fee income for the services provided to the Adviser Funds. The Adviser Subsidiary's contribution to our net investment income is derived from dividend income declared by the Adviser Subsidiary and interest income earned on loans to the Adviser Subsidiary. For the three and six months ended June 30, 2022 and 2021, no dividends were declared by the Adviser Subsidiary.

The Adviser Subsidiary has entered into investment management agreements (the "IMAs") with the Adviser Funds. Pursuant to the IMAs, the Adviser Subsidiary provides investment advisory and management services to the Adviser Funds in exchange for an asset-based fee and certain incentive fees. The Adviser Funds are privately offered investment funds exempt from registration under the 1940 Act that invest in debt and equity investments in venture or institutionally backed technology related and life sciences companies.

Financial Condition, Liquidity, Capital Resources and Obligations

Our liquidity and capital resources are derived from our debt borrowings and cash flows from operations, including investment sales and repayments, and income earned. Our primary use of funds from operations includes investments in portfolio companies and payments of fees and other operating expenses we incur. We have used, and expect to continue to use, our debt and the proceeds from the turnover of our portfolio and from public and private offerings of securities to finance our investment objectives. We may also raise additional equity or debt capital through registered offerings off a shelf registration, At-the-Market ("ATM"), and private offerings of securities, by securitizing a portion of our investments, or by borrowing from the SBA through our SBIC subsidiary. This "Financial Condition, Liquidity and Capital Resources" section should be read in conjunction with the "COVID-19 Developments" section above.

During the six months ended June 30, 2022, we principally funded our operations from (i) cash receipts from interest, dividend, and fee income from our investment portfolio and (ii) cash proceeds from the realization of portfolio investments through the repayments of debt investments and the sale of debt and equity investments, (iii) debt offerings along with borrowings on our credit facilities, and (iv) equity offerings.

During the six months ended June 30, 2022, our operating activities used $306.7 million of cash and cash equivalents, compared to $12.2 million used during the six months ended June 30, 2021. This $294.5 million increase in cash used in operating activities was primarily driven by a $157.6 million decrease in principal, fee repayments, and proceeds received from the sale of debt investments, $62.8 million fewer proceeds received from the sale of equity investments, plus a net increase of $47.0 million in purchases of investments (net of assignments to Adviser Funds).

During the six months ended June 30, 2022, our investing activities used approximately $74 thousand of cash, compared to $12 thousand used during the six months ended June 30, 2021. The $62 thousand increase in cash used in investing activities was due to an increase in purchases of capital equipment.

During the six months ended June 30, 2022, our financing activities provided $289.2 million of cash, compared to $201.2 million used in financing activities during the six months ended June 30, 2021. The $490.4 million increase of cash flows from financing activities was primarily due to $1,124.2 million of new debt issuances related to the issuance of our January 2027 Notes, June 2025 3-Year Notes, 2031 Asset-Backed Notes, SBA Debenture borrowings, and increased utilization of our Credit Facilities during the six months ended June 30, 2022. The debt issuances were used in our operating activities and to repay the $230.0 million of 2022 Convertible Notes and $150.0 million to retire the 2022 Notes. Additionally, we issued $147.1 million of ATM equity (net of offering costs) during the six months ended June 30, 2022. We did not issue any common stock issued during the six months ended June 30, 2021. The amounts offset the $30.1 million increase in dividend distributions, which totaled $115.9 million during the six months ended June 30, 2022, compared to $85.8 million during the six months ended June 30, 2021.

As of June 30, 2022, our net assets totaled $1.3 billion, with a NAV per share of $10.43. We intend to continue to operate in order to generate cash flows from operations, including income earned from investments in our portfolio companies. Our primary use of funds will be investments in portfolio companies and cash distributions to holders of our common stock.

Available liquidity and capital resources as of June 30, 2022

As of June 30, 2022, we had $779.7 million in available liquidity, including $115.3 million in cash and cash equivalents. We had available borrowing capacity of $201.4 million under the SMBC Facility and $463.0 million under the MUFG Bank Facility. In addition, the MUFG Bank Facility has accordion provision through which the available borrowing capacity can be increased by $55.0 million, subject to certain conditions.

The 1940 Act permits BDCs to incur borrowings, issue debt securities, or issue preferred stock unless immediately after the borrowings or issuance the ratio of total assets (less total liabilities other than indebtedness) to total indebtedness plus preferred stock is less than 200% (or 150% if certain requirements are met). On September 4, 2018 and December 6, 2018, our Board, including a "required majority" (as such term is defined in Section 57(o) of the 1940 Act) and our stockholders, respectively, approved the application to us of the 150% minimum asset coverage ratio set forth in Section 61(a)(2) of the 1940 Act. As of June 30, 2022, our asset coverage ratio under our regulatory requirements as a BDC was 198.4% excluding our SBA debentures. Our exemptive order from the SEC allows us to exclude all SBA leverage from our asset coverage ratio. As a result of the SEC exemptive order, our ratio of total assets on a consolidated basis to outstanding indebtedness may be less than 150%, which while providing increased investment flexibility, also may increase our exposure to risks associated with leverage. Total asset coverage when including our SBA debentures was 187.1% as of June 30, 2022.

As of June 30, 2022, we had $105.6 million outstanding under our Credit Facilities, which are floating interest rate obligations. As of June 30, 2022, the remaining $1,415.0 million of debt outstanding are all fixed interest rate debt obligations.

During the six months ended June 30, 2022, we issued $350 million in aggregate principal amount of January 2027 Notes, which generated net proceeds of approximately $343.4 million. The net proceeds from the January 2027 Notes generated was primarily used to repay the 2022 Convertible Notes and to retire the 2022 Notes. In addition, we issued $150 million and $50 million in aggregate principal which generated net proceeds of approximately $147.7 million and $49.5 million related to the 2031 Asset-Backed Notes and June 2025 3-Year Notes, respectively. We also borrowed the remaining $24.5 million of capital available through our SBIC, and raised $147.1 million through ATM equity offerings of common shares.

Lastly, as of June 30, 2022, $3.4 million of cash was classified as restricted cash. Our restricted cash relates to amounts that are held as collateral securing certain of the Company's financing transactions, including collections of interest and principal payments on assets that are securitized related to the 2031 Asset-Backed Notes. Based on current characteristics of the securitized debt investment portfolios, the restricted funds may be used to pay monthly interest and principal on the securitized debt with any excess distributed to us or available for our general operations. Refer to "Note 5 – Debt" included in the notes to our consolidated financial statements appearing elsewhere in this report for additional discussion of our debt obligations.

As detailed above, our diverse and well-structured balance sheet is designed to provide a long-term focused and sustainable investment platform. Currently, we believe we have ample liquidity to support our near-term capital requirements. As the impact of recent macro-economic events, including the COVID-19 pandemic, war in Ukraine, and the related disruption to markets and business continues to impact the economy, we will continue to evaluate our overall liquidity position and take proactive steps to maintain the appropriate liquidity position based upon the current circumstances.

Equity Offerings

On May 9, 2022, we entered into an ATM equity distribution agreement (the "2022 Equity Distribution Agreement")with JMP and Jeffries (the "Sales Agents"). The 2022 Equity Distribution Agreement provides that we may offer and sell up to 17.5 million shares of our common stock from time to time through the Sales Agents. Sales of our common stock, if any, may be made in negotiated transactions or transactions that are deemed to be "at the market," as defined in Rule 415 under the Securities Act, including sales made directly on the NYSE or similar securities exchange or sales made to or through a market maker other than on an exchange, at prices related to the prevailing market prices or at negotiated prices. The 2022 Equity Distribution Agreement replaces the ATM equity distribution agreement between the Company and JMP executed on July 2, 2020 (the "2020 Equity Distribution Agreement").

Under the 2020 Equity Distribution Agreement the Company sold approximately 0.7 million and 5.6 million shares, respectively, of common stock under during the three and six months ended June 30, 2022. From the sale of shares under the 2020 Equity Distribution Agreement the Company received total accumulated net proceeds of approximately $13.3 million and $98.5 million, including $0.2 million and $1.6 million of offering expenses, respectively for each period. Under the 2022 Equity Distribution agreement the Company sold approximately 3.3 million of common stock for both the three and six months ended June 30, 2022. From the sale of shares the Company received total accumulated net proceeds of approximately $48.6 million including $0.5 million of offering expenses for both the three and six months ended June 30, 2022. During the three and six months ended June 30, 2021, there were no shares sold under the existing equity distribution agreement.

Commitments and Obligations

Our significant cash requirements generally relate to our debt obligations. As of June 30, 2022, we had $1,520.6 million of debt outstanding, which includes $357.0 million within 1 to 3 years, and $1,163.6 million beyond 3 years. In addition to our debt obligations, in the normal course of business, we are party to financial instruments with off-balance sheet risk. These consist primarily of unfunded contractual commitments to extend credit, in the form of loans, to our portfolio companies. Unfunded contractual commitments to provide funds to portfolio companies are not reflected on our balance sheet.

Our unfunded contractual commitments may be significant from time to time. A portion of these unfunded contractual commitments are dependent upon the portfolio company reaching certain milestones before the debt commitment becomes available. Furthermore, our credit agreements contain customary lending provisions which allow us relief from funding obligations for previously made unfunded commitments in instances where the underlying company experiences materially adverse events that affect the financial condition or business outlook for the company. These commitments will be subject to the same underwriting and ongoing portfolio maintenance as are the on-balance sheet financial instruments that we hold. Since these commitments may expire without being drawn upon, the total commitment amount does not necessarily represent future cash requirements. As such, our disclosure of unfunded contractual commitments includes only those which are available at the request of the portfolio company and unencumbered by milestones. Refer to "Note 11 – Commitments and Contingencies" included in the notes to our consolidated financial statements appearing elsewhere in this report for additional discussion of our unfunded commitments.

As of June 30, 2022, we had approximately $488.9 million of unfunded commitments, including undrawn revolving facilities, which were available at the request of the portfolio company and unencumbered by future or unachieved milestones, as well as uncalled capital commitments to make investments in a private equity fund. This excludes $127.6 million of unfunded commitments which represent the portion of portfolio company commitments assigned to or directly committed by the Adviser Funds. We intend to use cash flow from normal and early principal repayments, and proceeds from borrowings and notes to fund these commitments.

As of June 30, 2022, we also had approximately $388.5 million of non-binding term sheets outstanding to nine new companies and one existing company, which generally convert to contractual commitments within approximately 90 days of signing. Non-binding outstanding term sheets are subject to completion of our due diligence and final investment committee approval process, as well as the negotiation of definitive documentation with the prospective portfolio companies. Not all non-binding term sheets are expected to close and do not necessarily represent future cash requirements.

The fair value of our unfunded commitments is considered to be immaterial as the yield determined at the time of underwriting is expected to be materially consistent with the yield upon funding, given that interest rates are generally pegged to market indices and given the existence of milestones, conditions and/or obligations imbedded in the borrowing agreements.

Indemnification Agreements

We have entered into indemnification agreements with our directors and executive officers. The indemnification agreements are intended to provide our directors and executive officers the maximum indemnification permitted under Maryland law and the 1940 Act. Each indemnification agreement provides that we shall indemnify the director or executive officer who is a party to the agreement, or an "Indemnitee," including the advancement of legal expenses, if, by reason of his or her corporate status, the Indemnitee is, or is threatened to be, made a party to or a witness in any threatened, pending, or completed proceeding, to the maximum extent permitted by Maryland law and the 1940 Act. We and our executives and directors are covered by Directors and Officers Insurance, with the directors and officers being indemnified by us to the maximum extent permitted by Maryland law subject to the restrictions in the 1940 Act.

Distributions

Our Board maintains a variable distribution policy with the objective of distributing four quarterly distributions in an amount that approximates 90% - 100% of our taxable quarterly income or potential annual income for a particular taxable year. In addition, at the end of our taxable year, our Board may choose to pay additional special distributions, so that we may distribute approximately all of our annual taxable income in the taxable year in which it was earned, or may elect to maintain the option to spill over our excess taxable income into the following taxable year as part of any future distribution payments.

Distributions from our taxable income (including gains) to a stockholder generally will be treated as a dividend for U.S. federal income tax purposes to the extent of such stockholder's allocable share of our current or accumulated earnings and profits. Distributions in excess of our current and accumulated earnings and profits would generally be treated first as a return of capital to the extent of a stockholder's tax basis in our shares, and any remaining distributions would be treated as a capital gain. The determination of the tax attributes of our distributions is made annually as of the end of our taxable year based upon our taxable income for the full taxable year and distributions paid for the full taxable year. As a result, any determination of the tax attributes of our distributions made on a quarterly basis may not be representative of the actual tax attributes of our distributions for a full taxable year.

Of the distributions declared during the year ended December 31, 2021, 100% were distributions derived from our current and accumulated earnings and profits. There can be no certainty to stockholders that this determination is representative of what the tax attributes of our 2022 distributions to stockholders will actually be.

We maintain an "opt out" dividend reinvestment plan that provides for reinvestment of our distribution on behalf of our stockholders, unless a stockholder elects to receive cash. As a result, if our Board authorizes, and we declare, a cash distribution, then our stockholders who have not "opted out" of our dividend reinvestment plan will have their cash distribution automatically reinvested in additional shares of our common stock, rather than receiving the cash distributions.

Shortly after the close of each calendar year information identifying the source of the distribution (i.e., paid from ordinary income, paid from net capital gains on the sale of securities, and/or a return of paid-in-capital surplus which is a nontaxable distribution, if any) will be provided to our stockholders subject to information reporting. To the extent our taxable earnings fall below the total amount of our distributions for any taxable year, a portion of those distributions may be deemed a tax return of capital to our stockholders.

We expect to qualify to be subject to tax as a RIC under Subchapter M of the Code. In order to be subject to tax as a RIC, we are required to satisfy certain annual gross income and quarterly asset composition tests, as well as make distributions to our stockholders each taxable year treated as dividends for federal income tax purposes of an amount at least equal to 90% of the sum of our investment company taxable income, determined without regard to any deduction for dividends paid, plus our net tax-exempt income, if any. Upon being eligible to be subject to tax as a RIC, we would be entitled to deduct such distributions we pay to our stockholders in determining the overall components of our "taxable income." Components of our taxable income include our taxable interest, dividend and fee income, reduced by certain deductions, as well as taxable net realized securities gains. Taxable income generally differs from net income for financial reporting purposes due to temporary and permanent differences in the recognition of income and expenses and generally excludes net unrealized appreciation or depreciation as such gains or losses are not included in taxable income until they are realized. In connection with maintaining our ability to be subject to tax as a RIC, among other things, we have made and intend to continue to make the requisite distributions to our stockholders each taxable year, which generally should relieve us from corporate-level U.S. federal income taxes.

As a RIC, we will be subject to a 4% nondeductible U.S. federal excise tax on certain undistributed income and gains unless we make distributions treated as dividends for U.S. federal income tax purposes in a timely manner to our stockholders in respect of each calendar year of an amount at least equal to the Excise Tax Avoidance Requirement. We will not be subject to this excise tax on any amount on which we incurred U.S. federal corporate income tax (such as the tax imposed on a RIC's retained net capital gains).

Depending on the level of taxable income earned in a taxable year, we may choose to carry over taxable income in excess of current taxable year distributions treated as dividends for U.S. federal income tax purposes from such taxable income into the next taxable year and incur a 4% excise tax on such taxable income, as required. The maximum amount of excess taxable income that may be carried over for distribution in the next taxable year under the Code is the total amount of distributions treated as dividends for U.S. federal income tax purposes paid in the following taxable year, subject to certain declaration and payment guidelines. To the extent we choose to carry over taxable income into the next taxable year, distributions declared and paid by us in a taxable year may differ from our taxable income for that taxable year as such distributions may include the distribution of current taxable year taxable income, the distribution of prior taxable year taxable income carried over into and distributed in the current taxable year, or returns of capital.

We can offer no assurance that we will achieve results that will permit the payment of any cash distributions and, if we issue senior securities, we will be prohibited from making distributions if doing so causes us to fail to maintain the asset coverage ratios stipulated by the 1940 Act or if distributions are limited by the terms of any of our debt. Our ability to make distributions will be limited by the asset coverage requirements under the 1940 Act.

We intend to timely distribute to our stockholders substantially all of our annual taxable income for each year, except that we may retain certain net capital gains for reinvestment and, depending upon the level of taxable income earned in a year, we may choose to carry forward taxable income for distribution in the following year and pay any applicable U.S. federal excise tax.

Critical Accounting Policies and Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and revenues and expenses during the period reported. On an ongoing basis, our management evaluates its estimates and assumptions, which are based on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ from those estimates. Changes in our estimates and assumptions could materially impact our results of operations and financial condition.

For a description of our critical accounting policies, refer to "Note 2 – Summary of Significant Accounting Policies" included in the notes to our consolidated financial statements appearing elsewhere in this report. We consider the most significant accounting policies to be those related to our Valuation of Investments, Fair Valuation Measurements, Income Recognition, and Income Taxes. The valuation of investments is our most significant critical estimate. The most significant input to this estimate is the yield interest rate, which includes the hypothetical market yield plus premium or discount adjustment, used in determining the fair value of our debt investments. The following table shows the approximate increase (decrease) to the fair value of our debt investments from hypothetical change to the yield interest rates used for each valuation, assuming no other changes:

(in thousands) Basis Point Change		Change in unrealized appreciation (depreciation)
(100)	$	35,738
(50)	$	18,587
50	$	(19,105)
100	$	(37,614)

For a further discussion and disclosure of key inputs and considerations related to this estimate, refer to “Note 3 – Fair Value of Financial Instruments” included in the notes to our consolidated financial statements appearing elsewhere in this report.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are subject to financial market risks, including changes in interest rates. Interest rate risk is defined as the sensitivity of our current and future earnings to interest rate volatility, variability of spread relationships, the difference in re-pricing intervals between our assets and liabilities and the effect that interest rates may have on our cash flows. Changes in interest rates may affect both our cost of funding and our interest income from portfolio investments, cash and cash equivalents and idle fund investments. Our investment income will be affected by changes in various interest rates, including Prime, LIBOR, SOFR, and BSBY rates, to the extent our debt investments include variable interest rates. As of June 30, 2022, approximately 94.9% of the loans in our portfolio had variable rates based on floating Prime, LIBOR, SOFR, or BSBY rates with a floor. As of June 30, 2022, approximately 14.2% of our debt investments have variable rates based on LIBOR. Additionally, all of our LIBOR rate based debt securities have interest rate floors. We are actively considering and discussing the preferred alternative benchmark with our portfolio companies and prioritize the inclusion of LIBOR fallback language in our documentation. The Alternative Reference Rates Committee ("ARRC") has recommended for US based debt securities to use the SOFR rate as the alternative benchmark. Our debt borrowings under the Credit Facilities bear interest at a floating rate, all other outstanding debt borrowings bear interest at a fixed rate. Changes in interest rates can also affect, among other things, our ability to acquire and originate loans and securities and the value of our investment portfolio.

Based on our Consolidated Statements of Assets and Liabilities as of June 30, 2022, the following table shows the approximate annualized increase (decrease) in components of net assets resulting from operations of hypothetical base rate changes in interest rates, assuming no changes in our investments and debt:

(in thousands) Basis Point Change	Interest Income	Interest Expense	Net Income	EPS
(75)	$ (15,133)	$ (1,496)	$ (13,637)	$ (0.11)
(50)	$ (10,494)	$ (997)	$ (9,497)	$ (0.08)
(25)	$ (5,391)	$ (499)	$ (4,892)	$ (0.04)
25	$ 6,069	$ 499	$ 5,570	$ 0.04
50	$ 12,225	$ 997	$ 11,228	$ 0.09
75	$ 18,393	$ 1,496	$ 16,897	$ 0.14
100	$ 24,790	$ 1,995	$ 22,795	$ 0.18
200	$ 50,272	$ 3,990	$ 46,282	$ 0.37

We do not currently engage in any hedging activities. However, we may, in the future, hedge against interest rate fluctuations and foreign currency by using standard hedging instruments such as futures, options, and forward contracts. While hedging activities may insulate us against changes in interest rates and foreign currency, they may also limit our ability to participate in the benefits of lower interest rates with respect to our borrowed funds and higher interest rates with respect to our portfolio of investments. During the six months ended June 30, 2022, we did not engage in interest rate or foreign currency hedging activities.

Although we believe that the foregoing analysis is indicative of our sensitivity to interest rate changes, it does not adjust for potential changes in the credit market, credit quality, size and composition of the assets in our portfolio. It also does not adjust for other business developments, including our debt borrowings and use of our Credit Facilities that could affect the net increase in net assets resulting from operations, or net income. It also does not assume any repayments from our portfolio companies. Accordingly, no assurances can be given that actual results would not differ materially from the statement above.

Because we currently borrow, and plan to borrow in the future, money to make investments, our net investment income is dependent upon the difference between the rate at which we borrow funds and the rate at which we invest the funds borrowed. Accordingly, there can be no assurance that a significant change in market interest rates will not have a material adverse effect on our net investment income. In periods of rising interest rates, our cost of funds may increase, which could reduce our net investment income if there is not a corresponding increase in interest income generated by variable rate assets in our investment portfolio. For additional information regarding the interest rate associated with each of our debt borrowings and Credit Facilities, refer to Item 2 "Financial Condition, Liquidity and Capital Resources" in this quarterly report on Form 10-Q and "Note 5 – Debt" included in the notes to our consolidated financial statements appearing elsewhere in this report.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our chief executive and chief financial officers, under the supervision and with the participation of our management, conducted an evaluation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended. As of the end of the period covered by this quarterly report on Form 10-Q, our chief executive and chief financial officers have concluded that our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our chief executive and chief financial officers, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financing reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act that occurred during our most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II: OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We may, from time to time, be involved in litigation arising out of our operations in the normal course of business or otherwise. Furthermore, third parties may try to seek to impose liability on us in connection with the activities of our portfolio companies. While the outcome of any current legal proceedings cannot at this time be predicted with certainty, we do not expect any current matters will materially affect our financial condition or results of operations; however, there can be no assurance whether any pending legal proceedings will have a material adverse effect on our financial condition or results of operations in any future reporting period.

ITEM 1A. RISK FACTORS

In addition to the risks discussed below, important risk factors that could cause results or events to differ from current expectations are described in Part I, Item 1A "Risk Factors" of the Company's Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on February 22, 2022 (the "Annual Report") and Part II, Item 1A "Risk Factors" of the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed with the SEC on May 5, 2022.

Our financial results could be negatively affected if a significant portfolio investment fails to perform as expected.

Our total investment in companies may be significant individually or in the aggregate. As a result, if a significant investment in one or more companies fails to perform as expected, our financial results could be more negatively affected and the magnitude of the loss could be more significant than if we had made smaller investments in more companies. The following table shows the fair value of the totals of investments held in portfolio companies at June 30, 2022 that represent greater than 5% of our net assets:

	June 30, 2022	
(in thousands)	**Fair Value**	**Percentage of Net Assets**
Corium, Inc.	$ 134,641	10.1 %
Worldremit Group Limited	$ 92,940	7.0 %
Phathom Pharmaceuticals, Inc.	$ 91,542	6.9 %
SeatGeek, Inc.	$ 87,780	6.6 %
Rocket Lab Global Services, LLC	$ 86,602	6.5 %
Axsome Therapeutics, Inc.	$ 84,877	6.4 %
uniQure B.V.	$ 73,041	5.5 %
Convoy, Inc.	$ 72,436	5.5 %
Delphix Corp.	$ 66,834	5.0 %

- Corium, Inc. develops, engineers, and manufactures drug delivery products and devices that utilize the skin and mucosa as a primary means of transport.
- Worldremit Group Limited is a global online money transfer business.
- Phathom Pharmaceuticals, Inc. is a biopharmaceutical company focused on the development and commercialization of novel treatments for gastrointestinal diseases and disorders.
- SeatGeek, Inc. is a mobile-focused ticket platform that enables users to buy and sell tickets for live sports, concerts and theater events.
- Rocket Lab Global Services, LLC is a commercial space provider of high-frequency, low-cost launches.
- Axsome Therapeutics, Inc. is a biopharmaceutical company developing novel therapies for the management of central nervous system disorders for which there are limited treatment options.
- uniQure B.V. is a leader in the field of gene therapy, developing proprietary therapies to treat patients with severe genetic diseases of the central nervous system and liver.
- Convoy, Inc. is a developer for on-demand shipment services.
- Delphix Corp. is a provider of a Data as a Service platform intended to help enterprises to accelerate cloud migrations, custom development and ERP rollouts.

Our financial results could be materially adversely affected if these portfolio companies or any of our other significant portfolio companies encounter financial difficulty and fail to repay their obligations or to perform as expected.

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

Dividend Reinvestment Plan

During the six months ended June 30, 2022, we issued 121,471 shares of common stock to stockholders in connection with the dividend reinvestment plan. These issuances were not subject to the registration requirements of the Securities Act. The aggregate value of the shares of our common stock issued under our dividend reinvestment plan was approximately $1.9 million.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not Applicable

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable

ITEM 5. OTHER INFORMATION

Not Applicable

ITEM 6. EXHIBITS

Exhibit Number	Description
4.1*	Indenture, dated as of June 22, 2022, between Hercules Capital Funding Trust 2022-1, as Issuer, and U.S. Bank Trust Company National Association, as Trustee.
4.2*	Amended and Restated Trust Agreement, dated as of June 22, 2022, between Hercules Capital Funding 2022-1 LLC, as Trust Depositor, and Wilmington Trust, National Association, as Owner Trustee.
10.1	Second Amendment to Revolving Credit Agreement, dated as of June 14, 2022, among Hercules Capital, Inc., the lenders party thereto and Sumitomo Mitsui Banking Corporation, as administrative agent [(1)]
10.2	Second Amendment to Loan and Security Agreement, dated as of June 10, 2022, among Hercules Funding IV LLC, the lenders from time to time party thereto, MUFG Union Bank, N.A., s resigning agent, and MUFG Bank, Ltd. (as successor to MUFG Union Bank, N.A.), as administrative agent. [(1)]
10.3*	Sale and Servicing Agreement, dated as of June 22, 2022, by and among Hercules Capital Funding Trust 2022-1, as Issuer, Hercules Capital, Inc., as Seller and Servicer, Hercules Capital Funding 2022-1 LLC, as Trust Depositor, U.S. Bank Trust Company, National Association, as Trustee and Securities Intermediary, and U.S. Bank National Association, as Backup Servicer and Custodian.
10.4*	Sale and Contribution Agreement, dated as of June 22, 2022, between Hercules Capital, Inc., as Seller, and Hercules Capital Funding 2022-1 LLC, as Trust Depositor.
10.5*	Note Purchase Agreement, dated as of June 22, 2022, by and among Hercules Capital, Inc., as Originator and Servicer, Hercules Capital Funding 2022-1 LLC, as Trust Depositor, Hercules Capital Funding Trust 2022-1, as Issuer, and American Family Life Assurance Company of Columbus, Allianz Life Insurance Company of North America, Compsource Mutual Insurance Company, The Lincoln National Life Insurance Company, Massachusetts Mutual Life Insurance Company, Great American Life Insurance Company, and Fidelity & Guaranty Life Insurance Company, as Purchasers.
10.6*	Administration Agreement, dated June 22, 2022, by and among Hercules Capital, Inc., as Administrator, Hercules Capital Funding Trust 2022-1, as Issuer, Wilmington Trust National Association, as Owner Trustee, and U.S. Bank Trust Company, National Association, as Trustee.
10.7*	Second Supplement to the Note Purchase Agreement, dated as of June 23, 2022, by and among Hercules Capital, Inc. and the Additional Purchasers party thereto.
31.1*	Chief Executive Officer Certification Pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Chief Financial Officer Certification Pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Chief Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Chief Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Filed herewith.

(1) Incorporated by reference to Exhibits 10.1 and 10.2, as applicable, to the Company's Form 8-K (File No. 814-00702), filed on June 15, 2022.

Schedule 12 – 14

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS IN AND ADVANCES TO AFFILIATES
For the Six Months Ended June 30, 2022 (unaudited)

(in thousands) Portfolio Company	Investment [1]	Amount of Interest and Fees Credited to Income [2]	Realized Gain (Loss)	Fair Value as of December 31, 2021	Gross Additions [3]	Gross Reductions [4]	Net Change in Unrealized Appreciation/ (Depreciation)	Fair Value as of June 30, 2022
Control Investments								
Majority Owned Control Investments								
Coronado Aesthetics, LLC [10]	Preferred Stock	$ —	$ —	$ 500	$ —	$ —	$ (88)	$ 412
	Common Stock	—	—	65	—	—	(55)	10
Gibraltar Business Capital, LLC [5]	Unsecured Debt	1,711	—	23,212	39	—	(576)	22,675
	Preferred Stock	—	—	19,393	—	—	(3,978)	15,415
	Common Stock	—	—	1,225	—	—	(251)	974
Hercules Adviser LLC [6]	Unsecured Debt	239	—	8,850	3,150	—	—	12,000
	Member Units	—	—	11,990	—	—	11,191	23,181
Total Majority Owned Control Investments		$ 1,950	$ —	$ 65,235	$ 3,189	$ —	$ 6,243	$ 74,667
Other Control Investments								
Tectura Corporation[7]	Senior Debt	$ 342	$ —	$ 8,269	$ —	$ —	$ (61)	$ 8,208
	Preferred Stock	—	—	—	—	—	—	—
	Common Stock	—	—	—	—	—	—	—
Total Other Control Investments		$ 342	$ —	$ 8,269	$ —	$ —	$ (61)	$ 8,208
Total Control Investments		$ 2,292	$ —	$ 73,504	$ 3,189	$ —	$ 6,182	$ 82,875
Affiliate Investments								
Black Crow AI, Inc. [8]	Preferred Stock	$ —	$ 3,772	$ 1,120	$ —	$ (1,000)	$ (120)	$ —
Pineapple Energy LLC [9]	Senior Debt	1,123	—	7,747	78	(4,781)	(104)	2,940
	Common Stock	—	—	591	400	—	(318)	673
Total Affiliate Investments		$ 1,123	$ 3,772	$ 9,458	$ 478	$ (5,781)	$ (542)	$ 3,613
Total Control and Affiliate Investments		$ 3,415	$ 3,772	$ 82,962	$ 3,667	$ (5,781)	$ 5,640	$ 86,488

(1) Stock and warrants are generally non-income producing and restricted.

(2) Represents the total amount of interest, fees, or dividends credited to income for the period an investment was an affiliate or control investment.

(3) Gross additions include increases in the cost basis of investments resulting from new portfolio investments, paid-in-kind interest or dividends, the amortization of discounts and closing fees and the exchange of one or more existing securities for one or more new securities.

(4) Gross reductions include decreases in the cost basis of investments resulting from principal repayments or sales and the exchange of one or more existing securities for one or more new securities. Gross reductions also include previously recognized depreciation on investments that become control or affiliate investments during the period.

(5) As of March 31, 2018, the Company's investment in Gibraltar Business Capital, LLC became classified as a control investment as a result of obtaining a controlling financial interest.

(6) Hercules Adviser LLC is a wholly owned subsidiary providing investment management and other services to the Adviser Funds and other External Parties.

(7) As of March 31, 2017, the Company's investment in Tectura Corporation became classified as a control investment as of result of obtaining more than 50% representation on the portfolio company's board. In May 2018, the Company purchased common shares, thereby obtaining greater than 25% of voting securities of Tectura as of June 30, 2018.

(8) During the six months ended June 30, 2022, the Company sold its investments in Black Crow AI, Inc., as a result it is no longer an affiliate investment.

(9) As of December 11, 2020, the Company investment in Pineapple Energy LLC became classified as an affiliate investment as a result of obtaining more than 5% but less than 25% of the voting securities of the portfolio company.

(10) As of December 31, 2021, the Company's investment in Coronado Aesthetics, LLC became classified as a control investment as a result of obtaining more than 25% of the voting securities of the portfolio company.

Schedule 12 – 14

HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS IN AND ADVANCES TO AFFILIATES
For the Six Months Ended June 30, 2021 (unaudited)

(in thousands) Portfolio Company	Investment [1]	Amount of Interest and Fees Credited to Income [2]	Realized Gain (Loss)	Fair Value as of December 31, 2020	Gross Additions [3]	Gross Reductions [4]	Net Change in Unrealized Appreciation/ (Depreciation)	Fair Value as of June 30, 2021
Control Investments								
Majority Owned Control Investments								
Gibraltar Business Capital, LLC [5]	Unsecured Debt	$ 1,495	$ —	$ 14,970	$ 9,609	$ —	$ (1,258)	$ 23,321
	Preferred Stock	—	—	31,554	—	—	(12,085)	19,469
	Common Stock	—	—	2,276	—	—	(872)	1,404
Hercules Adviser LLC [6]	Unsecured Debt	14	—	—	3,000	—	—	3,000
	Member Units	—	—	—	35		10,888	10,923
Total Majority Owned Control Investments		$ 1,509	$ —	$ 48,800	$ 12,644	$ —	$ (3,327)	$ 58,117
Other Control Investments								
Tectura Corporation[7]	Senior Debt	$ 342	$ —	$ 8,600	$ —	$ —	$ (226)	$ 8,374
	Preferred Stock	—	—	—	—	—	—	—
	Common Stock	—	—	—	—	—	—	—
Total Other Control Investments		$ 342	$ —	$ 8,600	$ —	$ —	$ (226)	$ 8,374
Total Control Investments		$ 1,851	$ —	$ 57,400	$ 12,644	$ —	$ (3,553)	$ 66,491
Affiliate Investments								
Black Crow AI, Inc. [8]	Preferred Stock	$ —	$ —	$ —	$ 1,000	$ —	$ 309	$ 1,309
	Convertible Debt	—	—	—	2,208	(3,993)	1,785	—
Pineapple Energy LLC [9]	Senior Debt	2	—	7,500	40	—	—	7,540
	Common Stock	—	—	840	—	—	61	901
Solar Spectrum Holdings LLC (p.k.a. Sungevity, Inc.) [10]	Senior Debt	—	(641)	—	—	(681)	681	—
	Common Stock	—	(61,502)	—	—	(61,502)	61,502	—
Total Affiliate Investments		$ 2	$ (62,143)	$ 8,340	$ 3,248	$ (66,176)	$ 64,338	$ 9,750
Total Control and Affiliate Investments		$ 1,853	$ (62,143)	$ 65,740	$ 15,892	$ (66,176)	$ 60,785	$ 76,241

(1) Stock and warrants are generally non-income producing and restricted.
(2) Represents the total amount of interest, fees, or dividends credited to income for the period an investment was an affiliate or control investment.
(3) Gross additions include increases in the cost basis of investments resulting from new portfolio investments, paid-in-kind interest or dividends, the amortization of discounts and closing fees and the exchange of one or more existing securities for one or more new securities.
(4) Gross reductions include decreases in the cost basis of investments resulting from principal repayments or sales and the exchange of one or more existing securities for one or more new securities. Gross reductions also include previously recognized depreciation on investments that become control or affiliate investments during the period.
(5) As of March 31, 2018, the Company's investment in Gibraltar Business Capital, LLC became classified as a control investment as a result of obtaining a controlling financial interest.
(6) Hercules Adviser LLC is a wholly-owned subsidiary providing investment management and other services to External Parties.
(7) As of March 31, 2017, the Company's investment in Tectura Corporation became classified as a control investment as of result of obtaining more than 50% representation on the portfolio company's board. In May 2018, the Company purchased common shares, thereby obtaining greater than 25% of voting securities of Tectura as of June 30, 2018.
(8) As of March 23, 2021, the Company's investment in Black Crow AI, Inc. became classified as an affiliate investment as a result of obtaining more than 5% but less than 25% of the voting securities of the portfolio company.
(9) As of December 11, 2020, the Company's investment in Pineapple Energy LLC became classified as an affiliate investment as a result of obtaining more than 5% but less than 25% of the voting securities of the portfolio company.
(10) As of June 30, 2021, the Company's investments in Solar Spectrum Holdings LLC (f.k.a. Sungevity, Inc.) were written off for a realized loss.

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HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS IN AND ADVANCES TO AFFILIATES
As of June 30, 2022 (unaudited)

(in thousands) Portfolio Company	Industry	Type of Investment [1]	Maturity Date	Interest Rate and Floor	Principal or Shares	Cost	Value [2]
Control Investments							
Majority Owned Control Investments							
Coronado Aesthetics, LLC	Medical Devices & Equipment	Preferred Series A Equity			5,000,000	$ 250	$ 412
	Medical Devices & Equipment	Common Stock			180,000	—	10
Total Coronado Aesthetics, LLC						$ 250	$ 422
Gibraltar Business Capital, LLC	Diversified Financial Services	Unsecured Debt	September 2026	Interest rate FIXED 14.50%	$ 15,000	$ 14,687	$ 13,434
	Diversified Financial Services	Unsecured Debt	September 2026	Interest rate FIXED 11.50%	$ 10,000	9,837	9,241
	Diversified Financial Services	Preferred Series A Equity			10,602,752	26,122	15,415
	Diversified Financial Services	Common Stock			830,000	1,884	974
Total Gibraltar Business Capital, LLC						$ 52,530	$ 39,064
Hercules Adviser LLC		Unsecured Debt	June 2025	Interest rate FIXED 5.00%	$ 12,000	$ 12,000	$ 12,000
		Member Units			1	35	23,181
Total Hercules Adviser LLC						$ 12,035	$ 35,181
Total Majority Owned Control Investments (5.62%)*						$ 64,815	$ 74,667
Other Control Investments							
Tectura Corporation	Internet Consumer & Business Services	Senior Secured Debt	July 2024	PIK Interest 5.00%	$ 10,680	$ 240	$ —
	Internet Consumer & Business Services	Senior Secured Debt	July 2024	Interest rate FIXED 8.25%	$ 8,250	8,250	8,208
	Internet Consumer & Business Services	Senior Secured Debt	July 2024	PIK Interest 5.00%	$ 13,023	13,023	—
	Internet Consumer & Business Services	Preferred Series BB Equity			1,000,000	—	—
	Internet Consumer & Business Services	Common Stock			414,994,863	900	—
Total Tectura Corporation						$ 22,413	$ 8,208
Total Other Control Investments (0.62%)*						$ 22,413	$ 8,208
Total Control Investments (6.24%)*						**$ 87,228**	**$ 82,875**
Affiliate Investments							
Pineapple Energy LLC	Sustainable and Renewable Technology	Senior Secured Debt	December 2024	PIK Interest 10.00%	$ 3,078	$ 3,078	$ 2,940
	Sustainable and Renewable Technology	Common Stock			498,978	5,167	673
Total Pineapple Energy LLC						$ 8,245	$ 3,613
Total Affiliate Investments (0.27%)*						**$ 8,245**	**$ 3,613**
Total Control and Affiliate Investments (6.51%)*						**$ 95,473**	**$ 86,488**

* Value as a percent of net assets

(1) Stock and warrants are generally non-income producing and restricted.

(2) All of the Company's control and affiliate investments are Level 3 investments valued using significant unobservable inputs. This is with the exception for Pineapple Energy LLC common stock, which is held as a Level 2 investment.

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HERCULES CAPITAL, INC.
CONSOLIDATED SCHEDULE OF INVESTMENTS IN AND ADVANCES TO AFFILIATES
As of and for the year ended December 31, 2021

(in thousands) Portfolio Company	Industry	Type of Investment [1]	Maturity Date	Interest Rate and Floor	Principal or Shares	Cost	Value [2]
Control Investments							
Majority Owned Control Investments							
Coronado Aesthetics, LLC	Medical Devices & Equipment	Preferred Series A Equity			5,000,000	$ 250	$ 500
	Medical Devices & Equipment	Common Stock			180,000	—	65
Total Coronado Aesthetics, LLC						$ 250	$ 565
Gibraltar Business Capital, LLC	Diversified Financial Services	Unsecured Debt	September 2026	Interest rate FIXED 14.50%	$ 15,000	$ 14,662	$ 13,818
	Diversified Financial Services	Unsecured Debt	September 2026	Interest rate FIXED 11.50%	$ 10,000	9,823	9,394
	Diversified Financial Services	Preferred Series A Equity			10,602,752	26,122	19,393
	Diversified Financial Services	Common Stock			830,000	1,884	1,225
Total Gibraltar Business Capital, LLC						$ 52,491	$ 43,830
Hercules Adviser LLC	Diversified Financial Services	Unsecured Debt	May 2023	Interest rate FIXED 5.00%	$ 8,850	$ 8,850	$ 8,850
	Diversified Financial Services	Member Units			1	35	11,990
Total Hercules Adviser LLC						$ 8,885	$ 20,840
Total Majority Owned Control Investments (4.99%)*						$ 61,626	$ 65,235
Other Control Investments							
Tectura Corporation	Internet Consumer & Business Services	Senior Secured Debt	July 2024	PIK Interest 5.00%	$ 10,680	$ 240	$ —
	Internet Consumer & Business Services	Senior Secured Debt	July 2024	Interest rate FIXED 8.25%	$ 8,250	8,250	8,250
	Internet Consumer & Business Services	Senior Secured Debt	July 2024	PIK Interest 5.00%	$ 13,023	13,023	19
	Internet Consumer & Business Services	Preferred Series BB Equity			1,000,000	—	—
	Internet Consumer & Business Services	Common Stock			414,994,863	900	—
Total Tectura Corporation						$ 22,413	$ 8,269
Total Other Control Investments (0.63%)*						$ 22,413	$ 8,269
Total Control Investments (5.62%)*						$ 84,039	$ 73,504
Affiliate Investments							
Black Crow AI, Inc.	Internet Consumer & Business Services	Preferred Series Seed			872,797	$ 1,000	$ 1,120
Pineapple Energy LLC	Sustainable and Renewable Technology	Senior Secured Debt	December 2023	PIK Interest 10.00%	$ 7,500	7,500	7,500
	Sustainable and Renewable Technology	Senior Secured Debt	January 2022	Interest rate FIXED 10.00%	$ 280	280	247
	Sustainable and Renewable Technology	Common Stock			3,000,000	4,767	591
Total Pineapple Energy LLC						$ 12,547	$ 8,338
Total Affiliate Investments (0.72%)*						$ 13,547	$ 9,458
Total Control and Affiliate Investments (6.34%)*						$ 97,586	$ 82,962

* Value as a percent of net assets
(1) Stock and warrants are generally non-income producing and restricted.
(2) All of the Company's control and affiliate investments are Level 3 investments valued using significant unobservable inputs.

SIGNATURES

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

HERCULES CAPITAL, INC. (Registrant)

Dated: July 28, 2022

/S/ SCOTT BLUESTEIN

Scott Bluestein
President, Chief Executive Officer, and
Chief Investment Officer

Dated: July 28, 2022

/S/ SETH H. MEYER

Seth H. Meyer
Chief Financial Officer, and
Chief Accounting Officer

INDENTURE

by and between

HERCULES CAPITAL FUNDING TRUST 2022-1,
as the Issuer,

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as the Trustee

Dated as of June 22, 2022

Hercules Capital Funding Trust 2022-1
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EXHIBITS

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INDENTURE

THIS INDENTURE, dated as of June 22, 2022 (as amended, modified, restated, supplemented or waived from time to time, this "Indenture"), is by and between HERCULES CAPITAL FUNDING TRUST 2022-1, a Delaware statutory trust, as the issuer (together with its successors and assigns, in such capacity, the "Issuer"), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association ("U.S. Bank") not in its individual capacity, but solely in its capacity as the trustee (together with its successors and assigns, in such capacity, the "Trustee").

Each party hereto agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Issuer's Notes.

GRANTING CLAUSE

The Issuer hereby Grants to the Trustee, on behalf of and for the benefit of the Holders of the Notes, without recourse, subject to the terms of this Indenture and the other Transaction Documents, a continuing security interest in and lien on all of its right, title and interest in and to all accounts, cash and currency, chattel paper, copyrights,

copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to (i) the Loans and all Related Property included or to be included from time to time in the Loan Assets, whether now existing or hereafter arising or acquired; (ii) Collections on the Loans received after the Cutoff Date (with respect to the Loans acquired by the Issuer on the Closing Date) or the applicable Transfer Date (with respect to each Additional Loan and Substitute Loan); (iii) the security interests in Related Property securing the Loans; (iv) the Loan Files relating to the Loans; (v) an assignment of all rights to Proceeds from liquidating the Loans; (vi) an assignment of the Trust Depositor's rights against Obligors under agreements between the Seller and the Obligors under the Loans; (vii) the Collection Account, the Reserve Account, the Lockbox Account, the Reinvestment Account and the Distribution Account, all amounts deposited therein or credited thereto, the Permitted Investments purchased with funds therefrom or deposited therein and all income from the investment of funds therein; (viii) other rights under the Transaction Documents; (ix) all proceeds from the items described above; and (x) all present and future claims, demands, causes and choses in action in respect of any or all of the foregoing and all payments on or under and all proceeds of every kind and nature whatsoever in respect of any or all of the foregoing, including all proceeds of the conversion, voluntary or involuntary, into cash or other liquid property, all cash proceeds, accounts, accounts receivable, notes, drafts, acceptances, chattel paper, checks, deposit accounts, insurance proceeds, condemnation awards, rights to payment of any and every kind and other forms of obligations and receivables, instruments and other property which at any time constitute all or part of or are included in the proceeds of any of the foregoing; *provided* that all right, title and interest of the Issuer in and to each Excluded Amount, the Certificate Account and any and all proceeds of any Excluded Amount or the Certificate Account (collectively, the "Excluded Property") shall be excluded from the foregoing Grant by the Issuer (collectively, the "Indenture Collateral").

The foregoing Grant is made in trust to secure (x) the payment of principal of and interest on, and any other amounts owing in respect of, the Notes and all other sums owing by the Issuer hereunder or under any other Transaction Document, and (y) to secure compliance with the covenants and agreement in this Indenture and the other Transaction Documents.

The Trustee, on behalf of the Noteholders (1) acknowledges such Grant, and (2) accepts the trusts under this Indenture in accordance with this Indenture and agrees to perform its duties required in this Indenture to the best of its ability to the end that the interests of the Noteholders may be adequately and effectively protected.

ARTICLE I
DEFINITIONS

Section 1.01 Definitions.

Certain defined terms used throughout this Indenture are defined above or in this Section 1.01. In addition, except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Sale and Servicing Agreement (as defined below), which are incorporated by reference herein.

"Additional Notes" means any Notes issued pursuant to Section 2.03.

"Additional Notes Closing Date" means the closing date for the issuance of any Additional Notes pursuant to Section 2.03 as set forth in a supplemental indenture pursuant to Section 9.01.

"Applicable Procedures" has the meaning provided in Section 4.02(l)(i).

"Authorized Newspaper" means a newspaper of general circulation in the Borough of Manhattan, The City of New York, printed in the English language and customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays.

"Certificate Registrar" means, initially, the Trustee, and thereafter, any successor appointed pursuant to the Trust Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means any and all information concerning any Disclosing Party disclosed by, or at the request or on behalf of, any Disclosing Party to any Receiving Party or its representatives pursuant to this Indenture, excluding, however, any information that at the time of disclosure: (a) was generally available to the public, other than as a result of a disclosure by any Receiving Party or its representatives in violation of this Indenture; (b) was available to any Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its representatives; (c) was already known to the Receiving Party and not subject to restrictions on use or disclosure; or (d) was independently developed by or on behalf of the Receiving Party (other than at the request of or for the benefit of the Disclosing Party) by individuals who did not directly or indirectly receive Confidential Information.

"Corporate Trust Office" means the principal office of the Trustee currently located at (a) for Note transfer purposes and presentment of the Notes for final payment thereon, the corporate office of the Trustee located at 111 Fillmore Avenue East, Attention: Bondholder Services-EP-MNWS2N, St. Paul, MN 55107, Reference: Hercules Capital Funding Trust 2022-1 and (b) for all other purposes, the corporate office of the Trustee located at One Federal Street, 3rd Floor, Boston, Massachusetts 02110, Attention: Jack Lindsay, Reference: Hercules Capital Funding Trust 2022-1, telephone number (617) 603-6789, facsimile number (855) 869-2187, email: jack.lindsay@usbank.com or at such other address as the Trustee may designate from time to time by notice to the Issuer, or the principal corporate trust officer of any successor Trustee at the address designated by such successor by notice to the Issuer.

"Default" means any occurrence that is, or with notice or the lapse of time or both would become, an Event of Default.

"Disclosing Party" means each of the Issuer, the Trust Depositor, the Servicer and the Seller and "Disclosing Parties" means collectively all such parties.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor legislation thereto and the regulations promulgated and the rulings issued thereunder.

"Excluded Property" has the meaning provided in the Granting Clause.

"Event of Default" has the meaning provided in Section 5.01.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable) and any current or future regulations or official interpretations thereof.

"Grant" means to mortgage, pledge, sell, bargain, warrant, alienate, remise, release, convey, assign, transfer, create, and grant a lien upon and a security interest in and right of set-off against, deposit, set over and confirm pursuant to this Indenture. A Grant of Indenture Collateral or of any other agreement or instrument shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including the immediate and continuing right to claim for, collect, receive and give receipt for principal and interest payments in respect of such collateral or other agreement or instrument and all other moneys payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Indenture Collateral" has the meaning provided in the Granting Clause.

"Institutional Accredited Investor" means any Person meeting the requirements of Rule 501 (a) (1), (2), (3) or (7) of Regulation D under the Securities Act.

"Issuer Documents" has the meaning provided in Section 3.25(a).

"Issuer Order" means a written order or request signed in the name of the Issuer by any one of its Responsible Officers or by the Servicer or the Administrator on behalf of the Issuer and delivered to the Trustee. An Issuer Order or request provided in an email by a Responsible Officer of the Issuer or the Administrator on behalf of the Issuer shall constitute an Issuer Order in each case except to the extent the Trustee requests otherwise.

"Legal Final Payment Date" means July 20, 2031.

"Minimum Denomination" of any Note shall mean, a minimum denomination of $10,000 initial principal amount and integral multiples of $1,000 in excess thereof; *provided* that one Note may be in a smaller multiple in excess of the minimum denomination.

"Non-Permitted Holder" has the meaning provided in Section 4.02(s)(ii).

"Note Register" has the meaning provided in Section 4.02(a).

"Note Registrar" has the meaning provided in Section 4.02(a).

"Noteholder Representative" means Ares Alternative Credit Management LLC.

"Outstanding" means, as of any date of determination, all Notes theretofore executed, authenticated and delivered under this Indenture except: (i) Notes in exchange for or in lieu of which other Notes have been executed, authenticated and delivered pursuant to this Indenture unless proof satisfactory to the Trustee is presented that any such Notes are held by a holder in due course; (ii) Notes to be redeemed in connection with an Optional Redemption and in respect of which money in the necessary amount to pay the Redemption Price, has been theretofore deposited with the Trustee in trust for the Noteholders; and (iii) Notes otherwise cancelled by the Note Registrar in accordance with the express terms of this Indenture; *provided* that, in determining whether the Holders of the requisite amount of any Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder or under the Sale and Servicing Agreement, (1) Notes beneficially owned by the Issuer shall be disregarded and deemed not to be Outstanding and (2) Notes beneficially owned by the Servicer, Seller, any Affiliate of the Seller or the Servicer or any account managed on a discretionary basis by the Servicer or an Affiliate of the Servicer shall be disregarded and deemed not to be Outstanding with respect to any assignment by the Servicer or termination of the Servicer under the Sale and Servicing Agreement or this Indenture (including the exercise of any rights to remove the Servicer or approve or object to a Successor Servicer); *except* that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes that the Trustee knows to be beneficially owned in the manner indicated above shall be so disregarded; *provided* that the Trustee shall be entitled to rely on a certificate of the Servicer attesting to the ownership of Notes by the Seller, the Servicer, any of their respective Affiliates or any account managed on a discretionary basis by the Servicer or an Affiliate of the Servicer, if any.

"Owner" means each Holder of a Note.

"Owner Trustee" means Wilmington Trust, National Association, not in its individual capacity but solely as owner trustee under the Trust Agreement, and any successor Owner Trustee thereunder.

"Placement Agent" means Guggenheim Securities, LLC.

"Plan" has the meaning provided in Section 4.02(t).

"Proceeding" means any suit in equity, action at law or other judicial or administrative proceeding.

"PTCE" has the meaning provided in Section 4.02(t).

"Qualified Institutional Buyer" has the meaning provided in Rule 144A under the Securities Act.

"Qualified Purchaser" has the meaning provided in Section 2(a)(51) under the 1940 Act.

"Rating Agency Confirmation" means, with respect to any event or circumstance, that the Rating Agency has been given notice of such event or circumstance at least (10) Business Days prior to the occurrence of such event or circumstance; *provided that* in the case of a proposed change related to an additional issuance of Notes, in which case the Rating Agency shall have received written notice of the proposed action not less than ten (10) Business Days prior to the effectiveness thereof and has issued a written notice that such action will not result in a downgrade or withdrawal of its rating assigned to the Notes.

"Receiving Party" means each Holder of a Note, the Trustee and the Owner Trustee.

"Regulation S" means Regulation S under the Securities Act.

"Sale" has the meaning provided in Section 5.15.

"Sale and Contribution Agreement" means the Sale and Contribution Agreement, dated as of the date hereof, by and between Hercules Capital, Inc., as Seller, and Hercules Capital Funding 2022-1 LLC, as the Trust Depositor.

"Sale and Servicing Agreement" means the Sale and Servicing Agreement, dated as of date hereof, by and among Hercules Capital Funding Trust 2022-1, as the Issuer, Hercules Capital Funding 2022-1 LLC, as the Trust Depositor, Hercules Capital, Inc., as the Seller and as the Servicer, U.S. Bank Trust Company, National Association, as the Trustee and Paying Agent, and U.S. Bank National Association, as Backup Servicer and Custodian.

"Series" means 2022-1.

"Similar Law" has the meaning provided in Section 4.02(t).

"Super-Majority Noteholders" means the Noteholders evidencing more than 66 2/3% of the Aggregate Outstanding Principal Balance of Notes.

"Transferee Letter" means the letter set forth in Exhibit D-1 to this Indenture.

"Trust Certificate" means a certificate evidencing ownership of the beneficial interest of a Certificateholder in the Issuer, substantially in the form of Exhibit A attached to the Trust Agreement.

"Trust Company" means Wilmington Trust, National Association (and any successor thereto or assign thereof), in its individual capacity, and any other Person who shall act as Owner Trustee under the Trust Agreement, in its individual capacity.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939, as amended from time to time, as in effect on any relevant date.

"Trustee" has the meaning provided in the Preamble.

"USA PATRIOT Act" means, collectively, the United States Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, signed into law on and

effective as of October 26, 2001, which, among other things, requires that financial institutions, a term that includes banks, broker-dealers and investment companies, establish and maintain compliance programs to guard against money laundering activities, and the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions and money laundering.

Section 1.02 Rules of Construction.

Unless the context otherwise requires:

(i) a term has the meaning given to it;

(ii) an accounting term not otherwise defined has the meaning given to it in accordance with generally accepted accounting principles;

(iii) "or" is not exclusive;

(iv) "including" means including without limitation;

(v) words in the singular include the plural and words in the plural include the singular;

(vi) any pronouns shall be deemed to cover all genders; and

(vii) any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified, waived or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

ARTICLE II
THE NOTES

Section 2.01 Form.

The Notes, together with the Trustee's certificate of authentication, shall be in substantially the forms set forth as Exhibits A-1 and A-2 to this Indenture with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the appropriate Responsible Officers executing such Notes, as evidenced by their execution of the Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

The Notes shall be typewritten, printed, lithographed or engraved or produced by any combination of these methods (with or without steel engraved borders), all as determined by the Responsible Officers executing such Notes, as evidenced by their execution of such Notes.

The terms of the Notes set forth in Exhibits A-1 and A-2 are part of the terms of this Indenture.

Section 2.02 **Execution, Authentication and Delivery.**

The Notes shall be executed on behalf of the Issuer by any of its Responsible Officers. The signature of any such Responsible Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signature of individuals who were at any time Responsible Officers of the Issuer shall bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

The Trustee shall upon receipt of an Issuer Order authenticate and deliver the Notes for original issue in an aggregate amount equal to the Initial Note Principal Balance.

Each Note shall be dated the date of its authentication. The Notes shall be issued in fully registered form in minimum initial denominations equal to the applicable Minimum Denomination and in integral multiples of $1,000 in excess thereof; *provided* that one Note may be issued in a smaller multiple in excess of the minimum denomination.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 2.03 **Additional Issuance**.

(a) At any time within the Reinvestment Period, the Issuers may, but shall not be obligated to, pursuant to a supplemental indenture in accordance with Section 9.01 hereof, issue Additional Notes and use the proceeds thereof to purchase Additional Loans or as otherwise permitted under this Indenture; *provided* that the following conditions are met:

(i) the Servicer and the Retention Parent each consent to such issuance;

(ii) the aggregate Outstanding Principal Balance of Additional Notes issued in all additional issuances, as of their respective dates of issuance, together with the Initial Note Principal Balance of the original Notes shall not exceed $300,000,000;

(iii) the Additional Notes will be secured by the same Indenture Collateral as the previously issued Notes and the terms of the Additional Notes issued shall be identical to the terms of previously issued Notes (except that the interest due on Additional Notes will accrue from the issue date of such Additional Notes and that the interest rate and prices of such may be different than those of the initial Notes);

(iv) the proceeds of any Additional Notes (net of fees and expenses incurred in connection with such issuance) shall be treated as Principal Proceeds and will be used to purchase Additional Loans;

(v) after giving effect to such issuance of Additional Notes and any concurrent application of the proceeds thereof to acquire Additional Loans, the Aggregate Outstanding Principal Balance will be no greater than the Borrowing Base;

(vi) the Issuer shall have received Rating Agency Confirmation with respect to such issuance of Additional Notes;

(vii) neither the Servicer nor the Issuer shall fail to be in compliance with the credit risk retention requirements of Section 941 of the Dodd-Frank Act which were published in the Federal Register on December 24, 2014 and which became effective on December 24, 2016 (the "U.S. Risk Retention Rules") as a result of such issuance;

(viii) an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters will be delivered to the Issuer (with a copy to the Trustee) to the effect that (1) such additional issuance will not result in the Issuer being treated as a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes or otherwise subject to U.S. federal income tax on a net basis and (2) any Additional Notes will be characterized as indebtedness for U.S. federal income tax purposes; *provided*, *however*, that such opinion described in this clause (2) will not be required with respect to any Additional Notes that bear a different CUSIP number (or equivalent identifier) from the Notes that are outstanding at the time of the additional issuance; and

(ix) such issuance is accomplished in a manner that allows the independent accountants of the Issuer to accurately provide the tax information relating to original issue discount required to be provided to the holders of Notes.

(b) Interest on the Additional Notes shall be payable commencing on the first Payment Date following the issue date of such Additional Notes (if issued prior to the applicable Record Date). The Additional Notes shall rank *pari passu* in all respects with the initial Notes.

(c) In connection with any issuance of Additional Notes, the Issuer shall deliver, or cause to be delivered, notice of such issuance to the Trustee and the Noteholder Representative at least ten (10) Business Days prior to the proposed date of issuance of such Additional Notes. During the ten (10) Business Days immediately following delivery of such notice, (i) the existing Noteholders shall have the exclusive opportunity to make offers to purchase such Additional Notes and (ii) neither the Issuer, nor any party on its behalf, sell or attempt to sell the Additional Notes to any third party, offer such Additional Notes to or solicit offers to purchase such Additional Notes from any third party. Notwithstanding the foregoing, the Issuer shall not issue Additional Notes without the Noteholder Representative's consent if after giving effect to such issuance, the Noteholder Representative and its Affiliates would own less than 50.5% of the outstanding Notes.

Section 2.04 Opinions of Counsel.

On the Closing Date, the Trustee shall have received: (i) an Opinion of Counsel, with respect to securities law matters; (ii) an Opinion of Counsel, with respect to the tax status of the arrangement created by this Indenture and the tax treatment of the Notes; (iii) an Opinion of Counsel to the Issuer, with respect to the due authorization, valid execution and delivery of this Indenture and with respect to its binding effect on the Issuer; (iv) an Opinion of Counsel with respect to certain "true sale" and "non-consolidation" issues relating to Seller and Trust Depositor; and (v) an Opinion of Counsel with respect to certain trust and limited liability matters and with respect to certain "perfection and priority" issues.

ARTICLE III
COVENANTS

Section 3.01 Transaction Accounts.

The Trustee shall establish and maintain as required therein or herein, as applicable, the Lockbox Account, the Collection Account, the Reserve Account, the Reinvestment Account and the Distribution Account specified in Sections 7.01, 7.02, 7.03, and 7.04 of the Sale and Servicing Agreement. On the Closing Date, the Issuer will deposit, or cause to be deposited, an initial deposit of $625,000 from proceeds of the issuance and sale of the Notes into the

Reserve Account. Subject to the Priority of Payments, the Trustee shall make all payments of principal of and interest on the Notes, subject to Section 3.03 and as provided in Section 3.05, from moneys on deposit in the Distribution Account in accordance with the instructions of the Servicer pursuant to Section 7.06 of the Sale and Servicing Agreement.

Section 3.02 Maintenance of Office or Agency.

The Issuer will maintain with the Trustee an office or agency where, subject to satisfaction of conditions set forth herein, Notes may be surrendered for registration of transfer or exchange, and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer hereby initially appoints the Trustee to serve as its agent for the foregoing purposes. The Issuer will give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency. If at any time the Issuer shall fail to maintain any such office or agency or shall fail to furnish the Trustee with the address thereof (if such office or agency is no longer maintained with the Trustee), such surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuer hereby appoints the Trustee as its agent to receive all such surrenders, notices and demands.

Section 3.03 Money for Payments To Be Held in Trust; Paying Agent.

The Issuer hereby appoints the Trustee to act as agent for the payment (the "Paying Agent") of principal and interest on the Notes and all other amounts payable pursuant to the Sale and Servicing Agreement (including without limitation the Priority of Payments) and this Indenture. As provided in Section 3.01, all payments of amounts due and payable with respect to any Notes that are to be made from amounts withdrawn from the Distribution Account shall be made on behalf of the Issuer by the Paying Agent, and no amounts so withdrawn from the Distribution Account for payments of Notes shall be paid over to the Issuer except as provided in this Section 3.03 and in Section 3.05.

The Issuer may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents for any or all of such purposes; *provided* that no Paying Agent shall be appointed in a jurisdiction that subjects payments on the Notes to withholding tax; *provided* that unless such agent or any affiliate (excluding the Trustee and its affiliates) has short-term debt rated "P-1" or the equivalent thereof by the Rating Agency it may not hold funds pursuant to this Indenture overnight. The Issuer shall give prompt written notice to the Trustee, the Rating Agency and the Noteholders of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

By no later than 10:00 a.m. (New York, New York time) on the Business Day prior to each Payment Date, and by no later than 12:00 noon (New York, New York time) on any Redemption Date, as applicable, the Paying Agent (provided that sufficient funds therefor are available) shall deposit or cause to be deposited in the Distribution Account from amounts on deposit in the Collection Account an aggregate sum sufficient to pay the amounts then becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto and (unless the Trustee is the Paying Agent) shall promptly notify the Issuer in writing of its action or failure so to act.

The Issuer will cause each party other than the Trustee that it appoints as Paying Agent to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee (and if the Trustee acts as Paying Agent, it hereby so agrees), subject to the provisions of this Section 3.03, that such Paying Agent will:

(i) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(ii) at any time during the continuance of any Event of Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent;

(iii) immediately resign as Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of Notes if at any time it ceases to meet the standards required to be met by a Paying Agent at the time of its appointment; and

(iv) to the extent such Paying Agent is located in, or makes payments within, the United States, comply with all requirements of the Code with respect to the withholding from any payments made by it on any Notes of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, by Issuer Order direct any Paying Agent to pay to the Trustee all sums held in trust by such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which the sums were held by such Paying Agent; and upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Subject to applicable laws with respect to escheat of funds, any money held by the Paying Agent in trust for the payment of any amount due with respect to any Note and remaining unclaimed for two years after such amount has become due and payable shall be discharged from such trust and be paid to the Issuer on an Issuer Order; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Issuer for payment thereof (but only to the extent of the amounts so paid to the Issuer), and all liability of the Paying Agent with respect to such trust money shall thereupon cease; *provided* that the Paying Agent, before being required to make any such repayment, shall at the expense and direction of the Issuer cause to be published once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Issuer. The Trustee shall also adopt and employ, at the expense and direction of the Issuer, any other reasonable means of notification of such repayment (including, but not limited to, mailing notice of such repayment to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in moneys due and payable but not claimed is determinable from the records of the Trustee or of any other party acting as Paying Agent, at the last address of record for each such Holder).

Section 3.04 Existence; Separate Legal Existence.

(a) The Issuer will keep in full effect its existence, rights and franchises as a statutory trust under the laws of the State of Delaware (unless it becomes, or any successor Issuer hereunder is or becomes, organized under the laws of any other state or of the United States, in which case the Issuer will keep in full effect its existence, rights and franchises under the laws of such other jurisdiction) and will obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Indenture, the Notes, the other Transaction Documents, the Indenture Collateral and each other instrument or agreement included in the Indenture Collateral.

(b) The Issuer shall:

(i) Maintain its own deposit account or accounts, separate from those of any Affiliate, with commercial banking institutions and in accordance with the terms of this Indenture. The funds of the Issuer will not be diverted to any other Person or for other than authorized uses of the Issuer.

(ii) Ensure that it is at all times in compliance with Section 4.01 of the Trust Agreement.

(iii) Ensure that, to the extent that it jointly contracts with any of its beneficial owners or Affiliates to do business with vendors or service providers or to share overhead expenses, the costs incurred in so doing shall be allocated fairly among such entities, and each such entity shall bear its fair share of such costs. To

the extent that the Issuer contracts or does business with vendors or service providers when the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing shall be fairly allocated to or among such entities for whose benefit the goods and services are provided, and each such entity shall bear its fair share of such costs. All material transactions between Issuer and any of its Affiliates shall be only at fair market value on an arm's length basis and, as applicable thereto, in accordance with the Sale and Servicing Agreement.

(iv) Conduct its affairs strictly in accordance with its organizational documents and observe all necessary, appropriate and customary statutory trust formalities, including, but not limited to, holding all regular and special board of trustees meetings, if any, as required under the terms of the Trust Agreement appropriate to authorize all statutory trust action, keeping separate and accurate minutes of its meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, payroll and intercompany transaction accounts.

(v) Conduct its affairs in its own name, duly correct any known misunderstandings regarding its separate identity and shall not take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding.

Section 3.05 Payment of Principal and Interest.

The Issuer will duly and punctually pay the principal of and interest on the Notes, in accordance with the terms of such Notes, this Indenture and the Sale and Servicing Agreement (including the Priority of Payments therein). The Issuer will cause to be distributed all amounts on deposit in the Distribution Account on a Payment Date, or such other date selected by the Trustee pursuant to Section 5.04(b), deposited therein pursuant to the Sale and Servicing Agreement for the benefit of the Notes, to the applicable Noteholders. Amounts properly withheld under the Code or any applicable state law by any Person from a payment to any Noteholder of interest and/or principal shall be considered as having been paid by the Issuer to such Noteholder for all purposes of this Indenture.

Section 3.06 Protection of Indenture Collateral.

(a) The Issuer intends the security interest Granted pursuant to this Indenture in favor of the Trustee on behalf of the Noteholders to be prior to all other liens in respect of the Indenture Collateral other than Permitted Liens, and the Issuer shall take or shall cause the Servicer to take all actions necessary to obtain and maintain, for the benefit of the Trustee on behalf of the Noteholders, a first lien on and a first priority, perfected security interest in the Indenture Collateral, subject to any Permitted Liens with respect thereto. In connection therewith, pursuant to Section 2.09 of the Sale and Servicing Agreement, the Issuer shall cause to be delivered into the possession of the Trustee (or to the Custodian on behalf of the Trustee) as pledgee hereunder, indorsed in blank, any "instruments" (within the meaning of the UCC), not constituting part of chattel paper, evidencing any Loan which is part of the Indenture Collateral and all other portions of the Loan Files. The Trustee acknowledges and agrees that (i) it holds the Loan Assets delivered to it (or to the Custodian) (i) under the Sale and Contribution Agreement for the benefit of the Trust Depositor, and (ii) under the Sale and Servicing Agreement for the benefit of the Issuer, and that it holds the Indenture Collateral delivered to it (or the Custodian) pursuant to this Indenture for the benefit of the Noteholders. The Trustee (through the Custodian) agrees to maintain continuous possession of such delivered instruments and the Loan Files as pledgee hereunder until this Indenture shall have terminated in accordance with its terms or until, pursuant to the terms hereof or of the Sale and Servicing Agreement, the Trustee is otherwise authorized to release such instrument from the Indenture Collateral. The Issuer will or will cause the Servicer from time to time to prepare (or shall cause to be prepared), execute and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance and other instruments, and will take such other action necessary or advisable to:

(i) maintain or preserve the lien and security interest (and the priority thereof) of this Indenture or carry out more effectively the purposes hereof;

(ii) perfect, publish notice of or protect the validity of any Grant made or to be made by this Indenture;

(iii) enforce any of the Loans transferred to the Issuer as and to the extent commercially reasonable and in accordance with the Sale and Servicing Agreement; or

(iv) preserve and defend title to the Indenture Collateral and the rights of the Trustee and the Noteholders in such Indenture Collateral against the claims of all persons and parties.

Except as otherwise provided in or permitted by the Sale and Servicing Agreement or this Indenture, the Trustee shall not remove any portion of the Indenture Collateral held by it that consists of money or is evidenced by an instrument, certificate or other writing from the jurisdiction in which it was held at the date of the most recent Opinion of Counsel delivered pursuant to Section 3.07 (or from the jurisdiction in which it was held as described in the Opinion of Counsel delivered at the Closing Date pursuant to Section 3.07(a), if no Opinion of Counsel has yet been delivered pursuant to Section 3.07(b)) unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to such property will continue to be maintained after giving effect to such action or actions.

The Issuer hereby designates the Trustee its agent and attorney-in-fact to execute any financing statement, continuation statement or other instrument required to be executed pursuant to this Section 3.06; *provided* that such designation shall not impose upon the Trustee any of the Issuer's or Servicer's obligations under this Indenture or the Sale and Servicing Agreement. The Issuer hereby authorizes the filing of all such financing statements in the applicable office(s) of the applicable state(s) for purposes of perfecting the security interests created herein, and such financing statements may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect, notwithstanding that such collateral description may be broader in scope than the collateral described herein.

Section 3.07 Opinions as to Indenture Collateral.

(a) On or before the Closing Date, the Issuer shall furnish to the Trustee an Opinion of Counsel either stating that, in the opinion of such counsel, such action has been taken with respect to the delivery of the Underlying Notes and any other requisite documents, and with respect to the execution and filing of any financing statements and continuation statements, as is necessary to perfect and make effective the lien and security interest of this Indenture and reciting the details of such action, or stating that, in the opinion of such counsel, no such action is necessary to make such lien and security interest effective.

(b) On or before June 30 in each calendar year, beginning in 2023, the Servicer on behalf of the Issuer will furnish to the Trustee and the Rating Agency an Opinion of Counsel at the expense of the Issuer either stating that, in the opinion of such counsel, such action has been taken with respect to any other requisite documents and with respect to the execution and filing of any financing statements and continuation statements as is necessary to maintain the perfection of the lien and security interest created by this Indenture and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary to maintain the perfection of such lien and security interest. Such Opinion of Counsel shall also describe any other requisite documents and the execution and filing of any financing statements and continuation statements that will, in the opinion of such counsel, be required to maintain the lien and security interest of this Indenture until June 30 in the following calendar year.

Section 3.08 **Furnishing of Rule 144A Information.**

The Issuer will furnish, upon the written request of any Noteholder or of any owner of a beneficial interest therein, such information as is specified in paragraph (d)(4) of Rule 144A under the Securities Act (i) to such Noteholder or beneficial owner, (ii) to a prospective purchaser of such Note or interest therein who is a Qualified Institutional Buyer and a Qualified Purchaser designated by such Noteholder or beneficial owner, or (iii) to the Trustee for delivery to such Noteholder, beneficial owner or prospective purchaser, in order to permit compliance by such Noteholder or beneficial owner with Rule 144A in connection with the resale of such Note or beneficial interest therein by such Noteholder or beneficial owner in reliance on Rule 144A unless, at the time of such request, the Issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, or exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act.

Section 3.09 **Performance of Obligations; Sale and Servicing Agreement.**

(a) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, the other Transaction Documents and in the instruments and agreements included in the Indenture Collateral.

(b) The Issuer may contract with other Persons to assist it in performing its duties under this Indenture, the other Transaction Documents and the instruments and agreements included in the Indenture Collateral, and any performance of such duties by a Person identified to the Trustee in an Officer's Certificate of the Issuer shall be deemed to be action taken by the Issuer. Initially, the Issuer has contracted with the Servicer and the Administrator to assist the Issuer in performing its duties under this Indenture, the other Transaction Documents and the instruments and agreements included in the Indenture Collateral.

(c) The Issuer will not take any action or permit any action to be taken by others which would release any Person from any of such Person's covenants or obligations under any of the documents relating to the Loans or under any instrument included in the Indenture Collateral, or which would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any of the documents relating to the Loans or any such instrument, except such actions as the Servicer is expressly permitted to take in the Transaction Documents.

(d) If a Responsible Officer of the Issuer shall have knowledge of the occurrence of a Servicer Default, the Issuer shall promptly notify in writing the Trustee, the Backup Servicer and the Rating Agency thereof, and shall specify in such notice the action, if any, the Issuer is taking in respect of such Servicer Default. If such Servicer Default arises from the failure of the Servicer to perform any of its duties or obligations under the Sale and Servicing Agreement with respect to the Indenture Collateral, the Issuer may, and shall pursuant to direction of the Majority Noteholders, remedy such failure. So long as any such Servicer Default shall be continuing, the Trustee may, and shall pursuant to direction of the Super-Majority Noteholders, exercise its remedies set forth in Section 8.02 of the Sale and Servicing Agreement. Unless granted or permitted by the Holders of the Notes to the extent provided in Article VIII of the Sale and Servicing Agreement, the Issuer may not waive any such Servicer Default or terminate the rights and powers of the Servicer under the Sale and Servicing Agreement.

Section 3.10 **Negative Covenants.**

So long as any Notes are Outstanding, the Issuer shall not:

(i) except as expressly permitted by this Indenture or any other Transaction Document, sell, transfer, exchange or otherwise dispose of any portion the Indenture Collateral, unless directed to do so by the Trustee;

(ii) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes (other than amounts properly withheld from such payments under the Code or applicable state law), or assert any claim against any present or former Noteholder by reason of the payment of the taxes levied or assessed upon the Issuer;

(iii) permit the validity or effectiveness of this Indenture to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations with respect to the Notes under this Indenture except as may be expressly permitted hereby, permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture or any other Transaction Document) to be created on or extend to or otherwise arise upon or burden the Indenture Collateral or any part thereof or any interest therein or the proceeds thereof (except for Permitted Liens) or permit the lien of this Indenture not to constitute a valid first priority security interest in the Indenture Collateral (subject to Permitted Liens);

(iv) except as contemplated in the Transaction Documents, dissolve or liquidate in whole or in part;

(v) engage in any activities other than financing, acquiring, owning, pledging and managing the Loans as contemplated by the Transaction Documents and activities incidental to those activities;

(vi) incur, assume or guarantee any indebtedness other than indebtedness evidenced by the Notes or indebtedness otherwise permitted by the Transaction Documents;

(vii) have any employees, it being understood that the Issuer's officers shall not be considered employees; or

(viii) establish, maintain, contribute to, or incur any liability in respect of any Plan or any similar such plan subject to Similar Law.

Section 3.11 **Annual Statement as to Compliance.**

The Issuer will deliver to the Trustee and the Rating Agency, within 90 days after the end of each calendar year (commencing with the calendar year ending December 31, 2022), an Officer's Certificate stating, as to the Person signing such Officer's Certificate, that:

(i) a review of the activities of the Issuer during such year and of its performance under this Indenture has been made under such Person's supervision or direction; and

(ii) to the best of such Person's knowledge, based on such review, the Issuer has complied with all conditions and covenants under this Indenture throughout such year, or, if there has been such a default in its compliance with any such condition or covenant, specifying each such default known to such Person and the nature and status thereof.

Section 3.12 **[Reserved].**

Section 3.13 **Representations and Warranties Concerning the Loans.**

The Issuer has pledged to the Trustee for the benefit of the Noteholders all of its rights under the Sale and Contribution Agreement and the Sale and Servicing Agreement (except for the Excluded Property) and the Trustee has the benefit of the representations and warranties made by the Seller and the Trust Depositor in such documents

concerning the Loans transferred into the Loan Assets and the right to enforce any remedy against the Seller and the Trust Depositor provided in the Sale and Contribution Agreement and the Sale and Servicing Agreement, to the same extent as though such representations and warranties were made directly to the Trustee.

Section 3.14 Trustee's Review of Loan Files.

The Custodian, on behalf of the Trustee, agrees, for the benefit of the Noteholders, to review the Required Loan Documents that are part of the Loan Files as provided in Section 2.11 of the Sale and Servicing Agreement.

Section 3.15 Sale and Servicing Agreement.

In order to facilitate the servicing of the Loans, the Trustee and the Issuer authorize the Servicer, in the name and on behalf of the Trustee and the Issuer, to perform its respective duties and obligations under the Sale and Servicing Agreement and the rights of the Trustee pursuant to the third sentence of Section 8.01 hereof. The Trustee agrees to perform its express obligations under the Sale and Servicing Agreement in accordance with the terms thereof subject to Section 6.01 hereof.

Section 3.16 Amendments to Sale and Servicing Agreement.

The Trustee may enter into any amendment or supplement to the Sale and Servicing Agreement only in accordance with Section 13.01 of the Sale and Servicing Agreement. The Trustee may, in its reasonable discretion, decline to enter into or consent to any such supplement or amendment if its own rights, duties or immunities shall be adversely affected in any material respect.

Section 3.17 Servicer as Agent and Bailee of Trustee.

(a) Solely for purposes of perfection under Section 9-313 of the UCC or other similar applicable law, rule or regulation of the state in which such property is held by the Servicer, the Trustee hereby acknowledges that the Servicer is acting as agent and bailee of the Trustee in holding any documents released to the Servicer pursuant to the Sale and Servicing Agreement as well as any other items constituting a part of the Indenture Collateral which from time to time come into the possession of the Servicer. It is intended that, by the Servicer's execution and delivery of the Sale and Servicing Agreement, the Trustee, as a secured party, will be deemed to have possession of such documents, such moneys and such other items for purposes of Section 9-313 of the UCC of the state in which such property is held by the Servicer.

(b) Solely for purposes of perfection under Section 9-313 of the UCC or other similar applicable law, rule or regulation of the state in which such property is held by the Trustee, if the transfer of the Loans and the other assets in the Indenture Collateral by the Trust Depositor to the Issuer is deemed to be a loan, the Custodian hereby acknowledges it is acting as agent and bailee of the Issuer in holding items constituting a part of the Indenture Collateral which from time to time come into the possession of the Trustee.

Section 3.18 Investment Company Act of 1940.

The Issuer shall not and the Trustee shall not knowingly take any action that would cause the Issuer or the pool of Indenture Collateral to be required to register as an "investment company" under the 1940 Act (or any successor or amendatory statute).

Section 3.19 **Issuer May Consolidate, etc., Only on Certain Terms.**

(a) The Issuer shall not consolidate or merge with or into any other Person, unless:

(i) the Person (if other than the Issuer) formed by or surviving such consolidation or merger shall be a Person organized and existing under the laws of the United States or any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee in form satisfactory to the Trustee, the due and punctual payment of the principal of and interest on all Notes, and the performance or observance of every agreement and covenant of this Indenture, the Notes, the Trust Certificate and each other Transaction Document on the part of the Issuer to be performed or observed, all as provided herein and therein;

(ii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(iii) each Holder of a Note has consented in writing to such transaction (and notice thereof has been provided to the Rating Agency);

(iv) the Issuer shall have received written advice from Dechert LLP or Winston & Strawn LLP or an opinion of tax counsel of nationally recognized standing in the United States experiences in such matters (and shall have delivered copies thereof to the Trustee on which the Trustee may conclusively rely) to the effect that such transaction will not (1) cause the Issuer to be treated as an association, publicly traded partnership or taxable mortgage pool, in each case, taxable as a corporation for U.S. federal income tax purposes, (2) cause the Notes to be deemed to have been sold or exchanged under Section 1001 of the Code or (3) cause any Notes that were characterized as indebtedness at the time of issuance to be characterized as other than indebtedness;

(v) any action that is necessary to maintain the lien and security interest created by this Indenture shall have been taken; and

(vi) the Issuer shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel (which may conclusively rely on the Officer's Certificate with respect to clauses (ii) and (iii) above and as to the taking of any action required by such Opinion of Counsel as it relates to clause (v) above) each stating that such consolidation or merger complies with this Section 3.19 and that all conditions precedent herein provided for relating to such transaction have been complied with.

(b) Except as otherwise permitted hereunder or under the Transaction Documents, the Issuer shall not convey or transfer all or substantially all of its properties or assets, including those included in the Indenture Collateral, to any Person, unless:

(i) the Person that acquires by conveyance or transfer the properties and assets of the Issuer the conveyance or transfer of which is hereby restricted shall be a United States citizen or a Person organized and existing under the laws of the United States or any state thereof or the District of Columbia, expressly assumes, by an indenture supplemental hereto, executed and delivered to the Trustee, in form and substance reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and interest on all Notes, and the performance of each other Transaction Document, and the performance or observance of every agreement and covenant of this Indenture, the Notes, the Trust Certificate and each other Transaction Document on the part of the Issuer to be performed or observed, all as provided herein, expressly agrees by means of such supplemental indenture that all right, title and interest so conveyed or transferred shall be subject and subordinate to the rights of the Holders of the Notes as provided in the Transaction Documents,

and unless otherwise provided in such supplemental indenture, expressly agrees to indemnify, defend and hold harmless the Issuer against and from any loss, liability or expense arising under or related to this Indenture and the Notes arising from such transfer;

(ii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(iii) each Holder of a Note has consented in writing to such transaction (and notice thereof has been provided to Rating Agency);

(iv) the Issuer shall have received written advice from Dechert LLP or Winston & Strawn LLP or an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters (and shall have delivered copies thereof to the Trustee on which the Trustee shall be entitled to rely) to the effect that such transaction will not (1) cause the Issuer to be treated as an association, publicly traded partnership or taxable mortgage pool, in each case, taxable as a corporation for U.S. federal income tax purposes, (2) cause the Notes to be deemed to have been sold or exchanged under Section 1001 of the Code or (3) cause any Notes that were characterized as indebtedness at the time of issuance to be characterized as other than indebtedness;

(v) any action that is necessary to maintain the lien and security interest created by this Indenture shall have been taken; and

(vi) the Issuer shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel (which may conclusively rely on a certificate of the transferee as to the transferee's citizenship, if applicable, and on the Officer's Certificate with respect to clauses (ii) and (iii) above and to the taking of any action required by such Opinion of Counsel as it relates to clause (v) above) each stating that such conveyance or transfer, and such supplemental indenture, comply with this Section 3.19 and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 3.20 Successor or Transferee.

(a) Upon any consolidation or merger of the Issuer in accordance with Section 3.19(a), the Person formed by or surviving such consolidation or merger (if other than the Issuer) shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Person had been named as the Issuer herein.

(b) Upon a conveyance or transfer of all or substantially all of the assets and properties of the Issuer pursuant to Section 3.19(b), the Issuer will be released from every covenant and agreement of this Indenture to be observed or performed on the part of the Issuer with respect to the Notes immediately upon the delivery of written notice to the Trustee stating that the Issuer is to be so released.

Section 3.21 No Other Business.

The Issuer shall not engage in any business other than financing, purchasing, owning, selling, managing and enforcing the Loans and Related Property, including through any subsidiaries permitted pursuant to Section 5.10 of the Sale and Servicing Agreement, in the manner contemplated by this Indenture and the other Transaction Documents and all activities incidental thereto, issuing the Notes and the Trust Certificate and as otherwise expressly permitted in the Trust Agreement or the other Transaction Documents.

Section 3.22 **No Borrowing; Use of Proceeds.**

The Issuer shall not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any indebtedness except for the Notes and any other indebtedness permitted by the Transaction Documents. In consideration of the Trust Depositor's transfer of the Initial Loans to the Issuer, the Issuer will transfer the net cash proceeds from the sale of the Notes to the Trust Depositor, together with the Trust Certificate. The Trust Depositor will use a portion of the net proceeds to acquire the Initial Loans from the Seller on the Closing Date.

Section 3.23 **Guarantees, Loans, Advances and Other Liabilities.**

Except as contemplated by this Indenture or the other Transaction Documents, the Issuer shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person, other than any subsidiary established by the Issuer pursuant to Section 5.10 of the Sale and Servicing Agreement.

Section 3.24 **Capital Expenditures.**

The Issuer shall not make any expenditure (by long-term or operating lease or otherwise) for capital assets (either realty or personalty).

Section 3.25 **Representations and Warranties of the Issuer.**

The Issuer represents and warrants as of the date hereof and as of the date of any subsequent acquisition of a Substitute Loan, as applicable, as follows:

(a) Power and Authority. It has full power, authority and legal right to execute, deliver and perform its obligations as Issuer under this Indenture and the Notes (the foregoing documents, the "Issuer Documents") and under each of the other Transaction Documents to which the Issuer is a party.

(b) Due Authorization and Binding Obligation. The execution and delivery of the Issuer Documents and the other Transaction Documents to which the Issuer is a party, and the consummation of the transactions provided for therein have been duly authorized by all necessary action on its part. Each of the Issuer Documents and the other Transaction Documents to which the Issuer is a party constitutes the legal, valid and binding obligation of the Issuer and is enforceable in accordance with its terms, except as enforcement of such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by the availability of equitable remedies.

(c) No Conflict. The execution and delivery of the Issuer Documents and the other Transaction Documents to which the Issuer is a party, the performance of the transactions contemplated thereby and the fulfillment of the terms thereof will not conflict with, result in any material breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, any indenture, contract, agreement, mortgage, deed of trust, or other instrument to which the Issuer is a party or by which it or any of its property is bound.

(d) No Violation. The execution and delivery of the Issuer Documents and the other Transaction Documents to which the Issuer is a party, the performance of the transactions contemplated thereby and the fulfillment of the terms thereof will not conflict with or violate, in any material respect, any Applicable Law.

(e) All Consents Required. All approvals, authorizations, consents, orders or other actions of any Person or any Governmental Authority required in connection with the execution and delivery of the Issuer Documents and the other Transaction Documents to which the Issuer is a party, the performance of the transactions contemplated thereby and the fulfillment of the terms thereof have been obtained.

(f) No Proceedings. No litigation or administrative proceeding of or before any court, tribunal or governmental body is currently pending, or to the knowledge of the Issuer, threatened, against the Issuer or any of its respective properties or with respect to the Issuer Documents or any other Transaction Document to which the Issuer is a party that, if adversely determined, would have a material adverse effect on the business, properties, assets or condition (financial or otherwise) of the Issuer or the transactions contemplated by the Issuer Documents or any of the other Transaction Documents to which the Issuer is a party.

(g) Organization and Good Standing. The Issuer is a statutory trust duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite power to own its assets and to transact the business in which it is currently engaged, and had at all relevant times, and now has, all necessary power, authority and legal right under its organizational documents and under Applicable Law to acquire, own and pledge the Indenture Collateral.

(h) 1940 Act. The Issuer is not an "investment company" within the meaning of the 1940 Act. The Issuer will rely on an exclusion or exemption from the definition of "investment company" under the 1940 Act contained in Section 3(c)7 thereof and Rule 3a-7 thereof, and will qualify for the "loan securitization" exemption set forth in the implementing regulations of the Volcker Rule. The Issuer is not a "covered fund" for purposes of the regulations adopted to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (such statutory provision together with such implementing regulations, the "Volcker Rule").

(i) Location. The Issuer is located (within the meaning of Article 9 of the UCC) in the State of Delaware. The Issuer agrees that it will not change its location (within the meaning of Article 9 of the UCC) without at least 30 days prior written notice to the Seller, the Servicer, the Trustee and the Rating Agency.

(j) Security Interest in Collateral.

(i) This Indenture creates a valid, continuing and enforceable security interest (as defined in the applicable UCC) in the Indenture Collateral in favor of the Trustee, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from the Issuer;

(ii) the Indenture Collateral constitutes "general intangibles," "instruments," "accounts," "investment property," or "chattel paper," within the meaning of the applicable UCC;

(iii) the Issuer owns and has good and marketable title to the Indenture Collateral free and clear of any Lien (other than Permitted Liens), claim or encumbrance of any Person;

(iv) the Issuer has received all consents and approvals required by the terms of the Indenture Collateral to the pledge of the Indenture Collateral hereunder to the Trustee;

(v) the Issuer has caused the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Indenture Collateral granted to the Trustee under this Indenture;

(vi) other than the security interest granted by the Issuer pursuant to this Indenture and any Permitted Liens, the Issuer has not pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the Indenture Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Indenture Collateral other than any financing statement (A) relating to the security interest granted by the Issuer under this Indenture, or (B) that has been terminated or for which a release or partial release has been filed. The Issuer is not aware of the filing of any judgment or tax Lien filings against the Issuer;

(vii) all original executed copies of each Underlying Note that constitute or evidence the Indenture Collateral have been delivered to and are in the possession of the Trustee;

(viii) the Issuer has received a written acknowledgment from the Trustee that the Trustee or its bailee is holding the Underlying Notes that constitute or evidence the Indenture Collateral solely on behalf of and for the benefit of the Securityholders; and

none of the Underlying Notes that constitute or evidence the Indenture Collateral has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Issuer and the Trustee.

The representations and warranties in Section 3.25(j) shall survive the termination of this Indenture.

Section 3.26 Restricted Payments.

The Issuer shall not, directly or indirectly, (i) pay any dividend or make any distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, to the Owner Trustee or any owner of a beneficial interest in the Issuer or otherwise with respect to any ownership or equity interest or security in or of the Issuer, (ii) redeem, purchase, retire or otherwise acquire for value any such ownership or equity interest or security or (iii) set aside or otherwise segregate any amounts for any such purpose; *provided* that the Issuer may make, or cause to be made, (w) distributions to the Owner Trustee, the Trust Depositor and the Certificateholder as contemplated by, and to the extent funds are available for such purpose under, the Trust Agreement and the Sale and Servicing Agreement, (x) payments to the Servicer and/or Trust Depositor pursuant to the terms of the Sale and Servicing Agreement or the other Transaction Documents and (y) payments to the Trustee and other Persons entitled thereto pursuant to terms of the Sale and Servicing Agreement. The Issuer will not, directly or indirectly, make payments to or distributions from the Distribution Account except in accordance with this Indenture and the other Transaction Documents.

Section 3.27 Notice of Events of Default, Amendments and Waivers.

Promptly, but in any case no later than within two (2) Business Days of discovery by a Responsible Officer of the Issuer (or receipt of notice thereof by the Issuer), the Issuer shall furnish to the Trustee (with a copy to the Backup Servicer), (i) in the case of any proposed or pending litigation or investigation relating to it by any governmental authority or any legal proceeding which involve or may involve the possibility of materially and adversely affecting the Issuer, a written notice specifying the nature of such litigation, investigation or proceeding or the action the Issuer is taking or proposes to take with respect thereto, (ii) written notice of the occurrence of any Event of Default or Servicer Default or of any situation which the Issuer reasonably expects to develop into an Event of Default or Servicer Default, or (iii) written notice of any event or occurrence (including changes in applicable law) of which the Servicer or Issuer (as applicable) has knowledge that may reasonably affect, materially and adversely, the ability of the Servicer to service the Loans or to otherwise perform and carry out its duties, responsibilities and obligations under the Transaction Documents, provided, that in the case of any notice required pursuant to (ii) or (iii) above, the Servicer or the Issuer, as applicable, shall provide a copy of such notice to the Rating Agency. The Trustee shall make available to Holders any notice delivered to it pursuant to (i), (ii) or (iii) above (including posting to its

website), but shall not be under any obligation to review or evaluate any such notice, or to investigate or inquire further into any matter described therein.

Section 3.28 Further Instruments and Acts.

Upon request of the Trustee, the Issuer will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture (provided nothing herein shall be deemed to impose an obligation on the Trustee to so request).

Section 3.29 Statements to Noteholders.

The Trustee shall make available on its secure internet website to each Noteholder and the Rating Agency, the Monthly Reports prepared by the Servicer pursuant to Article IX of the Sale and Servicing Agreement. The Trustee shall make available to the Noteholders, the parties to the Transaction Documents and the Rating Agency, via the Trustee's internet website, a copy of the Transaction Documents, each Monthly Report and, with the consent or at the direction of the Trust Depositor, such other information regarding the Notes and/or the Loans as the Trustee may have in its possession or as may be provided to the Trustee by the Servicer or the Trust Depositor, but only with the use of its secured internet website; *provided* the Trustee shall have no obligation to provide such information described in this Section 3.29 until it has received the requisite information from the Trust Depositor or the Servicer. The Trustee will make no representation or warranties as to the accuracy or completeness of such documents posted to its website and will assume no responsibility therefor.

The Trustee's secure internet website shall be initially located at http://pivot.usbank.com or at such other address as shall be specified by the Trustee from time to time in writing to the Noteholders, the parties to the Transaction Documents and the Issuer (who shall promptly forward the same to the Rating Agency). In connection with providing access to the Trustee's internet website, the Trustee shall (other than with respect to the parties to the Transaction Documents and the Rating Agency) require registration and the acceptance of a disclaimer. The Trustee shall be permitted to change the method by which the Monthly Reports are distributed in order to make such distributions more convenient and/or more accessible to the Holders. The Trustee shall not be liable for the dissemination of information in accordance with this Indenture.

Section 3.30 Grant of Substitute Loans and Additional Loans

In consideration of the delivery or acquisition of Loans transferred on each Substitute Loan Cutoff Date or each Additional Loan Cutoff Date, as applicable, pursuant to and in accordance with the terms of Section 2.04, Section 2.06 or Section 2.07, as applicable, of the Sale and Servicing Agreement, the Issuer grants to the Trustee a security interest in all of its right, title and interest in the Loans transferred on such Substitute Loan Cutoff Date or such Additional Loan Cutoff Date, as applicable, and simultaneously with the transfer of the Substitute Loans and Additional Loans, as applicable, the Issuer will cause the related Loan File to be delivered to the Trustee or the Custodian on its behalf.

ARTICLE IV
THE NOTES; SATISFACTION AND DISCHARGE OF INDENTURE

Section 4.01 The Notes.

The Notes shall, on original issue, be executed on behalf of the Issuer by the Owner Trustee, not in its individual capacity but solely as Owner Trustee, authenticated and delivered by the Trustee upon receipt of an Issuer Order.

Section 4.02 **Registration of Transfer and Exchange of Notes.**

(a) The Trustee shall cause to be kept a Note Register (the "Note Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Notes and the registration of transfers and exchanges of Notes as herein provided. The Trustee shall be "Note Registrar" for the purpose of registering Notes and transfers of Notes as herein provided. The Note Register shall contain the name, remittance instructions, as well as the Series and the number in the Series.

(b) Each Note shall be issued in minimum denominations of not less than the Minimum Denomination, so that on the Closing Date the sum of the denominations of all outstanding Notes shall equal the applicable Initial Note Principal Balance. On the Closing Date and pursuant to an Issuer Order, the Trustee will execute and authenticate Notes all in an aggregate principal amount that shall equal the Initial Note Principal Balance.

(c) Subject to the restrictions on transfer and exchange set forth in this Section 4.02, the Holder of any Note may transfer or exchange the same in whole or in part (in a Note balance amount or amounts not less than the applicable Minimum Denomination) by surrendering such Note at the Corporate Trust Office, or at the office of any transfer agent, together with an executed instrument of assignment and transfer reasonably satisfactory in form and substance to the Note Registrar in the case of transfer and a written request for exchange in the case of exchange. Following a proper request for transfer or exchange, the Note Registrar shall, within five Business Days of such request made at such Corporate Trust Office, cause the Trustee to authenticate and the Note Registrar to deliver at such Corporate Trust Office, to the transferee (in the case of transfer) or Holder (in the case of exchange) or send by first-class mail or by overnight delivery service at the risk of the transferee (in the case of transfer) or Holder (in the case of exchange) to such address as the transferee or Holder, as applicable, may request, a Note or Notes, as the case may require, for a like aggregate Percentage Interest and in such Note balance amount or amounts and authorized denomination or denominations as may be requested. The presentation for transfer or exchange of any Note shall not be valid unless made at the Corporate Trust Office by the registered Holder in person, or by a duly authorized attorney-in-fact.

(d) (i) No transfer of any Note shall be made unless such transfer is exempt from the registration requirements of the Securities Act and any applicable state securities laws or is made in accordance with the Securities Act and such laws. No transfer of any Note shall be made if such transfer would require the Issuer to register as an "investment company" under the 1940 Act. The Holder of a Note desiring to effect such transfer shall, and by accepting a Note and the benefits of this Indenture does hereby agree to, indemnify the Trustee, the Issuer and the Servicer against any liability that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws. None of the Issuer, the Trustee, the Servicer or the Trust Depositor is obligated to register or qualify any Note under the Securities Act or any state or international securities laws.

(ii) If, at any time, any Holder of any Note is not both a Qualified Purchaser and either (1) a Qualified Institutional Buyer or (2) an Institutional Accredited Investor (any such person, a "Non-Permitted Holder"), the Issuer shall, promptly after obtaining actual knowledge that such person is a Non-Permitted Holder, send notice to such Non-Permitted Holder demanding that such Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within thirty (30) days of the date of such notice. If such Non-Permitted Holder fails to transfer such Notes, the Issuer shall have the right, without further notice to the Non-Permitted Holder, to sell such Notes or interests in such Notes to a purchaser selected by the Issuer that is not a Non-Permitted Holder on such terms and by such means as the Issuer may choose in its sole discretion. The Holder of each Note, the Non-Permitted Holder and each other Person in the chain of title from the Holder to the Non-Permitted Holder, by its acceptance of an interest in the Notes, agrees to cooperate with the Issuer and the Trustee to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale, shall be remitted to the Non-Permitted Holder.

(e) No Note, or any interest therein, may be acquired directly or indirectly by, for, on behalf of or with any assets of an employee benefit plan as defined in Section 3(3) of ERISA that is subject to Part 4, Subtitle B of Title I of ERISA, any plan, account or arrangement described in and subject to Section 4975 of the Code, or an entity whose underlying assets include "plan assets" (as defined in 29 CFR Section 2510.3-101, as modified by Section 3(42) of ERISA) of any plan, account or arrangement covered by ERISA or the Code (collectively, a "Plan") or governmental, non-U.S. or church plan or arrangement subject to any federal, state, local or non-U.S. law or regulation substantively similar or of similar effect to Section 406 of ERISA or Section 4975 of the Code ("Similar Law") unless it represents or is deemed to represent that its acquisition, holding and disposition of the Note will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code by reason of any of Section 408(b)(17) of ERISA or Section 4975(d)(20) of the Code, Prohibited Transaction Class Exemption ("PTCE") 96-23, PTCE 95-60, PTCE 91-38, PTCE 90-1, PTCE 84-14, each as amended, or otherwise or, in the case of a governmental, non-U.S. or church plan or arrangement subject to Similar Law, will not constitute or result in a non-exempt violation of Similar Law. Such representation shall be made in a certification from the transferee to the Trustee.

(f) The Trustee, Note Registrar and Certificate Registrar shall not be responsible for ascertaining whether any transfer complies with, or otherwise monitoring or determining compliance with, the requirements or terms of the Securities Act, applicable state or international securities laws, ERISA, the Code or the 1940 Act; except that if a transfer certificate or opinion is specifically required by the terms of this Section (or, with respect to the Certificates, by the terms of the Trust Agreement, as applicable) to be provided to the Trustee, Note Registrar or Certificate Registrar by a prospective transferee or transferor, the Trustee, Note Registrar or Certificate Registrar, as applicable, shall be under a duty to receive and examine the same to determine whether it conforms substantially on its face to the applicable requirements of this Section (or the Trust Agreement, as applicable).

(g) Any Note may be cancelled by the Note Registrar without any notice to or approval of any Noteholder in accordance with Section 4.03 or once such Note has been properly surrendered for (i) final payment, (ii) transfer and exchange or (iii) redemption. Any Note acquired by the Issuer or otherwise surrendered for cancellation or marked as abandoned by Holder thereof will be cancelled by the Note Registrar only upon receipt of written consent thereto from both the Servicer and the Super-Majority Noteholders.

(h) Each Noteholder and each beneficial owner of a Note shall be deemed to acknowledge that (i) none of the Issuer, the Servicer, the Trustee, the Owner Trustee, the Custodian, or any of their respective affiliates is acting as a fiduciary or financial or investment adviser for such beneficial owner; and (ii) such beneficial owner has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary and has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to the Indenture) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the Issuer, the Servicer, the Backup Servicer, the Trustee, the Owner Trustee, the Custodian or any of their respective affiliates.

(i) Each Noteholder and each beneficial owner of a Note shall be deemed to acknowledge that (i) such beneficial owner was not formed for the purpose of investing in the Notes; and (ii) such beneficial owner understands that the Issuer may receive a list of participants holding interests in the Notes from one or more book-entry depositories.

Section 4.03 Mutilated, Destroyed, Lost or Stolen Notes.

If (i) any mutilated Note is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Trustee such security or indemnity as may be required by it to hold the Issuer and the Trustee harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Trustee that such Note has been acquired by a protected purchaser, the Issuer shall execute, and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a replacement Note; *provided* that if any such destroyed, lost or stolen Note, but not a mutilated Note,

shall have become or within seven days shall be due and payable, or shall have been called for redemption, instead of issuing a replacement Note, the Issuer may pay such destroyed, lost or stolen Note when so due without surrender thereof. If, after the delivery of such replacement Note or payment of a destroyed, lost or stolen Note pursuant to the proviso to the preceding sentence, a protected purchaser of the original Note in lieu of which such replacement Note was issued presents for payment such original Note, the Issuer and the Trustee shall be entitled to recover such replacement Note (or such payment) from the Person to whom it was delivered or any Person taking such replacement Note from such Person to whom such replacement Note was delivered or any assignee of such Person, except a protected purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Issuer or the Trustee in connection therewith.

Upon the issuance of any replacement Note under this Section 4.03, the Issuer may require the payment by the Holder of such Note of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the fees and reasonable expenses of the Trustee) connected therewith.

Every replacement Note issued pursuant to this Section 4.03 in replacement of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuer, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 4.03 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 4.04 Payment of Principal and Interest; Defaulted Interest.

(a) The Notes shall accrue interest during each Interest Period on the basis of a 360 day year consisting of twelve 30-day months (or in the case of the first Payment Date, an accrual period of thirty (30) days). Any installment of interest or principal, if any, payable on any Note which is punctually paid or duly provided for by the Issuer on the applicable Payment Date shall be paid to the Person in whose name such Note is registered on the Record Date, by check mailed first-class, postage prepaid, to such Person's address as it appears on the Note Register on such Record Date, except that the Redemption Price for any Note called for redemption pursuant to Article X hereof shall be payable as provided in Section 4.04(b) or Article X hereof, as applicable. The funds represented by any such checks returned undelivered shall be held in accordance with Section 3.03.

(b) The principal of each Note shall be payable on each Payment Date to the extent of funds available therefor in accordance with the Priority of Payments as provided in the Sale and Servicing Agreement. Notwithstanding the foregoing, the entire unpaid principal amount of the Notes shall be due and payable, if not previously paid, on the date on which an Event of Default shall have occurred and be continuing, if the Trustee with the consent or at the direction of the Majority Noteholders has declared the Notes to be immediately due and payable in the manner provided in Section 5.02. All principal payments among the Notes shall be made in the order and priorities set forth herein and in the Sale and Servicing Agreement and all principal payments on the Notes shall be made *pro rata* to the Noteholders. The Trustee shall notify the Person in whose name a Note is registered at the close of business on the Record Date preceding the Payment Date on which the Issuer expects that the final installment of principal of and interest on such Note will be paid; *provided* that the Issuer or Servicer shall have provided the Trustee with timely notice of such expectation. Such notice shall be mailed or transmitted by facsimile or other electronic mail prior to such final Payment Date and shall specify that such final installment will be payable only upon presentation and surrender of such Note and shall specify the place where such Note may be presented and surrendered for payment of such installment. Notices in connection with a redemption shall be given to Noteholders as provided in Article X.

Section 4.05 **Tax Treatment.**

(a) The Issuer has entered into this Indenture, and the Notes will be issued, with the intention that, for federal, state and local income and franchise tax purposes, (i) the Notes will be treated as indebtedness secured by the Indenture Collateral and (ii) the Issuer shall not be treated as an association, taxable mortgage pool or publicly traded partnership, in each case, taxable as a corporation for U.S. federal income tax purposes. The Issuer, by entering into this Indenture, and each Noteholder, by the acceptance of any such Note (and each beneficial owner of a Note, by its acceptance of an interest in the applicable Note), agree to treat such Notes for federal, state and local income and franchise tax purposes as indebtedness. Each Holder of any such Note agrees that it will cause any beneficial owner of such Note acquiring an interest in a Note through it to comply with this Indenture as to treatment of indebtedness under applicable tax law, as described in this Section 4.05. The parties hereto agree that they shall not cause or permit the making, as applicable, of any election under Treasury Regulations Section 301.7701-3 whereby the Issuer or any portion thereof would be treated as a corporation for federal income tax purposes and, except as required by the terms of this Indenture or applicable law, shall not file tax returns for the Issuer, but shall treat the Issuer as a disregarded entity for federal income tax purposes (unless, pursuant to Section 4.05(b)(ii), the Issuer is treated as a partnership). The provisions of this Indenture shall be construed in furtherance of the foregoing intended tax treatment.

(b) It is the intent of the Trust Depositor, the Servicer and the Certificateholder that, for federal income tax purposes, (i) in the event that the Trust Certificate is owned by a single beneficial owner, for federal income tax purposes, the Issuer will be disregarded as an entity separate from such beneficial owner, and the Certificateholder (and the beneficial owner of the Trust Certificate), by acceptance of the Trust Certificate (or a beneficial interest therein), agrees to take no action inconsistent with such treatment and (ii) in the event that the Trust Certificate is owned by more than one beneficial owner for federal income tax purposes, the Issuer will be treated as a partnership, the partners of which are the beneficial owners of the Trust Certificate, and each Certificateholder (and beneficial owner of the Trust Certificate), by acceptance of a Trust Certificate (or beneficial interest therein), agrees to treat the Trust Certificate as equity and to take no action inconsistent with such treatment.

(c) All payments made by the Issuer under the Notes will be made without any deduction or withholding for or on account of any tax unless such deduction or withholding is required by applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If the Issuer is so required to deduct or withhold it will provide notice to the Trustee of such requirement promptly after a Responsible Officer becomes aware thereof and the Issuer will not be obligated to pay to the holder of any such Note any additional amounts in respect of such withholding or deduction.

(d) Each Holder and each beneficial owner of a Note, by acceptance of such Note or its interest in such Note, shall be deemed to understand and acknowledge that failure to provide the Issuer, the Trustee or any other party acting as Paying Agent with the applicable U.S. federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or successor applicable form) in the case of a person that is a "United States person" within the meaning of Section 7701(a)(30) of the Code or an appropriate Internal Revenue Service Form W-8 (or successor applicable form) in the case of a person that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code) or any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. withholding tax (including, but not limited to, any withholding tax imposed under FATCA), duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit the Issuer to determine the withholding or deduction required to be made, may result in amounts being withheld from payments in respect of such Note.

Section 4.06 **Satisfaction and Discharge of Indenture.**

(a) The following shall survive the satisfaction and discharge of this Indenture: (i) rights of registration of transfer and exchange, (ii) substitution of mutilated, destroyed, lost or stolen Notes pursuant to Section 4.03, (iii) rights of Noteholders to receive payments of principal thereof and interest thereon, (iv) Sections 3.03, 3.04, 3.06, 3.10,

3.19, 3.21, 3.22, 4.05, 6.07, 11.15 and the second sentence of 11.16, (v) the rights, obligations and immunities of the Trustee hereunder (including the rights of the Trustee under Section 6.07 and the obligations of the Trustee under Section 4.07) and (vi) the rights of Noteholders as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them. This Indenture shall cease to be of further effect with respect to the Notes (and the Trustee, on written demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture with respect to the Notes) when:

(A) either

(1) all Notes theretofore authenticated and delivered (other than (i) Notes that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 4.03 and (ii) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 3.03) have been delivered to the Trustee for cancellation (two Business Days prior to the final Payment Date) pursuant to Section 4.02(v); or

(2) all Notes not theretofore delivered to the Trustee for cancellation:

(i) have become due and payable; or

(ii) mature within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer;

and the Issuer, in the case of (2)(i) or (ii) above, has irrevocably deposited or caused to be irrevocably deposited with the Trustee cash or direct obligations of or obligations guaranteed by the United States of America (which will mature prior to the date such amounts are payable), in trust for such purpose, in an amount sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation when due to the Stated Maturity therefor, Redemption Date (if Notes shall have been called for redemption pursuant to Article X), as the case may be and, unless each Holder of each Note has consented to such deposit and satisfaction and discharge of this Indenture, the Issuer has delivered to the Trustee an opinion of U.S. tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that the Holders of the Notes would recognized no gain or loss for U.S. federal income tax purposes solely as a result of such deposit and satisfaction and discharge of this Indenture; and

(B) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, which may be internal counsel to the Issuer or the Servicer and if requested by the Trustee, a certificate from a firm of acceptable public accountants, meeting the applicable requirements of Section 11.02 and, subject to Section 11.02, stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes have been complied with;

(C) [reserved]; and

(D) the Issuer has made payment of all other sums due under this Indenture, the Trust Agreement and the Sale and Servicing Agreement.

(b) By acceptance of any Note, the Holder thereof agrees to surrender such Note to the Trustee promptly upon such Noteholder's receipt of the final payment thereon or as otherwise provided in the Transaction Documents.

Section 4.07 **Application of Trust Money.**

All moneys deposited with the Trustee pursuant to Section 4.06 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent, as the Trustee may determine, to the Holders of Notes for the payment or redemption for which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest; but such moneys need not be segregated from other funds except to the extent required herein or in the Sale and Servicing Agreement or required by law.

Section 4.08 **Repayment of Moneys Held by Paying Agent.**

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all moneys then held by any Paying Agent other than the Trustee under the provisions of this Indenture with respect to such Notes shall, upon demand of the Issuer, be paid to the Trustee to be held and applied according to Section 3.05 and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

ARTICLE V
REMEDIES

Section 5.01 **Events of Default.**

Any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "Event of Default":

(i) failure to pay all accrued interest on the Notes on any Payment Date and such failure continues unremedied for two (2) Business Days;

(ii) failure to pay the Outstanding Principal Balance of the Notes by the Legal Final Payment Date;

(iii) a default in the observance or performance of any covenant or agreement of the Seller, the Trust Depositor or the Issuer made in this Indenture or any other Transaction Document, and such default has a material adverse effect on the Noteholders, which default continues unremedied for a period of 30 days after the first to occur of (i) actual knowledge thereof by a Responsible Officer of the Seller, the Trust Depositor or the Issuer, as applicable, or (ii) there shall have been given, by registered or certified mail, to the Issuer by the Trustee (upon receipt of actual knowledge by a Responsible Officer thereof), a written notice specifying such default and requiring it to be remedied and stating that such notice is a notice of default hereunder;

(iv) any representation, warranty, certification or written statement of the Seller, the Trust Depositor or the Issuer in this Indenture or any other Transaction Document or in any certificate delivered under this Indenture shall prove to have been incorrect in any material respect when made, and such incorrect representation or warranty has a material adverse effect on the Noteholders, and which default continues unremedied for a period of 30 days after the first to occur of (i) actual knowledge thereof by a Responsible Officer of the Seller, the Trust Depositor or the Issuer, as applicable, or (ii) the delivery to the Issuer by the Trustee, by registered or certified mail, of written notice specifying such incorrect representation or warranty and requiring it to be remedied and stating that such notice is a notice of default hereunder;

(v) there occurs the filing of a decree or order for relief by a court having jurisdiction in the premises in respect of the Trust Depositor, the Issuer or any substantial part of the Indenture Collateral in an involuntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Trust Depositor, the Issuer or for any substantial part of the Indenture Collateral, or ordering the winding-up or liquidation of the Trust Depositor's or the Issuer's affairs, and such decree or order shall remain unstayed and in effect for a period of 30 consecutive days;

(vi) there occurs the commencement by the Trust Depositor or the Issuer of a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by the Trust Depositor or the Issuer to the entry of an order for relief in an involuntary case under any such law, or the consent by the Trust Depositor or the Issuer to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Trust Depositor or the Issuer or for any substantial part of the Indenture Collateral, or the making by the Trust Depositor or the Issuer of any general assignment for the benefit of creditors, or the failure by the Trust Depositor or the Issuer generally to pay its debts as such debts become due, or the taking of any action by the Trust Depositor or the Issuer in furtherance of any of the foregoing;

(vii) the Trustee, on behalf of the Noteholders, shall fail to have a valid and perfected first priority security interest in the Indenture Collateral except as otherwise expressly permitted to be released in accordance with the applicable Transaction Document, and such failure to have a perfected first priority security interest shall have a material adverse effect on the Noteholders;

(viii) one or more final, non-appealable judgment(s) against the Issuer in excess of $1,000,000 individually or in the aggregate and the continuance of such judgment(s) unsatisfied and in effect for any period of more than 60 consecutive days without a stay of execution;

(ix) the Issuer becomes subject to registration as an "investment company" under the 1940 Act for any period of more than 45 consecutive days;

(x) any of this Indenture, the Sale and Servicing Agreement, the Sale and Contribution Agreement or the Note Purchase Agreement is terminated (other than in accordance with its terms) or fails to be in full force and effect which has a material adverse effect on the Issuer or its ability to make payments on the Notes; or

(xi) the Seller or the Trust Depositor shall fail to cure, repurchase or replace a Defective Loan in accordance with the Transaction Documents and such failure shall continue unremedied for 30 days after the earliest to occur of (i) written notice of such failure is given to the Issuer by the Trustee (upon receipt by a Responsible Officer of the Trustee of actual knowledge or written notice of such failure) or (ii) knowledge of a Responsible Officer of the Trust Depositor or Seller of such failure.

The Issuer shall deliver to the Trustee, the Backup Servicer and the Rating Agency, within two (2) Business Days after the occurrence of an Event of Default, written notice in the form of an Officer's Certificate, including a description of its nature and period of existence and what action the Issuer is taking or proposes to take with respect thereto.

Section 5.02 **Acceleration of Maturity; Rescission and Annulment.**

If an Event of Default should occur and be continuing, (other than an Event of Default specified in Sections 5.01(v) or (vi)), then and in every such case the Trustee may, and shall at the direction of the Super-Majority Noteholders, declare the Notes to be immediately due and payable by a notice in writing to the Issuer (who shall

promptly forward the same to the Rating Agency) and the Owner Trustee (and to the Trustee if given by Noteholders), and upon any such declaration the unpaid principal amount of the Notes, together with accrued and unpaid interest thereon, through the date of acceleration, shall become immediately due and payable. If an Event of Default specified in Sections 5.01(v) or (vi) occurs, the unpaid principal amount of the Notes, together with accrued and unpaid interest thereon, through the date of acceleration, shall automatically, and without any notice to the Issuer, become immediately due and payable.

At any time after such declaration or automatic occurrence of acceleration of maturity and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article V provided, the Super-Majority Noteholders, by written notice to the Issuer and the Trustee, may rescind and annul such declaration and its consequences if:

(A) the Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(i) all payments of principal of and interest on the Notes, and all other amounts that would then be due hereunder, upon the Notes if the Event of Default giving rise to such acceleration had not occurred; and

(ii) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel; and

(B) all Events of Default, other than the nonpayment of the principal of the Notes that has become due solely by such acceleration, have been cured or waived as provided in Section 5.12.

No such rescission or annulment shall affect any subsequent default or impair any right consequent thereto.

If the Notes are accelerated following an Event of Default, then on each Payment Date on or after such Event of Default, payments will be made by the Trustee from all funds available to it in the same order of priority as that provided for in Section 7.06(c) of the Sale and Servicing Agreement.

Section 5.03 **Collection of Indebtedness and Suits for Enforcement by Trustee.**

(a) The Issuer covenants that if (i) default is made in the payment of any interest on any Note, or (ii) default is made in the payment of the principal of or any installment of the principal of any Note, when the same becomes due and payable, and in each case such default continues for a period of two (2) Business Days, the Issuer will, upon demand of the Trustee, pay to it, for the benefit of the Noteholders, the whole amount then due and payable on the Notes for principal and interest, with interest upon the overdue principal, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel.

(b) In case the Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, with the consent of the Majority Noteholders and subject to the provisions of Section 11.15 hereof may institute a Proceeding for the collection of the sums so due and unpaid, and may prosecute such Proceeding to judgment or final decree, and may enforce the same against the Issuer or other obligor upon the Notes and collect in the manner provided by law out of the Indenture Collateral, wherever situated, the moneys adjudged or decreed to be payable.

(c) If an Event of Default occurs and is continuing, and the Notes have been declared due and payable and such declaration and its consequences have not been rescinded and annulled, the Trustee subject to the provisions of Section 5.04 and Section 11.15 hereof may, as more particularly provided in Section 5.04, in its discretion, proceed

to protect and enforce its rights and the rights of the Noteholders by such appropriate Proceedings as the Trustee shall deem most effective to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law.

(d) In case there shall be pending, relative to the Issuer or any Person having or claiming an ownership interest in the Indenture Collateral, Proceedings under Title 11 of the United States Code or any other applicable federal or state bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or its property or such other Person, or in case of any other comparable judicial Proceedings relative to the Issuer, or to the creditors or property of the Issuer, the Trustee, irrespective of whether the principal of any Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.03, shall be entitled and empowered, by intervention in such Proceedings or otherwise:

(i) to file and prove a claim or claims for the whole amount of principal and interest, as applicable, owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in such Proceedings;

(ii) unless prohibited by applicable law and regulations, to vote on behalf of the Holders of Notes in any election of a trustee, a standby trustee or Person performing similar functions in any such Proceedings;

(iii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf;

(iv) to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee or the Noteholders allowed in any judicial proceedings relative to the Issuer, its creditors and its property; and

(v) to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matter;

and any trustee, receiver, liquidator, custodian or other similar official in any such Proceeding is hereby authorized by each of such Noteholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to such Noteholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith.

(e) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Noteholder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

(f) All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes or the production thereof in any trial or other Proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders of the Notes.

(g) In any Proceedings brought by the Trustee (and also any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Noteholder a party to any such Proceedings.

Section 5.04 Remedies; Priorities.

(a) If an Event of Default has occurred and is continuing, and the Notes have been declared due and payable and such declaration and its consequences have not been rescinded and annulled, subject to the provisions of Section 11.15 hereof, the Trustee may do one or more of the following (subject to the provisions of this Section 5.04 and Section 5.15):

(i) institute Proceedings in its own name and as trustee of an express trust for the collection of all amounts then payable on the Notes or under this Indenture with respect thereto, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Issuer and any other obligor upon such Notes moneys adjudged due;

(ii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Indenture Collateral;

(iii) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights and remedies of the Trustee and the Holders of the Notes; and

(iv) sell the Indenture Collateral or any portion thereof or rights or interest therein at one or more public or private sales called and conducted in any matter permitted by law;

provided, *however*, that the Trustee may not sell or otherwise liquidate the Indenture Collateral following and during the continuance of an Event of Default unless (A) the Notes have been declared or otherwise become immediately due and payable in accordance with Section 5.02 and such declaration or acceleration and its consequences have not been rescinded and annulled and (B) either (1) the proceeds of such Sale or liquidation are sufficient to discharge in full all amounts then due and unpaid upon the Notes for principal and interest (including any interest payable pursuant to Section 7.05(a)(6) or 7.05(c)(4)), (2) the Trustee determines that the Indenture Collateral would not be sufficient on an ongoing basis to make all payments on the Notes as those payments would have become due had the Notes not been declared due and payable and the Super-Majority Noteholders (excluding Notes held by the Trust Depositor, the Seller, the Servicer or any of their respective affiliates) consent to such Sale or (3) 100% of the holders of the outstanding Notes (excluding Notes held by the Trust Depositor, the Seller, the Servicer or any of their respective affiliates) consent to such Sale. In determining whether the proceeds of such Sale or liquidation distributable to the Noteholders and the other parties entitled thereto are sufficient to discharge in full the amounts referenced in clause (B)(1) above, the Trustee may, but need not, obtain, at the Issuer's expense, and rely upon an opinion of an independent accountant or an investment banking firm of national reputation as to the feasibility of such proposed action and as to the sufficiency of the expected sales proceeds of the Indenture Collateral for such purpose.

(b) If the Trustee collects any money pursuant to this Article V, it shall distribute such money in accordance with Section 7.06(c) of the Sale and Servicing Agreement. The Trustee may fix a record date and

distribution date (which may be a date other than a Payment Date) for any payment to Noteholders pursuant to this Section 5.04. At least five days before such record date, the Issuer shall mail to each Noteholder and the Trustee a notice that states the record date, the distribution date and the amount to be paid.

Section 5.05 [Reserved].

Section 5.06 Limitation of Suits.

No Holder of any Note shall have any right to institute any Proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless and subject to the provisions of Section 11.15 hereof:

(i) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(ii) prior to the payment in full of Notes, the Noteholders evidencing not less than 25% of the Aggregate Outstanding Principal Balance of the Notes have made written request to the Trustee to institute such Proceeding in respect of such Event of Default in its capacity as Trustee hereunder;

(iii) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in complying with such request;

(iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute such Proceedings; and

(v) prior to the payment in full of the Notes, no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Holders of a majority of the Outstanding Principal Balance of the Notes.

It is understood and intended that no one or more of the Holders of Notes shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Notes or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided.

In the event the Trustee shall receive conflicting or inconsistent requests and indemnity from two or more groups of Holders of Notes, each representing less than a majority of the Aggregate Outstanding Principal Balance of the Notes then entitled to make such request, the Trustee in its sole discretion may determine what action, if any, shall be taken, notwithstanding any other provisions of this Indenture.

Section 5.07 Unconditional Rights of Noteholders To Receive Principal and Interest.

Notwithstanding any other provisions in this Indenture, but subject to Section 11.15 hereof, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on such Note on or after the respective due dates thereof expressed in such Note or in this Indenture and such right shall not be impaired without the consent of such Holder.

Section 5.08 Restoration of Rights and Remedies.

If the Trustee or any Noteholder has instituted any Proceeding to enforce any right or remedy under this Indenture and such Proceeding has been discontinued or abandoned for any reason or has been determined adversely

to the Trustee or to such Noteholder, then and in every such case the Issuer, the Trustee and the Noteholders shall, subject to any determination in such Proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Noteholders shall continue as though no such Proceeding had been instituted.

Section 5.09 Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.10 Delay or Omission Not a Waiver.

No delay or omission of the Trustee or any Holder of any Note in the exercise of any right or remedy accruing upon any Default or Event of Default shall impair any such right or remedy or constitute a waiver of any such Default or Event of Default or an acquiescence therein. Every right and remedy given by this Article V or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Noteholders, as the case may be.

Section 5.11 Control by Noteholders.

The Majority Noteholders shall have the right to direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee with respect to the Notes or exercising any trust or power conferred on the Trustee; *provided* that:

(i) such direction shall not be in conflict with any rule of law or with this Indenture;

(ii) the Super-Majority Noteholders or 100% of the Noteholders (as applicable) may provide any direction to the Trustee to sell or liquidate the Indenture Collateral pursuant to the express terms of Section 5.04; and

(iii) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

Notwithstanding the rights of Noteholders set forth in this Section 5.11, subject to Section 6.01(g), the Trustee need not take any action that it determines might involve it in liability.

Section 5.12 Waiver of Past Defaults.

Prior to the declaration of the acceleration of the maturity of the Notes as provided in Section 5.02, the Majority Noteholders may waive any past Event of Default and its consequences except an Event of Default with respect to payment of principal or interest, as applicable, on any of the Notes or in respect of a covenant or provision hereof which cannot be modified or amended without the waiver or consent of each of the Holders of the Outstanding Notes affected thereby. In the case of any such waiver, the Issuer, the Trustee and the Noteholders shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereto.

Upon any such waiver, any Event of Default arising therefrom shall be deemed to have been cured and not to have occurred, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereto.

Section 5.13 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by such Holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.13 shall not apply to (i) any suit instituted by the Trustee, (ii) any suit instituted by any Noteholder, or group of Noteholders, in each case holding in the aggregate more than 25% of the Aggregate Outstanding Principal Balance or (iii) any suit instituted by any Noteholder for the enforcement of the payment of principal or interest, as applicable, on any Note on or after the respective due dates expressed in such Note and in this Indenture.

Section 5.14 Waiver of Stay or Extension Laws.

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead or in any manner whatsoever, claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.15 Sale of Indenture Collateral.

(a) The power to effect any sale or other disposition (a "Sale") of any portion of the Indenture Collateral pursuant to Section 5.04 is expressly subject to the provisions of Section 5.11 and this Section 5.15. The power to effect any such Sale shall not be exhausted by any one or more Sales as to any portion of the Indenture Collateral remaining unsold, but shall continue unimpaired until the entire Indenture Collateral shall have been sold or all amounts payable on the Notes and under this Indenture shall have been paid. The Trustee hereby expressly waives its right to any amount fixed by law as compensation for any Sale.

(b) The Trustee shall not in any private Sale sell the Indenture Collateral, or any portion thereof, unless the Majority Noteholders consent to or such Noteholders as required by Section 5.11 direct the Trustee to make such Sale and:

(i) the proceeds of such Sale or liquidation are sufficient to discharge in full all amounts then due and unpaid upon the Notes for principal and interest, as applicable, to pay all amounts then due and payable to the Trustee and to reimburse the Servicer for any outstanding unreimbursed Servicing Advances and Scheduled Payment Advances; or

(ii) the Trustee determines, at the direction of Noteholders representing at least 25% of the Aggregate Outstanding Principal Balance of the Notes, that the conditions for liquidation of the Indenture Collateral set forth in Section 5.04 are satisfied (in making any such determination, the Trustee may rely upon an opinion of an Independent investment banking firm obtained and delivered as provided in Section 5.04).

(c) In connection with a Sale of all or any portion of the Indenture Collateral:

(i) other than in the case of a Sale of any Loan as contemplated by the Sale and Servicing Agreement, any Holder or Holders of Notes (other than the Trust Depositor) may bid for and purchase the property offered for Sale, and upon compliance with the terms of Sale may hold, retain and possess and dispose of such property, without further accountability, and may, in paying the purchase money therefor, deliver any Notes or claims for interest thereon in lieu of cash up to the amount which shall, upon distribution of the net proceeds of such Sale, be payable thereon, and such Notes, in case the amounts so payable thereon shall be less than the amount due thereon, shall be returned to the Holders thereof after being appropriately stamped to show such partial payment;

(ii) other than in the case of a Sale of any Loan as contemplated by the Sale and Servicing Agreement, the Trustee may bid for and acquire the property offered for Sale in connection with any Sale thereof, and, subject to any requirements of, and to the extent permitted by, Requirements of Law in connection therewith, may purchase all or any portion of the Indenture Collateral in a private sale, and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting the gross Sale price against the sum of (A) the amount which would be distributable to the Holders of the Notes as a result of such Sale in accordance with Section 5.04(b) on the Payment Date next succeeding the date of such Sale and (B) the expenses of the Sale and of any Proceedings in connection therewith which are reimbursable to it, without being required to produce the Notes in order to complete any such Sale or in order for the net Sale price to be credited against such Notes, and any property so acquired by the Trustee shall be held and dealt with by it in accordance with the provisions of this Indenture;

(iii) the Trustee shall execute and deliver an appropriate instrument of conveyance transferring its interest in any portion of the Indenture Collateral in connection with a Sale thereof;

(iv) the Trustee is hereby irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer and convey its interest in any portion of the Indenture Collateral in connection with a Sale thereof, and to take all action necessary to effect such Sale;

(v) the Trustee shall use commercially reasonable efforts to maximize the proceeds of any such Sale of the Indenture Collateral;

(vi) no purchaser or transferee at such a Sale shall be bound to ascertain the Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any moneys; and

(vii) all proceeds received by the Trustee in connection with the liquidation or sale of the Indenture Collateral shall be deposited into the Collection Account no later than two (2) Business Days following receipt thereof.

Section 5.16 Action on Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking, obtaining or application of any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or by the levy of any execution under such judgment upon any portion of the Indenture Collateral or upon any of the assets of the Issuer. Any money or property collected by the Trustee shall be applied in accordance with Section 5.04(b).

Section 5.17 **Performance and Enforcement of Certain Obligations.**

(a) Promptly following a request from the Trustee to do so, the Issuer shall take all such lawful action as the Trustee at the direction of the Majority Noteholders may request to compel or secure the performance and observance by the Seller, the Trust Depositor and the Servicer, as applicable, of each of their obligations to the Issuer under or in connection with the Transaction Documents, and to exercise any and all rights, remedies, powers and privileges lawfully available to the Issuer under or in connection with the Transaction Documents to the extent and in the manner directed by the Trustee, including the transmission of notices of default to the Seller, the Trust Depositor or the Servicer thereunder and the institution of legal or administrative actions or proceedings to compel or secure performance by the Seller, the Trust Depositor or the Servicer of each of their obligations under the Transaction Documents.

(b) If a Servicer Default has occurred and is continuing, the Trustee, at the direction of the Majority Noteholders, shall exercise all rights, remedies, powers, privileges and claims of the Issuer against the Servicer under or in connection with the Sale and Servicing Agreement, including the right or power to take any action to compel or secure performance or observance by the Servicer, of its obligations to the Issuer thereunder and to give any consent, request, notice, direction, approval, extension or waiver under the Sale and Servicing Agreement, and any right of the Issuer to take such action shall not be suspended.

ARTICLE VI
THE TRUSTEE

Section 6.01 **Duties of Trustee.**

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs with respect to the Indenture Collateral.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; however, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 6.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.11.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c), (g) and (i) of this Section 6.01.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law or the terms of this Indenture or the Sale and Servicing Agreement.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture, to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or to honor the request or direction of any of the Noteholders pursuant to this Indenture, unless such Noteholder or Noteholders shall have offered to the Trustee security or indemnity reasonably acceptable to the Trustee against the costs, expenses, and liabilities (including the fees and expenses of its attorneys and agents) that might be incurred by it in compliance with the request or direction. Anything in this Indenture to the contrary notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits).

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.

(i) The Trustee shall not be deemed to have notice of any Event of Default or Servicer Default or any other matter under a Transaction Document unless a Responsible Officer assigned to and working in the Trustee's Corporate Trust Office has actual knowledge thereof or has received written notice thereof in accordance with this Indenture.

Section 6.02 **Rights of Trustee.**

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officer's Certificate.

(c) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys or a custodian or nominee, and the Trustee shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent, attorney, custodian or nominee appointed with due care by it hereunder.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided* that the Trustee's conduct does not constitute willful misconduct, negligence or bad faith.

(e) The Trustee may consult with counsel, and the advice of counsel or an Opinion of Counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with such advice of counsel or such Opinion of Counsel.

(f) The Trustee shall not be bound to make any investigation into the performance of the Seller, Trust Depositor, Issuer or the Servicer under this Indenture or any other Transaction Document or into the matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other document, but the Trustee, in its discretion, may make any further inquiry or investigation into those matters that it deems appropriate, and if the Trustee determines to inquire further, it shall be entitled to examine the books, records and premises of the Issuer and the Servicer, personally or by agent or attorney; *provided* that any such examination shall be upon reasonable prior notice and at a time acceptable to the Issuer or the Servicer in their reasonable judgment during normal business hours; *provided*, *further*, that the Trustee shall, and shall cause its agents, to hold in confidence any and all such information, except (i) to the extent disclosure may be required by law by any regulatory authority and (ii) to the extent that the Trustee, in its reasonable judgment, may determine that such disclosure is consistent with its obligations hereunder; *provided* that all such persons agree in writing with the Issuer to hold such information as confidential. A Noteholder may only disclose such information obtained from the Trustee to any prospective transferee and to such Noteholder's and transferee's accountants, consultants, attorneys and similar agents; *provided* that all such persons agree in writing with the Issuer and the Trustee to hold such information as confidential.

(g) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(h) Except as expressly provided herein or in any other Transaction Document, nothing herein shall be construed to impose an obligation on the part of the Trustee to recalculate, evaluate or verify any report, certificate or information received by it from the Issuer or Servicer or to otherwise monitor the activities of the Issuer, Servicer or any other Party.

(i) In the event that the Trustee or any affiliate is also acting in the capacity of Custodian, Backup Servicer, Paying Agent, Note Registrar or Certificate Registrar hereunder or under the other Transaction Documents, the rights, protections, immunities and indemnities afforded the Trustee pursuant to this Article VI shall also be afforded to the Trustee or any affiliate in such capacities.

(j) Whenever in the administration of this Indenture the Trustee shall (i) deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate or (ii) be required to determine the value of any Indenture Collateral or funds hereunder or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants (which may or may not be the Independent Accountants appointed by the Issuer pursuant to Section 9.05 of the Sale and Servicing Agreement), investment bankers or other persons qualified to provide the information required to make such determination, including nationally recognized dealers in securities of the type being valued and securities quotation services.

(k) Nothing herein shall be construed to impose an obligation on the part of the Trustee to recalculate, evaluate or verify or independently determine the accuracy of any report, certificate or information received from the Issuer or Servicer (unless and except to the extent otherwise expressly set forth herein).

(l) Any permissive right of the Trustee to take or refrain from taking actions enumerated in this Indenture or other Transaction Document shall not be construed as a duty.

(m) The Trustee shall not be responsible for delays or failures in performance resulting from acts beyond its control.

(n) The Trustee and Custodian shall be without liability for any damage or loss resulting from or caused by events or circumstances beyond it's reasonable control including nationalization, expropriation, currency restrictions, the interruption, disruption or suspension of the normal procedures and practices of any securities market, power, mechanical, communications or other technological failures or interruptions, computer viruses or the like, fires, floods, earthquakes or other natural disasters, civil and military disturbance, acts of war or terrorism, riots, revolution, acts of God, work stoppages, strikes, national disasters of any kind, or other similar events or acts; errors by the Issuer or Servicer (including any Responsible Officer) in its instructions to the Trustee or Custodian; or changes in applicable law, regulation or orders.

In order to comply with the USA PATRIOT Act, including Section 326 thereof, the Trustee (including in its capacity as Certificate Registrar) is required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Trustee. Accordingly, the Issuer and each of the parties to the other Transaction Documents agrees to provide to the Trustee upon its their request from time to time such identifying information and documentation as may be available for such party in order to enable the Trustee to comply with the USA PATRIOT Act.

Section 6.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee. Any Note Registrar, co-registrar, Paying Agent or co-paying agent may do the same with like rights. However, the Trustee must comply with Section 6.11.

Section 6.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Sale and Servicing Agreement, the Trust Agreement, the Notes or any other Transaction Document, the validity or sufficiency of any security interest intended to be created or the characterization of the Notes for tax purposes, it shall not be accountable for the Issuer's use of the proceeds from the Notes, and it shall not be responsible for any statement of the Issuer in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication.

Section 6.05 Notice of Event of Default.

The Trustee shall mail to each Noteholder, the Servicer (who shall promptly forward the same to the Rating Agency, for so long as any of the Notes are Outstanding) and the Owner Trustee notice of an Event of Default within 30 days after the Trustee has actual knowledge thereof in accordance with Section 6.01.

Section 6.06 Reports by Trustee to Holders.

The Trustee shall deliver to each Noteholder such information in its possession as may be required to enable such holder to prepare its federal and state income tax returns. In addition, upon the Issuer's or a Noteholder's written request, the Trustee shall promptly furnish information reasonably requested by the Issuer or such Noteholder that is reasonably available to the Trustee to enable the Issuer or such Noteholder to perform its federal and state income tax reporting obligations.

The Trustee shall not be responsible for any tax reporting, disclosure, record keeping or list maintenance requirements of the Issuer under Sections 6011(a), 6111 or 6112 of the Code, including, but not limited to, the preparation of IRS Form 8886 pursuant to Treasury Regulations Section 1.6011-4(d) or any successor provision and any required list maintenance under Treasury Regulations Section 301.6112-1 or any successor provision.

Section 6.07 **Compensation and Indemnity.**

The Issuer shall pay to the Trustee on each Payment Date reasonable compensation for its services under this Indenture and the other Transaction Documents in accordance with the Priority of Payments and pursuant to the separate fee agreement between the Trustee and the Issuer. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuer shall indemnify, defend and hold harmless the Trustee and its officers, directors, employees and agents for and against any and all loss, liability or expense (including attorneys' fees) incurred by it in connection with the administration of this Indenture and the performance of its duties hereunder and under the other Transaction Documents, including but not limited to the costs of defending any claim or bringing any claim or legal action to enforce the indemnification obligations of the Issuer. The Trustee shall notify the Issuer and the Trust Depositor promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer and the Trust Depositor shall not relieve the Issuer of its obligations hereunder or under the Trust Agreement. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith, except that the Trustee shall not be liable (i) for any error of judgment made by it in good faith unless it is proved that the Trustee was negligent in ascertaining the pertinent facts, (ii) for any action it takes or omits to take in good faith in accordance with directions received by it from the Holders of the Notes in accordance with the terms hereunder, or (iii) for interest on any money received by it except as the Trustee and the Issuer may agree in writing. The Issuer shall assume (with the consent of the Trustee, such consent not to be unreasonably withheld) the defense of claim for indemnification hereunder and any settlement of any such claim and pay all expenses in connection therewith, including reasonable counsel fees. If the consent of the Trustee required in the immediately preceding sentence is unreasonably withheld, the Issuer is relieved of its indemnification obligations hereunder with respect thereto. The obligations of the Issuer set forth in this Section 6.07 are subject in all respects to Section 11.15(b).

The Trustee hereby agrees not to cause the filing of a petition in bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship or other similar laws now or hereafter in effect against the Issuer for the non-payment to the Trustee of any amounts provided by this Section 6.07 until at least one year and one day, or, if longer, the applicable preference period then in effect, after the payment in full of all Notes issued under this Indenture.

The amounts payable to the Trustee pursuant to this Section 6.07 shall not, except as provided by Section 7.06 of the Sale and Servicing Agreement, exceed on any Payment Date the limitation on the amount thereof described in the Priority of Payments for such Payment Date and in the definition of Administrative Expenses in the Sale and Servicing Agreement; *provided* that (i) the Trustee shall not institute any proceeding for payment of any amount payable hereunder except in connection with an action pursuant to Section 5.03 or 5.04 for the enforcement of the lien of this Indenture for the benefit of the Noteholders and (ii) the Trustee may only seek to enforce payment of such amounts in conjunction with the enforcement of the rights of the Noteholders in the manner set forth in Section 5.04.

The Trustee shall, subject to the Priority of Payments, receive amounts pursuant to this Section 6.07 and Section 7.06 of the Sale and Servicing Agreement, and only to the extent that the payment thereof would not result in an Event of Default and the failure to pay such amounts to the Trustee will not, by itself, constitute an Event of Default. Subject to Section 6.08, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee shall not have received amounts due it hereunder and hereby agrees not to cause the filing of a petition in bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship or other similar laws now or hereafter in effect against the Issuer for the nonpayment to the Trustee of any amounts provided by this Section 6.07 until at least one year and one day, or, if longer, the applicable preference period then in effect, after the payment in full of all Notes issued under this Indenture.

The Issuer's payment obligations and indemnity to the Trustee pursuant to this Section 6.07 shall survive the discharge of this Indenture and resignation or removal of the Trustee. When the Trustee incurs expenses after the

occurrence of an Event of Default specified in clauses (vi) or (vii) of the definition of "Event of Default" with respect to the Issuer, the expenses are intended to constitute expenses of administration under Title 11 of the United States Code or any other applicable federal or state bankruptcy, insolvency or similar law.

Section 6.08 Replacement of Trustee.

No resignation or removal of the Trustee shall become effective until the appointment of a successor Trustee pursuant to this Section 6.08 and that meets the criteria set forth in Section 6.11 has become effective. The Trustee may resign at any time with thirty (30) days prior written notice to the Issuer, the Noteholders, the Trust Depositor and the Servicer. The Majority Noteholders or the Issuer, with the written consent of the Majority Noteholders, may remove the Trustee with thirty (30) days prior written notice to the Trustee (a copy of which notice shall promptly be provided by the Issuer to the Rating Agency). The Issuer shall remove the Trustee if:

(i) the Trustee fails to comply with Section 6.11;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property;

(iv) the Trustee otherwise becomes incapable of acting; or

(v) the Trustee defaults in any of its obligations under the Transaction Documents and such default is not cured within 30 days after a Responsible Officer of the Trustee receives written notice of such default.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Upon the appointment becoming effective, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. No successor Trustee shall accept appointment as provided in this Section 6.08 unless at the time of such appointment becoming effective such Person shall be eligible under the provisions of Section 6.11. The retiring Trustee shall promptly transfer all property (including all Indenture Collateral) held by it as Trustee to the successor Trustee and shall execute and deliver such instruments and such other documents as may reasonably be required to more fully and certainly vest and confirm in the successor Trustee all such rights, powers, duties and obligations.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Majority Noteholders may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section 6.08, the Issuer's obligations under Section 6.07 shall continue for the benefit of the retiring Trustee.

Upon the appointment of a successor Trustee as provided in this Section 6.08, the successor Trustee shall mail notice of such succession hereunder at the expense of the Issuer to all Holders of Notes at their addresses as shown in the Note Register.

Section 6.09 **Successor Trustee by Merger.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee; *provided* that such corporation or banking association shall be otherwise qualified and eligible under Section 6.11.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere provided for in the Notes or in this Indenture.

Section 6.10 **Appointment of Co-Trustee or Separate Trustee.**

(a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirement of any jurisdiction in which any part of the Indenture Collateral may at the time be located, the Trustee shall have the power and may execute and deliver all instruments to appoint one or more Persons to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Indenture Collateral, and to vest in such Person or Persons, in such capacity and for the benefit of the Noteholders, such interest to the Indenture Collateral, or any part hereof, and, subject to the other provisions of this Section 6.10, such powers, duties, obligations, rights and trusts as the Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor Trustee under Section 6.11 and no notice to the Noteholders of the appointment of any co-trustee or separate trustee shall be required under Section 6.08 hereof. No appointment of a co-trustee or a separate trustee shall relieve the Trustee of its duties and obligations hereunder.

(b) Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Indenture Collateral or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article VI. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to

all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Trustee. Every such instrument shall be filed with the Trustee.

(d) Any separate trustee or co-trustee may at any time constitute the Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

Section 6.11 Eligibility; Disqualification.

The Trustee or any affiliate hereunder shall at all times (i) be a national banking association or banking corporation or trust company organized and doing business under the laws of any state or the United States, (ii) be authorized under such laws to exercise corporate trust powers, (iii) have a combined capital and surplus of at least $50,000,000, (iv) have unsecured and unguaranteed long-term debt obligations rating of at least investment grade or better by the Rating Agency or another nationally recognized statistical rating organization, or otherwise does not result in a withdrawal or reduction in rating by the Rating Agency on the Notes, and (v) be subject to supervision or examination by federal or state authority. If such banking association publishes reports of condition at least annually, pursuant to Applicable Law or the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.11 its combined capital and surplus shall be deemed to be as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.11, the Trustee shall give prompt notice to the Issuer (who shall promptly forward the same to the Rating Agency), the Trust Depositor, the Servicer and the Noteholders that it has so ceased to be eligible to be the Trustee.

Section 6.12 Representations, Warranties and Covenants of the Trustee.

The Trustee hereby makes the following representations, warranties and covenants on which the Issuer, the Trust Depositor, the Servicer and the Noteholders shall rely:

(a) The Trustee is a national banking association and trust company duly organized, validly existing and in good standing under the laws of the United States.

(b) The Trustee satisfies the criteria specified in Section 6.11.

(c) The Trustee has full power, authority and legal right to execute, deliver and perform this Indenture and the other Transaction Documents to which it is a party and has taken all necessary action to authorize the execution, deliver and performance by it of this Indenture and the other Transaction Documents to which it is a party.

(d) The execution, delivery and performance by the Trustee of this Indenture and the other Transaction Documents to which it is a party shall not (i) violate any provision of any law or any order, writ, judgment or decree of any court, arbitrator or governmental authority applicable to it or any of its assets, (ii) violate any provision of the corporate charter or by-laws of the Trustee or (iii) violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of any lien on any properties included in the Indenture Collateral pursuant to the provisions of, any mortgage, indenture, contract, agreement or other undertaking to which it is a party, which violation, default or lien could reasonably be expected to materially and adversely affect the Trustee's performance or ability to perform its duties as Trustee under this Indenture and the other Transaction Documents to which it is a party or the transactions contemplated in this Indenture and the other Transaction Documents to which it is a party.

(e) The execution, delivery and performance by the Trustee of this Indenture and the other Transaction Documents to which it is a party shall not require the authorization, consent or approval of, the giving of notice to, the filing or registration with or the taking of any other action in respect of any governmental authority or agency regulating the banking and corporate trust activities of the Trustee.

(f) This Indenture and the other Transaction Documents to which it is a party have been duly executed and delivered by the Trustee and constitute the legal, valid and binding agreements of the Trustee enforceable in accordance with their respective terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally or the application of equitable principles in any proceeding, whether at law or in equity. U.S. Bank hereby agrees and covenants that it will not, at any time in the future, deny that this Indenture and the other Transaction Documents to which it is a party constitute its legal, valid and binding agreements.

(g) The Trustee is not affiliated, as that term is defined in Rule 405 under the Securities Act, with the Issuer.

Section 6.13 Directions to Trustee.

The Trustee is hereby directed and authorized:

(i) to accept a collateral assignment of the Loans, and hold the assets of the Indenture Collateral as security for the Noteholders;

(ii) to authenticate and deliver the Notes substantially in the forms prescribed by Exhibits A-1 through A-2 in accordance with the terms of this Indenture;

(iii) to execute and deliver the Transaction Documents to which it is a party; and

(iv) to take all other actions as shall be required to be taken by it by the terms of this Indenture and the other Transaction Documents to which it is party.

For avoidance of doubt, in entering into and performing under the Transaction Documents to which it is a party, the Trustee (in all its capacities) shall be subject to the protections, rights, indemnities and immunities afforded it under Article VI of this Indenture.

Section 6.14 Conflicts.

If a Default occurs and is continuing and the Trustee is deemed to have a "conflicting interest" (as defined in the TIA) as a result of acting as trustee for the Notes, the Issuer, at its expense, shall appoint a successor Trustee for the affected Notes so that there will be a separate Trustee for such affected Notes. No such event shall alter the voting rights of the Noteholders under this Indenture or under any of the other Transaction Documents.

ARTICLE VII
NOTEHOLDERS' LISTS AND REPORTS

Section 7.01 Issuer To Furnish Trustee Names and Addresses of Noteholders.

The Issuer will furnish or cause to be furnished to the Trustee (a) within five (5) days after each Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Notes as of such Record Date and (b) at such other times as the Trustee may reasonably request in writing, within 30 days after

receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 10 days prior to the time such list is furnished; *provided* that so long as the Trustee is the Note Registrar, no such list shall be required to be furnished.

Section 7.02 **Preservation of Information; Communications to Noteholders.**

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the Holders of Notes contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders of Notes received by the Trustee in its capacity as Note Registrar. The Trustee may destroy any list furnished to it as provided in such Section 7.01 upon receipt of a new list so furnished.

(b) The Trustee shall furnish to the Noteholders promptly upon receipt of a written request therefor, duplicates or copies of all reports, notices, requests, demands, certificates and financial statements of the Issuer or of the Servicer furnished to the Trustee under the Transaction Documents.

Section 7.03 **Fiscal Year.**

Unless the Issuer otherwise determines, the fiscal year of the Issuer shall end on December 31 of each year. The Issuer shall notify the Trustee of any change in its fiscal year.

ARTICLE VIII
TRANSACTION ACCOUNTS, DISBURSEMENTS AND RELEASES

Section 8.01 **Collection of Money.**

Except as otherwise expressly provided herein or in the Sale and Servicing Agreement, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all money and other property payable to or receivable by the Trustee pursuant to this Indenture. The Trustee shall apply all such money received by it as provided in this Indenture. Except as otherwise expressly provided in this Indenture or in the Sale and Servicing Agreement, if any event of default occurs in the making of any payment or performance under any agreement or instrument that is part of the Indenture Collateral, the Trustee (at the direction of the Servicer pursuant to the Sale and Servicing Agreement) may take such action as may be appropriate to enforce such payment or performance, including the institution and prosecution of appropriate Proceedings. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture and any right to proceed thereafter as provided in Article V.

Section 8.02 **Transaction Accounts.**

(a) On or prior to the Closing Date, the Trustee or any affiliate on behalf of the Issuer shall establish and maintain, in the name of the Issuer, for the benefit of the Trustee and the Noteholders, the Lockbox Account, the Distribution Account, the Reinvestment Account, the Reserve Account and the Collection Account, in each case, as provided in Sections 7.01, 7.02, 7.03 and 7.04 of the Sale and Servicing Agreement.

(b) All funds required to be deposited in the Collection Account with respect to the preceding Collection Period will be deposited in the Collection Account as provided in Section 7.03 of the Sale and Servicing Agreement. On or before the last day of each Collection Period or such other date as determined by the Trustee pursuant to Section 7.06(c) of the Sale and Servicing Agreement, the Collections with respect to the preceding Collection Period on deposit in the Collection Account will be transferred from the Collection Account to the Distribution Account as provided in Section 7.06 of the Sale and Servicing Agreement. On or before the Business Day immediately preceding each Payment Date, all other amounts then on deposit in the Collection Account (including,

without limitation, any amounts deposited into the Collection Account from the Reserve Account pursuant to Section 7.02 of the Sale and Servicing Agreement) will be deposited into the Distribution Account and will remain uninvested while deposited in the Distribution Account. The Trustee shall invest any funds in the Reserve Account as provided in the Sale and Servicing Agreement. Funds will be deposited into the Reserve Account as provided in Section 7.06 of the Sale and Servicing Agreement.

(c) On each Payment Date or such other date as determined by the Trustee pursuant to Section 5.04(b), the Trustee, as Paying Agent, shall distribute all amounts on deposit in the Distribution Account to Noteholders in respect of Notes and any other parties specified in the Priority of Payments, and to the Trustee, as Paying Agent under the Trust Agreement, for distribution to the Holders of the Trust Certificates in accordance with the Priority of Payments.

(d) All moneys deposited from time to time in the Distribution Account and the Reserve Account pursuant to the Sale and Servicing Agreement and all deposits therein pursuant to this Indenture are for the benefit of the Securityholders and all investments made with such moneys including all income or other gain from such investments are for the benefit of the Securityholders as provided by the Sale and Servicing Agreement.

(e) The Redemption Price described in Section 10.01 hereof shall be deposited in the Distribution Account.

Section 8.03 Officer's Certificate.

Except for releases or conveyances required or permitted by the Sale and Servicing Agreement and the other Transaction Documents, the Trustee shall receive at least two Business Days' notice when requested by the Issuer to take any action pursuant to Section 8.05(a), accompanied by copies of any instruments to be executed, and the Trustee shall also require, as a condition to such action, an Officer's Certificate, in form and substance reasonably satisfactory to the Trustee, stating the effect of any such action, outlining the steps required to complete the same, and concluding that all conditions precedent to the taking of such action have been complied with and such action will not materially and adversely impair the security for the Notes or the rights of the Noteholders in contravention of the provisions of this Indenture.

Section 8.04 Termination Upon Distribution to Noteholders.

Subject to Section 4.06, this Indenture and the respective obligations and responsibilities of the Issuer and the Trustee created hereby shall terminate upon the distribution to the Noteholders and the Trustee of all amounts required to be distributed to such parties pursuant to the applicable provisions of this Indenture and the Sale and Servicing Agreement.

Section 8.05 Release of Indenture Collateral.

(a) Subject to the payment of its fees and reasonable expenses, the Trustee may, and when required by the provisions of this Indenture shall, execute instruments to release property from the lien of this Indenture, or convey the Trustee's interest in the same, in a manner and under circumstances that are not inconsistent with the provisions of this Indenture, the Sale and Servicing Agreement and the other Transaction Documents. No party relying upon an instrument executed by the Trustee as provided in Article IV hereunder shall be bound to ascertain the Trustee's authority, inquire into the satisfaction of any conditions precedent, or see to the application of any moneys. The Trustee shall not release any Loan from the lien of this Indenture in connection with a sale of such Loan to an Affiliate of the Servicer or the Issuer without first receiving an Officer's Certificate of the Servicer in the form of Exhibit F and a Request for Release in the form of Exhibit M to the Sale and Servicing Agreement. The Trustee shall make copies of any such Officer's Certificate available to any Noteholder upon written request of such Noteholder, subject to Section 11.01.

(b) The Trustee shall, at such time as (i) there are no Notes Outstanding and (ii) all sums due the Trustee pursuant to this Indenture have been paid, release any remaining portion of the Indenture Collateral that secured the Notes from the lien of this Indenture. The Trustee shall release property from the lien of this Indenture pursuant to this Section 8.05(b) only upon receipt of a request from the Issuer accompanied by an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent to such release have been satisfied.

ARTICLE IX
SUPPLEMENTAL INDENTURES

Section 9.01 Supplemental Indentures Without Consent of Noteholders.

(a) Without the consent of the Holders of any Notes but with prior written notice to all Noteholders, the Rating Agency and the Servicer, the Issuer and the Trustee, when authorized by an Issuer Order, at any time and from time to time, may enter into a supplemental indenture, in form reasonably satisfactory to the Trustee, for any of the following purposes; *provided* that the Issuer shall only enter into a supplemental indenture in compliance with Section 4.01(c) and (d) of the Trust Agreement and Section 9.06 hereof:

(i) to correct or amplify the description of any property at any time subject to the lien of this Indenture, or better to assure, convey and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture, or to subject to the lien of this Indenture additional property;

(ii) to evidence the succession, in compliance with the applicable provisions hereof, of another Person to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes;

(iii) to add to the covenants of the Issuer, for the benefit of the Holders of the Notes, or to surrender any right or power herein conferred upon the Issuer;

(iv) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee;

(v) to cure any ambiguity or manifest error, to correct or supplement any provision in this Indenture or in any supplemental indenture that may be defective or inconsistent with any other provision herein or in any supplemental indenture or to make any modification that is of a formal, minor or technical nature;

(vi) to evidence and provide for the acceptance of the appointment hereunder by a successor trustee with respect to the Notes and to add to or change any of the provisions of this Indenture as shall be necessary to facilitate the administration of the trusts hereunder by more than one trustee, pursuant to the requirements of Article VI;

(vii) to add to the conditions, limitations and restrictions on the authorized amount, terms and purposes of the issuance, authentication and delivery of Notes, as herein set forth, additional conditions, limitations and restrictions thereafter to be observed;

(viii) to modify the restrictions on and procedures for resales and other transfers of the Notes to reflect any changes in Applicable Law or regulations (or the interpretation thereof);

(ix) to enable the Issuer or the Trustee to rely upon any exemption from registration under the Securities Act or the 1940 Act or to remove restrictions on resale or transfer to the extent required under

Applicable Law or otherwise make any changes necessary to comply with changes to U.S. securities laws or the regulations implementing such laws;

(x) to evidence or implement any change to this Indenture required by regulations or guidelines enacted to support the USA PATRIOT Act;

(xi) to comply with any changes to the Code or the regulations implementing the Code;

(xii) to reflect any written change to the guidelines, methodology or standards established by any Rating Agency that are applicable to this Indenture;

(xiii) to amend, modify or otherwise accommodate changes to this Indenture relating to compliance with Rule 17g-5 under the Exchange Act or to permit compliance with the Dodd-Frank Act (including, without limitation, the Volcker Rule), as applicable to the Issuer, the Trustee, the Servicer or the Notes, or to comply with any rule or regulation enacted by regulatory agencies of the United States federal government after the Closing Date that are applicable to the Notes or the transactions contemplated by this Indenture;

(xiv) subject to the requirements of Section 2.03, to permit the Issuer to issue Additional Notes; and

(xv) to add any new provisions with respect to matters or questions arising under this Indenture or in any supplemental indenture that will not be inconsistent with any existing provisions of this Indenture or such supplemental indenture; *provided* that such action shall not, as evidenced by an Officer's Certificate delivered to the Trustee, adversely affect in any material respect the interests of the Noteholders.

The Trustee is hereby authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be therein contained.

(b) The Issuer and the Trustee, when authorized by an Issuer Order, may also, without the consent of any of the Holders of the Notes but with Rating Agency Confirmation, enter into a supplemental indenture for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Noteholders under this Indenture (other than as included in clauses (i) through (xv) of Section 9.01(a) above); *provided* that such action (A) shall not, as evidenced by an Officer's Certificate of the Servicer, materially adversely affect the interest of any Noteholder, and (B) shall be in compliance with Section 4.01(c) and (d) of the Trust Agreement and Sections 9.02(a) and 9.06 hereof.

(c) In connection with any supplemental indentures pursuant to this Section 9.01, the Issuer and the Trustee shall be entitled to receive an Opinion of Counsel to the effect that such supplemental indenture will not (i) cause the Issuer to be treated as an association, publicly traded partnership or taxable mortgage pool, in each case, taxable as a corporation for U.S. federal income tax purposes, (ii) cause the Notes to be deemed to have been sold or exchanged under Section 1001 of the Code or (iii) cause any Notes that were characterized as indebtedness at the time of issuance to be characterized as other than indebtedness (which Opinion of Counsel may rely upon an Officer's Certificate of the Servicer with respect to the effect of any such amendment on the economic interests of any Noteholder); provided, that the opinion described in clause (ii) shall not be required in connection with the issuance of Additional Notes pursuant to Section 2.03 hereof.

(d) In the event that any proposed supplemental indenture pursuant to this Section 9.01, in the reasonable judgment of the Servicer (on behalf of the Issuer) does not satisfy the proviso in Section 9.01(b), such amendment may become effective with the consent of each Holder of a Note. It shall not be necessary for the

Noteholders to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 9.02 **Supplemental Indentures With Consent of Noteholders.**

(a) No supplemental indenture shall, without the consent of the Holder of each Note adversely affected thereby:

(i) change the Legal Final Payment Date or the due date of any payment of principal of or interest, as applicable, on any Note, reduce the principal amount of any Note or any rate of interest or the portion of the Redemption Price payable to the Holders of the Notes, change the earliest date on which any Note may be redeemed, change the provisions of this Indenture relating to the application of proceeds of any Loan Assets to the payment of principal, interest or of distributions pursuant to the Sale and Servicing Agreement, change any place where, or the coin or currency in which, any Note or the principal thereof, or interest thereon, is payable, or impair the right to institute suit for the enforcement of any provisions of the Indenture regarding payment on the Notes;

(ii) reduce the percentage of the Aggregate Outstanding Principal Balance of the Notes, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which is required for any waiver of compliance with any provision of this Indenture or defaults hereunder and their consequences provided for in this Indenture;

(iii) modify or alter the provisions of the proviso to the definition of the term "Outstanding" or modify or alter the provisions of the proviso to the definition of the term "Holder";

(iv) modify or alter the provisions hereunder regarding the voting of Notes held by the Issuer, the Seller, the Servicer, an affiliate of any of them or any obligor on the Notes;

(v) modify any provisions hereunder in such a manner as to affect the calculation of the amount of any payment of interest or principal due on any Note on any Payment Date or to affect the rights of the Noteholders to the benefit of any provisions for the mandatory redemption of the Notes contained in the Indenture; or

(vi) reduce the percentage of the Aggregate Outstanding Principal Balance of the Notes, the consent of the Holders of which is required to direct the Trustee to sell or liquidate the Indenture Collateral pursuant to Section 5.04;

(vii) modify any provision of this Section 9.02 except to increase any percentage specified herein or to provide that certain additional provisions of this Indenture or the other Transaction Documents cannot be modified or waived without the consent of the Holder of each Note affected thereby; or

(viii) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Indenture Collateral or, except as otherwise permitted or contemplated herein or by any other Transaction Document, terminate the lien of this Indenture on any property at any time subject hereto or deprive any Noteholder of the security provided by the lien of this Indenture.

(b) The Issuer shall only enter into a supplemental indenture in compliance with Section 4.01(c) of the Trust Agreement and Section 9.06 hereof; *provided* that such action shall not, as evidenced by an Opinion of Counsel (i) cause the Issuer to be treated as an association, publicly traded partnership or taxable mortgage pool, in each case, taxable as a corporation for U.S. federal income tax purposes, (ii) cause the Notes to be deemed to have been sold or

exchanged under Section 1001 of the Code or (iii) cause any Notes that were characterized as indebtedness at the time of issuance to be characterized as other than indebtedness (which Opinion of Counsel may rely upon an Officer's Certificate of the Servicer with respect to the effect of any such amendment on the economic interests of any Noteholder); provided, that the opinion described in clause (ii) shall not be required in connection with the issuance of Additional Notes pursuant to Section 2.03 hereof.

(c) Promptly after the execution by the Issuer and the Trustee of any supplemental indenture pursuant to this Section 9.02, the Trustee shall mail to the Servicer (who shall promptly forward the same to the Rating Agency) and the Holders of the Notes to which such amendment or supplemental indenture relates a copy of such supplemental indenture or a notice setting forth in general terms the substance of such supplemental indenture. Any failure of the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

(d) The Issuer and the Trustee may only enter into one or more supplemental indentures pursuant to this Section 9.02 to the extent that written advice from Dechert LLP or Winston & Strawn LLP or an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters is delivered to the Issuer (with a copy to the Trustee) to the effect that such supplemental indenture will not (i) cause the Issuer to be treated as an association, publicly traded partnership or taxable mortgage pool, in each case, taxable as a corporation for U.S. federal income tax purposes, (ii) cause the Notes to be deemed to have been sold or exchanged under Section 1001 of the Code or (iii) cause any Notes that were characterized as indebtedness at the time of issuance to be characterized as other than indebtedness.

Section 9.03 Execution of Supplemental Indentures.

In executing, or permitting the additional trusts created by, any supplemental indenture permitted by this Article IX or the modification thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive and subject to Sections 6.01 and 6.02, shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, which Opinion of Counsel may rely upon an Officer's Certificate of the Servicer with respect to the effect of any such supplemental indenture on the economic interests of the Holders of the Notes. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise. The Issuer shall provide copies of each supplemental indenture to the Rating Agency.

Section 9.04 Effect of Supplemental Indenture.

Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and shall be deemed to be modified and amended in accordance therewith with respect to the Notes affected thereby, and the respective rights, limitations of rights, obligations, duties, liabilities and immunities under this Indenture of the Trustee, the Issuer and the Noteholders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.05 Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article IX may, and if required by the Trustee shall, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

Section 9.06 **Consent of the Servicer and Owner Trustee.**

The Issuer agrees that it will not permit to become effective any supplemental indenture that adversely affects the obligations or rights of the Servicer or the Owner Trustee or the amount or priority or payment of any fees or other amounts payable to the Servicer or the Owner Trustee unless, in each such case, the Servicer or the Owner Trustee has been given prior written notice of such supplemental indenture and has consented thereto in writing.

ARTICLE X
OPTIONAL REDEMPTION

Section 10.01 **Optional Redemption.**

(a) The Issuer may effect an Optional Redemption, in whole but not in part, on any Redemption Date (such Redemption Date to be specified in a notice to be delivered to the Issuer and the Trustee at least 15 Business Days prior to such Redemption Date) by deposit in full of the Redemption Price in the Distribution Account for distribution to the Holders of the Notes and other persons entitled thereto by 10:00 a.m. (New York City time) on the business day preceding the applicable Redemption Date whereupon all such Notes shall be due and payable on the applicable Payment Date, in connection with which the Issuer shall comply with the provisions of this Section 10.01 and Section 10.02. The Servicer or the Issuer will furnish notice of such election to the Trustee, the Owner Trustee and the Rating Agency no later than 10 Business Days prior to the proposed Redemption Date and, provided that sufficient funds are received by the Servicer, the Servicer on behalf of the Issuer shall deposit in the Distribution Account an amount equal to the Redemption Price of the Notes to be redeemed on the Redemption Date.

(b) The Notes to be redeemed shall, following delivery of a notice of an Optional Redemption complying with Section 10.02, on the Redemption Date become due and payable at the Redemption Price with respect thereto and (unless such Redemption Price is not paid) no interest shall accrue on such Redemption Price for any period after the date to which accrued interest is calculated for purposes of calculating the Redemption Price. On the Redemption Date, upon deposit in full by the Servicer in the Distribution Account of an amount equal to the Redemption Price, the Indenture Collateral (other than the Transaction Accounts) shall cease to constitute assets of the Issuer and the Noteholders shall have no interest therein nor any claim to any distributions in respect of the Indenture Collateral (other than the Transaction Accounts).

(c) The portion of the Redemption Price constituting payment of principal of the Notes shall be distributed to Noteholders in accordance with Section 7.06(b) of the Sale and Servicing Agreement and all other amounts included in the Redemption Price shall be distributed in accordance with Section 7.06(a) of the Sale and Servicing Agreement.

(d) The Issuer or the Servicer may withdraw any notice of Optional Redemption or specify a new Redemption Date at any time prior to the proposed Redemption Date set forth in any prior notice of Optional Redemption by providing written notice to the Trustee, the Owner Trustee and the Rating Agency by no later than the second Business Day preceding such Redemption Date. A withdrawal of such notice of Optional Redemption or the inability of the Issuer to complete an Optional Redemption of the Notes will not constitute an Event of Default.

Section 10.02 **Form of Redemption Notice by Trustee.**

(a) Notice of redemption under Section 10.01 shall be given by the Trustee by facsimile, electronic mail, overnight courier or by first-class mail, postage prepaid, transmitted or mailed prior to the applicable Redemption Date, to each Holder of Notes, as of the close of business on the Record Date preceding the applicable Redemption Date at such Holder's address appearing in the Note Register.

(b) All notices of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) that the Record Date otherwise applicable to such Redemption Date, is not applicable and that, unless waived by the Issuer, payments shall be made only upon presentation and surrender of such Notes and the place where such Notes are to be surrendered for payment of the Redemption Price with respect thereto (which shall be the office or agency of the Issuer to be maintained as provided in Section 3.02); and

(iv) that interest on the Notes shall cease to accrue on the Redemption Date, as applicable; *provided* that the Redemption, as applicable, occurs on such date.

(c) Notice of redemption of the Notes shall be given by the Trustee in the name and at the expense of the Issuer. Failure to give notice of redemption, or any defect therein, to any Holder of any Note shall not impair or affect the validity of the redemption of any other Note.

ARTICLE XI
MISCELLANEOUS

Section 11.01 Confidentiality.

(a) No Receiving Party shall use any Confidential Information except to the extent necessary to evaluate and monitor the transaction represented by the Transaction Documents. Each Receiving Party agrees (and each Holder of a Note is deemed to agree) that it will make available Confidential Information only to (i) its officers, employees, directors, affiliates, advisors, agents, shareholders, members, partners and managers who have a need to know such Confidential Information for the purpose of evaluating or monitoring the transaction, (ii) its accounting firms and legal counsel (and their respective officers, employees, directors, agents, affiliates and advisors) and (iii) any prospective purchasers of a Note, in each case who have need to know such Confidential Information for the purposes of evaluating or monitoring the transaction (collectively, "representatives"), and that all persons to whom such Confidential Information is made available will be made aware of the confidential nature of such Confidential Information and agree to be bound by the restrictions imposed by this Indenture on the use of Confidential Information. This Section 11.01 shall constitute a confidentiality agreement for purposes of Regulation FD under the Exchange Act.

(b) No Receiving Party or any of its representatives will disclose any Confidential Information to any third party, except as may be required by law or expressly permitted pursuant to this Section 11.01.

(c) Each Receiving Party acknowledges and agrees that the breach or threatened breach of this Section 11.01 by it may result in irreparable and continuing damage to the Disclosing Parties, for which there will be no adequate remedy at law. Accordingly, each Receiving Party agrees that the Disclosing Parties shall be entitled, without prejudice, to all the rights and remedies available to each of them, including an injunction or specific performance to prevent breaches or threatened breaches of any of the provisions of this Indenture by an action instituted in a court having proper jurisdiction.

(d) The confidentiality provisions of this Section 11.01 shall remain in effect for a period commencing on the date hereof and end two years after the Legal Final Payment Date.

(e) If any Receiving Party or any of its affiliates or representatives is required by legal process to disclose any of the Confidential Information, such Receiving Party shall provide the Disclosing Parties with notice of such requirement so that the Disclosing Parties may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Indenture. If a protective order or other remedy is not obtained, such Receiving Party, its affiliates and representatives may, without violating this Indenture, disclose that portion of the Confidential Information that such party is legally required to disclose.

Section 11.02 Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of a Responsible Officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which the certificate or opinion is based are erroneous. Any such certificate of a Responsible Officer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Servicer, the Issuer, the Trust Depositor, or any other appropriate Person, stating that the information with respect to such factual matters is in the possession of the Servicer, the Issuer, the Trust Depositor or such other Person, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Whenever in this Indenture, in connection with any application or certificate or report to the Trustee, it is provided that the Issuer shall deliver any document as a condition of the granting of such application, or as evidence of the Issuer's compliance with any term hereof, it is intended that the truth and accuracy in all material respects, at the time of the granting of such application or at the effective date of such certificate or report (as the case may be), of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the Issuer to have such application granted or to the sufficiency of such certificate or report. The foregoing shall not, however, be construed to affect the Trustee's right to rely upon the truth and accuracy of any statement or opinion contained in any such document as provided in Article VI.

Section 11.03 Acts of Noteholders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Noteholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by agents duly appointed in writing; and except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Noteholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 11.03.

(b) The fact and date of the execution by any person of any such instrument or writing may be proved in any manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register; *provided* that in all cases except where otherwise required by law or regulation, any act by a Holder of a Note may be taken by the Beneficial Owner of such Note.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Notes shall bind the Holder of every Note issued upon the registration thereof or in exchange therefor or in lieu thereof, in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

Section 11.04 **Notices, etc., to Trustee and Others.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or Act of Noteholders or other documents provided or permitted by this Indenture shall be in writing and if such request, demand, authorization, direction, notice, consent, waiver or Act of Noteholders is to be made upon, given or furnished to or filed with:

(i) the Trustee by any Noteholder or by the Issuer, shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by telecopy in legible form, to the Trustee addressed to it at U.S. Bank Trust Company, National Association, Global Corporate Trust, One Federal Street 3rd Floor, Boston, Massachusetts 02110, Attention: Jack Lindsay, Ref: Hercules Capital Funding Trust 2022-1, Tel: (617) 603-6789, Fax: (855) 869-2187; Email: jack.lindsay@usbank.com or at any other address previously furnished in writing to the Issuer, the Noteholder, or the Servicer by the Trustee;

(ii) the Issuer by the Trustee or by any Noteholder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to the Issuer addressed to it at c/o Wilmington Trust, National Association, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Administration, Facsimile No.: (302) 636-4140, or at any other address previously furnished in writing to the Trustee by the Issuer;

(iii) the Servicer by the Issuer or the Trustee shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to the Servicer addressed to Hercules Capital, Inc., 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301, Attention: Chief Financial Officer, Re: Hercules Capital Funding Trust 2022-1, Telephone: (650) 289-3060, Facsimile No.: (650) 473-9194; with a copy to Hercules Capital, Inc., 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301, Attention: General Counsel, Re: Hercules Capital Funding Trust 2022-1, Telephone: (650) 289-3060, Facsimile No.: (650) 473-9194; or at any other address previously furnished in writing to the Issuer or the Trustee by the Servicer; and

(iv) the Owner Trustee by the Issuer or the Trustee shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to the Owner Trustee addressed to Wilmington Trust, National Association, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890; Attention: Corporate Trust Administration; Facsimile No.: (302) 636-4140.

(b) Notices required to be given to the Rating Agency shall be in writing, personally delivered or mailed by certified mail, return receipt requested, to the Rating Agency, at the following address: Kroll Bond Rating Agency, LLC, 805 Third Avenue, 29th Floor, New York, New York 10022, Attn: ABS Surveillance; or as to each of the foregoing, at such other address as shall be designated by written notice to the other parties; *provided* that no notice shall be required to be given to the Rating Agency unless the Outstanding Notes are rated by the Rating Agency.

(c) Delivery of any request, demand, authorization, direction, notice, consent, waiver or Act of Noteholders or other documents made as provided above will be deemed effective: (i) if in writing and delivered in Person or by overnight courier service, on the date it is delivered; (ii) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine); (iii) if sent by mail, on the date that mail is delivered or its delivery is attempted; and (iv) if sent by email, on the date of transmission; in each case, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

Section 11.05 **Notices to Noteholders; Waiver.**

Where this Indenture provides for notice to Noteholders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, by nationally recognized overnight courier or by first-class, postage prepaid to each Noteholder affected by such event, at his address as it appears on the Note Register, not later than the latest date, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Noteholders is given by mail, neither the failure to mail such notice nor any defect in any notice so mailed to any particular Noteholder shall affect the sufficiency of such notice with respect to other Noteholders, and any notice that is mailed in the manner herein provided shall conclusively be presumed to have been duly given.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by any Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such a waiver.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event to Noteholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Where this Indenture provides for notice to the Rating Agency, failure to give such notice shall not affect any other rights or obligations created hereunder, and shall not under any circumstance constitute an Event of Default.

Section 11.06 **Alternate Payment and Notice Provisions.**

Notwithstanding any provision of this Indenture or any of the Notes to the contrary, the Issuer may enter into any agreement with any Holder of a Note providing for a method of payment, or notice by the Trustee or any other party acting as paying agent to such Holder, that is different from the methods provided for in this Indenture for such payments or notices. The Issuer will furnish to the Trustee a copy of each such agreement and the Trustee, at the expense of the Issuer, will cause payments to be made and notices to be given in accordance with such agreements.

Section 11.07 **Effect of Headings.**

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 11.08 **Successors and Assigns.**

All covenants and agreements in this Indenture and the Notes by the Issuer shall bind its successors and assigns, whether so expressed or not. All agreements of the Trustee in this Indenture shall bind its successors, co-trustees and agents.

Section 11.09 **Severability.**

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 11.10 **Benefits of Indenture.**

Except as otherwise specifically provided herein, nothing in this Indenture or in the Notes shall give to any Person, other than the parties hereto and their successors hereunder, the Owner Trustee and the Noteholders, and any other party secured hereunder, and any other Person with an ownership interest in any part of the Indenture Collateral, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 11.11 **Legal Holidays.**

In any case where the date on which any payment is due shall not be a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date on which nominally due, and no interest shall accrue for the period from and after any such nominal date.

Section 11.12 **GOVERNING LAW.**

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

(b) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE. Each party hereto (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Indenture by, among other things, the mutual waivers and certifications in this Section 11.12(b).

Section 11.13 **Counterparts.**

This Indenture may be executed by facsimile signature and in several counterparts, each of which shall be an original and all of which shall together constitute but one and the same instrument. This Indenture shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, "Signature Law"), in each case to the extent applicable. Each faxed,

scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Indenture may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument. For the avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings and authentication of Notes when required under the UCC or other Signature Law due to the character or intended character of the writings.

Section 11.14 Issuer Obligation.

No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer, the Owner Trustee or the Trustee on the Notes or under this Indenture or any of the other Transaction Documents or any certificate or other writing delivered in connection herewith or therewith, against (i) the Trustee or the Owner Trustee in its individual capacity, (ii) any of the Trust Depositor, the Seller, the Servicer and any holder of a Trust Certificate or (iii) any partner, owner, beneficiary, stockholder, manager, member, officer, director, employee or agent of any of the parties identified in clauses (i) and (ii) or of any successor or assign of any such Person. For all purposes of this Indenture, in the performance of any duties or obligations of the Issuer hereunder, the Owner Trustee and the Trust Company shall be subject to, and entitled to the benefits of, the terms and provisions of the Trust Agreement.

Section 11.15 No Petition; Limited Recourse.

(a) The Trustee, by entering into this Indenture, and each Noteholder, by accepting a Note, hereby covenant and agree that they will not prior to the date which is one year and one day or, if longer, the preference period then in effect after payment in full of the Notes rated by any Rating Agency, institute against the Trust Depositor or the Issuer, or join in any institution against the Trust Depositor or the Issuer of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any United States federal or state bankruptcy or similar law in connection with any obligations relating to the Notes, this Indenture or any of the other Transaction Documents.

(b) Notwithstanding any other provisions of the Notes, this Indenture or any other Transaction Document, the obligations of the Issuer under the Notes and this Indenture and any other Transaction Document are limited recourse obligations of the Issuer payable solely from the Indenture Collateral in accordance with the Priority of Payments and, following realization of the Indenture Collateral and distribution in accordance with the Priority of Payments, any claims of the Noteholders, and any other parties to any Transaction Document shall be extinguished. No recourse shall be had against any officer, administrator, member, director, employee, security holder, holder of a beneficial interest in or incorporator of the Issuer or their respective successors or assigns for the payment of any amounts payable under the Notes, this Indenture or any other Transaction Document. It is understood that the foregoing provisions of this Section 11.15(b) shall not (i) prevent recourse to the Loan Assets or the Indenture Collateral for the sums due or to become due under any security, instrument or agreement which is part of the Loan Assets or the Indenture Collateral or (ii) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture or payable under any other Transaction Document until such Loan Assets and such Indenture Collateral have been realized and distributed in accordance with the Priority of Payments and the other applicable provisions of the Transaction Documents, whereupon any such outstanding indebtedness or obligation shall be extinguished. Except as otherwise provided hereunder or agreed in writing among the parties hereto, the Issuer shall retain the authority to institute, participate and join in any plan of reorganization, readjustment, merger or consolidation with respect to the issuer of any securities held hereunder, and, in general, to exercise each and every other power or right with respect to each such asset or investment as individuals generally have and enjoy with respect to their own assets and investment, including power to vote upon any securities.

Section 11.16 **Inspection; Confidentiality.**

The Issuer agrees that, on reasonable prior notice, it will permit any representative of the Trustee, upon reasonable notice and during the Issuer's normal business hours, and in a manner that does not unreasonably interfere with the Issuer's normal operations, to examine all the books of account, records, reports and other papers of the Issuer, to make copies and extracts therefrom, to cause such books to be audited by Independent certified public accountants, and to discuss the Issuer's affairs, finances and accounts with the Issuer's officers, employees, and Independent certified public accountants, all at such reasonable times, in such reasonable manner, and as often as may be reasonably requested. The Trustee shall and shall cause its representatives, its legal counsel and its auditors to hold in confidence all such information except to the extent disclosure may be required by law (and all reasonable applications for confidential treatment are unavailing) and except to the extent that the Trustee may reasonably determine that such disclosure is consistent with its obligations hereunder and under Applicable Law.

Section 11.17 **Limitation of Liability.**

It is expressly understood and agreed by the parties hereto that (i) this Indenture is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Owner Trustee on behalf of the Issuer under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose of binding only the Issuer, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties to this Indenture and by any person claiming by, through or under them, (iv) Wilmington Trust, National Association has made no investigation as to the accuracy or completeness of any representations and warranties made by the Owner Trustee or the Trust in this Agreement and (v) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaking by the Issuer under this Indenture or any related documents.

Section 11.18 **Disclaimer.**

Each Noteholder by accepting a Note and by accepting the benefits of this Indenture acknowledges and agrees that this Indenture and the Notes represent a debt obligation of the Issuer only and do not represent an interest in any assets (other than the Indenture Collateral) of the Trust Depositor or any holder of a Trust Certificate (including by virtue of any deficiency claim in respect of obligations not paid or otherwise satisfied from the Trust Assets and proceeds thereof).

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

HERCULES CAPITAL FUNDING TRUST 2022-1

By: Wilmington Trust, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of the Issuer

Page

By:
Name:
Title:

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

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
not in its individual capacity, except as expressly set forth herein, but solely as the Trustee

By:
Name:
Title:

EXHIBIT A

FORM OF NOTE

HERCULES CAPITAL FUNDING TRUST 2022-1 [__]% ASSET-BACKED NOTE

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE APPLICABLE SECURITIES LAWS OF ANY STATE. ACCORDINGLY, TRANSFER OF THIS NOTE IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN SECTION 4.02 OF THE INDENTURE. BY ITS ACCEPTANCE OF THIS NOTE, THE HOLDER OF THIS NOTE IS DEEMED TO REPRESENT TO THE ISSUER AND THE TRUSTEE THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT IS A "QUALIFIED PURCHASER" AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY ACT OF 1940 (EACH SUCH PERSON, A "QUALIFIED PURCHASER") AND IS ACQUIRING SUCH NOTE FOR ITS OWN ACCOUNT (AND NOT FOR THE ACCOUNT OF OTHERS) OR AS A FIDUCIARY OR AGENT FOR OTHERS, PURSUANT TO AN EXEMPTION FROM REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT.

NO SALE, PLEDGE OR OTHER TRANSFER OF THIS NOTE SHALL BE MADE UNLESS SUCH SALE, PLEDGE OR OTHER TRANSFER IS (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR (B) (I) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON THE TRANSFEROR REASONABLY BELIEVES AFTER DUE INQUIRY IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A WHO IS A QUALIFIED PURCHASER AND THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A "QUALIFIED INSTITUTIONAL BUYER" TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (II) SUCH SALE, PLEDGE OR OTHER TRANSFER IS MADE TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D OF THE SECURITIES ACT ("INSTITUTIONAL ACCREDITED INVESTOR") AND IS ACQUIRING SUCH NOTE FOR THE BENEFIT OF ITS OWN ACCOUNT (AND NOT THE ACCOUNT OF OTHERS) OR AS A FIDUCIARY OR AGENT FOR OTHERS (WHICH OTHERS ARE ALSO INSTITUTIONAL ACCREDITED INVESTORS) OR (III) WITH RESPECT TO SUBSEQUENT SALES OF A NOTE ONLY, SUCH SALE, PLEDGE OR OTHER TRANSFER IS OTHERWISE MADE IN A TRANSFER EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE

SECURITIES ACT, IN WHICH CASE (A) THE ISSUER SHALL REQUIRE THAT BOTH THE PROSPECTIVE TRANSFEROR AND THE PROSPECTIVE TRANSFEREE CERTIFY TO THE ISSUER AND THE SELLER IN WRITING THE FACTS SURROUNDING SUCH TRANSFER, WHICH CERTIFICATION SHALL BE IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER AND THE SELLER, AND (B) THE ISSUER SHALL REQUIRE A WRITTEN OPINION OF COUNSEL (WHICH SHALL NOT BE AT THE EXPENSE OF THE SELLER OR THE ISSUER) SATISFACTORY TO THE SELLER AND THE ISSUER TO THE EFFECT THAT SUCH TRANSFER WILL NOT VIOLATE THE SECURITIES ACT OR THE APPLICABLE STATE SECURITIES LAWS. THE TRUSTEE MAY REQUIRE AN OPINION OF COUNSEL TO BE DELIVERED TO IT IN CONNECTION WITH ANY SALE, PLEDGE OR OTHER TRANSFER OF THIS NOTE PURSUANT TO CLAUSES (A) OR (B) ABOVE. ALL OPINIONS OF COUNSEL REQUIRED IN CONNECTION WITH ANY TRANSFER SHALL BE IN A FORM REASONABLY ACCEPTABLE TO THE TRUSTEE. IN CONNECTION WITH A TRANSFER UNDER CLAUSE (B) ABOVE, THE TRUSTEE SHALL REQUIRE THAT THE PROSPECTIVE TRANSFEREE CERTIFY TO THE TRUSTEE AND THE SELLER, IN WRITING THE FACTS SURROUNDING SUCH TRANSFER, WHICH CERTIFICATION SHALL BE IN FORM AND SUBSTANCE DESCRIBED IN THE INDENTURE. ANY ATTEMPTED TRANSFER IN CONTRAVENTION OF THE IMMEDIATELY PRECEDING RESTRICTION WILL BE VOID AB INITIO AND THE PURPORTED TRANSFEROR WILL CONTINUE TO BE TREATED AS THE OWNER OF THE NOTES FOR ALL PURPOSES.

EACH INVESTOR IN THIS NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) IT IS NOT, AND IS NOT DIRECTLY OR INDIRECTLY ACQUIRING THIS NOTE FOR, ON BEHALF OF OR WITH ANY ASSETS OF, AN EMPLOYEE BENEFIT PLAN OR OTHER ARRANGEMENT SUBJECT TO PART 4, SUBTITLE B, TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), A PLAN, ACCOUNT OR ARRANGEMENT SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE PLAN ASSETS OF ANY SUCH PLANS (COLLECTIVELY, A "BENEFIT PLAN INVESTOR") OR A PLAN OR OTHER ARRANGEMENT SUBJECT TO ANY PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SUBSTANTIVELY SIMILAR TO SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE ("SIMILAR LAW") OR (II) ITS ACQUISITION, HOLDING AND DISPOSITION OF SUCH NOTE OR ANY INTEREST THEREIN DOES NOT AND WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE, OR A NON-EXEMPT VIOLATION OF SIMILAR LAW.

THE ISSUER HAS THE RIGHT, UNDER THE INDENTURE, TO COMPEL ANY NON-PERMITTED HOLDER TO SELL ITS INTEREST IN THIS NOTE, OR MAY SELL SUCH INTEREST ON BEHALF OF SUCH OWNER.

THE FAILURE TO PROVIDE THE ISSUER AND THE TRUSTEE (AND ANY OF THEIR AGENTS) WITH THE PROPERLY COMPLETED AND SIGNED TAX CERTIFICATIONS (GENERALLY, IN THE CASE OF U.S. FEDERAL INCOME TAX, AN INTERNAL REVENUE SERVICE FORM W-9 (OR APPLICABLE SUCCESSOR FORM) IN THE CASE OF A PERSON THAT IS A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(a)(30) OF THE CODE OR THE APPROPRIATE INTERNAL REVENUE SERVICE FORM W-8 (OR APPLICABLE SUCCESSOR FORM) IN THE CASE OF A PERSON THAT IS NOT A "UNITED STATES PERSON" WITHIN THE MEANING OF SECTION 7701(a)(30) OF THE CODE) MAY RESULT IN WITHHOLDING FROM PAYMENTS IN RESPECT OF SUCH NOTE, INCLUDING U.S. FEDERAL WITHHOLDING OR BACK-UP WITHHOLDING.

EACH HOLDER OF THIS NOTE (AND ANY INTEREST THEREIN) WILL BE DEEMED TO HAVE REPRESENTED AND AGREED TO TREAT SUCH NOTE AS INDEBTEDNESS FOR U.S. FEDERAL, STATE AND LOCAL INCOME AND FRANCHISE TAX PURPOSES, EXCEPT AS OTHERWISE REQUIRED BY LAW.

EACH HOLDER OF THIS NOTE (AND ANY INTEREST THEREIN) THAT IS NOT A "UNITED STATES TAX PERSON" (AS DEFINED IN SECTION 7701(a)(30) OF THE CODE) WILL MAKE, OR BY ACQUIRING THIS NOTE OR AN INTEREST THEREIN WILL BE DEEMED TO MAKE, A REPRESENTATION TO THE EFFECT THAT (A) IT IS NOT (I) A BANK (OR AN ENTITY AFFILIATED WITH A BANK) EXTENDING CREDIT PURSUANT TO A LOAN AGREEMENT ENTERED INTO IN THE ORDINARY COURSE OF ITS TRADE OR BUSINESS (WITHIN THE MEANING OF SECTION 881(c)(3)(A) OF THE CODE), (II) A CONTROLLED FOREIGN CORPORATION RELATED TO THE ISSUER, AND (III) A HOLDER (DIRECTLY OR BY ATTRIBUTION) OF AT LEAST 10 PERCENT OF AN INTEREST (INCLUDING A CAPITAL OR PROFITS INTEREST) IN THE ISSUER, OR (B) IT HAS PROVIDED AN IRS FORM W-8BEN (OR APPLICABLE SUCCESSOR FORM) OR AN IRS FORM W-8BEN-E (OR APPLICABLE SUCCESSOR FORM), AS APPLICABLE, REPRESENTING THAT IT IS A PERSON THAT IS ELIGIBLE FOR BENEFITS UNDER AN INCOME TAX TREATY WITH THE UNITED STATES THAT ELIMINATES U.S. FEDERAL INCOME TAXATION OF U.S. SOURCE INTEREST NOT ATTRIBUTABLE TO A PERMANENT ESTABLISHMENT IN THE UNITED STATES, OR (C) IT HAS PROVIDED AN IRS FORM W-8ECI (OR APPLICABLE SUCCESSOR FORM) REPRESENTING THAT ALL PAYMENTS RECEIVED OR TO BE RECEIVED BY IT ON THE NOTES ARE EFFECTIVELY CONNECTED WITH THE CONDUCT OF A TRADE OR BUSINESS IN THE UNITED STATES.

THIS NOTE MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") FOR U.S. FEDERAL INCOME TAX PURPOSES. THE ISSUE PRICE, AMOUNT OF OID, ISSUE DATE AND YIELD TO MATURITY OF THIS NOTE MAY BE OBTAINED BY WRITING TO THE SERVICER.

THE PRINCIPAL OF THIS NOTE IS PAYABLE IN INSTALLMENTS AS SET FORTH HEREIN. ACCORDINGLY, THE OUTSTANDING PRINCIPAL AMOUNT OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN ON THE FACE HEREOF.

THIS NOTE (AND ANY INTEREST HEREIN) MAY NOT BE TRANSFERRED IN AN AMOUNT LESS THAN THE MINIMUM DENOMINATION APPLICABLE TO SUCH NOTE.

AS A CONDITION TO THE PAYMENT OF ANY AMOUNT HEREUNDER WITHOUT THE IMPOSITION OF WITHHOLDING TAX, THE TRUSTEE SHALL REQUIRE CERTIFICATION ACCEPTABLE TO IT TO ENABLE THE ISSUER AND THE TRUSTEE TO DETERMINE THEIR DUTIES AND LIABILITIES WITH RESPECT TO ANY TAXES THAT THEY MAY BE REQUIRED TO PAY, DEDUCT OR WITHHOLD IN RESPECT OF THIS NOTE OR THE HOLDER HEREOF UNDER ANY PRESENT OR FUTURE LAW OR REGULATION OF THE UNITED STATES OR ANY PRESENT OR FUTURE LAW OR REGULATION OF ANY POLITICAL SUBDIVISION THEREOF OR TAXING AUTHORITY THEREIN OR TO COMPLY WITH ANY REPORTING OR OTHER REQUIREMENTS UNDER ANY SUCH LAW OR REGULATION.

REGISTERED $[____]

No. A-1

[ ], 202[ ]

SEE REVERSE FOR CERTAIN DEFINITIONS

CUSIP: [__]

Hercules Capital Funding Trust 2022-1, a statutory trust organized and existing under the laws of the State of Delaware (herein referred to as the "Issuer"), for value received, hereby promises to pay to [ ], or registered assigns, the principal sum of [ ] payable in accordance with the Indenture and the Sale and Servicing Agreement on each Payment Date on which principal is required to be paid in an amount equal to the result obtained by multiplying (i) a fraction, the numerator of which is the initial principal balance of this Note and the denominator of which is the Initial Note Principal Balance by (ii) the aggregate amount, if any, payable from the Distribution Account in respect of principal on the Notes.

The principal of and interest on this Note are payable in such coin or currency of the United States as at the time of payment is legal tender for payment of public and private debts. All payments made by the Issuer with respect to this Note shall be applied first to interest due and payable on this Note as provided above and then to the unpaid principal of this Note.

Reference is made to the further provisions of this Note set forth on the reverse hereof, which shall have the same effect as though fully set forth on the face of this Note.

Unless the certificate of authentication hereon has been executed by the Trustee whose name appears below by manual signature, this Note shall not be entitled to any benefit under the Indenture referred to on the reverse hereof, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be signed, manually or in facsimile, by its Responsible Officer as of the date set forth above.

HERCULES CAPITAL FUNDING TRUST 2022-1

By: **WILMINGTON TRUST, NATIONAL ASSOCIATION**, not in its individual capacity but solely as Owner Trustee under the Trust Agreement

By: _____
Authorized Signatory

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes of Hercules Capital Funding Trust 2022-1 designated above and referred to in the within-mentioned Indenture.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
not in its individual capacity but solely as Trustee,

By: _____
Authorized Signatory

[REVERSE OF NOTE]

This Note is one of a duly authorized issue of Notes of the Issuer, designated as its Hercules Capital Funding Trust 2022-1 Notes (herein called the "Notes"), all issued under an Indenture, dated as of June 22, 2022 (such indenture, as supplemented or amended, is herein called the "Indenture"), between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the "Trustee", which term includes any successor Trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights and obligations thereunder of the Issuer, the Trustee and the Holders of the Notes. The Notes are subject to all terms of the Indenture. All terms used in this Note that are defined in the Indenture, as supplemented or amended, shall have the meanings assigned to them in or pursuant to the Indenture, as so supplemented or amended.

Notwithstanding the foregoing, the entire unpaid principal amount of the Notes shall be due and payable on the date on which an Event of Default shall have occurred and be continuing and the Trustee or the Majority Noteholders have declared the Notes to be immediately due and payable (or such Notes have become automatically due and payable) in the manner provided in Section 5.02 of the Indenture. All principal payments on the Notes shall be made pro rata to the Noteholders entitled thereto.

Each Noteholder, by acceptance of a Note, covenants and agrees that no recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer under the Indenture on the Notes or under any certificate or other writing delivered in connection therewith, against any holder of a Trust Certificate, the Trust Depositor, the Servicer, the Trustee or the Owner Trustee in its individual capacity.

On each Payment Date, commencing on the Payment Date occurring on August 22, 2022, the Trustee or paying agent shall distribute to the Person in whose name this Note is registered on the close of business on the Record Date an amount equal to the product of the Percentage Interest of the Notes evidenced by this Note and the amount required to be distributed to Holders of Notes on such Payment Date pursuant to Section 3.05 of the Indenture.

During each Interest Period, this Note will bear interest at the Interest Rate.

Distributions on this Note will be made by the Trustee or paying agent by check mailed to the address of the Person entitled thereto as such name and address shall appear on the Note Register or, upon written request to the Trustee, by wire transfer of immediately available funds to the account of the Person entitled thereto as shall appear on the Note Register without the presentation or surrender of this Note or the making of any notation thereon, at a bank or other entity having appropriate facilities therefor, and, in the case of wire transfers, at the expense of such Person unless such Person shall own of record Notes which have Initial Note Principal Balances aggregating at least $10,000.

Notwithstanding the above, the final distribution on this Note will be made after due notice by the Trustee of the pendency of such distribution and only upon presentation and surrender of this Note at the office or agency maintained for that purpose by the Note Registrar.

As provided in the Indenture and the Sale and Servicing Agreement, deposits and withdrawals from the Distribution Account and the Collection Account may be made by the Servicer or the Trustee from time to time for purposes other than distributions to Noteholders, such purposes including reimbursement to the Servicer of advances made, or certain expenses incurred, by it, and to the extent applicable, investment in Permitted Investments.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Note Register upon surrender of this Note for registration of transfer at the offices or agencies maintained by the Note Registrar, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by, the holder hereof or such holder's attorney duly authorized in writing,

and thereupon one or more new Notes in authorized denominations evidencing the same aggregate undivided Percentage Interest will be issued to the designated transferee or transferees.

The Note is issuable only as a registered Note. As provided in the Indenture and subject to certain limitations therein set forth, the Note is exchangeable for a new Note evidencing the same aggregate principal amount, as requested by the holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Note Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Servicer, the Trust Depositor, the Owner Trustee, the Trustee and the Note Registrar, and any agent of any of the foregoing, may treat the person in whose name this Note is registered as the owner hereof for all purposes, and none of the foregoing shall be affected by notice to the contrary.

The obligations and responsibilities created by the Indenture shall terminate upon the payment to Noteholders of all amounts required to be paid to them pursuant to the Indenture and the Sale and Servicing Agreement and the disposition of all property held as part of the Indenture Collateral.

SCHEDULE OF EXCHANGES OF INTERESTS IN THE NOTE

The following exchanges of a part of this Note for an interest in another Note or for an Individual Note, or exchanges of a part of another Note or Individual Note for an interest in this Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Note	Amount of increase in Principal Amount of this Note	Principal Amount of this Note following such decrease (or increase)	Signature of Responsible Officer of Note Registrar

ASSIGNMENT

Social Security or taxpayer I.D. or other identifying number of assignee

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

____

____

(name and address of assignee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ____ ____

Signature Guaranteed:

Page

EXHIBIT B

LIST OF LOANS

See Exhibit G of the Sale and Servicing Agreement.

EXHIBIT C

FORM OF WIRING INSTRUCTIONS

_____, 2022

[Paying Agent]
[Trustee]
_____
_____
_____

Re: Hercules Capital Funding Trust 2022-1 Notes

Dear Sir:

In connection with the sale of the above-captioned Note by _____ to _____, ("Transferee") you, as paying agent, are instructed to make all remittances to Transferee as Noteholder as of _____, ____ by wire transfer. For such wire transfer, the wiring instructions are as follows:

_____
_____
_____

_____
Transferee

Noteholder's mailing address:

Name:
Address:

EXHIBIT D

FORM OF TRANSFEREE LETTER

Hercules Capital, Inc.
as the Servicer
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: Chief Financial Officer
Re: Hercules Capital Funding Trust 2022-1

U.S. Bank Trust Company, National Association,
as the Trustee
111 Fillmore Avenue East
Attn: Bondholder Services - EP-MN-WS2N
St. Paul, Minnesota, 55107
Ref: Hercules 2022-1

_____, 20__

Re: Hercules Capital Funding Trust 2022-1 Notes

Ladies and Gentlemen:

In connection with our acquisition of the above-captioned Notes, we certify that (a) we understand that the Notes are not being registered under the Securities Act of 1933, as amended (the "Act"), or any state securities laws and are being transferred to us in a transaction that is exempt from the registration requirements of the Act and any such laws, (b) we are an Institutional Accredited Investor who is a Qualified Purchaser, as defined in the Indenture pursuant to which the Notes were issued (the "Indenture"), and have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of investments in the Notes, (c) we have had the opportunity to ask questions of and receive answers from the Seller and the Servicer concerning the purchase of the Notes and all matters relating thereto or any additional information deemed necessary to our decision to purchase the Notes, (d) we are acquiring the Notes for investment for our own account and not with a view to any distribution of such Notes (but without prejudice to our right at all times to sell or otherwise dispose of the Notes in accordance with clause (f) below), (e) we have not offered or sold any Notes to, or solicited offers to buy any Notes from, any person, or otherwise approached or negotiated with any person with respect thereto, or taken any other action which would result in a violation of Section 5 of the Act, (f) we will not sell, transfer or otherwise dispose of any Notes unless (1) such sale, transfer or other disposition is made pursuant to an effective registration statement under the Act or is exempt from such registration requirements, and if requested, we will at our expense provide an opinion of counsel satisfactory to the addressees of this certificate that such sale, transfer or other disposition may be made pursuant to an exemption from the Act, (2) the purchaser or transferee of such Note has executed and delivered to you a certificate to substantially the same effect as this certificate if required by the Indenture, and (3) the purchaser or transferee has otherwise complied with any conditions for transfer set forth in the Indenture, and (g) the purchaser is not, and is not directly or indirectly acquiring or holding a Note or any interest therein on behalf of or with any assets of an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is subject to Part 4, Subtitle B, Title I of ERISA, a "plan" described in and subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code") or an entity whose underlying assets include "plan assets" (as defined in 29 CFR Section 2510.3-101, as modified by Section 3(42) of ERISA) of any plan, account or arrangement covered by ERISA or the Code (collectively, a "Plan") or governmental, non-U.S. or church plan or

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arrangement subject to any federal, state, local or non-U.S. law or regulation substantively similar or of similar effect to Section 406 of ERISA or Section 4975 of the Code (collectively, "Similar Law"); or its acquisition, holding and disposition of such Note (1) will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code by reason of any of Section 408(b)(17) of ERISA or Section 4975(d)(20) of the Code, Prohibited Transaction Class Exemption ("PTCE") 96-23, PTCE 95-60, PTCE 91-38, PTCE 90-1, PTCE 84-14, each as amended, or otherwise, or (2) in the case of a governmental, non-U.S. or church plan or arrangement subject to Similar Law, will not constitute or result in a non-exempt violation of Similar Law.

Very truly yours,

____
Print Name of Transferee

By:_
Responsible Officer

EXHIBIT E

FORM OF TRANSFER CERTIFICATE

U.S. Bank Trust Company, National Association
Global Corporate Trust, One Federal Street, 3rd Floor
Boston, Massachusetts 02110

Re: Hercules Capital Funding Trust 2022-1

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of June 22, 2022 (the *"Indenture"*), by and among Hercules Capital Funding Trust 2022-1 (the *"Issuer"*) and U.S. Bank Trust Company, National Association, as trustee (in such capacity, the *"Trustee"*). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to US $[___] aggregate Note Principal Balance of Notes then Outstanding (the *"Notes"*) which are held as Notes in the name of [insert name of transferor] (the *"Transferor"*). The Transferor has requested a transfer of such beneficial interest in the Notes to [insert name of transferee] (the *"Transferee"*).

In connection with such request, and in respect of such Notes, the Transferor does hereby certify that such Notes are being transferred in accordance with (i) the transfer restrictions set forth in the Indenture, and (ii) (A) Rule 144A under the Securities Act to a transferee that the Transferor reasonably believes is purchasing the Notes for its own account with respect to which the transferee exercises sole investment discretion and the transferee and any such account is a "qualified institutional buyer" (*"QIB"*) within the meaning of Rule 144A, in each case in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction or (B) pursuant to another applicable exemption from the registration requirements under the Securities Act; provided that an Opinion of Counsel confirming the applicability of the exemption claimed shall have been delivered to the Issuer and the Trustee in a form reasonably acceptable to them.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer, the Trustee and the Servicer.

[Insert Name of Transferor]

By:_____
Name:
Title:
Dated:

EXECUTION VERSION
Exhibit 4.2

AMENDED AND RESTATED TRUST AGREEMENT

by and between

HERCULES CAPITAL FUNDING 2022-1 LLC,
as the Trust Depositor

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as the Owner Trustee

Dated as of June 22, 2022

Hercules Capital Funding Trust 2022-1
Asset-Backed Notes

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TRUST AGREEMENT

THIS AMENDED AND RESTATED TRUST AGREEMENT (such agreement as amended, modified, waived, supplemented or restated from time to time, the "Trust Agreement" or this "Agreement"), dated as of June 22, 2022, is between HERCULES CAPITAL FUNDING 2022-1 LLC, a Delaware limited liability company, as trust depositor (the "Trust Depositor"), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association (in its individual capacity, together with its successors and assigns, the "Trust Company"), as owner trustee (solely in such capacity, the "Owner Trustee").

R E C I T A L S

WHEREAS, the Trust Depositor and the Owner Trustee have heretofore established a trust known as the Hercules Capital Funding Trust 2022-1 (the "Trust") pursuant to the Trust Agreement dated as of June 10, 2022 (the "Original Trust Agreement") and the Certificate of Trust (as defined below); and

WHEREAS, the Trust Depositor desires to continue the Trust; and

WHEREAS, the Trust Depositor desires to retain the Owner Trustee as the trustee of the Trust; and

WHEREAS, the Owner Trustee is willing to continue to serve as trustee of the Trust; and

WHEREAS, each of the Trust Depositor and the Owner Trustee consents to the amendment and restatement on the Original Trust Agreement pursuant to this Agreement.

NOW, THEREFORE, based upon the above recitals, the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions.

For all purposes of this Trust Agreement, except as otherwise expressly provided below or unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Sale and Servicing Agreement, dated as of June 22, 2022 (the "Sale and Servicing Agreement"), among Hercules Capital Funding Trust 2022-1, as the Issuer, Hercules Capital Funding 2022-1 LLC, as the Trust Depositor, Hercules Capital, Inc., as the Seller and as the Servicer, U.S. Bank Trust Company, National Association, as the Trustee and Paying Agent, and U.S. Bank National Association, as the Backup Servicer and Custodian which capitalized terms are incorporated by reference herein. All other capitalized terms used herein shall have the meanings specified herein or below.

"Agreement" shall have the meaning given to such term in the Preamble of this Trust Agreement.

"Bankruptcy Action" shall have the meaning given to such term in Section 4.02 of this Agreement.

"Benefit Plan" shall have the meaning given to such term in Section 3.10(b) of this Trust Agreement.

"Capital Account" shall have the meaning given to such term in Section 2.11(d) of this Trust Agreement.

"Certificate Account" shall have the meaning given to such term in Section 5.01(a) of this Trust Agreement.

"Certificate Register" shall mean the Certificate Register established and maintained in accordance with this Trust Agreement.

"Certificate Registrar" shall mean, initially, the Trustee, and thereafter, any successor appointed pursuant to this Trust Agreement.

"Certificate of Trust" shall mean a certificate of trust duly executed in the form of Exhibit B attached hereto.

"Corporate Trust Office" shall mean (a) in the case of Owner Trustee: Wilmington Trust, National Association, Rodney Square North, 1100 Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Administration- Hercules Capital Funding Trust 2022-1 and in the case of the Trustee/Certificate Registrar: U.S. Bank Trust Company, National Association, 111 Fillmore Avenue East, Attn: Bondholder Services - EP-MN-WS2N, St. Paul, Minnesota, 55107, Ref: Hercules 2022-1; (b) in the case of the Trustee: the principal office of the Trustee currently located at (i) for Note transfer purposes and presentment of the Notes for final payment thereon, the corporate office of the Trustee located at 111 Fillmore Avenue East, Attention: Bondholder Services-EP-MNWS2N, St. Paul, MN 55107, Reference: Hercules Capital Funding Trust 2022-1 and (ii) for all other purposes, the corporate office of the Trustee located at One Federal Street, 3rd Floor, Boston, Massachusetts 02110, Attention: Jack Lindsay, Reference: Hercules Capital Funding Trust 2022-1 telephone number (617) 603-6789, facsimile number (855) 869-2187, email: jack.lindsay@usbank.com; and (c) at such other address as the Owner Trustee or the Trustee may designate from time to time by notice to the Issuer.

"Domestic Corporation" shall mean an entity that is treated as a corporation for U.S. federal income tax purposes and is created or organized in, or under the laws of, the United States, any state thereof or the District of Columbia.

"Expenses" shall have the meaning given to such term in Section 8.02 of this Trust Agreement.

"Fiscal Year" shall have the meaning given to such term in Section 2.11(e) of this Trust Agreement.
"Indemnified Parties" shall have the meaning given to such term in Section 8.02 of this Trust Agreement.

"Majority Certificateholders" means the Holder or Holders of Trust Certificates evidencing an aggregate Percentage Interest in excess of 50%.

"Non-Foreign Status Certificate" shall have the meaning given to such term in Section 3.10(g) of this Trust Agreement.

"Original Trust Agreement" shall have the meaning given to such term in the recitals of this Trust Agreement.

"Owner Trustee" shall have the meaning given to such term in the Preamble of this Trust Agreement.

"Percentage Interest" shall mean with respect to a Trust Certificate, the percentage set forth on the face thereof.

"QIBs" shall have the meaning given to such term in Section 3.10 of this Trust Agreement.

"S&P" means Standard & Poor's Financial Services LLC.

"Sale and Servicing Agreement" shall have the meaning given to such term in Section 1.01 of this Trust Agreement.

"Secretary of State" shall have the meaning given to such term in Section 2.02 of this Agreement.

"Section 385 Certificateholder" shall mean a holder of a Trust Certificate (or interest therein) that is (a) a Domestic Corporation, (b) an entity that is treated as a partnership for U.S. federal income tax purposes and has an expanded group partner (as defined in Treasury Regulations Section 1.385-3(g)(12)) that is a Domestic Corporation or (c) a disregarded entity or grantor trust of an entity described in clause (a) or (b).

"Section 385 Controlled Partnership" shall have the meaning set forth in Treasury Regulations Section 1.385-1(c)(1) for a "controlled partnership".

"Transfer" shall have the meaning given to such term in Section 3.10(d) of this Trust Agreement.

"Treasury Regulations" or "Treas. Regs." shall mean regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary Treasury Regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

"Trust" shall have the meaning given to such term in the recitals of this Trust Agreement.

"Trust Agreement" shall have the meaning given to such term in the Preamble of this Trust Agreement.

"Trust Certificate" shall mean a trust certificate representing a beneficial interest in the Trust executed and authenticated in the form of Exhibit A attached hereto.

"Trust Company" shall have the meaning given to such term in the Preamble of this Trust Agreement.

"Trust Depositor" shall have the meaning given to such term in the Preamble of this Trust Agreement.

"Trust Estate" shall mean all right, title and interest of the Trust in and to the Loan Assets and all other property and rights assigned to the Trust pursuant to the Sale and Servicing Agreement, all funds on deposit from time to time in the Transaction Accounts and the Certificate Account, and all other property of the Trust from time to time, including any rights of the Owner Trustee and the Trust pursuant to the Transaction Documents.

Section 1.02 **Other Terms**.

All accounting terms used but not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States. The symbol "$" shall mean the lawful currency of the United States of America. All terms used in Article 9 of the UCC in the State of Delaware, and not specifically defined herein, are used herein as defined in such Article 9.

Section 1.03 **Computation of Time Periods**.

Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding", and the word "within" means "from and excluding a specified date and to and including a later specified date".

Section 1.04 **Interpretation**.

In this Agreement, unless a contrary intention appears:

(i) the singular number includes the plural number and *vice versa*;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Transaction Documents;

(iii) reference to any gender includes each other gender;

(iv) reference to day or days without further qualification means calendar days;

(v) unless otherwise stated, reference to any time means New York, New York time;

(vi) references to "writing" include printing, typing, lithography, electronic or other means of reproducing words in a visible form;

(vii) reference to any agreement (including any Transaction Document), document or instrument means such agreement, document or instrument as amended, modified, supplemented, replaced, restated, waived or extended and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Transaction Documents, and reference to any promissory note includes any promissory note that is an extension or renewal thereof or a substitute or replacement therefor; and

(viii) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any Section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such Section or other provision.

Section 1.05 References.

All Section references (including references to the Preamble), unless otherwise indicated, shall be to Sections (and the Preamble) in this Agreement.

Section 1.06 Calculations.

Except as otherwise provided herein, all interest rate and basis point calculations hereunder will be made on the basis of a 360 day year consisting of twelve 30-day months and will be carried out to at least three decimal places.

ARTICLE II

ORGANIZATION

Section 2.01 Name.

The Trust created and continued hereby shall be known as the "Hercules Capital Funding Trust 2022-1," in which name the Trust shall have power and authority and is hereby authorized and empowered, without the need for further action on the part of the Trust, and the Owner Trustee shall have power and authority, and is hereby authorized and empowered, to conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued.

Section 2.02 Office.

The office of the Trust shall be in care of the Owner Trustee at the Corporate Trust Office or at such other address in the State of Delaware as the Owner Trustee may designate by written notice to the Certificateholders and the Trust Depositor. The Trust shall constitute a statutory trust within the meaning of Section 3801(g) of the Statutory Trust Statute for which the Owner Trustee has filed a Certificate of Trust with the Secretary of State of the State of Delaware (the "Secretary of State") pursuant to Section 3810(a) of the Statutory Trust Statute. The execution and filing of the Certificate of Trust by the Owner Trustee is hereby ratified, authorized, and approved. The Owner Trustee shall have power and authority, and is hereby authorized and empowered, to execute and file with the Secretary of State any other certificate required or permitted under the Statutory Trust Statute to be filed with the Secretary of State. It is the intention of the parties hereto that this Trust Agreement constitute the governing instrument of such statutory trust.

Section 2.03 **Purposes and Powers**.

The purpose of the Trust is, and the Trust shall have the power and authority and is hereby authorized and empowered, without the need for further action on the part of the Trust, and the Owner Trustee shall have power and authority, and is hereby authorized and empowered (but shall not be obligated), in the name and on behalf of the Trust, to do or cause to be done all acts and things necessary, appropriate or convenient to cause the Trust, to engage in the following activities:

(a) to execute, authenticate, deliver, and issue from time to time the Notes pursuant to the Indenture and the Trust Certificates pursuant to this Trust Agreement and, if applicable, a supplement hereto, and to sell the Notes and to transfer the Trust Certificates pursuant to such agreements and the other Transaction Documents;

(b) with the proceeds of the sale of the Notes, to purchase the Initial Loans, to pay the organizational, start-up and transactional expenses of the Trust and to fund the Transaction Accounts then permitted or required to be funded pursuant to the Sale and Servicing Agreement or the Indenture;

(c) as permitted under the Transaction Documents, to purchase, acquire, own, hold, receive, manage, exercise rights and remedies with respect to, sell, transfer and dispose of, the Trust Estate or any portion thereof as well as any permitted Trust subsidiary;

(d) to assign, grant, transfer, pledge, mortgage, convey and grant a security interest in the Trust Estate pursuant to the Indenture and to hold, manage, transfer and distribute to the Certificateholders pursuant to the terms of this Trust Agreement and the Sale and Servicing Agreement any portion of the Trust Estate released from the lien of, and remitted to the Trust pursuant to, the Indenture;

(e) to enter into, execute, deliver and perform its obligations under the Transaction Documents to which it is to be a party and to exercise its rights and remedies thereunder;

(f) subject to compliance with the Transaction Documents, to engage in such other activities as may be required in connection with the conservation of the Trust Estate and the making of distributions to the Certificateholders, the Noteholders and others specified in the Transaction Documents; and

(g) to engage in those activities, including entering into agreements, that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith.

The Trust is hereby authorized to engage in the foregoing activities. The Trust shall not engage in any activity other than in connection with the foregoing or other than as required or authorized by the terms of this Agreement or the other Transaction Documents. Nothing contained herein shall be deemed to authorize the Owner Trustee on behalf of the Trust to engage in any other business operations or any activities other than those set forth in this Section 2.03. Specifically, the Owner Trustee shall have no authority on behalf of the Trust to engage in any business operations, or acquire any assets other than those specifically included in the Trust Estate from time to time in accordance with the Transaction Documents. Similarly, the Owner Trustee shall have no discretionary duties other than performing those acts necessary to accomplish the purpose of this Trust as set forth in this Section 2.03, certain of which may be delegated to the Servicer or the Administrator. Notwithstanding anything to the contrary contained herein, the Trust may hold the Notes prior to their sale by the Initial Purchaser.

Section 2.04 **Appointment of Owner Trustee**.

The Trust Depositor hereby appoints the Owner Trustee as trustee of the Trust effective as of the date hereof, to have all the rights, powers and duties set forth herein, and the Owner Trustee hereby accepts such appointment.

Section 2.05 **Initial Capital Contribution of Trust Estate**.

The Trust Depositor hereby sells, assigns, transfers, conveys and sets over to the Owner Trustee, as of the date hereof, the sum of ten dollars ($10.00). The Owner Trustee hereby acknowledges receipt from the Trust Depositor, as of the date hereof, of the foregoing contribution, which shall constitute the initial Trust Estate (prior to giving effect to the conveyances described in the Sale and Servicing Agreement) and shall be deposited in the Certificate Account. The Trust Depositor shall pay organizational expenses of the Trust as they may arise or shall, upon the request of the Owner Trustee, promptly reimburse the Owner Trustee for any such expenses paid by the Owner Trustee.

Section 2.06 **Declaration of Trust**.

The Owner Trustee hereby declares that it will hold the Trust Estate in trust upon and subject to the conditions set forth herein for the use and benefit of the Certificateholders, subject to the obligations of the Trust under the Transaction Documents. It is the intention of the parties hereto that the Trust constitute a statutory trust under the Statutory Trust Statute and that this Trust Agreement constitute the governing instrument of such statutory trust. It is the intention of the parties hereto that, solely for federal income tax purposes, the Trust shall be treated as set forth in Section 2.11 of this Agreement. The parties agree that, unless otherwise required by appropriate tax authorities, the Trust will file or cause to be filed annual or other necessary returns, reports and other forms consistent with the characterization of the Trust as set forth in Section 2.11 of this Agreement. Effective as of the date hereof, the Owner Trustee shall have all rights, powers and authority set forth herein and in the Statutory Trust Statute with respect to accomplishing the purposes of the Trust.

Section 2.07 **Liability of the Certificateholders**.

No Certificateholder shall have any personal liability for any liability or obligation of the Trust.

Section 2.08 **Title to Trust Property**.

Legal title to all of the Trust Estate shall be vested at all times in the Trust as a separate legal entity except where Applicable Law in any jurisdiction requires title to any part of the Trust Estate to be vested in a trustee or trustees, in which case title shall be deemed to be vested in the Owner Trustee, a co-trustee and/or a separate trustee, as the case may be. If any portion of the Trust Estate is deemed to be vested in the Owner Trustee, a co-trustee and/or a separate trustee, (a) the Trust Depositor or the Owner Trustee, upon having actual knowledge thereof, will immediately notify the Trustee and the Servicer and (b) the Servicer will cause to be filed such UCC financing statements and related filings, documents or writings as are necessary (or as shall be reasonably requested by the Trustee) to maintain the Trustee's security interest in the Collateral under the Indenture.

Section 2.09 **Situs of Trust**.

All bank accounts maintained by the Owner Trustee or the Trustee on behalf of the Trust shall be located in the State of Delaware or such other state in which the Corporate Trust Office of the Owner Trustee or the Trustee may be located. The Trust shall not have any employees in any state other than Delaware; *provided* that nothing herein shall restrict or prohibit the Owner Trustee from having employees within or without the State of Delaware. Payments will be received by the Trust only in Delaware or such other state in which the Corporate Trust Office of the Trustee may be located, and payments will be made by the Trust only from Delaware or such other state in which the Corporate Trust Office of the Trustee may be located. The only office of the Trust will be at the Corporate Trust Office in Delaware.

Section 2.10 **Representations and Warranties of the Trust Depositor**.

The Trust Depositor hereby represents and warrants to the Owner Trustee that:

(a) The Trust Depositor is duly organized and validly existing as a limited liability company in good standing under the laws of the State of Delaware, with power and authority to own its properties and to conduct its business as such properties are currently owned and such business is presently conducted.

(b) The Trust Depositor has the power and authority to execute and deliver this Agreement and to carry out its terms. The Trust Depositor has full power and authority to sell and assign the property to be sold and assigned to and deposited with the Trust and the Trust Depositor has duly authorized such sale and assignment and deposit to the Trust by all necessary limited liability company action.

(c) The execution, delivery and performance of this Agreement have been duly authorized by the Trust Depositor by all necessary limited liability company action.

(d) This Agreement constitutes a legal, valid and binding obligation of the Trust Depositor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and similar laws relating to creditors' rights generally and subject to general principles of equity.

(e) The execution, delivery and performance of this Trust Agreement and the other Transaction Documents to which it is a party by the Trust Depositor, and the consummation of the transactions contemplated hereby and thereby, will not violate any material Applicable Law applicable to the Trust Depositor, or constitute a material breach of any mortgage, indenture, contract or other agreement to which the Trust Depositor is a party or by which the Trust Depositor or any of the Trust Depositor's properties may be bound, or result in the creation or imposition of any security interest, lien, charge, pledge, preference, equity or encumbrance of any kind upon any of its properties pursuant to the terms of any such mortgage, indenture, contract or other agreement, other than as contemplated by the Transaction Documents.

(f) To the Trust Depositor's best knowledge, there are no proceedings or investigations pending, or to the Trust Depositor's knowledge threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Trust Depositor or its properties: (A) asserting the invalidity of this Trust Agreement, (B) seeking to prevent the consummation of any of the transactions contemplated by this Trust Agreement or (C) seeking any determination or ruling that might materially and adversely affect the performance by the Trust Depositor of its obligations under, or the validity or enforceability of, this Trust Agreement.

Section 2.11 **Federal Income Tax Allocations**.

(a) It is the intent of the Trust Depositor and the Certificateholders that (i) for any period that the Trust Certificates are owned by a single beneficial owner for U.S. federal income tax purposes, the Trust will be disregarded as an entity separate from such beneficial owner for U.S. federal income tax purposes, and the Certificateholders (and the beneficial owner of the Trust Certificates), by acceptance of the Trust Certificates (or a beneficial interest therein), agree to take no action inconsistent with such treatment and (ii) for any period that the Trust Certificates are owned by more than one beneficial owner for U.S. federal income tax purposes, the Trust will be treated as a partnership for U.S. federal income tax purposes, other than a publicly traded partnership, the partners of which are the beneficial owners of the Trust Certificates, and the Certificateholders (and beneficial owners of the Trust Certificates), by acceptance of a Trust Certificate (or beneficial interest therein) agree to treat the Trust Certificates as equity and to take no action inconsistent with such treatment.

(b) Neither the Trust Depositor nor any Certificateholder will, under any circumstances, and at any time, make an election on Internal Revenue Service Form 8832 or otherwise take any action that would cause the Trust to be treated as an association, publicly traded partnership or taxable mortgage pool, in each case, taxable as a corporation for U.S. federal income tax purposes.

(c) For any period that the Trust has two or more equity owners and is treated as a partnership for U.S. federal income tax purposes, the provisions of Section 2.11(d)-(g) shall apply.

(d) With respect to each taxable year (or portion thereof) in which the Trust is classified as a partnership for U.S. federal income tax purposes, (i) a capital account ("Capital Account") will be maintained by the Trust for each Certificateholder with respect to all items of income, deduction, gain, loss or credit and such items will be allocated to such Capital Accounts in a manner consistent with Section 704 of the Code, and (ii) without limiting the foregoing, upon liquidation of the Trust or at such time as a Certificateholder ceases to hold any Trust Certificates in the Trust, liquidating distributions will be made in accordance with the Capital Account balances of the Certificateholders (as determined after taking into account all required Capital Account adjustments for the taxable year during which such liquidation occurs) by the later of the end of the taxable year or, the date which is 90 days after the date of such liquidation. The provisions of this Section relating to Capital Accounts are intended to comply with such provisions and related provisions issued with respect to Section 704 of the Code and shall be interpreted consistently therewith. The Trust shall have the authority to make such adjustments to the Certificateholder's Capital Accounts as may be required to cause the allocations made by the Trust to comply with such provisions.

(e) With respect to each taxable year (or portion thereof) in which the Trust is classified as a partnership for U.S. federal income tax purposes, at least once each such taxable year of the Trust for U.S. federal income tax purposes (as determined under Section 706 of the Code, a "Fiscal Year"), after adjusting each Certificateholder's Capital Account for all contributions and distributions with respect to such Fiscal Year, the Trust shall allocate all profits and losses and items thereof in the following order of priority: (i) first, profits and losses and items thereof shall be allocated in the manner and to the extent provided by (A) Treas. Regs. §1.704-1(b)(4), (B) Treas. Regs. §1.704-1(b)(2) (to comply with the substantial economic effect safe harbors), including, without limitation, Treas. Regs. §1.704-1(b)(2)(ii)(d) (the "qualified income offset") and Treas. Regs. §1.704-1(b)(2)(iv) (capital accounting requirements) and (C) Treas. Regs. §1.704-2, including, without limitation, Treas. Regs. §§1.704-2(e) (provided that allocations pursuant to Treas. Regs. §1.704-2(e) shall be made to the Certificateholders pro rata in accordance with the capital each Certificateholder has contributed to the Trust), 1.704-2(i)(2), and 1.704-2(i)(4); and (ii) all remaining profits and losses and items thereof shall be allocated to the Certificateholders' Capital Accounts in a manner such that, after such allocations have been made, the balance of each Certificateholder's Capital Account (which may be a positive, negative, or zero balance) shall equal (A) the amount that would be distributed to such Certificateholder, determined as if the Trust were to sell all of its assets for the Section 704(b) Book Value (as defined below) thereof and distribute the proceeds thereof (net of any sales commissions and other similar transaction fees and payments required to be made to creditors) pursuant to the relevant legal documents setting forth such distributions, minus (B) the sum of (I) such Certificateholder's share of the "partnership minimum gain" (as determined under Treas. Regs. §§1.704-2(d) and (g)(3)) and "partner minimum gain" (as determined under Treas. Regs. §1.704-2(i)), and (II) the amount, if any, that such Certificateholder is obligated (or is deemed for U.S. federal income tax purposes to be obligated) to contribute, in its capacity as a Certificateholder, to the capital of the Trust as of the last day of such Fiscal Year. For purposes of this Section 2.11, (i) the term "Section 704(b) Book Value" means, with respect to any Trust property, the Trust's adjusted basis for U.S. federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treas. Regs. §§1.704-1(b)(2)(iv)(d) through (g), provided that on the date of the contribution of an asset to the Trust, the Section 704(b) Book Value of any asset contributed to the Trust shall be equal to the fair market value of such asset on the date of such contribution, and (ii) the term "profits and losses" shall mean the items of profit and loss of the Trust (including separately stated items) as computed under Treas. Regs. §1.704-1(b)(2)(iv).

(f) With respect to each taxable year (or portion thereof) in which the Trust is classified as a partnership for U.S. federal income tax purposes, except as provided in this Section 2.11(f), each item of taxable income, gain, loss, deduction, or credit shall be allocated in the same manner as its correlative item of "book" items allocated pursuant to Section 2.11(e). In accordance with Section 704(c)(1)(A) of the Code (and the principles thereof) and Treas. Regs. §1.704-3, income, gain, loss and deduction with respect to any property contributed to the capital of the Trust, or after Trust property has been revalued under Treas. Regs. §1.704-1(b)(2)(iv)(f), shall, solely for U.S. federal, state and local tax purposes, be allocated among the Certificateholders so as to take into account any variation between the adjusted basis of such Trust property to the Trust for U.S. federal income tax purposes and its value as so determined at the time of the contribution or revaluation of Trust property.

(g) In the event that the Trust is treated as a partnership for U.S. federal income tax purposes, the Servicer shall be the partnership representative within the meaning of Section 6223(a) of the Code. The partnership

representative may, in its sole discretion, cause the Trust to make an election under Section 754 of the Code. The partnership representative shall (i) if the Trust is eligible, cause the Trust to elect, pursuant to Section 6221(b) of the Code, that Section 6221(a) of the Code shall not apply to the Trust or (ii) if the election in Section 6221(b) of the Code is not available, to the extent applicable, cause the Trust to make the election under Section 6226(a) of the Code.

Section 2.12 Covenant of Certificateholders.

Each Certificateholder agrees to be bound by the terms and conditions of the Trust Certificates and of this Trust Agreement, including any supplements or amendments hereto, and to perform the obligations of a Certificateholder as set forth therein or herein, in all respects as if it were a signatory hereto. This undertaking is made for the benefit of the Trust Depositor, the Trust, the Owner Trustee, the Trust Company and all other Certificateholders present and future.

ARTICLE III

TRUST CERTIFICATES AND TRANSFER OF INTERESTS

Section 3.01 Initial Ownership.

Upon the formation of the Trust by the contribution by the Trust Depositor pursuant to Section 2.05 and until the issuance of the Trust Certificates, the Trust Depositor shall be the sole beneficiary of the Trust.

Section 3.02 The Trust Certificates.

(a) The Trust Certificates shall be substantially in the form set forth in Exhibit A hereto, with such changes as may be specified in a supplement to this Trust Agreement. Except as otherwise set forth in a supplement to this Trust Agreement, the Trust Certificates shall be issued from time to time in minimum Percentage Interests of 10% and integral multiples of 1% in excess thereof; *provided* that one Trust Certificate may be issued in a different denomination. The Trust Certificates shall be executed on behalf of the Trust by manual or facsimile signature of an authorized officer of the Owner Trustee. Trust Certificates bearing the manual or facsimile signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Trust, shall be validly issued and entitled to the benefit of this Trust Agreement, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the authentication and delivery of such Trust Certificates or did not hold such offices at the date of authentication and delivery of such Trust Certificates.

(b) A transferee of a Trust Certificate shall become a Certificateholder and shall be entitled to the rights and subject to the obligations of a Certificateholder hereunder upon such transferee's acceptance of a Trust Certificate duly registered in such transferee's name pursuant to Section 3.04.

Section 3.03 Authentication of Trust Certificates.

Concurrently with the initial transfer of the Initial Loans to the Trust pursuant to the Sale and Servicing Agreement, the Trust shall issue the Trust Certificates, in an aggregate Percentage Interest equal to 100%, executed by the Owner Trustee on behalf of the Trust, authenticated by the Certificate Registrar and delivered to or upon the written order of the Trust Depositor, signed by its chairman of the board, its chief executive officer, its chief financial officer, its president, any vice president, secretary or any assistant treasurer, without further limited liability company action by the Trust Depositor, in authorized denominations. No Trust Certificate shall entitle its Holder to any benefit under this Agreement or be valid for any purpose unless there shall appear on such Trust Certificate a certificate of authentication substantially in the form set forth in Exhibit A, executed by the Certificate Registrar, by manual signature; such authentication shall constitute conclusive evidence that such Trust Certificate has been duly and validly authorized, issued, authenticated and delivered hereunder and, subject to the terms of this Agreement, fully paid and non-assessable. All Trust Certificates shall be dated the date of their authentication.

Section 3.04 **Registration of Transfer and Exchange of Trust Certificates**.

(a) The Certificate Registrar shall keep or cause to be kept, at the office or agency maintained pursuant to Section 3.08, a Certificate Register in which, subject to such reasonable regulations as it may prescribe, the Certificate Registrar shall provide for the registration of Trust Certificates and, subject to Section 3.10 hereof, of transfers and exchanges of Trust Certificates as herein provided. The Trustee shall be the initial Certificate Registrar. Promptly upon written request therefor from the Owner Trustee, the Certificate Registrar shall provide to the Owner Trustee in writing such information regarding or contained in the Certificate Register as the Owner Trustee may reasonably request. The Owner Trustee shall be entitled to rely (and shall be fully protected in relying) on such information.

(b) Upon surrender for registration of transfer of any Trust Certificate at the office or agency maintained pursuant to Section 3.08, the Certificate Registrar shall cause the Owner Trustee to execute on behalf of the Trust and the Certificate Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Trust Certificates in authorized denominations of a like aggregate amount dated the date of authentication by the Certificate Registrar or any authenticating agent. At the option of a Certificateholder, Trust Certificates may be exchanged for other Trust Certificates of authorized denominations of a like aggregate amount upon surrender of the Trust Certificates to be exchanged at the office or agency maintained pursuant to Section 3.08.

(c) Every Trust Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer and accompanied by Internal Revenue Service Form W-9 (or applicable successor form) and such other documentation as may be required by the Owner Trustee in order to comply with Applicable Law, each in a form satisfactory to the Owner Trustee and the Certificate Registrar duly executed by the registered Certificateholder or such registered Certificateholder's attorney duly authorized in writing. Each Trust Certificate surrendered for registration of transfer or exchange shall be cancelled and subsequently disposed of by the Certificate Registrar in accordance with its customary practice.

(d) No service charge shall be made for any registration of transfer or exchange of Trust Certificates, but the Owner Trustee or the Certificate Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Trust Certificates.

Section 3.05 **Mutilated, Destroyed, Lost or Stolen Trust Certificates**.

If (a) any mutilated Trust Certificate shall be surrendered to the Certificate Registrar, or if the Certificate Registrar and the Owner Trustee shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Certificate, and (b) there shall be delivered to the Certificate Registrar and the Owner Trustee such security or indemnity as may be reasonably required by them to save each of them harmless, then in the absence of notice to the Trust that such Trust Certificate has been acquired by a protected purchaser, the Certificate Registrar shall cause the Owner Trustee on behalf of the Trust to execute and the Certificate Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Certificate, a new Trust Certificate of like tenor and denomination. The Holder of such Trust Certificate shall pay the reasonable expenses and charges of the Certificate Registrar and the Owner Trustee in connection therewith. In connection with the issuance of any new Trust Certificate under this Section 3.05, the Owner Trustee or the Certificate Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Certificate issued pursuant to this Section 3.05 shall constitute conclusive evidence of ownership of a beneficial interest in the Trust, as if originally issued, whether or not the lost, stolen or destroyed Trust Certificate shall be found at any time.

Section 3.06 **Persons Deemed Owners**.

Prior to due presentation of a Trust Certificate for registration of transfer, the Owner Trustee, the Certificate Registrar or any paying agent or other agent thereof may treat the Person in whose name any Trust Certificate is registered in the Certificate Register as the owner of such Trust Certificate for the purpose of receiving distributions

pursuant to Section 5.02 and for all other purposes whatsoever, and none of the Owner Trustee, the Certificate Registrar or any paying agent or other agent thereof shall be bound by any notice to the contrary.

Section 3.07 **Access to List of Certificateholders' Names and Addresses**.

The Certificate Registrar shall furnish or cause to be furnished to the Trustee or any other party acting as paying agent, the Owner Trustee, the Servicer and the Trust Depositor, within ten (10) Business Days after receipt by the Certificate Registrar of a written request therefor from the Trustee, the Owner Trustee, the Servicer or the Trust Depositor, a list, in such form as the Trustee or any other party acting as paying agent, the Owner Trustee, the Servicer or the Trust Depositor may reasonably require, of the names and addresses of the Certificateholders as of the most recent Record Date. If three or more Certificateholders or one or more Holders of Trust Certificates evidencing not less than 25% of the Percentage Interests apply in writing to the Certificate Registrar, and such application states that the applicants desire to communicate with other Certificateholders with respect to their rights under this Trust Agreement or under the Trust Certificates and such application is accompanied by a copy of the communication that such applicants propose to transmit, then the Certificate Registrar shall, within five (5) Business Days after the receipt of such application, afford such applicants access during normal business hours to the current list of Certificateholders. Upon receipt of any such application, the Certificate Registrar will promptly notify the Trust Depositor by providing a copy of such application and a copy of the list of Certificateholders produced in response thereto. Each Certificateholder, by receiving and holding a Trust Certificate, shall be deemed to have agreed not to hold any of the Trust Depositor, the Certificate Registrar and the Owner Trustee accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

Section 3.08 **Maintenance of Office or Agency**.

The Certificate Registrar shall maintain an office or offices or agency or agencies where Trust Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Certificate Registrar in respect of the Trust Certificates and the Transaction Documents may be served. The Certificate Registrar initially designates the office of the Certificate Registrar at the Corporate Trust Office as its office for such purposes. The Certificate Registrar shall give prompt written notice to the Trust Depositor, any paying agent, the Owner Trustee and the Certificateholders of any change in the location of the Certificate Register or any such office or agency.

Section 3.09 **Appointment of Trustee as Paying Agent**.

The Trustee shall make distributions to Certificateholders from the Certificate Account pursuant to Section 5.02 and shall report the amounts of such distributions to the Owner Trustee. Any paying agent of the Trustee shall have the revocable power to withdraw funds from the Certificate Account for the purpose of making the distributions referred to above. The Owner Trustee (acting at the written direction of the Administrator or the Certificateholder) may revoke such power and remove the Trustee or any other party acting as paying agent of the Trustee, if the Administrator or the Certificateholder determines in its sole discretion that the Trustee or any other party acting as paying agent shall have failed to perform its obligations under this Trust Agreement in any material respect. The paying agent initially shall be U.S. Bank Trust Company, National Association, as Trustee under the Indenture. U.S. Bank Trust Company, National Association shall be permitted to resign as paying agent upon 30 days' written notice to the Owner Trustee and the Servicer. In the event that U.S. Bank Trust Company, National Association shall no longer be the paying agent, the Owner Trustee (acting at the written direction of the Administrator or the Certificateholder) shall appoint a successor to act as paying agent (which shall be a bank or trust company). The Owner Trustee shall cause the Trustee and such successor paying agent or any additional paying agent appointed by the Owner Trustee to execute and deliver to the Owner Trustee an instrument in which the Trustee and such successor paying agent or additional paying agent shall agree with the Owner Trustee that, as paying agent, the Trustee and such successor paying agent or additional paying agent will hold all sums, if any, held by it for payment to the Certificateholders in trust for the benefit of the Certificateholders entitled thereto until such sums shall be paid to such Certificateholders. The Trustee or any other party acting as paying agent, shall return all unclaimed funds to the Owner Trustee and upon removal of a paying agent such paying agent shall also return all funds in its possession to the Owner Trustee. The provisions of Sections 7.01, 7.04, 7.05, 7.06, 8.01 and 8.02 shall apply to U.S. Bank Trust Company, National Association or the Owner Trustee also in its role as paying agent and Certificate Registrar as if

U.S. Bank Trust Company, National Association and the Owner Trustee were named in such Sections, for so long as U.S. Bank Trust Company, National Association or the Owner Trustee shall act as paying agent or Certificate Registrar and, to the extent applicable, to any other paying agent or certificate registrar appointed hereunder. Any reference in this Agreement to the paying agent shall include any co-paying agent unless the context requires otherwise.

Section 3.10 **Transfer Restrictions**.

The Trust Certificates may not be offered, transferred or sold except to the Trust Depositor or an Affiliate thereof or to Qualified Institutional Buyers ("QIBs") for purposes of Rule 144A under the Securities Act who are Qualified Purchasers for purposes of Section 3(c)(7) under the 1940 Act, and who are United States persons (as defined in Section 7701(a)(30) of the Code) in reliance on an exemption from the registration requirements of the Securities Act.

(a) The Trust Certificates have not been registered or qualified under the Securities Act, or any state securities law. No transfer, sale, pledge or other disposition of any Trust Certificate shall be made unless such disposition is made pursuant to an effective registration statement under the Securities Act and effective registration or qualification under applicable state securities laws, or is made in a transaction which does not require such registration or qualification. No transfer of any Trust Certificates shall be made if such transfer would require the Trust to register as an "investment company" under the 1940 Act. In the event that a transfer is to be made, the transferee shall execute and deliver to the Owner Trustee and Certificate Registrar a certification substantially in the form of Exhibit C hereto. In the event that such transfer is to be made in reliance on the availability of an exemption under the Securities Act, the Owner Trustee may require the prospective transferee to provide an Opinion of Counsel satisfactory to it that such transfer may be made pursuant to an exemption from the Securities Act, which Opinion of Counsel shall not be an expense of the Owner Trustee or of the Trust.

(b) Neither the Trust Certificates nor any beneficial interest in such Trust Certificates may be acquired or held by or with plan assets of any employee benefit plans, retirement arrangements, individual retirement accounts or Keogh plans subject to either Part 4, Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended, or Section 4975 of the Code (a "Benefit Plan") and any such purported transfer shall not be effective. Each transferee of a Trust Certificate shall be required to represent (a) that it is not a Benefit Plan and is not acquiring such Trust Certificate with the plan assets of a Benefit Plan and (b) that if such Trust Certificate is subsequently deemed to be a plan asset of such a Benefit Plan, it will dispose of such Trust Certificate.

(c) Each Trust Certificate will bear the legends set forth in paragraph 6 of Exhibit C hereto.

(d) No transfer, sale, pledge or other disposition of one or more Trust Certificates (a "Transfer") shall be made unless the Percentage Interest of the Trust Certificates so Transferred is no less than ten (10%) percent.

(e) Notwithstanding any other provision herein or elsewhere, other than to determine that any certification delivered to the Owner Trustee or Certificate Registrar, as the case may be, pursuant to Section 3.10(a) hereof is substantially in the form of Exhibit C hereto and to determine (including, without limitation, based on one or more certificates from the Person transferring such Trust Certificate and/or the Note Registrar) that any transfer of a Trust Certificate described in such certification delivered to the Owner Trustee complies with Section 3.10(d), the Owner Trustee and Certificate Registrar shall have no obligation to determine whether or not any transfer or exchange or proposed or purported transfer or exchange of a Trust Certificate is permitted under or in accordance with this Agreement, the Securities Act or applicable state securities laws, and the Owner Trustee and Certificate Registrar shall have no personal liability to any Person in connection with any transfer or exchange or proposed or purported transfer or exchange (and/or registration thereof).

(f) No Transfer of a Trust Certificate or any interest therein shall be made unless the Trust and the Owner Trustee (and any of their agents) receive from the prospective transferee a representation and warranty that the prospective transferee is a "United States person" as defined in Section 7701(a)(30) of the Code and a correct, complete and properly executed Internal Revenue Service Form W-9 (or applicable successor form). If any holder of

a Trust Certificate or any interest therein (other than the Trust Depositor as the initial Certificateholder) fails to provide the Trust and the Owner Trustee (and any of their agents) with the properly completed and signed tax certification specified above, the acquisition of its interest in the Trust Certificates shall be void *ab initio*.

(g) No Transfer of a Trust Certificate or any interest therein shall be made unless the transferor delivers to the transferee, with a copy to the Trust and the Owner Trustee, prior to the Transfer of the Trust Certificate or any interest therein, a properly completed certificate, in a form reasonably acceptable to the transferee and the Trust, stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person within the meaning of Section 1446(f)(2) of the Code (such certificate, a "Non-Foreign Status Certificate"). Each transferor of a Trust Certificate or any interest therein acknowledges, or by acquiring the Trust Certificate or any interest therein will be deemed to acknowledge, that the failure to provide a Non-Foreign Status Certificate to the transferee may result in withholding on the amount realized on its disposition of the Trust Certificate.

(h) No Transfer of a Trust Certificate or any interest therein, including the initial issuance to the Trust Depositor, shall be made, unless the prospective transferee acknowledges (other than the Trust Depositor) and agrees that no Trust Certificate or any interest therein may be acquired or owned by any Person that is classified for U.S. federal income tax purposes as a partnership, subchapter S corporation or grantor trust unless (i)(A) none of the direct or indirect beneficial owners of any interest in such Person have or ever will have more than 40% of the value of its interest in such Person attributable to the aggregate interest of such Person in the Trust Certificates and any other equity interests of the Trust, and (B) it is not and will not be a principal purpose of the arrangement involving the investment of such Person in the Trust Certificates and any other equity interests of the Trust to permit any partnership to satisfy the 100 partner limitation of Treasury Regulations Section 1.7704-1(h)(1)(ii) or (ii) such Person obtains an opinion of nationally recognized U.S. tax counsel reasonably acceptable to the Trust that such transfer will not cause the Trust to be treated as a publicly traded partnership taxable as a corporation.

(i) No Transfer of a Trust Certificate or any interest therein, including the initial issuance to the Trust Depositor, shall be made unless the prospective transferee acknowledges and agrees that no Trust Certificate may be acquired, and no Certificateholder (or holder of an interest in a Trust Certificate) may sell, transfer, assign, participate, pledge or otherwise dispose of a Trust Certificate (or any interest therein) or other equity interest in the Trust or cause a Trust Certificate (or any interest therein) or other equity interest in the Trust to be marketed, (i) on or through an "established securities market" within the meaning of Section 7704(b)(1) of the Code and Treasury Regulations Section 1.7704-1(b), including without limitation, an interdealer quotation system that regularly disseminates firm buy or sell quotations or (ii) if such acquisition, sale, transfer, assignment, participation, pledge or other disposition would cause the combined number of holders of Trust Certificates and other equity interests in the Trust to be more than 88.

(j) No Transfer of a Trust Certificate or any interest therein, including the initial issuance to the Trust Depositor, shall be made unless the prospective transferee acknowledges and agrees that it will not participate in the creation or other transfer of any financial instrument or contract the value of which is determined in whole or in part by reference to the Trust (including the amount of distributions by the Trust, the value of the Trust's assets, the results of the Trust's operation or the Trust Certificates).

(k) No Transfer of a Trust Certificate or any interest therein, including the initial issuance to the Trust Depositor, shall be made unless the prospective transferee acknowledges and agrees that any sale, transfer, assignment, participation, pledge, or other disposition of a Trust Certificate that would violate any of the three preceding paragraphs above or otherwise cause the Trust to be unable to rely on the "private placement" safe harbor of Treasury Regulations Section 1.7704-1(h) will be void and of no force or effect, and it will not transfer any interest in its Trust Certificates to any person that does not agree to be bound by the three preceding paragraphs above or by this paragraph.

(l) Unless the Trust Depositor, Trust and Owner Trustee have received an Opinion of Counsel from Dechert LLP, Winston & Strawn LLP, or other nationally recognized tax counsel that the restriction on the proposed acquisition of a Trust Certificate (or any interest therein) described by this paragraph is no longer necessary to conclude that any such acquisition (and subsequent resale of the applicable Notes described below) will not cause the Treasury Regulations under Section 385 of the Code to apply to such Notes in a manner that could cause a material

adverse effect on the Trust or the Trust to be treated as an association or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes, (i) a Section 385 Certificateholder cannot acquire a Trust Certificate (or any interest therein) if (A) a member of any "expanded group" (as defined in Treasury Regulations Section 1.385-1(c)(4)) that includes such Section 385 Certificateholder owns any Notes or (B) a Section 385 Controlled Partnership of such expanded group owns any Notes and (ii) a Section 385 Certificateholder cannot hold a Trust Certificate (or any interest therein) if (A) a member of any "expanded group" (as defined in Treasury Regulations Section 1.385-1(c)(4)) that includes such Section 385 Certificateholder acquires any Notes from the Trust, any Affiliate of the Trust or any other subsequent transferor of a Note or (B) a Section 385 Controlled Partnership of such expanded group acquires any Notes from the Trust, any Affiliate of the Trust or any other subsequent transferor of a Note. The preceding sentence shall not apply if the Noteholder or potential Noteholder is a U.S. corporate member of the same U.S. corporate "affiliated group" (as defined in Section 1504 of the Code) filing a consolidated federal income tax return that includes each of any applicable related Section 385 Certificateholders (including in the case of a partnership, the relevant "expanded group partner" (as defined in Treasury Regulations Section 1.385-3(g)(12)). If a Certificateholder (or holder of an interest in a Trust Certificate) fails to comply with the foregoing requirements, the Trust and Depositor are authorized, at their discretion, to compel such Certificateholder (or holder of an interest in a Trust Certificate) to sell its Trust Certificate (or interest therein) to a Person whose ownership complies with this subsection so long as such sale does not otherwise cause a material adverse effect on the Trust or cause the Trust to be treated as an association or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

(m) Each holder or beneficial owner of a Trust Certificate (or any interest therein) acknowledges and agrees, and will be deemed to have acknowledged and agreed, that, for so long as the Trust is disregarded as separate from it for U.S. federal income tax purposes, neither a Trust Certificate (or any interest therein) or a Note (or any interest therein) may be transferred by it (except to a person that is disregarded as separate from such holder or beneficial owner for U.S. federal income tax purposes), unless it shall have received written advice of Dechert LLP or Winston & Strawn LLP or an opinion of nationally recognized U.S. tax counsel reasonably acceptable to the Trust that such transfer will not cause the Trust to be treated as a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes or otherwise to be subject to U.S. federal income tax on a net basis.

(n) Each holder or beneficial owner of a Trust Certificate (or any interest therein) acknowledges and agrees, and will be deemed to have acknowledged and agreed, that, for so long as the Trust is classified as a partnership for U.S. federal income tax purposes, it shall not acquire any Trust Certificates (or any other interest treated as equity in the Issuer for U.S. federal income tax purposes) if such transfer would cause the Trust to be treated as a disregarded entity for U.S. federal income tax purposes, unless it shall have received written advice of Dechert LLP or Winston & Strawn LLP or an opinion of nationally recognized U.S. tax counsel reasonably acceptable to the Trust that such transfer will not cause the Trust to be treated as a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes or otherwise to be subject to U.S. federal income tax on a net basis.

ARTICLE IV

ACTIONS BY OWNER TRUSTEE

Section 4.01 **Prior Notice to and Consent by Certificateholders with Respect to Certain Matters**.

With respect to the following matters, the Trust shall not take action unless either (i), at least ten (10) Business Days before the taking of such action, the Owner Trustee shall have notified the Certificateholders and the Trust Depositor (who shall promptly forward such notice to any Rating Agency) in writing of the proposed action and the Certificateholders holding a Percentage Interest of not less than 66-2/3% shall not, prior to the tenth (10th) Business Day after such notice is given, have notified the Owner Trustee in writing that such Certificateholders have withheld consent or provided alternative direction or (ii) Certificateholders holding a Percentage Interest of not less than 66-2/3% direct the Owner Trustee to take action with respect to:

(a) the initiation of any claim or lawsuit by the Trust and the compromise of any action, claim or lawsuit brought by or against the Trust;

(b) the election by the Trust to file an amendment to the Certificate of Trust (unless such amendment is required to be filed under the Statutory Trust Statute);

(c) the amendment of the Indenture or any other Transaction Document in circumstances where the consent of any Noteholder is required;

(d) the amendment of the Indenture or any other Transaction Document in circumstances where the consent of any Noteholder is not required and such amendment may reasonably be expected to adversely affect the interest of the Certificateholders;

(e) such Certificateholders direct the Owner Trustee to initiate any amendment to any Transaction Document or to seek any waiver or other modification thereof;

(f) the appointment pursuant to the Indenture of a successor paying agent or Trustee or pursuant to this Trust Agreement of a successor Certificate Registrar, or paying agent, or the consent to the assignment by the Trustee or Certificate Registrar of its obligations under the Indenture or this Trust Agreement, as applicable;

(g) the consent to the calling or waiver of any Event of Default of any Transaction Document or such Certificateholders direct the Owner Trustee to call or waive any such Event of Default;

(h) the consent to the assignment of the Trustee or Servicer of their respective obligations under any Transaction Document;

(i) except as provided in Article IX hereof, the dissolution, termination or liquidation of the Trust in whole or in part;

(j) the merger or consolidation of the Trust with or into any other entity, or conveyance or transfer of all or substantially all of the Trust's assets to any other entity;

(k) the incurrence, assumption or guaranty by the Trust of any indebtedness other than as set forth in this Agreement or the Transaction Documents;

(l) the doing of any act which would make it impossible to carry on the ordinary business of the Trust as described in Section 2.03 hereof;

(m) the confession of a judgment against the Trust;

(n) the possession of Loan Assets or other Collateral, or assignment of the Trust's right to property, for other than a purpose permitted under Section 2.03;

(o) the lending by the Trust of any funds to any entity, except as permitted or required under the Sale and Servicing Agreement with respect to the Loan Assets or other Collateral;

(p) the change in the Trust's purpose and powers from those set forth in this Trust Agreement; or

(q) the removal or replacement of the Servicer or the Trustee.

In addition, the Trust shall not commingle its assets with those of any other entity other than as permitted under the Transaction Documents. The Trust shall maintain its financial and accounting books and records separate from those of any other entity; *provided* that the Trust may be consolidated with another entity in accordance with U.S. generally accepted accounting principles and, when so consolidated will note on its consolidated financial statement that the Trust's assets are not available to satisfy the claims of creditors of such consolidating Person. Except as expressly set forth herein, the Trust shall pay its indebtedness, operating expenses and liabilities from its own funds, and the Trust shall not pay the indebtedness, operating expenses and liabilities of any other entity.

Section 4.02 Action by Certificateholders with Respect to Bankruptcy.

To the extent permitted by Applicable Law, the Trust shall not have the power, without the unanimous prior written approval of the Certificateholders, and to the extent otherwise consistent with the Transaction Documents, to (i) institute proceedings to have the Trust declared or adjudicated as bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against the Trust, (iii) file a petition or consent to a petition seeking reorganization or relief on behalf of the Trust under any applicable federal or state law relating to bankruptcy, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or any similar official) of the Trust or a substantial portion of the property of the Trust, (v) make any assignment for the benefit of the Trust's creditors, (vi) cause the Trust to admit in writing its inability to pay its debts generally as they become due, or (vii) take any action, or cause the Trust to take any action, in furtherance of any of the foregoing (any of the above, a "Bankruptcy Action"). So long as the Indenture remains in effect, and to the extent permitted by Applicable Law, no Certificateholder shall have the power to take and shall not take any Bankruptcy Action with respect to the Trust or direct the Owner Trustee to take any Bankruptcy Action with respect to the Trust.

Section 4.03 Restrictions on Certificateholders' Power.

The Certificateholders shall not direct the Owner Trustee to take or to refrain from taking any action if such action or inaction would be contrary to any obligation of the Trust or the Owner Trustee under this Trust Agreement or any of the Transaction Documents or would cause a violation of any of the Transaction Documents or would be contrary to or inconsistent with Section 2.03, nor shall the Owner Trustee be obligated to follow any such direction, if given.

Section 4.04 Majority Control.

Except as expressly provided herein or in any supplement to this Trust Agreement, any action or direction that may be taken or given by the Certificateholders under this Trust Agreement may not be taken or given unless agreed to or directed by the Majority Certificateholders. Except as expressly provided herein or in any supplement to this Trust Agreement, any written notice of the Certificateholders delivered pursuant to this Trust Agreement shall be effective if signed by Majority Certificateholders at the time of the delivery of such notice.

ARTICLE V

APPLICATION OF TRUST FUNDS; CERTAIN DUTIES

Section 5.01 Establishment of Trust Account.

(a) For the benefit of the Certificateholders, the Trustee on behalf of the Trust shall establish and maintain in the name of the Trust an Eligible Deposit Account with the Trustee (the "Certificate Account"), bearing a designation clearly indicating that the funds deposited therein are held for the benefit of the Certificateholders. Each Qualified Institution maintaining the Certificate Account shall agree in writing (and the Trustee does hereby so agree) to comply with all instructions originated by the Trustee or any other party acting as paying agent, or Owner Trustee directing the disposition of funds in the account without the further consent of the Trust.

(b) The Trust shall possess all right, title and interest in all funds on deposit from time to time in the Certificate Account and in all proceeds thereof. Except as provided in Section 3.09 or as otherwise expressly provided herein, the Certificate Account shall be under the sole dominion and control of the Trustee for the benefit of the Certificateholders. If, at any time, the Certificate Account ceases to be an Eligible Deposit Account, the Trustee shall within ten (10) Business Days (or such longer period, not to exceed 30 calendar days, as to which any Rating Agency may consent) establish a new Certificate Account as an Eligible Deposit Account and shall transfer any cash and/or any investments to such new Certificate Account.

Section 5.02 **Application of Trust Funds**.

(a) On each Payment Date and at and in accordance with the instruction of the Servicer, the Trustee shall distribute to the Certificateholders, *pro rata* based on their respective Percentage Interests, the amounts deposited in the Certificate Account received from the Trustee pursuant to the Indenture or the Sale and Servicing Agreement.

(b) On each Payment Date, the Trustee shall, or shall cause the Servicer to, make available to each Certificateholder via its website at http://pivot.usbank.com the statement or statements provided to the Trustee by the Servicer pursuant to the Indenture and the Sale and Servicing Agreement with respect to such Payment Date.

(c) In the event that any withholding tax is imposed on the Trust's payment (or allocations of income) to a Certificateholder, such tax shall reduce the amount otherwise distributable to the Certificateholder in accordance with this Section 5.02. The Trustee is hereby authorized and directed to retain from amounts otherwise distributable to the Certificateholders sufficient funds for the payment of any tax that is legally owed by the Trust (but such authorization shall not prevent the Owner Trustee or the Trustee from contesting any such tax in appropriate proceedings, and withholding payment of such tax, if permitted by Applicable Law, pending the outcome of such proceedings); *provided* that the Trustee shall not be responsible for determining whether any such tax is owed and may rely for such purposes on the written direction of the Trust Depositor or Servicer. The amount of any withholding tax imposed with respect to a Certificateholder shall be treated as cash distributed to such Certificateholder at the time it is withheld by the Trust and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution, the Trustee may in its sole discretion withhold such amounts in accordance with this Section 5.02(c). In the event that a Certificateholder wishes to apply for a refund of any such withholding tax, the Owner Trustee or the Trustee shall reasonably cooperate with such Certificateholder in making such claim so long as such Certificateholder agrees to reimburse the Owner Trustee and the Trustee, in its capacity as paying agent, for any out-of-pocket expenses incurred. The Certificateholders shall supply the Owner Trustee, the Trustee and any paying agent with Internal Revenue Service forms, with appropriate supporting documentation, and such other certificates, information or forms that the Owner Trustee, the Trustee or any paying agent may request from time to time in connection with any withholding tax or the application for a refund thereof.

Section 5.03 **Method of Payment**.

Subject to Section 9.01(c), distributions required to be made to Certificateholders on any Payment Date shall be made to each Certificateholder of record on the preceding Record Date either by wire transfer, in immediately available funds, to the account of such Certificateholder at a bank or other entity having appropriate facilities therefor, if such Certificateholder shall have provided to the Certificate Registrar and the Trustee or any other party acting as paying agent appropriate written instructions at least five (5) Business Days prior to such Payment Date or, if not, by check mailed to such Certificateholder at the address of such holder appearing in the Certificate Register.

Section 5.04 **No Segregation of Moneys; No Interest**.

Subject to Sections 5.01 and 5.02, moneys received by the Owner Trustee, the Trustee or any paying agent hereunder shall be held uninvested, need not be segregated in any manner except to the extent required by any Applicable Law or the Sale and Servicing Agreement and may be deposited under such general conditions as may be prescribed by any Applicable Law, and neither a paying agent, the Trustee, the Trust Company nor the Owner Trustee shall be liable for any interest thereon.

Section 5.05 Accounting and Reports to the Certificateholders, the Internal Revenue Service and Others.

The Trust Depositor shall (a) maintain (or cause to be maintained) the books of the Trust on a calendar year basis on the accrual method of accounting, (b) deliver (or cause to be delivered) to each Certificateholder, as may be required by the Code and applicable Treasury Regulations, such information as may be required (including, if applicable, Schedule K-1) to enable each Certificateholder to prepare its federal and state income tax returns, (c) prepare or cause to be prepared, and file, or cause to be filed, all tax returns, if any, relating to the Trust (including, if applicable, a partnership information return, Internal Revenue Service Form 1065) and in writing direct the Owner Trustee to make such elections as from time to time may be required or appropriate under any applicable state or federal statute or any rule or regulation thereunder so as to maintain the Trust's characterization as a partnership for federal income tax purposes or an entity that is disregarded as separate from its sole beneficial owner for federal income tax purposes, (d) collect or cause to be collected any withholding tax as described in and in accordance with Section 5.02(c) with respect to income or distributions to Certificateholders and (e) upon the request of the Trust, provide to necessary parties such reasonably current information as is specified in paragraph (d)(4) of Rule 144A under the Securities Act. The Owner Trustee shall make all elections pursuant to this Section 5.05 as directed by the Trust Depositor in writing.

Section 5.06 Signature on Returns; Partnership Representative.

(a) The Servicer shall sign on behalf of the Trust the tax returns of the Trust, and any other returns as may be required by law if any, as the same shall be furnished to it in execution form by the Trust Depositor, unless Applicable Law requires a Certificateholder to sign such documents, in which case such documents shall not be furnished to the Servicer, but shall be furnished to and signed by the Trust Depositor so long as it is a Certificateholder, in its capacity as "partnership representative" (if applicable), or such other Certificateholder as may have been designated "partnership representative" (if applicable). In executing any such return, the Servicer shall rely entirely upon, and shall have no personal liability for, information or calculations provided by the Trust Depositor.

(b) In the event the Trust Depositor is a Certificateholder and the Trust is characterized as a partnership, the Trust Depositor shall be the "partnership representative" of the Trust pursuant to the Code. In the event the Trust receives a notice of final partnership administrative adjustment under Section 6231(a)(3) of the Code, the Trust shall make an election pursuant to Section 6226 of the Code and shall comply with all of the requirements and procedures required in connection with such election.

ARTICLE VI

AUTHORITY AND DUTIES OF OWNER TRUSTEE

Section 6.01 General Authority.

Each of the Owner Trustee, the Servicer, the Administrator and the Trust Depositor shall have power and authority, and each is hereby authorized and empowered, in the name and on behalf of the Trust, to execute and deliver the Transaction Documents to which the Trust is to be a party and each certificate or other document attached as an Exhibit to or contemplated by the Transaction Documents to which the Trust is to be a party and any amendment or other agreement or instrument, in each case, in such form as the Owner Trustee, the Servicer, the Administrator or the Trust Depositor shall approve, as evidenced conclusively by the Owner Trustee's, the Servicer's, the Administrator's or the Trust Depositor's execution thereof. In addition to the foregoing, the Owner Trustee shall have power and authority and hereby is further authorized (but shall not be obligated) to take all actions required of the Trust pursuant to the Transaction Documents. The Trust and the Owner Trustee are hereby authorized to delegate such power and authority, or any portion thereof, with respect to the duties and obligations of the Trust and/or the Owner Trustee under this Agreement and the other Transaction Documents to the Servicer and the Administrator. The Owner Trustee shall have power and authority and hereby is further authorized from time to time to take such action as the Servicer, the Trust Depositor or the Administrator recommends and directs with respect to the Transaction Documents.

Section 6.02 **General Duties**.

It shall be the duty of the Owner Trustee to discharge (or cause to be discharged) all of the duties expressly required to be performed by the Owner Trustee under the terms of this Agreement in the interest of the Certificateholders, subject to the Transaction Documents and in accordance with the provisions of this Agreement. Notwithstanding the foregoing, the Owner Trustee shall be deemed to have discharged its duties and responsibilities hereunder and under the Transaction Documents to the extent the Trust Depositor has agreed hereunder or the Servicer has agreed in the Sale and Servicing Agreement or the Administrator has agreed in the Administration Agreement to perform any act or to discharge any duty of the Owner Trustee or of the Trust under any Transaction Document, and the Owner Trustee shall not be held personally liable for the default or failure of the Trust Depositor, the Administrator or the Servicer to carry out its obligations under the Sale and Servicing Agreement, the Administration Agreement or this Trust Agreement, as applicable. To the fullest extent permitted by law, neither the Owner Trustee nor any of its officers, directors, employees, agents or affiliates shall have any implied duties (including fiduciary duties) or liabilities otherwise existing at law or in equity with respect to the Trust, which implied duties and liabilities are hereby eliminated. Every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article.

Section 6.03 **Action upon Instruction**.

(a) Subject to Article IV and Section 7.01 and in accordance with the terms of the Transaction Documents, the Certificateholders may by written instruction direct the Owner Trustee in the management of the Trust. Such direction may be exercised at any time by written instruction to the Owner Trustee of the Certificateholders pursuant to Article IV.

(b) The Owner Trustee shall not be required to take any action hereunder or under any Transaction Document if the Owner Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in personal liability on the part of the Owner Trustee or is contrary to the terms hereof or of any Transaction Document or is otherwise contrary to Applicable Law.

(c) Whenever the Owner Trustee is unable to decide between alternative courses of action permitted or required by the terms of this Trust Agreement or under any Transaction Document, the Owner Trustee shall promptly give notice (in such form as shall be appropriate under the circumstances) to the Certificateholders requesting instruction as to the course of action to be adopted and stating that if the Owner Trustee shall not have received appropriate instruction within ten (10) Business Days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement and the other Transaction Documents as it shall deem to be in the best interests of the Certificateholders and shall have no personal liability to any Person for such action or inaction. To the extent the Owner Trustee acts or refrains from acting in good faith in accordance with any written instruction received from Majority Certificateholders, the Owner Trustee shall not be personally liable on account of such action or inaction to any Person. If the Owner Trustee shall not have received appropriate instruction within ten (10) Business Days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement and the other Transaction Documents as it shall deem to be in the best interests of the Certificateholders and shall have no personal liability to any Person for such action or inaction.

(d) In the event that the Owner Trustee is unsure as to the application of any provision of this Trust Agreement or any Transaction Document or any such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision, or in the event that this Trust Agreement permits any determination by the Owner Trustee or is silent or is incomplete as to the course of action that the Owner Trustee is required or permitted to take with respect to a particular set of facts, the Owner Trustee may give notice (in such form as shall be appropriate under the circumstances) to the Certificateholders requesting instruction and stating that if the Owner Trustee shall not have received appropriate instruction within ten (10) Business Days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it

may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement or the other Transaction Documents as it shall deem to be in the best interests of the Certificateholders, and shall have no personal liability to any Person for such action or inaction. To the extent that the Owner Trustee acts or refrains from acting in good faith in accordance with any such instruction received from Majority Certificateholders, the Owner Trustee shall not be personally liable, on account of such action or inaction, to any Person. If the Owner Trustee shall not have received appropriate instruction within ten (10) Business Days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement or the other Transaction Documents as it shall deem to be in the best interests of the Certificateholders, and shall have no personal liability to any Person for such action or inaction.

Section 6.04 **No Duties Except as Specified in this Agreement or in Instructions**.

The Owner Trustee shall not have any duty or obligation to manage, make any payment with respect to, register, record, sell, dispose of, or otherwise deal with the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, the Transaction Documents or any document contemplated hereby or thereby, except as expressly provided by the terms of this Trust Agreement or in any document or written instruction received by the Owner Trustee pursuant to Section 6.03; and no implied duties (including fiduciary duties) or obligations shall be read into this Trust Agreement or any other Transaction Document against the Owner Trustee. The Owner Trustee shall have no responsibility for filing or amending any financing or continuation statement in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or lien granted to it hereunder, preparing or filing any tax, qualification to do business or securities law filing or report, monitoring or enforcing the satisfaction of any risk retention requirements, the execution or filing of any documents or filings with the Commission for the Trust or recording this Trust Agreement or any Transaction Document. The Owner Trustee nevertheless agrees that it will, at its own cost and expense, promptly take all action as may be necessary to discharge any liens on any part of the Trust Estate that result from actions by, or claims against, the Owner Trustee in its individual capacity that are not related to the Trust, this Trust Agreement, the Trust Company's serving as Owner Trustee.

Section 6.05 **Restrictions**.

(a) The Owner Trustee shall not take any action that, (i) is inconsistent with the purposes of the Trust set forth in Section 2.03 or (ii) to the actual knowledge of a Responsible Officer of the Owner Trustee, would result in the Trust's becoming taxable as a corporation for federal income tax purposes. The Certificateholders shall not direct the Owner Trustee to take action that would violate the provisions of this Section 6.05.

(b) Notwithstanding anything contained herein to the contrary, the Owner Trustee shall not be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the registration with, licensing by or the taking of any other similar action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware by or with respect to the Owner Trustee; (ii) result in any fee, tax or other governmental charge under the laws of any jurisdiction or any political subdivisions thereof in existence on the date hereof other than the State of Delaware becoming payable by the Owner Trustee; or (iii) subject the Owner Trustee to personal jurisdiction in any jurisdiction other than the State of Delaware for causes of action arising from acts unrelated to the consummation of the transactions by the Owner Trustee contemplated hereby. The Owner Trustee shall be entitled to obtain advice of counsel (which advice shall be an expense of the Trust) to determine whether any action required to be taken pursuant to the Agreement results in the consequences described in clauses (i), (ii) and (iii) of the preceding sentence. In the event that said counsel advises the Owner Trustee that such action will result in such consequences, the Owner Trustee may, or if instructed to do so by the Trust Depositor, shall appoint an additional trustee pursuant to Section 10.05 hereof to proceed with such action.

ARTICLE VII

CONCERNING THE OWNER TRUSTEE

Section 7.01 **Acceptance of Trusts and Duties**.

The Owner Trustee accepts the trusts hereby created and agrees to perform its duties hereunder but only upon the terms of this Trust Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of this Trust Agreement and the other Transaction Documents. The Owner Trustee shall not be personally answerable, accountable or liable to any Person under any circumstances hereunder or under any other Transaction Document under any circumstances, except to the Trust and the Certificateholders (i) for its own willful misconduct, or gross negligence or (ii) in the case of the inaccuracy of any representation or warranty contained in Section 7.03 expressly made by the Owner Trustee. In particular, but not by way of limitation (and subject to the exceptions set forth in the preceding sentence):

(a) the Owner Trustee shall not be personally liable for any error of judgment made by a Responsible Officer or employee of the Owner Trustee which did not result from gross negligence or willful misconduct on the part of such Responsible Officer or employee;

(b) the Owner Trustee shall not be personally liable with respect to any action taken or omitted to be taken by it in accordance with the instructions of the Trust Depositor, the Servicer or of Certificateholders holding such Percentage Interest as is required with respect thereto under this Agreement or the applicable Transaction Documents;

(c) no provision of this Trust Agreement or any other Transaction Document shall require the Owner Trustee to expend or risk its own funds or otherwise incur any personal financial liability in the performance of any of its rights or powers hereunder or under any Transaction Document if the Owner Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(d) under no circumstances shall the Owner Trustee be personally liable for indebtedness evidenced by or arising under any of the Transaction Documents, including the principal of and interest on the Notes;

(e) the Owner Trustee shall not be personally responsible (i) for or in respect of the validity or sufficiency of this Trust Agreement or for the due execution hereof by the Trust Depositor, (ii) for the form, character, genuineness, sufficiency, value or validity of any of the Trust Estate, or (iii) for or in respect of the validity or sufficiency of the Transaction Documents, other than the Owner Trustee's due execution of the Trust Certificate on behalf of the Trust, and the Owner Trustee shall in no event assume or incur any personal liability, duty, or obligation to any Noteholder or any Certificateholder other than as expressly provided for herein or expressly agreed to in the Transaction Documents;

(f) the Owner Trustee shall not be personally liable for the default or misconduct of the Trust Depositor, the Trustee, the Certificate Registrar, the Administrator or the Servicer or any other Person under any of the Transaction Documents or otherwise and the Owner Trustee shall have no obligation or personal liability to monitor or perform the obligations of the Trust or the Certificate Registrar under this Trust Agreement or the other Transaction Documents that are required to be performed by the Trustee under the Indenture, the Administrator under the Administration Agreement or the Servicer or the Trust Depositor under the Sale and Servicing Agreement;

(g) the Owner Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement, or to institute, conduct or defend any litigation under this Trust Agreement or otherwise or in relation to this Trust Agreement or any other Transaction Document, at the request, order or direction of any of the Certificateholders, unless such Certificateholders have offered to the Owner Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by the Owner Trustee therein or thereby. The right

of the Owner Trustee to perform any discretionary act enumerated in this Trust Agreement or in any other Transaction Document shall not be construed as a duty, and the Owner Trustee shall not be personally answerable therefor other than to the Trust and the Certificateholders for its willful misconduct, bad faith or gross negligence in the performance of any such act;

(h) the Owner Trustee shall not be liable or responsible for delays or failures in the performance of its obligations hereunder arising out of or caused, directly or indirectly, by circumstances beyond its control (such acts include but are not limited to acts of God, pandemics or epidemics, strikes, lockouts, riots, acts of war and interruptions, losses or malfunctions of utilities, computer (hardware or software) or communications services); it being understood that the Owner Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances;

(i) to the fullest extent permitted by law and notwithstanding anything in this Agreement to the contrary, the Owner Trustee shall not be personally liable for (x) special, consequential or punitive damages, however styled, including, without limitation, lost profits or (y) the acts or omissions of any nominee, correspondent, clearing agency or securities depository through which it holds the Trust's securities or assets;

(j) each of the parties hereto hereby agrees and, as evidenced by its acceptance of any benefits hereunder, any Certificateholder agrees that the Owner Trustee in any capacity (x) has not provided and will not provide in the future, any advice, counsel or opinion regarding the tax, regulatory, financial, investment, securities law or insurance implications and consequences of the formation, funding and ongoing administration of the Trust, including, but not limited to, income, gift and estate tax issues, insurable interest issues, risk retention issues, doing business or other licensing matters and the initial and ongoing selection and monitoring of financing arrangements, (y) has not made any investigation as to the accuracy of any representations, warranties or other obligations of the Trust under the Transaction Documents and shall have no liability in connection therewith and (z) the Owner Trustee has not prepared or verified, and shall not be responsible or liable for, any information, disclosure or other statement in any disclosure or offering document or in any other document issued or delivered in connection with the sale or transfer of the Notes;

(k) It shall be the Administrator's duty and responsibility, and not the Owner Trustee's duty or responsibility, to cause the Trust to respond to, defend, participate in or otherwise act in connection with any regulatory, administrative, governmental, investigative or other proceeding or inquiry relating in any way to the trust, its assets or the conduct of its business;

(l) The Owner Trustee shall not be required to provide, on its own behalf, any surety bond or other kind of security in connection with the execution of any of its trusts or powers under this Agreement or any other Transaction Document or the performance of its duties hereunder; and

(m) The Owner Trustee shall not be deemed to have knowledge or notice of any fact or event unless a Responsible Officer of the Owner Trustee has actual knowledge thereof.

Section 7.02 **Furnishing of Documents**.

The Owner Trustee shall furnish to the Certificateholders duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and any other instruments furnished to the Owner Trustee under the Transaction Documents.

Section 7.03 **Representations and Warranties**.

The Owner Trustee hereby represents and warrants to the Trust Depositor, for the benefit of the Trust Depositor and Certificateholders, that:

(a) It is national banking association, duly organized and validly existing in good standing under the laws of the United States of America. It has all requisite power and authority to execute, deliver and perform its obligations under this Trust Agreement.

(b) It has taken all action necessary to authorize the execution and delivery by it of this Trust Agreement, and this Trust Agreement will be executed and delivered by one of its officers who is duly authorized to execute and deliver this Trust Agreement on its behalf.

(c) Neither the execution nor the delivery by it of this Trust Agreement, nor the consummation by it of the transactions contemplated hereby nor compliance by it with any of the terms or provisions hereof, will (i) contravene any federal or Delaware state law, governmental rule or regulation governing the trust powers of the Trust Company or any judgment or order binding on it, (ii) constitute any default under its charter documents or organizational documents or any indenture, mortgage, contract, long-term lease, license or other agreement or instrument to which it is a party or by which any of its properties may be bound or (iii) result in the creation or imposition of any lien, charge or encumbrance on the Trust Estate resulting from actions by or claims against the Owner Trustee individually which are unrelated to this Agreement or the other Transaction Documents.

(d) This Agreement constitutes a legal, valid and binding obligation of the Owner Trustee enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and similar laws relating to creditors' rights generally and creditors of national banking associations and subject to general principles of equity.

(e) To the Owner Trustee's best knowledge, there are no proceedings or investigations pending, or to the Owner Trustee's knowledge threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Owner Trustee or its properties: (A) asserting the invalidity of this Trust Agreement, (B) seeking to prevent the consummation of any of the transactions contemplated by this Trust Agreement or (C) seeking any determination or ruling that might materially and adversely affect the performance by the Owner Trustee of its obligations under, or the validity or enforceability of, this Trust Agreement.

Section 7.04 **Reliance; Advice of Counsel**.

(a) The Owner Trustee shall incur no personal liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by an appropriate Person or Persons. The Trustee need not investigate any fact or matter stated in any such document, including verifying the correctness of any numbers or calculations. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any Person as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of determination of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof require and rely on a certificate, signed by the president or any vice president or by the treasurer or other authorized officer or agent of an appropriate Person or Persons or of any manager thereof, as to such fact or matter and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the trusts hereunder and in the performance of its duties and obligations under this Trust Agreement or the other Transaction Documents, the Owner Trustee may act directly or through its agents or attorneys or a custodian or nominee and the Owner Trustee shall not be personally liable for the conduct or misconduct of such agents or attorneys or a custodian or nominee if such agents or attorneys or a custodian or nominee shall have been selected by the Owner Trustee with reasonable care, and may consult with counsel, accountants and other skilled Persons to be selected with reasonable care and employed by it. The Owner Trustee shall not be personally liable for anything done, suffered or omitted in good faith by it in accordance with the written opinion or advice of any such counsel, accountants or other such Persons. The Owner Trustee shall have no duty to monitor or supervise any other trustee, the Certificate Registrar, a paying agent, the Trust Depositor, the Holders, the Servicer, any Subservicer, the Trustee, the Administrator, any agent, independent contractor, officer, employee or

manager of the Trust, any delegatee of any trustee, or any other Person and shall have no liability for the failure of any other Person to perform its obligations or duties under the Transaction Documents or otherwise.

Section 7.05 Not Acting in Individual Capacity.

Except as provided in this Article VII, in performing its duties hereunder, the Trust Company acts solely as Owner Trustee hereunder and not in its individual capacity, and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by this Trust Agreement or any Transaction Document shall look only to the Trust Estate for payment or satisfaction thereof.

Section 7.06 Owner Trustee Not Liable for Trust Certificates or Loans.

The recitals contained herein and in the Trust Certificates shall be taken as the statements of the Trust Depositor and the Owner Trustee assumes no personal responsibility for the correctness thereof. The Owner Trustee makes no representations as to the validity or sufficiency of this Trust Agreement, of any other Transaction Document or of the Trust Certificates (other than as to the due execution by the Owner Trustee of the Trust Certificates on behalf of the Trust) or the Notes, or of any Loan or related documents. The Owner Trustee shall at no time have any personal responsibility or liability for or with respect to the legality, validity and enforceability of any Loan, or for or with respect to the sufficiency of the Trust Estate or its ability to generate the payments to be distributed to Certificateholders under this Trust Agreement or the Noteholders under the Indenture, including, without limitation: (a) the existence, condition and ownership of any collateral securing a Loan; (b) the existence and enforceability of any insurance thereon; (c) the validity of the assignment of any Loan to the Trust or of any intervening assignment; (d) the performance or enforcement of any Loan; and (e) the compliance by the Trust Depositor or the Servicer with any warranty or representation made under any Transaction Document or in any related document or the accuracy of any such warranty or representation, or any action of the Trust Depositor, the Trustee, the Administrator or the Servicer or any subservicer taken in the name of the Owner Trustee.

Section 7.07 Owner Trustee May Own Trust Certificates and Notes.

The Owner Trustee in its individual or any other capacity may become the owner or pledgee of Trust Certificates or Notes and may deal with the Trust Depositor, the Trustee and the Servicer in banking transactions with the same rights as it would have if it were not Owner Trustee.

Section 7.08 No Action Adverse to the Trustee.

The Administrator shall not, without the written consent of the Owner Trustee, knowingly take or cause the Trust to take any action which in any way adversely affects or could reasonably be expected to adversely affect the Trustee or any of its rights, duties or protections under the Trust Agreement. Without limiting the foregoing, the Administrator shall not take, or cause the Trust to take, any of the following actions without the prior written consent of the Owner Trustee: (i) make or purport to make any representation, warranty, covenant or agreement on behalf of the Trustee, (ii) alter or increase any duty or obligation of the Owner Trustee under any agreement, (iii) any action in the name of the Owner Trustee, including without limitation any action involving the initiation of a claim against a third party or the response to a claim by any third party, (iv) effect any settlement or compromise of any pending or threatened claim, action, proceeding or lawsuit in respect of the Trust, or (v) any action in the name of the Owner Trustee or in the name of the Trust which could or does result in any taxes (other than income taxes), losses, damages, liabilities, costs or expenses of any kind and nature whatsoever of the Owner Trustee.

ARTICLE VIII

COMPENSATION OF OWNER TRUSTEE

Section 8.01 **Owner Trustee's Fees and Expenses**.

The Owner Trustee shall receive as compensation for its services hereunder such fees as have been separately agreed upon before the date hereof between the Trust Depositor and the Owner Trustee, and the Owner Trustee shall be entitled to be reimbursed by the Trust Depositor for its other reasonable expenses hereunder, including, but not limited to, the reasonable compensation, expenses and disbursements of such agents, representatives, experts and counsel as the Owner Trustee may employ in connection with the exercise and performance of its rights and its duties hereunder. The Trust Depositor shall be responsible for such fees and expenses only to the extent the same are not paid pursuant to the Priority of Payments, such fees and expenses to be paid to the Owner Trustee in accordance with the Priority of Payments.

Section 8.02 **Indemnification**.

Trust Depositor shall be liable as primary obligor for, and shall indemnify, defend and hold harmless the Owner Trustee (in its individual capacity and in its capacity as Owner Trustee) and its successors, assigns, agents and servants (collectively, the "Indemnified Parties") from and against, any and all liabilities, obligations, losses, damages, taxes, claims, actions and suits (provided that any indemnification for damages is limited to actual damages, not consequential, special or punitive damages), and any and all reasonable costs, expenses and disbursements (including reasonable legal fees and expenses and fees and expenses incurred in connection with the enforcement of indemnification rights) of any kind and nature whatsoever (collectively, "Expenses") which may at any time be imposed on, incurred by or asserted against an Indemnified Party in any way relating to or arising out of this Trust Agreement, the Transaction Documents, the Trust Estate, the administration of the Trust Estate or the action or inaction of the Owner Trustee hereunder, except only that the Trust Depositor shall not be liable for or required to indemnify an Indemnified Party from and against Expenses arising or resulting from the gross negligence or willful misconduct of such Indemnified Party. The indemnities contained in this Section shall survive the resignation or removal of the Owner Trustee and the termination of this Trust Agreement. If an Indemnified Party seeks indemnification hereunder it shall promptly notify the Trust Depositor if a Responsible Officer of the Indemnified Party receives a complaint, claim, compulsory process or other notice of any loss, claim, damage or liability giving rise to a claim of indemnification hereunder but failure to provide such notice shall not relieve the Trust Depositor of its indemnification obligations hereunder unless the Trust Depositor is deprived of material substantive or procedural rights or defenses as a result thereof. The Trust Depositor shall assume (with the consent of the Indemnified Party, such consent not to be unreasonably withheld) the defense and any settlement of any such claim and pay all expenses in connection therewith, including reasonable counsel fees, and promptly pay, discharge and satisfy any judgment or decree which may be entered against the Indemnified Party in respect of such claim; provided that the Owner Trustee shall be entitled to retain separate counsel at the expense of the Trust Depositor in the event that a conflict of interest or the possible imposition of criminal liability. If the consent of the Indemnified Party required in the immediately preceding sentence is unreasonably withheld, the Trust Depositor is relieved of its indemnification obligations hereunder with respect to such Person to the extent its defense of its claims are prejudiced thereby. The Trust Depositor shall be responsible for such indemnification to the extent the same is not paid pursuant to the Priority of Payments, such indemnification to be paid first in accordance with the Priority of Payments.

Section 8.03 **Payments to the Owner Trustee**.

Any amounts paid to the Owner Trustee pursuant to this Article VIII shall be deemed not to be a part of the Trust Estate immediately after such payment.

ARTICLE IX

TERMINATION OF TRUST AGREEMENT

Section 9.01 **Termination of Trust Agreement**.

(a) The Trust shall dissolve, liquidate and be wound up in accordance with Section 3808 of the Statutory Trust Statute upon (i) the final distribution by the Trustee or any other party acting as paying agent of all moneys or other property or proceeds of the Trust Estate in accordance with the terms of the Indenture, the Sale and Servicing Agreement and Article V, upon which the Trustee or any other party acting as paying agent shall notify the Owner Trustee and the Trust Depositor in writing and (ii) the written consent of the Certificateholders. The bankruptcy, liquidation, termination, dissolution, death or incapacity of any Certificateholder shall not (x) operate to dissolve or terminate this Trust Agreement or the Trust or (y) entitle such Certificateholder's legal representatives or heirs to claim an accounting or to take any action or proceeding in any court for a partition or winding up of all or any part of the Trust or Trust Estate or (z) otherwise affect the rights, obligations and liabilities of the parties hereto.

(b) Except as provided in Section 9.01(a), neither the Trust Depositor nor any Certificateholder shall be entitled to revoke or terminate the Trust.

(c) Notice of any termination of the Trust, specifying the Payment Date upon which the Certificateholders shall surrender their Trust Certificates to the Trustee or any other party acting as paying agent of the Trustee for payment of the final distribution and cancellation, shall be given by the Trustee or any other party acting as paying agent by letter to Certificateholders mailed within five (5) Business Days of receipt of written notice of such termination from the Servicer stating, as set forth in such notice from the Servicer, (i) the Payment Date upon or with respect to which final payment of the Trust Certificates shall be made upon presentation and surrender of the Trust Certificates at the office of the Trustee therein designated, (ii) the amount of any such final payment and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of the Trust Certificates at the office of the Trustee therein specified. The Trustee shall give such notice to the Certificate Registrar (if other than the Owner Trustee) and the Owner Trustee at the time such notice is given to Certificateholders. Upon presentation and surrender of the Trust Certificates, the Trustee shall cause to be distributed to Certificateholders amounts distributable on such Payment Date pursuant to Section 5.02.

In the event that all of the Certificateholders shall not surrender their Trust Certificates for cancellation within six months after the date specified in the above mentioned written notice, the Trustee shall give a second written notice to the remaining Certificateholders to surrender their Trust Certificates for cancellation and receive the final distribution with respect thereto. If within one year after the second notice all the Trust Certificates shall not have been surrendered for cancellation, the Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Trust Certificates, and the cost thereof shall be paid out of the funds and other assets that shall remain subject to this Trust Agreement. Any funds remaining in the Trust after exhaustion of such remedies shall be distributed by the Trustee or any other party acting as paying agent, to the Trust Depositor. Certificateholders shall thereafter look solely to the Trust Depositor as general unsecured creditors.

(d) Upon the winding up of the Trust and payment of all liabilities in accordance with Section 3808 of the Statutory Trust Statute, the paying agent shall make a final distribution to the Certificateholders in accordance with Article V and Section 9.01(c) above and the Administrator shall instruct the Owner Trustee in writing to cause the Certificate of Trust to be cancelled by filing a certificate of cancellation with the Secretary of State in accordance with the provisions of Section 3810 of the Statutory Trust Statute. Thereupon, the Trust and this Trust Agreement (other than the rights, benefits, protections, privileges and immunities of the Owner Trustee and the Trust Company) shall terminate.

ARTICLE X

SUCCESSOR OWNER TRUSTEES AND ADDITIONAL OWNER TRUSTEES

Section 10.01 **Eligibility Requirements for Owner Trustee**.

The Owner Trustee shall at all times be a Person (a) satisfying the provisions of Section 3807(a) of the Statutory Trust Statute; (b) authorized to exercise corporate trust powers; (c) having a combined capital and surplus of (or having a parent with a combined capital and surplus of) at least $100,000,000 and subject to supervision or examination by federal or state banking authorities; and (d) having (or having a parent that has) an investment grade rating with respect to S&P and Moody's. If such Person shall publish reports of condition at least annually pursuant to Applicable Law or the requirements of the aforesaid supervising or examining authority, then for the purpose of this Section 10.01, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Owner Trustee shall cease to be eligible in accordance with the provisions of this Section 10.01, the Owner Trustee shall resign immediately in the manner and with the effect specified in Section 10.02.

Section 10.02 **Resignation or Removal of Owner Trustee**.

(a) The Owner Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice thereof to the Trust Depositor. Upon receiving such notice of resignation, the Trust Depositor shall promptly appoint a successor Owner Trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Owner Trustee and one copy shall be delivered to the successor Owner Trustee. If no successor Owner Trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Owner Trustee, at the expense of the Trust Depositor, may petition any court of competent jurisdiction for the appointment of a successor Owner Trustee.

(b) The Trust Depositor may remove the Owner Trustee at any time without cause or at any time (1) that the Owner Trustee shall cease to be eligible in accordance with the provisions of Section 10.01 and shall fail to resign after written request therefor by the Trust Depositor or (2) the Owner Trustee shall be legally unable to act, or shall be adjudged bankrupt or insolvent, or a receiver of the Owner Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Owner Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. If the Trust Depositor shall remove the Owner Trustee under the authority of the immediately preceding sentence, the Trust Depositor shall promptly appoint a successor Owner Trustee by written instrument, in duplicate, one (1) copy of which instrument shall be delivered to the outgoing Owner Trustee so removed, and one (1) copy shall be delivered to the successor Owner Trustee, and shall pay all fees owed to the outgoing Owner Trustee in its individual capacity.

(c) Any resignation or removal of the Owner Trustee and appointment of a successor Owner Trustee pursuant to any of the provisions of this Section shall not become effective until the appointment by the successor Owner Trustee pursuant to Section 10.03 has become effective and, in the case of removal, payment of all accrued and unpaid fees and expenses owed to the outgoing Owner Trustee in its individual capacity. The Trust Depositor shall provide notice of such resignation or removal of the Owner Trustee to all Holders, the Trustee, the Servicer and any Rating Agency.

Section 10.03 **Successor Owner Trustee**.

(a) Any successor Owner Trustee appointed pursuant to Section 10.02 shall execute, acknowledge and deliver to the Trust Depositor and to its predecessor Owner Trustee an instrument accepting such appointment under this Trust Agreement, and thereupon the resignation or removal of the predecessor Owner Trustee shall become effective, and such successor Owner Trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Owner Trustee. The predecessor Owner Trustee shall upon payment of fees, expenses and

indemnity owing to it in its individual capacity deliver to the successor Owner Trustee all documents and statements and monies held by it under this Trust Agreement; and the Trust Depositor and the predecessor Owner Trustee shall execute and deliver such instruments and do such other things as may reasonably be required for fully and certainly vesting and confirming in the successor Owner Trustee all such rights, powers, duties and obligations.

(b) No successor Owner Trustee shall accept appointment as provided in this Section 10.03 unless at the time of such acceptance such successor Owner Trustee shall be eligible pursuant to Section 10.01.

(c) Upon acceptance of appointment by a successor Owner Trustee pursuant to this Section 10.03, the Trust Depositor shall mail notice thereof to all Holders, the Trustee, the Servicer and any Rating Agency. If the Trust Depositor shall fail to mail such notice within ten (10) Business Days after acceptance of such appointment by the successor Owner Trustee, the successor Owner Trustee shall cause such notice to be mailed at the expense of the Trust Depositor. Furthermore, upon acceptance of appointment by a successor Owner Trustee pursuant to this Section 10.03, such successor Owner Trustee shall file an amendment to the Certificate of Trust with the Secretary of State in accordance with the provisions of Section 3810 of the Statutory Trust Statute.

Section 10.04 Merger or Consolidation of Owner Trustee.

Any Person into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Owner Trustee, shall be the successor of the Owner Trustee hereunder, without the execution or filing of any instrument or any further act on the part of any of the parties hereto (except for the filing at the expense of the Trust of an amendment to the Trust's certificate of Trust if required by law) notwithstanding anything herein to the contrary; *provided* that such Person shall be eligible pursuant to Section 10.01; *provided*, *further*, that the Owner Trustee shall mail notice of such merger or consolidation to all Holders, the Trustee, the Servicer and the Trust Depositor (who shall promptly forward such notice to any Rating Agency) and file an amendment to the Certificate of Trust with the Secretary of State in accordance with the provisions of Section 3810 of the Statutory Trust Statute.

Section 10.05 Appointment of Co-Trustee or Separate Trustee.

(a) Notwithstanding any other provisions of this Trust Agreement, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Trust Depositor and the Owner Trustee acting jointly shall have the power and authority to execute and deliver all instruments to appoint one or more Persons approved by the Trust Depositor and Owner Trustee to act as co-trustee, jointly with the Owner Trustee, or as separate trustee or separate trustees, of all or any part of the Trust Estate, and to vest in such Person, in such capacity, such title to the Trust Estate or any part thereof and, subject to the other provisions of this Section, such powers, duties, obligations, rights and trusts as the Trust Depositor and the Owner Trustee may consider necessary or desirable. If the Trust Depositor shall not have joined in such appointment within 15 Business Days after the receipt by it of a request so to do, the Owner Trustee alone shall have the power, authority and authorization to make such appointment. No co-trustee or separate trustee under this Trust Agreement shall be required to meet the terms of eligibility as a successor Owner Trustee pursuant to Section 10.01 and no notice of the appointment of any co-trustee or separate trustee shall be required pursuant to Section 10.03.

(b) Each separate trustee and co-trustee shall, to the extent permitted by any Applicable Law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Owner Trustee shall be conferred upon and exercised or performed by the Owner Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Owner Trustee joining in such act), except to the extent that under any Applicable Law of any jurisdiction in which any particular act or acts are to be performed, the Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding

of title to the Trust Estate or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Owner Trustee;

(ii) no separate trustee or co-trustee under this Trust Agreement or the Owner Trustee shall be personally liable by reason of any act or omission of any other trustee under this Trust Agreement; and

(iii) the Trust Depositor and the Owner Trustee acting jointly may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Owner Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Trust Agreement and the conditions of this Article X. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Owner Trustee or separately, as may be provided therein, subject to all the provisions of this Trust Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Owner Trustee. Each such instrument shall be filed with the Owner Trustee and a copy thereof given to each of the Trust Depositor, the Trustee and the Servicer.

(d) Any separate trustee or co-trustee may at any time appoint the Owner Trustee as its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Trust Agreement on its behalf and in its name, and the Owner Trustee shall have the full power and authority to delegate its responsibilities to the Servicer as provided for herein and in the other Transaction Documents. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Owner Trustee, to the extent permitted by law, without the appointment of a new or successor co-trustee or separate trustee.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Supplements and Amendments.

(a) This Trust Agreement may be amended by the Trust Depositor, the Trust Company, and the Owner Trustee, with the consent of the Majority Noteholders (so long as the Notes are outstanding) and the consent of the Majority Certificateholders for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions in this Trust Agreement or of modifying in any manner the rights of the Noteholders or the Certificateholders; *provided* that such action shall not, as evidenced by an Officer's Certificate of the Servicer, materially adversely affect the interests of any Noteholder or Certificateholder. Notwithstanding anything to the contrary contained herein, this Trust Agreement may be amended by the Trust Depositor, the Trust Company, and the Owner Trustee without the consent of any Noteholder or Certificateholder to cure any ambiguity or to correct or supplement any provisions in this Trust Agreement in a manner consistent with the intent of this Trust Agreement and the Transaction Documents.

(b) Except as provided in Section 11.01(a) hereof, this Trust Agreement may be amended from time to time by the Trust Depositor, the Trust Company, and the Owner Trustee, with the consent of the Majority Noteholders (so long as the Notes are outstanding) and the consent of the Majority Certificateholders, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Trust Agreement or of modifying in any manner the rights of the Noteholders or the Certificateholders hereunder; *provided* that no such amendment shall (a) increase or reduce in any manner the amount of, or accelerate or delay the timing of any amounts received on the Loans which are required to be distributed on any Note or Trust Certificate without the consent of the Holder of that Note or Trust Certificate or (b) reduce the aforesaid percentage of Noteholders and the aggregate

Percentage Interest of Certificateholders required to consent to any such amendment, without the consent of the holders of all the outstanding Notes and Trust Certificates.

(c) Promptly after the execution of any such amendment or consent, the Owner Trustee shall furnish written notification of the substance of such amendment or consent to the Trustee and the Trust Depositor (who shall promptly forward such notice to any Rating Agency) and the Trustee shall furnish written notification of the substance of such amendment or consent to each Certificateholder and Noteholder.

(d) It shall not be necessary for the consent of Certificateholders or Noteholders pursuant to this Section 11.01 to approve the particular form of any proposed amendment or consent, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents (and any other consents of Certificateholders or Noteholders provided for in this Trust Agreement or in any other Transaction Document) and of evidencing the authorization of the execution thereof by Certificateholders or Noteholders shall be subject to such reasonable requirements as the Owner Trustee may prescribe.

(e) Promptly after the execution of any amendment to the Certificate of Trust, the Owner Trustee shall cause the filing of such amendment with the Secretary of State of Delaware.

(f) Prior to the execution of any amendment to this Trust Agreement or the Certificate of Trust, the Owner Trustee shall be entitled to receive and rely upon an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Trust Agreement and an officer's certificate of the Trust Depositor that all conditions precedent to the execution and delivery of such amendment have been met. The Owner Trustee and the Trust Company may, but shall not be obligated to, enter into any such amendment that affects the Owner Trustee's or the Trust Company's own rights, duties or immunities under this Trust Agreement or otherwise. Notwithstanding any other provision herein or elsewhere, no provision, amendment, supplement, waiver, or consent of or with respect to any of the Transaction Documents that affects any right, power, authority, duty, benefit, protection, privilege, immunity or indemnity of the Owner Trustee or the Trust Company shall be binding on the Owner Trustee or the Trust Company unless the Owner Trustee and the Trust Company shall have expressly consented thereto in writing.

(g) This Trust Agreement may only be amended to the extent that written advice from Dechert LLP or Winston & Strawn LLP or an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters is delivered to the Issuer (with a copy to the Owner Trustee) to the effect that such amendment will not (i) cause the Trust to be treated as an association, publicly traded partnership or taxable mortgage pool, in each case, taxable as a corporation for U.S. federal income tax purposes, (ii) cause the Notes to be deemed to have been sold or exchanged under Section 1001 of the Code or (iii) cause any Notes that were characterized as indebtedness at the time of issuance to be characterized as other than indebtedness.

Section 11.02 Customer Identification Program.

Pursuant to Applicable Law, the Owner Trustee is required to obtain on or before closing, and from time to time thereafter, documentation to verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Owner Trustee will ask for documentation to verify the entity's formation and existence, its financial statements, licenses, tax identification documents, identification and authorization documents from individuals claiming authority to represent the entity and other relevant documentation and information (including beneficial owners of such entities). To the fullest extent permitted by Applicable Law, the Owner Trustee may conclusively rely on, and shall be fully protected and indemnified in relying on, any such information received. Failure to provide such information may result in an inability of the Owner Trustee to perform its obligations hereunder, which, at the sole option of the Owner Trustee, may result in the Owner Trustee's resignation in accordance with the terms hereof. The parties hereto agree that for purposes of Applicable Law, (a) Ownership Prong: The Trust Depositor is and shall be deemed to be the sole beneficial owner of the Trust, and (b) Control Prong: The Trust Depositor is and shall deemed to be the party with the power and authority to control the Trust.

Section 11.03 **No Legal Title to Trust Estate in Certificateholders**.

The Certificateholders shall not have legal title to any part of the Trust Estate. The Certificateholders shall be entitled to receive distributions with respect to their undivided beneficial ownership interest therein only in accordance with Articles V and IX. No transfer, by operation of law or otherwise, of any right, title or interest of the Certificateholders to and in their beneficial ownership interest in the Trust Estate shall operate to dissolve the Trust or terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

Section 11.04 **Limitations on Rights of Others**.

The provisions of this Trust Agreement are solely for the benefit of the Owner Trustee, the Trust Company, the Indemnified Parties, the Trust Depositor, the Certificateholders and, to the extent expressly provided herein, the Trustee and the Noteholders, and nothing in this Trust Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Trust Estate or under or in respect of this Trust Agreement or any covenants, conditions or provisions contained herein.

Section 11.05 **Notices**.

(a) Any request, demand, authorization, direction, notice, consent, waiver or Act of Certificateholders or other documents provided or permitted by this Trust Agreement shall be in writing to and mailed, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by facsimile or telecopy in legible form, if to the Owner Trustee, addressed to its Corporate Trust Office; or if to the Trust Depositor, addressed to Hercules Capital Funding 2022-1 LLC, c/o Hercules Capital, Inc., 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301, Attention: Chief Financial Officer, Re: Hercules Capital Funding Trust 2022-1, Telephone: (650) 289-3060, Facsimile No.: (650) 473-9194; with a copy to Hercules Capital Funding 2022-1 LLC, c/o Hercules Capital, Inc., 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301, Attention: General Counsel, Re: Hercules Capital Funding Trust 2022-1, Telephone: (650) 289-3060, Facsimile No.: (650) 473-9194 or if to a Certificateholder shall be given by first-class mail, postage prepaid, at the address of such Certificateholder as shown in the Certificate Register.

(b) Delivery of any request, demand, authorization, direction, notice, consent, waiver or Act of Noteholders or other documents made as provided above will be deemed effective (except that notice to the Owner Trustee shall be deemed given only upon actual receipt by the Owner Trustee): (i) if in writing and delivered in Person or by overnight courier service, on the date it is delivered; (ii) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine); and (iii) if sent by mail, on the date that mail is delivered or its delivery is attempted; in each case, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

Section 11.06 **Severability**.

Any provision of this Trust 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 not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11.07 **Separate Counterparts**.

This Trust Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Agreement shall be valid, binding, and enforceable against a party when executed and delivered by

an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument.

Section 11.08 **Successors and Assigns**.

All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, each of the Trust Depositor, the Owner Trustee, the Trust Company, each Certificateholder and their respective successors and permitted assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by a Certificateholder shall bind the successors and assigns of such Certificateholder.

Section 11.09 **No Petition**.

(a) To the extent permitted by Applicable Law, the Trust Depositor will not, prior to the date which is one (1) year and one (1) day (or, if longer, the applicable preference period then in effect) after payment in full of the Notes rated by any Rating Agency (or such longer preference period as shall then be in effect), institute against the Trust any bankruptcy proceedings under any United States Federal or state bankruptcy or similar law in connection with any obligations relating to the Trust Certificates, the Notes, this Trust Agreement or any of the other Transaction Documents.

(b) To the extent permitted by Applicable Law, the Owner Trustee, by entering into this Trust Agreement, each Certificateholder, by accepting a Trust Certificate, and the Trustee and each Noteholder, by accepting the benefits of this Trust Agreement, hereby covenant and agree that they will not, prior to the date which is one (1) year and one (1) day (or if longer, the applicable preference period as shall then be in effect) after payment in full of the Notes rated by any Rating Agency (or such longer preference period as shall then be in effect), institute against the Trust, or join in any institution against the Trust of, any bankruptcy proceedings under any United States federal or state bankruptcy or similar law in connection with any obligations relating to the Trust Certificates, the Notes, this Trust Agreement or any of the other Transaction Documents; provided, however, that nothing contained herein shall prevent the Owner Trustee from filing a proof of claim in any such proceeding**;** provided, however, nothing in this Section shall preclude, or be deemed to stop, the Trustee (i) from taking any action prior to the expiration of the aforementioned period in (A) any case or Proceeding voluntarily filed or commenced by the Issuer or (B) any involuntary insolvency Proceeding filed or commenced by a Person other than the Trustee, or (ii) from commencing against the Issuer or any of its property any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation Proceeding.

(c) The provisions of this Section 11.08 shall survive the termination of this Trust Agreement for any reason whatsoever.

Section 11.10 **No Recourse**.

To the extent permitted by Applicable Law, each Certificateholder by accepting a Trust Certificate acknowledges that such Certificateholder's Trust Certificates represent beneficial interests in the Trust only and do not represent interests in or obligations of the Trust Depositor, the Servicer, the Seller, the Owner Trustee, the Trust Company, the Trustee, Certificate Registrar or any Affiliate thereof and no recourse may be had against such parties or their assets, except as may be expressly set forth or contemplated in this Trust Agreement, the Trust Certificates or the Transaction Documents. Each Certificateholder by accepting a Trust Certificate (i) acknowledges that such Trust

Certificate represents a beneficial interest in the Trust only and does not represent an interest in or an obligation of the Trust Depositor, the Servicer, the Seller, the Owner Trustee, the Trustee, or any Affiliate of the foregoing, and no recourse may be had against any such party or their assets, except as may be expressly set forth or contemplated in the Transaction Documents and (ii) enters into the undertakings and agreements provided for such Certificateholder set forth in Section 13.09 of the Sale and Servicing Agreement. The right to distributions of the assets of the Trust or the proceeds thereof arising under this Agreement or the Trust Certificates shall be payable solely in accordance with the priority set forth in Section 7.06 of the Sale and Servicing Agreement until the final discharge of the Indenture, and no Certificateholder shall have any recourse against the Trust except in accordance therewith. The provisions of this Section 11.09 shall survive any termination of this Agreement.

Section 11.11 Headings.

The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 11.12 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. SECTION 3540 OF TITLE 12 OF THE DELAWARE CODE SHALL NOT APPLY TO THIS TRUST.

ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS TRUST AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE, AND BY EXECUTION AND DELIVERY OF THIS TRUST AGREEMENT, EACH PARTY HERETO CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH SUCH PARTY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS TRUST AGREEMENT OR ANY DOCUMENT RELATED HERETO.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

Section 11.13 Termination of Original Trust Agreement.

The parties hereto agree that the Original Trust Agreement is hereby superseded in its entirety by this Agreement.

Section 11.14 No Trial by Jury.

The Parties hereto and the Certificateholders hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

HERCULES CAPITAL FUNDING 2022-1 LLC, as Trust Depositor

By: ____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Owner Trustee and as the Trust Company

By:
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee, hereby accepts the appointment as Certificate Registrar and paying agent pursuant to Sections 3.04 and 3.09 hereof and agrees to be bound by the obligations expressly set forth herein applicable to it in such capacities.

By:
Name:
Title:

FORM OF TRUST CERTIFICATE

THIS TRUST CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THIS TRUST CERTIFICATE, AGREES THAT THIS TRUST CERTIFICATE MAY BE MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAW AND ONLY TO (1) A "QUALIFIED INSTITUTIONAL BUYER," AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT IS A "QUALIFIED PURCHASER" AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY ACT OF 1940 (EACH SUCH PERSON, A "QUALIFIED PURCHASER"), (2) AN INSTITUTION THAT QUALIFIES AS AN "ACCREDITED INVESTOR" MEETING THE REQUIREMENTS OF RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR") THAT IS A QUALIFIED PURCHASER PURSUANT TO AN EXEMPTION UNDER THE SECURITIES ACT AND, IN EITHER CASE, IS ACQUIRING SUCH TRUST CERTIFICATE FOR ITS OWN ACCOUNT (AND NOT FOR THE ACCOUNT OF OTHERS) OR AS A FIDUCIARY OR AGENT FOR OTHERS (WHICH OTHERS ALSO ARE INSTITUTIONAL ACCREDITED INVESTORS), PURSUANT TO AN EXEMPTION FROM REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT AND IN EACH CASE, SUBJECT TO (A) THE RECEIPT BY THE OWNER TRUSTEE AND THE CERTIFICATE REGISTRAR OF A LETTER SUBSTANTIALLY IN THE FORM PROVIDED IN THE TRUST AGREEMENT AND (B) THE RECEIPT BY THE OWNER TRUSTEE AND THE CERTIFICATE REGISTRAR OF SUCH OTHER EVIDENCE ACCEPTABLE TO THE OWNER TRUSTEE THAT SUCH REOFFER, RESALE, PLEDGE OR TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAW OR IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE UNITED STATES AND SECURITIES AND BLUE SKY LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION, (3) PURSUANT TO ANOTHER EXEMPTION AVAILABLE UNDER THE SECURITIES ACT AND IN ACCORDANCE WITH ANY APPLICABLE STATE SECURITIES LAWS, OR (4) PURSUANT TO A VALID REGISTRATION STATEMENT. EACH INVESTOR IN THIS TRUST CERTIFICATE WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) IT IS NOT, AND IS NOT DIRECTLY OR INDIRECTLY ACQUIRING THIS TRUST CERTIFICATE FOR, ON BEHALF OF OR WITH ANY ASSETS OF, AN EMPLOYEE BENEFIT PLAN OR OTHER ARRANGEMENT SUBJECT TO PART 4, SUBTITLE B, TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), A PLAN SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE PLAN ASSETS OF ANY SUCH PLANS (COLLECTIVELY, A "BENEFIT PLAN INVESTOR") OR A PLAN OR OTHER ARRANGEMENT SUBJECT TO ANY PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SUBSTANTIVELY SIMILAR TO SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE ("SIMILAR LAW") OR (II) IT IS A PLAN SUBJECT TO SIMILAR LAW AND ITS ACQUISITION, HOLDING AND DISPOSITION OF SUCH TRUST CERTIFICATE OR ANY INTEREST THEREIN WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT VIOLATION OF SIMILAR LAW. SUCH REPRESENTATION SHALL BE DEEMED MADE ON EACH DAY FROM THE DATE ON WHICH THE ACQUIRER ACQUIRES ITS INTEREST IN THE TRUST CERTIFICATE THROUGH AND INCLUDING THE DATE ON WHICH THE ACQUIRER DISPOSES OF ITS INTEREST IN THE TRUST CERTIFICATE.

THIS TRUST CERTIFICATE IS NOT GUARANTEED OR INSURED BY ANY GOVERNMENTAL AGENCY.

NO TRANSFER, SALE, PLEDGE OR OTHER DISPOSITION OF ONE OR MORE TRUST CERTIFICATES (A "TRANSFER") SHALL BE MADE UNLESS SIMULTANEOUSLY WITH THE TRANSFER THE PERCENTAGE INTEREST OF THE TRUST CERTIFICATES SO TRANSFERRED IS NO LESS THAN TEN (10%) PERCENT.

EACH HOLDER OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) REPRESENTS AND WARRANTS THAT IT IS A "UNITED STATES PERSON" AS DEFINED IN SECTION 7701(a)(30) OF THE CODE AND WILL PROVIDE THE TRUST AND THE OWNER TRUSTEE (AND ANY OF THEIR AGENTS) WITH A CORRECT, COMPLETE AND PROPERLY EXECUTED INTERNAL REVENUE SERVICE FORM W-9 (OR APPLICABLE SUCCESSOR FORM). IF ANY HOLDER OF THIS TRUST CERTIFICATE (OR ANY INTEREST THEREIN) (OTHER THAN THE INITIAL HOLDER) FAILS TO PROVIDE THE TRUST AND THE OWNER TRUST (AND ANY OF THEIR AGENTS) WITH THE PROPERLY COMPLETED AND SIGNED TAX CERTIFICATIONS SPECIFIED ABOVE, THE ACQUISITION OF ITS INTEREST IN THIS TRUST CERTIFICATE SHALL BE VOID *AB INITIO*.

EACH TRANSFEROR OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) WILL AGREE, OR BY ACQUIRING THIS TRUST CERTIFICATE OR AN INTEREST THEREIN WILL BE DEEMED TO HAVE AGREED, TO DELIVER TO THE TRANSFEREE, WITH A COPY TO THE TRUST AND THE OWNER TRUSTEE, PRIOR TO THE TRANSFER OF THE TRUST CERTIFICATE (AND ANY INTEREST THEREIN), A PROPERLY COMPLETED CERTIFICATE, IN A FORM REASONABLY ACCEPTABLE TO THE TRANSFEREE AND THE TRUST, STATING, UNDER PENALTY OF PERJURY, THE TRANSFEROR'S UNITED STATES TAXPAYER IDENTIFICATION NUMBER AND THAT THE TRANSFEROR IS NOT A FOREIGN PERSON WITHIN THE MEANING OF SECTION 1446(f)(2) OF THE CODE (SUCH CERTIFICATE, A "NON-FOREIGN STATUS CERTIFICATE"). EACH TRANSFEROR OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) ACKNOWLEDGES, OR BY ACQUIRING THIS TRUST CERTIFICATE OR AN INTEREST THEREIN WILL BE DEEMED TO ACKNOWLEDGE, THAT THE FAILURE TO PROVIDE A NON-FOREIGN STATUS CERTIFICATE TO THE TRANSFEREE MAY RESULT IN WITHHOLDING ON THE AMOUNT REALIZED ON ITS DISPOSITION OF THE TRUST CERTIFICATE.

THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) MAY NOT BE ACQUIRED OR OWNED BY ANY PERSON (OTHER THAN THE TRUST DEPOSITOR) THAT IS CLASSIFIED FOR U.S. FEDERAL INCOME TAX PURPOSES AS A PARTNERSHIP, SUBCHAPTER S CORPORATION OR GRANTOR TRUST UNLESS (I) (A) NONE OF THE DIRECT OR INDIRECT BENEFICIAL OWNERS OF ANY INTEREST IN SUCH PERSON HAVE OR EVER WILL HAVE MORE THAN 40% OF THE VALUE OF ITS INTEREST IN SUCH PERSON ATTRIBUTABLE TO THE AGGREGATE INTEREST OF SUCH PERSON IN THE TRUST CERTIFICATES AND ANY OTHER EQUITY INTERESTS OF THE TRUST, AND (B) IT IS NOT AND WILL NOT BE A PRINCIPAL PURPOSE OF THE ARRANGEMENT INVOLVING THE INVESTMENT OF SUCH PERSON IN THE TRUST CERTIFICATES AND ANY OTHER EQUITY INTERESTS OF THE TRUST TO PERMIT ANY PARTNERSHIP TO SATISFY THE 100 PARTNER LIMITATION OF TREAS. REGS. § 1.7704-1(h)(1)(ii) OR (II) SUCH PERSON OBTAINS AN OPINION OF NATIONALLY RECOGNIZED U.S. TAX COUNSEL REASONABLY ACCEPTABLE TO THE TRUST THAT SUCH TRANSFER WILL NOT CAUSE THE TRUST TO BE TREATED AS A PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION.

THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) MAY NOT BE ACQUIRED, AND NO CERTIFICATEHOLDER MAY SELL, TRANSFER, ASSIGN, PARTICIPATE, PLEDGE OR OTHERWISE DISPOSE OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) OR CAUSE THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) TO BE MARKETED, (I) ON OR THROUGH AN "ESTABLISHED SECURITIES MARKET" WITHIN THE MEANING OF SECTION 7704(b)(1) OF THE CODE AND TREAS. REGS. § 1.7704-1(b), INCLUDING, WITHOUT LIMITATION, AN INTERDEALER QUOTATION SYSTEM THAT REGULARLY DISSEMINATES FIRM BUY OR SELL QUOTATIONS, OR (II) IF SUCH ACQUISITION, SALE, TRANSFER, ASSIGNMENT, PARTICIPATION, PLEDGE OR OTHER DISPOSITION WOULD CAUSE THE COMBINED NUMBER OF HOLDERS OF TRUST CERTIFICATES AND OTHER EQUITY INTERESTS IN THE TRUST TO BE MORE THAN 88.

NO HOLDER OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) WILL PARTICIPATE IN THE CREATION OR OTHER TRANSFER OF ANY FINANCIAL INSTRUMENT OR CONTRACT THE VALUE OF WHICH IS DETERMINED IN WHOLE OR IN PART BY REFERENCE TO THE TRUST

(INCLUDING THE AMOUNT OF DISTRIBUTIONS BY THE TRUST, THE VALUE OF THE TRUST'S ASSETS, THE RESULTS OF THE TRUST'S OPERATIONS OR THE TRUST CERTIFICATES).

EACH HOLDER OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) ACKNOWLEDGES AND AGREES THAT ANY SALE, TRANSFER, ASSIGNMENT, PARTICIPATION, PLEDGE, OR OTHER DISPOSITION OF THIS TRUST CERTIFICATE THAT WOULD VIOLATE ANY OF THE THREE PRECEDING PARAGRAPHS ABOVE OR OTHERWISE CAUSE THE TRUST TO BE UNABLE TO RELY ON THE "PRIVATE PLACEMENT" SAFE HARBOR OF TREAS. REGS. § 1.7704-1(h) WILL BE VOID AND OF NO FORCE OR EFFECT, AND IT WILL NOT TRANSFER ANY INTEREST IN THIS TRUST CERTIFICATE TO ANY PERSON THAT DOES NOT AGREE TO BE BOUND BY THE THREE PRECEDING PARAGRAPHS ABOVE OR BY THIS PARAGRAPH.

UNLESS THE TRUST DEPOSITOR, TRUST AND OWNER TRUSTEE HAVE RECEIVED AN OPINION OF COUNSEL FROM DECHERT LLP, WINSTON & STRAWN LLP, OR OTHER NATIONALLY RECOGNIZED TAX COUNSEL THAT THE RESTRICTION ON THE PROPOSED ACQUISITION OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) DESCRIBED BY THIS PARAGRAPH IS NO LONGER NECESSARY TO CONCLUDE THAT ANY SUCH ACQUISITION (AND SUBSEQUENT RESALE OF THE APPLICABLE NOTES DESCRIBED BELOW) WILL NOT CAUSE THE TREASURY REGULATIONS UNDER SECTION 385 OF THE CODE TO APPLY TO SUCH NOTES IN A MANNER THAT COULD CAUSE A MATERIAL ADVERSE EFFECT ON THE TRUST OR THE TRUST TO BE TREATED AS AN ASSOCIATION OR PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, (I) A SECTION 385 CERTIFICATEHOLDER CANNOT ACQUIRE A TRUST CERTIFICATE (AND ANY INTEREST THEREIN) IF (A) A MEMBER OF ANY "EXPANDED GROUP" (AS DEFINED IN TREASURY REGULATIONS SECTION 1.385-1(c)(4)) THAT INCLUDES SUCH SECTION 385 CERTIFICATEHOLDER OWNS ANY NOTES OR (B) A SECTION 385 CONTROLLED PARTNERSHIP OF SUCH EXPANDED GROUP OWNS ANY NOTES AND (II) A SECTION 385 CERTIFICATEHOLDER CANNOT HOLD A TRUST CERTIFICATE (AND ANY INTEREST THEREIN) IF (A) A MEMBER OF ANY "EXPANDED GROUP" (AS DEFINED IN TREASURY REGULATIONS SECTION 1.385-1(c)(4)) THAT INCLUDES SUCH SECTION 385 CERTIFICATEHOLDER ACQUIRES ANY NOTES FROM THE TRUST, ANY AFFILIATE OF THE TRUST OR ANY OTHER SUBSEQUENT TRANSFEROR OF A NOTE OR (B) A SECTION 385 CONTROLLED PARTNERSHIP OF SUCH EXPANDED GROUP ACQUIRES ANY NOTES FROM THE TRUST, ANY AFFILIATE OF THE TRUST OR ANY OTHER SUBSEQUENT TRANSFEROR OF A NOTE. THE PRECEDING SENTENCE SHALL NOT APPLY IF THE NOTEHOLDER OR POTENTIAL NOTEHOLDER IS A U.S. CORPORATE MEMBER OF THE SAME U.S. CORPORATE "AFFILIATED GROUP" (AS DEFINED IN SECTION 1504 OF THE CODE) FILING A CONSOLIDATED FEDERAL INCOME TAX RETURN THAT INCLUDES EACH OF ANY APPLICABLE RELATED SECTION 385 CERTIFICATEHOLDERS (INCLUDING IN THE CASE OF A PARTNERSHIP, THE RELEVANT "EXPANDED GROUP PARTNER" (AS DEFINED IN TREASURY REGULATIONS SECTION 1.385-3(g)(12)). IF A CERTIFICATEHOLDER (OR HOLDER OF AN INTEREST IN A TRUST CERTIFICATE) FAILS TO COMPLY WITH THE FOREGOING REQUIREMENTS, THE TRUST AND DEPOSITOR ARE AUTHORIZED, AT THEIR DISCRETION, TO COMPEL SUCH CERTIFICATEHOLDER (OR HOLDER OF AN INTEREST IN A TRUST CERTIFICATE) TO SELL ITS TRUST CERTIFICATE (OR INTEREST THEREIN) TO A PERSON WHOSE OWNERSHIP COMPLIES WITH THIS PARAGRAPH SO LONG AS SUCH SALE DOES NOT OTHERWISE CAUSE A MATERIAL ADVERSE EFFECT ON THE TRUST OR CAUSE THE TRUST TO BE TREATED AS AN ASSOCIATION OR PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES.

EACH HOLDER OF THIS TRUST CERTIFICATE (OR ANY INTEREST THEREIN) ACKNOWLEDGES AND AGREES, AND WILL BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED, THAT, FOR SO LONG AS THE TRUST IS DISREGARDED AS SEPARATE FROM IT FOR U.S. FEDERAL INCOME TAX PURPOSES, NEITHER A TRUST CERTIFICATE (OR ANY INTEREST THEREIN) OR A NOTE (OR ANY INTEREST THEREIN) MAY BE TRANSFERRED BY IT (EXCEPT TO A PERSON THAT IS DISREGARDED AS SEPARATE FROM SUCH HOLDER OR BENEFICIAL OWNER FOR U.S. FEDERAL

INCOME TAX PURPOSES), UNLESS IT SHALL HAVE RECEIVED WRITTEN ADVICE OF DECHERT LLP OR WINSTON & STRAWN LLP OR AN OPINION OF NATIONALLY RECOGNIZED U.S. TAX COUNSEL REASONABLY ACCEPTABLE TO THE TRUST THAT SUCH TRANSFER WILL NOT CAUSE THE TRUST TO BE TREATED AS A PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES OR OTHERWISE TO BE SUBJECT TO U.S. FEDERAL INCOME TAX ON A NET BASIS.

EACH HOLDER OF THIS TRUST CERTIFICATE (OR ANY INTEREST THEREIN) ACKNOWLEDGES AND AGREES, AND WILL BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED, THAT, FOR SO LONG AS THE TRUST IS CLASSIFIED AS A PARTNERSHIP FOR U.S. FEDERAL INCOME TAX PURPOSES, IT SHALL NOT ACQUIRE ANY TRUST CERTIFICATES (OR ANY OTHER INTEREST TREATED AS EQUITY IN THE ISSUER FOR U.S. FEDERAL INCOME TAX PURPOSES) IF SUCH TRANSFER WOULD CAUSE THE TRUST TO BE TREATED AS A DISREGARDED ENTITY FOR U.S. FEDERAL INCOME TAX PURPOSES, UNLESS IT SHALL HAVE RECEIVED WRITTEN ADVICE OF DECHERT LLP OR WINSTON & STRAWN LLP OR AN OPINION OF NATIONALLY RECOGNIZED U.S. TAX COUNSEL REASONABLY ACCEPTABLE TO THE TRUST THAT SUCH TRANSFER WILL NOT CAUSE THE TRUST TO BE TREATED AS A PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES OR OTHERWISE TO BE SUBJECT TO U.S. FEDERAL INCOME TAX ON A NET BASIS.

NUMBER 1 PERCENTAGE INTEREST: 100%

HERCULES CAPITAL FUNDING TRUST 2022-1

TRUST CERTIFICATE

Evidencing a beneficial ownership interest in the Trust, as defined below, the property of which includes primarily the Loans transferred to the Trust by Hercules Capital Funding 2022-1 LLC.

(This Trust Certificate does not represent an interest in or obligation of Hercules Capital Funding 2022-1 LLC, Hercules Capital, Inc. (the "Servicer") or the Owner Trustee (as defined below) (as such or in its individual capacity) or any of their respective affiliates, except to the extent described below.)

THIS CERTIFIES THAT HERCULES CAPITAL FUNDING 2022-1 LLC is the registered owner of the nonassessable, fully paid, beneficial ownership interest in HERCULES CAPITAL FUNDING TRUST 2022-1 (the "Trust") formed by Hercules Capital Funding 2022-1 LLC, in the Percentage Interest evidenced hereby.

The Trust was created pursuant to a Trust Agreement, dated as of June 10, 2022(as amended and restated as of June 22, 2022 and as further amended, modified, restated, waived, substituted or supplemented from time to time, the "Trust Agreement"), between Hercules Capital Funding 2022-1 LLC, as trust depositor (the "Trust Depositor"),

and Wilmington Trust, National Association, as owner trustee (the "Owner Trustee"), a summary of certain of the pertinent provisions of which is set forth below and a Certificate of Trust filed with the Secretary of State of the State of Delaware on June 10, 2022. To the extent not otherwise defined herein, the capitalized terms used herein have the meanings assigned to them in the Trust Agreement.

This Trust Certificate is one of a duly authorized issue of Hercules Capital Funding Trust 2022-1 Certificates (herein called the "Trust Certificates"). This Trust Certificate is issued under and is subject to the terms, provisions and conditions of the Trust Agreement, to which Trust Agreement the holder of this Trust Certificate by virtue of its acceptance hereof assents and by which such holder is bound.

Under the Trust Agreement, there will be distributions on the 20th day of each month or, if such 20th day is not a Business Day, the next Business Day (each, a "Payment Date"), commencing on July 20, 2022, to the Person in whose name this Trust Certificate is registered at the close of business on the last Business Day of the month immediately preceding the Payment Date (the "Record Date"), such Certificateholder's Percentage Interest in the amount to be distributed to Certificateholders on such Payment Date pursuant to the terms of the Sale and Servicing Agreement and the Indenture.

The Holder of this Trust Certificate acknowledges and agrees that its rights to receive distributions in respect of this Trust Certificate are subordinated to the rights of the Noteholders as described in the Sale and Servicing Agreement and the Indenture.

It is the intent of the Trust Depositor and the Certificateholders that (i) for any period that the Trust Certificates are owned by a single beneficial owner, for U.S. federal income tax purposes, the Trust will be disregarded as an entity separate from such beneficial owner for U.S. federal income tax purposes, and the Certificateholders (and the beneficial owner of the Trust Certificates), by acceptance of the Trust Certificates (or a beneficial interest therein), agree to take no action inconsistent with such treatment and (ii) for any period that the Trust Certificates are owned by more than one beneficial owner fore U.S. federal income tax purposes, the Trust will be treated as a partnership for U.S. federal income tax purposes, other than a publicly traded partnership, the partners of which are the beneficial owners of the Trust Certificates, and the Certificateholders (and beneficial owners of the Trust Certificates), by acceptance of a Trust Certificate (or beneficial interest therein) agree to treat the Trust Certificates as equity and to take no action inconsistent with such treatment.

To the fullest extent permitted by Applicable Law, each Certificateholder, by its acceptance of a Trust Certificate, covenants and agrees that such Certificateholder, will not prior to the date which is one (1) year and one (1) day (or, if longer, the applicable preference period then in effect) after the payment in full of the Notes rated by any Rating Agency, institute against the Trust, or join in any institution against the Trust of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any United States federal or state bankruptcy or similar law in connection with any obligations relating to the Trust Certificates, the Notes, the Trust Agreement or any of the other Transaction Documents.

Distributions on this Trust Certificate will be made as provided in the Trust Agreement by the Trustee or any other party acting as paying agent by wire transfer or check mailed to the Certificateholder of record in the Certificate Register without the presentation or surrender of this Trust Certificate or the making of any notation hereon. Except as otherwise provided in the Trust Agreement and notwithstanding the above, the final distribution on this Trust Certificate will be made after due notice by the Trustee or any other party acting as paying agent of the pendency of such distribution and only upon presentation and surrender of this Trust Certificate at the office or agency maintained for that purpose by the Trustee or any other party acting as paying agent.

Reference is hereby made to the further provisions of this Trust Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon shall have been executed by an authorized officer of the Certificate Registrar, by manual signature, this Trust Certificate shall not entitle the Holder hereof to any benefit under the Trust Agreement or the Sale and Servicing Agreement or be valid for any purpose.

THIS TRUST CERTIFICATE SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

IN WITNESS WHEREOF, the Owner Trustee, on behalf of the Trust and not in its individual capacity, has caused this Trust Certificate to be duly executed.

HERCULES CAPITAL FUNDING TRUST 2022-1

By: WILMINGTON TRUST, NATIONAL ASSOCIATION, solely as Owner Trustee and not in its individual capacity

By:_____
Authorized Signatory

CERTIFICATE OF AUTHENTICATION

This is one of the Trust Certificates of Hercules Capital Funding Trust 2022-1 referred to in the within-mentioned Trust Agreement.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Certificate Registrar

By:_____
Authorized Signatory

[REVERSE OF TRUST CERTIFICATE]

The Trust Certificates do not represent an obligation of, or an interest in, the Trust Depositor, the Servicer, the Owner Trustee or any affiliates of any of them and no recourse may be had against such parties or their assets, except as expressly set forth or contemplated herein or in the Trust Agreement, the Indenture or the Transaction Documents. In addition, this Trust Certificate is not guaranteed by any governmental agency or instrumentality and is limited in right of payment to certain collections and recoveries with respect to the Loans (and certain other amounts), all as more specifically set forth herein and in the Transaction Documents. A copy of each of the Transaction Documents may be examined by any Certificateholder upon written request during normal business hours at the principal office of the Trust Depositor and at such other places, if any, designated by the Trust Depositor.

The Trust Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Trust Depositor and the rights of the Certificateholders under the Trust Agreement at any time, by the Trust Depositor, the Trust Company and the Owner Trustee with the consent of the holders of the Trust Certificates evidencing not less than a majority of the outstanding Percentage Interest and of the holders of the Majority Noteholders. Any such consent by the holder of this Trust Certificate shall be conclusive and binding on such holder and on all future holders of this Trust Certificate and of any Trust Certificate issued upon the transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent is made upon this Trust Certificate. The Trust Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the holders of any of the Trust Certificates.

As provided in the Trust Agreement and subject to certain limitations therein set forth, the transfer of this Trust Certificate is registerable in the Certificate Register upon surrender of this Trust Certificate for registration of transfer at the offices or agencies of the Certificate Registrar, accompanied by a written instrument of transfer in form satisfactory to the Owner Trustee and the Certificate Registrar duly executed by the holder hereof or such holder's attorney duly authorized in writing, and thereupon one or more new Trust Certificates of authorized denominations evidencing the same aggregate interest in the Trust will be issued to the designated transferee. The initial Certificate Registrar appointed under the Trust Agreement is U.S. Bank Trust Company, National Association.

The Trust Certificates are issuable only as registered Trust Certificates without coupons in minimum Percentage Interests of ten (10%) percent and integral multiples of one (1%) percent in excess thereof; *provided* that one Trust Certificate may be issued in a different denomination. As provided in the Trust Agreement and subject to certain limitations therein set forth, Trust Certificates are exchangeable for new Trust Certificates of authorized denominations evidencing the same aggregate denomination, as requested by the holder surrendering the same. No service charge will be made for any such registration of transfer or exchange, but the Owner Trustee or the Certificate Registrar may require payment of a sum sufficient to cover any tax or governmental charge payable in connection therewith.

The Owner Trustee, the Certificate Registrar and any agent of the Owner Trustee or the Certificate Registrar may treat the Person in whose name this Trust Certificate is registered as the owner hereof for all purposes, and none of the Owner Trustee, the Certificate Registrar or any such agent shall be affected by any notice to the contrary.

This Trust Certificate may not be acquired directly or indirectly by, or held by or with plan assets of any employee benefit plans, retirement arrangements, individual retirement accounts or Keogh plans subject to either Title I of the Employee Retirement Income Security Act of 1974, as amended, or Section 4975 of the Internal Revenue Code of 1986, as amended. By accepting and holding this Trust Certificate, the Holder hereof shall be deemed to have represented and warranted that it is not any of the foregoing entities.

This Trust Certificate may not be transferred to any person who is not a U.S. Person, as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.

Each purchaser of the Trust Certificates shall be required, prior to purchasing a Trust Certificate, to execute the Purchaser's Representation and Warranty Letter in the form attached to the Trust Agreement as Exhibit C.

The obligations and responsibilities created by the Trust Agreement and the Trust created thereby shall terminate upon (i) the payment to Certificateholders of all amounts required to be paid to them pursuant to the Trust Agreement and the Sale and Servicing Agreement and the disposition of all property held as part of the Trust and (ii) the written consent of the Certificateholders. The Servicer on behalf of the Trustee has the option to cause the sale of the corpus of the Trust at a price and pursuant to procedures specified in the Indenture and the Sale and Servicing Agreement, and such sale of the receivables and other property of the Trust will effect early retirement of the Trust Certificates.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER OF ASSIGNEE

(Please print or type name and address, including postal zip code, of assignee)

---

the within Trust Certificate, and all rights thereunder, hereby irrevocably constituting and appointing

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to transfer said Trust Certificate on the books of the Certificate Registrar, with full power of substitution in the premises.

Dated:

____*
Signature Guaranteed:

____*

* NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Trust Certificate in every particular, without alteration, enlargement or any change whatever. Such signature must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

EXHIBIT B

CERTIFICATE OF TRUST OF
HERCULES CAPITAL FUNDING TRUST 2022-1

This Certificate of Trust of HERCULES CAPITAL FUNDING TRUST 2022-1 (the "Trust"), is being duly executed and filed by the undersigned, as owner trustee, to form a statutory trust under the Statutory Trust Statute (12 Del. Code, § 3801 *et seq*.) (the "Act").

1. Name. The name of the statutory trust formed hereby is HERCULES CAPITAL FUNDING TRUST 2022-1.

2. Delaware Trustee. The name and business address of a trustee of the Trust having its principal place of business in the State of Delaware is Wilmington Trust, National Association, 1100 North Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Administration.

3. Effective Date. This Certificate of Trust shall be effective upon its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the only owner trustee of the Trust, has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as owner trustee of the Trust

By:
Name:
Title:

EXHIBIT C

Form of Purchaser's Representation and Warranty Letter

Dated: June 22, 2022

Hercules Capital Funding Trust 2022-1
c/o Wilmington Trust, National Association, as Owner Trustee
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration

U.S. Bank Trust Company, National Association, as Certificate Registrar
111 Fillmore Avenue East
Attn: Bondholder Services - EP-MN-WS2N
St. Paul, Minnesota, 55107
Ref: Hercules 2022-1

Re: **Hercules Capital Funding Trust 2022-1 (the "Trust")**

Ladies and Gentlemen:

In connection with our proposed acquisition of Trust Certificates (the "Trust Certificates") issued under the Trust Agreement, dated as of June 10, 2022 (as amended and restated as of June 22, 2022 and as further amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time, the "Agreement"; capitalized terms used but not defined herein shall have the meanings given to such terms in the Agreement), between Hercules Capital Funding 2022-1 LLC, as Trust Depositor (the "Trust Depositor"), and Wilmington Trust, National Association, as Owner Trustee, the undersigned (the "Purchaser") represents, warrants and agrees that:

1. It is (1) the Trust Depositor or an Affiliate thereof, (2) a Qualified Institutional Buyer (a "QIB") for purposes of Rule 144A under the Securities Act and is acquiring the Trust Certificates for its own institutional account or for the account of a QIB or (3) an Institutional "Accredited Investor" (within the meaning of Rule 501 (a)(1)-(3) or (7) under the Securities Act) purchasing for investment and not for distribution in violation of the act.

2. It is not an employee benefit plan, retirement arrangement, individual retirement account or Keogh plan subject to either Title I of the Employee Retirement Income Security Act of 1974, as amended, or Section 4975 of the Internal Revenue Code of 1986, as amended and is not acquiring Trust Certificates with plan assets of any of the foregoing.

3. It has such knowledge and experience in evaluating business and financial matters so that it is capable of evaluating the merits and risks of an investment in the Trust Certificates. It understands the full nature and risks of an investment in the Trust Certificates and based upon its present and projected net income and net worth, it believes that it can bear the economic risk of an immediate or future loss of its entire investment in the Trust Certificates.

4. It understands that the Trust Certificates will be offered in a transaction not involving any public offering within the meaning of the Securities Act, and that, if in the future it decides to resell, pledge or otherwise transfer any Trust Certificates, such Trust Certificates may be resold, pledged or transferred only (a) to a person who the seller reasonably believes is a QIB/QP that purchases for its own account or for the account of another QIB/QP or (b) pursuant to an effective registration statement under the Securities Act.

5. It understands that each Trust Certificate will bear legends substantially to the following effect:

THIS TRUST CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THIS TRUST CERTIFICATE, AGREES THAT THIS TRUST CERTIFICATE MAY BE MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE ACT AND OTHER APPLICABLE LAW AND ONLY (1) A "QUALIFIED INSTITUTIONAL BUYER," AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT IS A "QUALIFIED PURCHASER" AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY ACT OF 1940 (EACH SUCH PERSON, A "QUALIFIED PURCHASER") , (2) AN INSTITUTION THAT QUALIFIES AS AN "ACCREDITED INVESTOR" MEETING THE REQUIREMENTS OF RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT ("INSTITUTIONAL ACCREDITED INVESTOR") THAT IS A QUALIFIED PURCHASER PURSUANT TO AN EXEMPTION UNDER THE SECURITIES ACT AND, IN EITHER CASE, IS ACQUIRING SUCH TRUST CERTIFICATE FOR ITS OWN ACCOUNT (AND NOT FOR THE ACCOUNT OF OTHERS) OR AS A FIDUCIARY OR AGENT FOR OTHERS (WHICH OTHERS ALSO ARE INSTITUTIONAL ACCREDITED INVESTORS), PURSUANT TO AN EXEMPTION FROM REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT AND IN EACH CASE, SUBJECT TO (A) THE RECEIPT BY THE OWNER TRUSTEE AND THE CERTIFICATE REGISTRAR OF A LETTER SUBSTANTIALLY IN THE FORM PROVIDED IN THE TRUST AGREEMENT AND (B) THE RECEIPT BY THE OWNER TRUSTEE AND THE CERTIFICATE REGISTRAR OF SUCH OTHER EVIDENCE ACCEPTABLE TO THE OWNER TRUSTEE THAT SUCH REOFFER, RESALE, PLEDGE OR TRANSFER IS IN COMPLIANCE WITH THE ACT AND OTHER APPLICABLE LAW OR IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE UNITED STATES AND SECURITIES AND BLUE SKY LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION, (3) PURSUANT TO ANOTHER EXEMPTION AVAILABLE UNDER THE ACT AND IN ACCORDANCE WITH ANY APPLICABLE STATE SECURITIES LAWS, OR (4) PURSUANT TO A VALID REGISTRATION STATEMENT. EACH INVESTOR IN THIS TRUST CERTIFICATE WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) IT IS NOT, AND IS NOT DIRECTLY OR INDIRECTLY ACQUIRING THIS TRUST CERTIFICATE FOR, ON BEHALF OF OR WITH ANY ASSETS OF, AN EMPLOYEE BENEFIT PLAN OR OTHER ARRANGEMENT SUBJECT TO PART 4, SUBTITLE B, TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), A PLAN SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE PLAN ASSETS OF ANY SUCH PLANS (COLLECTIVELY, A "BENEFIT PLAN INVESTOR") OR A PLAN OR OTHER ARRANGEMENT SUBJECT TO ANY PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SUBSTANTIVELY SIMILAR TO SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE ("SIMILAR LAW") OR (II) IT IS A PLAN SUBJECT TO SIMILAR LAW AND ITS ACQUISITION, HOLDING AND DISPOSITION OF SUCH TRUST CERTIFICATE OR ANY INTEREST THEREIN WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT VIOLATION OF SIMILAR LAW. SUCH REPRESENTATION SHALL BE DEEMED MADE ON EACH DAY FROM THE DATE ON WHICH THE ACQUIRER ACQUIRES ITS INTEREST IN THE TRUST CERTIFICATE THROUGH AND INCLUDING THE DATE ON WHICH THE ACQUIRER DISPOSES OF ITS INTEREST IN THE TRUST CERTIFICATE.

THIS TRUST CERTIFICATE IS NOT GUARANTEED OR INSURED BY ANY GOVERNMENTAL AGENCY.

NO TRANSFER, SALE, PLEDGE OR OTHER DISPOSITION OF ONE OR MORE TRUST CERTIFICATES (A "TRANSFER") SHALL BE MADE UNLESS SIMULTANEOUSLY WITH THE TRANSFER THE PERCENTAGE INTEREST OF THE TRUST CERTIFICATES SO TRANSFERRED IS NO LESS THAN TEN (10%) PERCENT.

EACH HOLDER OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) REPRESENTS AND WARRANTS THAT IT IS A "UNITED STATES PERSON" AS DEFINED IN SECTION 7701(a)(30) OF THE CODE AND WILL PROVIDE THE TRUST AND THE OWNER TRUSTEE (AND ANY OF THEIR AGENTS) WITH A CORRECT, COMPLETE AND PROPERLY EXECUTED INTERNAL REVENUE SERVICE FORM W-9 (OR APPLICABLE SUCCESSOR FORM). IF ANY HOLDER OF THIS TRUST CERTIFICATE (OR ANY INTEREST THEREIN) (OTHER THAN THE INITIAL HOLDER) FAILS TO PROVIDE THE TRUST AND THE OWNER TRUST (AND ANY OF THEIR AGENTS) WITH THE PROPERLY COMPLETED AND SIGNED TAX CERTIFICATIONS SPECIFIED ABOVE, THE ACQUISITION OF ITS INTEREST IN THIS TRUST CERTIFICATE SHALL BE VOID *AB INITIO*.

EACH TRANSFEROR OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) WILL AGREE, OR BY ACQUIRING THIS TRUST CERTIFICATE OR AN INTEREST THEREIN WILL BE DEEMED TO HAVE AGREED, TO DELIVER TO THE TRANSFEREE, WITH A COPY TO THE TRUST AND THE OWNER TRUSTEE, PRIOR TO THE TRANSFER OF THE TRUST CERTIFICATE (AND ANY INTEREST THEREIN), A PROPERLY COMPLETED CERTIFICATE, IN A FORM REASONABLY ACCEPTABLE TO THE TRANSFEREE AND THE TRUST, STATING, UNDER PENALTY OF PERJURY, THE TRANSFEROR'S UNITED STATES TAXPAYER IDENTIFICATION NUMBER AND THAT THE TRANSFEROR IS NOT A FOREIGN PERSON WITHIN THE MEANING OF SECTION 1446(f)(2) OF THE CODE (SUCH CERTIFICATE, A "NON-FOREIGN STATUS CERTIFICATE"). EACH TRANSFEROR OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) ACKNOWLEDGES, OR BY ACQUIRING THIS TRUST CERTIFICATE OR AN INTEREST THEREIN WILL BE DEEMED TO ACKNOWLEDGE, THAT THE FAILURE TO PROVIDE A NON-FOREIGN STATUS CERTIFICATE TO THE TRANSFEREE MAY RESULT IN WITHHOLDING ON THE AMOUNT REALIZED ON ITS DISPOSITION OF THE TRUST CERTIFICATE.

THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) MAY NOT BE ACQUIRED OR OWNED BY ANY PERSON (OTHER THAN THE TRUST DEPOSITOR) THAT IS CLASSIFIED FOR U.S. FEDERAL INCOME TAX PURPOSES AS A PARTNERSHIP, SUBCHAPTER S CORPORATION OR GRANTOR TRUST UNLESS (I) (A) NONE OF THE DIRECT OR INDIRECT BENEFICIAL OWNERS OF ANY INTEREST IN SUCH PERSON HAVE OR EVER WILL HAVE MORE THAN 40% OF THE VALUE OF ITS INTEREST IN SUCH PERSON ATTRIBUTABLE TO THE AGGREGATE INTEREST OF SUCH PERSON IN THE TRUST CERTIFICATES AND ANY OTHER EQUITY INTERESTS OF THE TRUST, AND (B) IT IS NOT AND WILL NOT BE A PRINCIPAL PURPOSE OF THE ARRANGEMENT INVOLVING THE INVESTMENT OF SUCH PERSON IN THE TRUST CERTIFICATES AND ANY OTHER EQUITY INTERESTS OF THE TRUST TO PERMIT ANY PARTNERSHIP TO SATISFY THE 100 PARTNER LIMITATION OF TREAS. REGS. § 1.7704-1(h)(1)(ii) OR (II) SUCH PERSON OBTAINS AN OPINION OF NATIONALLY RECOGNIZED U.S. TAX COUNSEL REASONABLY ACCEPTABLE TO THE TRUST THAT SUCH TRANSFER WILL NOT CAUSE THE TRUST TO BE TREATED AS A PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION.

THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) MAY NOT BE ACQUIRED, AND NO CERTIFICATEHOLDER MAY SELL, TRANSFER, ASSIGN, PARTICIPATE, PLEDGE OR OTHERWISE DISPOSE OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) OR CAUSE THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) TO BE MARKETED, (I) ON OR THROUGH AN "ESTABLISHED SECURITIES MARKET" WITHIN THE MEANING OF SECTION 7704(b)(1) OF THE CODE AND TREAS. REGS. § 1.7704-1(b), INCLUDING, WITHOUT LIMITATION, AN INTERDEALER QUOTATION SYSTEM THAT REGULARLY DISSEMINATES FIRM BUY OR SELL QUOTATIONS, OR (II) IF SUCH ACQUISITION, SALE, TRANSFER, ASSIGNMENT, PARTICIPATION, PLEDGE OR OTHER DISPOSITION WOULD CAUSE THE COMBINED NUMBER OF HOLDERS OF TRUST CERTIFICATES AND OTHER EQUITY INTERESTS IN THE TRUST TO BE MORE THAN 88.

NO HOLDER OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) WILL PARTICIPATE IN THE CREATION OR OTHER TRANSFER OF ANY FINANCIAL INSTRUMENT OR CONTRACT THE VALUE OF WHICH IS DETERMINED IN WHOLE OR IN PART BY REFERENCE TO THE TRUST (INCLUDING THE AMOUNT OF DISTRIBUTIONS BY THE TRUST, THE VALUE OF THE TRUST'S ASSETS, THE RESULTS OF THE TRUST'S OPERATIONS OR THE TRUST CERTIFICATES).

EACH HOLDER OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) ACKNOWLEDGES AND AGREES THAT ANY SALE, TRANSFER, ASSIGNMENT, PARTICIPATION, PLEDGE, OR OTHER DISPOSITION OF THIS TRUST CERTIFICATE THAT WOULD VIOLATE ANY OF THE THREE PRECEDING PARAGRAPHS ABOVE OR OTHERWISE CAUSE THE TRUST TO BE UNABLE TO RELY ON THE "PRIVATE PLACEMENT" SAFE HARBOR OF TREAS. REGS. § 1.7704-1(h) WILL BE VOID AND OF NO FORCE OR EFFECT, AND IT WILL NOT TRANSFER ANY INTEREST IN THIS TRUST CERTIFICATE TO ANY PERSON THAT DOES NOT AGREE TO BE BOUND BY THE THREE PRECEDING PARAGRAPHS ABOVE OR BY THIS PARAGRAPH.

UNLESS THE TRUST DEPOSITOR, TRUST AND OWNER TRUSTEE HAVE RECEIVED AN OPINION OF COUNSEL FROM DECHERT LLP, WINSTON & STRAWN LLP, OR OTHER NATIONALLY RECOGNIZED TAX COUNSEL THAT THE RESTRICTION ON THE PROPOSED ACQUISITION OF THIS TRUST CERTIFICATE (AND ANY INTEREST THEREIN) DESCRIBED BY THIS PARAGRAPH IS NO LONGER NECESSARY TO CONCLUDE THAT ANY SUCH ACQUISITION (AND SUBSEQUENT RESALE OF THE APPLICABLE NOTES DESCRIBED BELOW) WILL NOT CAUSE THE TREASURY REGULATIONS UNDER SECTION 385 OF THE CODE TO APPLY TO SUCH NOTES IN A MANNER THAT COULD CAUSE A MATERIAL ADVERSE EFFECT ON THE TRUST OR THE TRUST TO BE TREATED AS AN ASSOCIATION OR PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, (I) A SECTION 385 CERTIFICATEHOLDER CANNOT ACQUIRE A TRUST CERTIFICATE (AND ANY INTEREST THEREIN) IF (A) A MEMBER OF ANY "EXPANDED GROUP" (AS DEFINED IN TREASURY REGULATIONS SECTION 1.385-1(c)(4)) THAT INCLUDES SUCH SECTION 385 CERTIFICATEHOLDER OWNS ANY NOTES OR (B) A SECTION 385 CONTROLLED PARTNERSHIP OF SUCH EXPANDED GROUP OWNS ANY NOTES AND (II) A SECTION 385 CERTIFICATEHOLDER CANNOT HOLD A TRUST CERTIFICATE (AND ANY INTEREST THEREIN) IF (A) A MEMBER OF ANY "EXPANDED GROUP" (AS DEFINED IN TREASURY REGULATIONS SECTION 1.385-1(c)(4)) THAT INCLUDES SUCH SECTION 385 CERTIFICATEHOLDER ACQUIRES ANY NOTES FROM THE TRUST, ANY AFFILIATE OF THE TRUST OR ANY OTHER SUBSEQUENT TRANSFEROR OF A NOTE OR (B) A SECTION 385 CONTROLLED PARTNERSHIP OF SUCH EXPANDED GROUP ACQUIRES ANY NOTES FROM THE TRUST, ANY AFFILIATE OF THE TRUST OR ANY OTHER SUBSEQUENT TRANSFEROR OF A NOTE. THE PRECEDING SENTENCE SHALL NOT APPLY IF THE NOTEHOLDER OR POTENTIAL NOTEHOLDER IS A U.S. CORPORATE MEMBER OF THE SAME U.S. CORPORATE "AFFILIATED GROUP" (AS DEFINED IN SECTION 1504 OF THE CODE) FILING A CONSOLIDATED FEDERAL INCOME TAX RETURN THAT INCLUDES EACH OF ANY APPLICABLE RELATED SECTION 385 CERTIFICATEHOLDERS (INCLUDING IN THE CASE OF A PARTNERSHIP, THE RELEVANT "EXPANDED GROUP PARTNER" (AS DEFINED IN TREASURY REGULATIONS SECTION 1.385-3(g)(12)). IF A CERTIFICATEHOLDER (OR HOLDER OF AN INTEREST IN A TRUST CERTIFICATE) FAILS TO COMPLY WITH THE FOREGOING REQUIREMENTS, THE TRUST AND DEPOSITOR ARE AUTHORIZED, AT THEIR DISCRETION, TO COMPEL SUCH CERTIFICATEHOLDER (OR HOLDER OF AN INTEREST IN A TRUST CERTIFICATE) TO SELL ITS TRUST CERTIFICATE (OR INTEREST THEREIN) TO A PERSON WHOSE OWNERSHIP COMPLIES WITH THIS PARAGRAPH SO LONG AS SUCH SALE DOES NOT OTHERWISE CAUSE A MATERIAL ADVERSE EFFECT ON THE TRUST OR CAUSE THE TRUST TO BE TREATED AS AN ASSOCIATION OR PUBLICLY TRADED PARTNERSHIP TAXABLE AS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES.

6. It is acquiring the Trust Certificates for its own account and not with a view to the public offering thereof in violation of the Securities Act (subject, nevertheless, to the understanding that disposition of its property shall at all times be and remain within its control).

7. It has been furnished with all information regarding the Trust and Trust Certificates which it has requested from the Trust and the Trust Depositor.

8. Neither it nor anyone acting on its behalf has offered, transferred, pledged, sold or otherwise disposed of any Trust Certificate, any interest in any Trust Certificate or any other similar security to, or solicited any offer to buy or accept a transfer, pledge or other disposition of any Trust Certificate, any interest in any Trust Certificate or any other similar security from, or otherwise approached or negotiated with respect to any Trust Certificate, any interest in any Trust Certificate or any other similar security with, any person in any manner or made any general solicitation by means of general advertising or in any other manner, which would constitute a distribution of the Trust Certificates under the Securities Act or which would require registration pursuant to the Securities Act nor will it act, nor has it authorized or will authorize any person to act, in such manner with respect to any Trust Certificate.

9. It is a Qualified Purchaser ("QP") for purposes of Section 3(c)(7) of the 1940 Act.

10. It acknowledges and agrees that it is a "United States person" as defined in section 7701(a)(30) of the Code and it has provided to the Trust and the Owner Trustee (and any of their agents) a correct, complete and properly executed Internal Revenue Service Form W-9 (or applicable successor form) and any transfer of the Trust Certificates to any person that fails to provide such form shall be void *ab initio*.

11. It acknowledges and agrees that, no transfer of a Trust Certificate or any interest therein shall be made unless the transferor delivers to the transferee, with a copy to the Trust, the Owner Trustee and the Certificate Registrar, prior to the Transfer of the Trust Certificate or any interest therein, a properly completed certificate, in a form reasonably acceptable to the transferee and the Trust, stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person within the meaning of Section 1446(f)(2) of the Code (such certificate, a "Non-Foreign Status Certificate"). It acknowledges that the failure to provide a Non-Foreign Status Certificate to the transferee may result in withholding on the amount realized on its disposition of the Trust Certificate.

12. It is not, and it agrees that no Trust Certificate or any interest therein may be acquired or owned by any Person (other than the Trust Depositor) that is, classified for U.S. federal income tax purposes as a partnership, subchapter S corporation or grantor trust unless (i)(A) none of the direct or indirect beneficial owners of any interest in such Person have or ever will have more than 40% of the value of its interest in such Person attributable to the aggregate interest of such Person in the Trust Certificates and any other equity interests of the Trust, and (B) it is not and will not be a principal purpose of the arrangement involving the investment of such Person in the Trust Certificates and any other equity interests of the Trust to permit any partnership to satisfy the 100 partner limitation of Treasury Regulations Section 1.7704-1(h)(1)(ii) or (ii) such Person obtains an opinion of nationally recognized U.S. tax counsel reasonably acceptable to the Trust that such transfer will not cause the Trust to be treated as a publicly traded partnership taxable as a corporation.

13. It acknowledges and agrees that no Trust Certificate may be acquired, and no Certificateholder (or holder of an interest in a Trust Certificate) may sell, transfer, assign, participate, pledge or otherwise dispose of a Trust Certificate (or any interest therein) or other equity interest in the Trust or cause a Trust Certificate (or any interest therein) or other equity interest in the Trust to be marketed, (i) on or through an "established securities market" within the meaning of Section 7704(b)(1) of the Code and Treasury Regulations Section 1.7704-1(b), including without limitation, an interdealer quotation system that regularly disseminates firm buy or sell quotations or (ii) if such acquisition, sale, transfer, assignment, participation, pledge or other disposition would cause the combined number of holders of Trust Certificates and other equity interests in the Trust to be more than 88.

14. It acknowledges and agrees that it will not participate in the creation or other transfer of any financial instrument or contract the value of which is determined in whole or in part by reference to the Trust (including the amount of distributions by the Trust, the value of the Trust's assets, the results of the Trust's operation or the Trust Certificates).

15. It acknowledges and agrees that any sale, transfer, assignment, participation, pledge, or other disposition of a Trust Certificate that would violate any of the three preceding paragraphs above or otherwise cause the Trust to be unable to rely on the "private placement" safe harbor of Treasury Regulations Section 1.7704-1(h) will be void and of no force or effect, and it will not transfer any interest in its Trust Certificates to any person that does not agree to be bound by the three preceding paragraphs above or by this paragraph.

16. It acknowledges and agrees that, unless the Trust Depositor, Trust and Owner Trustee have received an Opinion of Counsel from Dechert LLP or Winston & Strawn LLP or other nationally recognized tax counsel that the restriction on the proposed acquisition of a Trust Certificate (or any interest therein) described by this paragraph is no longer necessary to conclude that any such acquisition (and subsequent resale of the applicable Notes described below) will not cause the Treasury Regulations under Section 385 of the Code to apply to such Notes in a manner that could cause a material adverse effect on the Trust or the Trust to be treated as an association or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes, (i) a Section 385 Certificateholder cannot acquire a Trust Certificate (or any interest therein) if (A) a member of any "expanded group" (as defined in Treasury Regulations Section 1.385-1(c)(4)) that includes such Section 385 Certificateholder owns any Notes or (B) a Section 385 Controlled Partnership of such expanded group owns any Notes and (ii) a Section 385 Certificateholder cannot hold a Trust Certificate (or any interest therein) if (A) a member of any "expanded group" (as defined in Treasury Regulations Section 1.385-1(c)(4)) that includes such Section 385 Certificateholder acquires any Notes from the Trust, any Affiliate of the Trust or any other subsequent transferor of a Note or (B) a Section 385 Controlled Partnership of such expanded group acquires any Notes from the Trust, any Affiliate of the Trust or any other subsequent transferor of a Note. The preceding sentence shall not apply if the Noteholder or potential Noteholder is a U.S. corporate member of the same U.S. corporate "affiliated group" (as defined in Section 1504 of the Code) filing a consolidated federal income tax return that includes each of any applicable related Section 385 Certificateholders (including in the case of a partnership, the relevant "expanded group partner" (as defined in Treasury Regulations Section 1.385-3(g)(12)). It understands that if it fails to comply with the foregoing requirements, the Trust and Depositor are authorized, at their discretion, to compel it to sell its Trust Certificate (or interest therein) to a Person whose ownership complies with this subsection so long as such sale does not otherwise cause a material adverse effect on the Trust or cause the Trust to be treated as an association or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

Very truly yours,

HERCULES CAPITAL FUNDING 2022-1 LLC

By: _____
Name:
Title:

SALE AND SERVICING AGREEMENT

by and among

HERCULES CAPITAL FUNDING TRUST 2022-1,
as the Issuer,

HERCULES CAPITAL FUNDING 2022-1 LLC,
as the Trust Depositor,

HERCULES CAPITAL, INC.
as the Seller and as the Servicer,

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as the Trustee and Paying Agent,

U.S. BANK NATIONAL ASSOCIATION
as the Backup Servicer and Custodian

Dated as of June 22, 2022

Hercules Capital Funding Trust 2022-1
Asset-Backed Notes

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SALE AND SERVICING AGREEMENT

THIS SALE AND SERVICING AGREEMENT, dated as of June 22, 2022, is by and among:

(1) **HERCULES CAPITAL FUNDING TRUST 2022-1**, a statutory trust created and existing under the laws of the State of Delaware (together with its successors and assigns, the "Issuer");

(2) **HERCULES CAPITAL FUNDING 2022-1 LLC**, a Delaware limited liability company, as the trust depositor (together with its successor and assigns, in such capacity, the "Trust Depositor");

(3) **HERCULES CAPITAL, INC.**, a Maryland corporation (together with its successors and assigns, "Hercules"), as the servicer (together with its successors and assigns, in such capacity, the "Servicer"), and as the seller (together with its successors and assigns, in such capacity, the "Seller");

(4) **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION** (together with its successors and assigns, "U.S. Bank"), not in its individual capacity but as the trustee (together with its successors and assigns, in such capacity, the "Trustee") and not in its individual capacity but as paying agent (together with its successors and assigns in such capacity, the "Paying Agent"); and

(5) **U.S. BANK NATIONAL ASSOCIATION** (together with its successors and assigns, "USBNA"), not in its individual capacity but as the backup servicer (together with its successors and assigns, in such capacity, the "Backup Servicer") and not in its individual capacity but as the custodian (together with its successors and assigns in such capacity, the "Custodian").

R E C I T A L S

WHEREAS, in the regular course of its business, the Seller originates and/or otherwise acquires Loans (as defined herein);

WHEREAS, the Trust Depositor acquired the Initial Loans from the Seller and may acquire from time to time thereafter certain Additional Loans and Substitute Loans;

WHEREAS, it is a condition to the Trust Depositor's acquisition of the Initial Loans, any Additional Loans and any Substitute Loans from the Seller that the Seller make certain representations and warranties regarding the Loan Assets for the benefit of the Trust Depositor as well as the Issuer;

WHEREAS, on the Closing Date, the Trust Depositor will sell, convey and assign all its right, title and interest in the Initial Loan Assets and certain other assets to the Issuer as provided herein;

WHEREAS, the Issuer is willing to purchase and accept assignment of the Loan Assets from the Trust Depositor pursuant to the terms hereof;

WHEREAS, the Servicer is willing to service the Loan Assets for the benefit and account of the Issuer pursuant to the terms hereof; and

WHEREAS, the Backup Servicer is willing to provide backup servicing for the Loan Assets.

NOW, THEREFORE, based upon the above recitals, the mutual premises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1.

DEFINITIONS

Section 1.01. Definitions.

Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

"1940 Act" means the Investment Company Act of 1940, as amended.

"Additional Loan" means one or more Loans transferred by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer under and in accordance with Section 2.07.

"Additional Loan Assets" means any assets acquired by the Issuer from the Trust Depositor following the Closing Date in connection with the conveyance of one or more Additional Loans pursuant to Section 2.07, which assets shall include the Trust Depositor's right, title and interest in the following:

(i) the Additional Loans listed in the related Subsequent List of Loans and all monies due, to become due or paid in respect thereof accruing on and after the Additional Loan Cutoff Date and all Insurance Proceeds, Liquidation Proceeds and other recoveries thereon, in each case as they arise after the Additional Loan Cutoff Date;

(ii) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Loans;

(iii) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Loans;

(iv) all collections and Records (including Computer Records) with respect to the foregoing;

(v) all documents relating to the applicable Loan Files; and

(vi) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, but excluding any Excluded Amount with respect thereto.

"Additional Loan Cutoff Date" means each date on or after the Closing Date on which an Additional Loan is transferred to the Issuer.

"Adjusted Interest Rate" means from and after the Rating Date, the annual rate of interest corresponding to the rating assigned to the Notes on the Rating Date as set forth below:

Note Rating	Adjusted Interest Rate
A or higher	4.950%
A-	5.150%
BBB+	5.550%
BBB	6.150%

"Adjusted Pool Balance" means, as of any Payment Date, Reference Date and Transfer Date, the Pool Balance (as of the last day of the related Collection Period, for any Reference Date or Payment Date, or as of such Transfer Date in the case of any Transfer Date) *minus*, without duplication, (a) the Excess Concentration Amounts (as of the last day of the related Collection Period, for any Reference Date or Payment Date, or as of such Transfer Date in the case of any Transfer Date), as applicable, *minus* (b) the aggregate Outstanding Loan Balance of all Delinquent Loans and Restructured Loans as of such date.

"Administration Agreement" means the Administration Agreement, as amended, supplemented or otherwise modified and in effect from time to time, dated as of the Closing Date, among the Issuer, the Administrator, the Owner Trustee and the Trustee.

"Administrative Expense Cap" XE "Administrative Expense Cap" means for all fees, expenses and indemnity payments due and owing with respect to each of the Trustee, the Owner Trustee, the Backup Servicer, the Custodian, the Split Loan Agent, if any, the Paying Agent and the Lockbox Bank pursuant to clause 1 of Section 7.06(a), prior to the occurrence of an Event of Default, collectively, an aggregate annual maximum amount of $500,000 (for the year ending on the first anniversary of the Closing Date and each year ending on each subsequent anniversary thereof), *provided*, however, that any amounts in respect of indemnification owing to the Backup Servicer as Successor Servicer shall not be subject to the Administrative Expense Cap. After the occurrence of an Event of Default that is continuing, the Administrative Expense Cap will not apply to indemnity payments to the Trustee, the Owner Trustee, the Backup Servicer, the Custodian, the Split Loan Agent (if any), the Paying Agent and the Lockbox Bank. If the Administrative Expense Cap is reached, all amounts owed to such parties above the Administrative Expense Cap will be paid pursuant to clause 6 of Section 7.06(a) and clause 3 of the Section 7.06(b) and will again be paid pursuant to clause 1 of the Section 7.06(a) beginning on the next anniversary of the Closing Date until the Administrative Expense Cap is again reached for such year.

"Administrative Expenses" means fees and expenses (excluding amounts related to indemnification) due or accrued with respect to any Payment Date and payable by the Issuer:

(a) to any Person in respect of any governmental fee, charge or tax in relation to the Issuer;

(b) to the Trustee, the Lockbox Bank, the Custodian, the Paying Agent and the Split Loan Agent (if any), (i) any monthly fees to be paid to it pursuant to the Transaction Documents, (ii) any additional fees, expenses or other amounts due and owing thereto and (iii) if a Successor Servicer is being appointed, any Servicing Transfer Costs incurred by the Trustee;

(c) to the Owner Trustee, (i) any monthly fees to be paid to it pursuant to the Transaction Documents and (ii) any additional fees, expenses or other amounts due and owing thereto;

(d) to the Backup Servicer, (i) the Backup Servicer Fee to be paid to it pursuant to the Transaction Documents, (ii) any additional fees, expenses or other amounts due and owing thereto and (iii) fees and expenses and other amounts payable to the Backup Servicer in connection with a Servicer Transfer pursuant to Section 8.02(c);

(e) to the Independent Accountants, agents and counsel of the Issuer for fees and expenses including, but not limited to, audit fees and expenses, and to the Servicer for expenses and other amounts (excluding the Servicing Fee, any Scheduled Payment Advances and any Servicing Advances) payable under this Agreement;

(f) to the Trustee, for unpaid fees and expenses (including fees and expenses of its agents and counsel) incurred in the exercise of its rights and remedies on behalf of the Securityholders pursuant to Article V of the Indenture; and

(g) to KBRA for its surveillance fees in relation to the Notes;

provided that Administrative Expenses will not include (I) any amounts due or accrued with respect to the actions taken on or in connection with the Closing Date, (II) any principal of or interest on any Notes or (III) amounts payable to Trustee and the Owner Trustee in respect of indemnification.

"Administrator" means Hercules, as administrator pursuant to the Administration Agreement.

"Advance Rate" means for any Payment Date, with respect to each Loan included in the Collateral as of the related Reference Date, an amount to be determined by the number of obligors as set forth below:

# of Obligors	Advance Rate
10 or fewer	N/A (Rapid Amortization Event)
11-14	60%
15-29	65%
30	66%
31	67%
32	68%
33	69%
34 or more	70%

"Affiliate" of any specified Person means any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, or is a director or officer of such Person; *provided* that for purposes of determining whether any Loan is an Eligible Loan or any Obligor is an Eligible Obligor, the term Affiliate shall not include any Affiliate relationship which may exist solely as a result of direct or indirect ownership of, or control by, a common owner which is a financial institution, fund or other investment vehicle which is in the business of making diversified investments including investments independent from the Loans. For the purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with"), when used with respect to any specified Person means the possession, direct or indirect, of the power to vote 25% or more of the voting securities of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. Each of the Trustee and the Owner Trustee may conclusively presume that a Person is not an Affiliate of another Person unless a Responsible Officer of such trustee has actual knowledge to the contrary.

"Agented Loan" means, any Loan with respect to which, (a) the Loan is originated or purchased by the Seller in accordance with the Credit and Collection Policy as a part of a syndicated loan transaction that has been fully consummated prior to such Loan becoming part of the Collateral, (b) the Issuer, as assignee of the Loan, has all of the rights (including without limitation voting rights) of the Seller with respect to such Loan and the Seller's right, title

and interest in and to the Related Property, (c) the Loan is secured by an undivided interest in the Related Property that also secures and is shared by, on a pro rata basis, all other holders of such Obligor's notes of equal priority issued in such syndicated loan transaction and (d) the Seller (or a wholly owned subsidiary of the Seller) is the lead agent or collateral agent for all lenders in such syndicated loan transaction and receives payment directly from the Obligor and may collect such payments on behalf of such lenders.

"Aggregate Outstanding Loan Balance" means, as of any date, the sum of the Outstanding Loan Balance for each Loan owned by the Issuer.

"Aggregate Outstanding Principal Balance" means, as of any date of determination, the sum of the Outstanding Principal Balances of the Notes on such date.

"Agreement" means this Sale and Servicing Agreement, as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof.

"Applicable Law" means, for any Person or property of such Person, all existing and future applicable laws, rules, regulations (including proposed, temporary and final income tax regulations), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority (including, without limitation, usury laws, the Federal Truth in Lending Act, and Regulation Z and Regulation B of the Board of Governors of the Federal Reserve System), the Customer Identification Program requirements established under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001) and its implementing regulations (collectively, USA PATRIOT Act), the Financial Crimes Enforcement Network's (FinCEN) Customer Due Diligence Requirements and such other laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions and applicable judgments, decrees, injunctions, writs, awards or orders of any court, arbitrator or other administrative, judicial, or quasi-judicial tribunal or agency of competent jurisdiction.

"Applicable Premium" means (i) prior to the end of the Reinvestment Period, the Make-Whole Premium; and (ii) $0 thereafter.

"Assignment" means each Assignment, substantially in the form of Exhibit A, relating to an assignment, transfer and conveyance of Loans and the Related Property by the Trust Depositor to the Issuer.

"Available Funds" means, with respect to any Payment Date, an amount equal to the sum of, without duplication, (a) Collections received during the related Collection Period; (b) interest earned on and any other investment earnings with respect to funds on deposit in each of the Collection Account and the Reserve Account during the related Interest Period; and (c) any Scheduled Payment Advances deposited into the Collection Account on the related Reference Date.

"Backup Servicer" has the meaning provided in the Preamble.

"Backup Servicer Fee" means the annual administration fee payable to the Backup Servicer as provided in the fee letter agreement between the Issuer and USBNA.

"Bankruptcy Code" means the United States Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.), as amended from time to time.

"Beneficial Owner" shall have the meaning provided in the Indenture.

"Borrowing Base" means, for any Payment Date, the sum of (A) the product of (x) the Advance Rate and (y) the Adjusted Pool Balance, (B) the amount on deposit in the Reinvestment Account (including for the avoidance of doubt, any capital contributions), and (C) all Principal Collections in the Collection Account anticipated to be deposited into

the Reinvestment Account on such Payment Date (or the related Payment Date, as applicable) pursuant to Section 7.06(b), in each case determined as of the related Reference Date.

"Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in New York, New York, Palo Alto, California, Wilmington, Delaware, Boston, Massachusetts, or St. Paul, Minnesota are authorized or obligated by law or executive order to be closed.

"Cash Yield Rate" means, for any Loan, a rate of return inclusive of interest, scheduled principal and fees for such Loan.

"Certificate" means the Hercules Capital Funding Trust 2022-1 Certificate representing a beneficial ownership interest in the Issuer and issued pursuant to the Trust Agreement.

"Certificate Account" shall have the meaning provided in Section 5.01 of the Trust Agreement.

"Certificate Register" shall have the meaning provided in the Trust Agreement.

"Certificateholder" means the registered holder of the Certificate.

"Closing Date" means June 22, 2022.

"Co-Agented Loan" means, any Loan with respect to which, (a) the Loan is originated or purchased by the Seller in accordance with the Credit and Collection Policy as a part of a syndicated loan transaction that has been fully consummated prior to such Loan becoming part of the Collateral, (b) the Issuer, as assignee of the Loan, has all of the rights (including without limitation voting rights) of the Seller with respect to such Loan and the Seller's right, title and interest in and to the Related Property, (c) the Loan is secured by an undivided interest in the Related Property that also secures and is shared by, on a *pro rata* basis, all other holders of such Obligor's notes of equal priority issued in such syndicated loan transaction and (d) either (i) the Seller (or a wholly owned subsidiary of the Seller) is a co-agent, collateral agent or paying agent in such syndicated loan transaction, (ii) neither the Seller nor any other lender is deemed to be the collateral agent in such syndicate loan transaction, or (iii) the Seller receives payment directly from the Obligor thereof on behalf of itself (but not on behalf of any other holders of such Obligor's notes) and no other holder of such Obligor's notes (nor any affiliate thereof) is identified as the lead agent, collateral agent or paying agent in such syndicated loan transaction.

"Code" means the Internal Revenue Code of 1986, as amended, or any successor legislation thereto.

"Collateral" means, as of any date, the "Indenture Collateral," as such term is defined in the Indenture.

"Collection Account" means the interest bearing trust account so designated and established and maintained pursuant to Section 7.03(a).

"Collection Period" means, with respect to the first Payment Date, the period from and including the Cutoff Date to the close of business July 4, 2022, and for any Payment Date thereafter, the period from and including the fifth day of the calendar month in which the prior Payment Date occurred to the fourth day of the calendar month in which such Payment Date occurs.

"Collections" means the aggregate of Interest Collections and Principal Collections.

"Commission" means the United States Securities and Exchange Commission.

"Computer Records" means the computer records generated by the Servicer that provide information relating to the Loans and that were used by the Seller in selecting the Loans conveyed by the Trust Depositor to the Issuer pursuant

to Section 2.01 (and any Additional Loans conveyed by the Trust Depositor to the Issuer pursuant to Section 2.07 and Substitute Loans conveyed by the Trust Depositor to the Issuer pursuant to Section 2.04 and Section 2.06, respectively).

"Continued Error" shall have the meaning provided in Section 8.03(e).

"Contractual Obligation" means, with respect to any Person, any provision of any securities issued by such Person or any indenture, mortgage, deed of trust, contract, undertaking, agreement, instrument or other document to which such Person is a party or by which it or any of its property is bound or is subject.

"Corporate Trust Office" means, with respect to the Trustee, the Owner Trustee or the Backup Servicer, as applicable, the office of the Trustee, the Owner Trustee or the Backup Servicer at which at any particular time its corporate trust business with respect to the transaction shall be principally administered, which offices at the date of the execution of this Agreement are located at the addresses set forth in Section 13.04.

"Credit and Collection Policy" means the policies and procedures of the Seller and Servicer with respect to underwriting, credit monitoring, investment grading, collection and servicing of Life Sciences Loans and Technology Loans in effect on the Cutoff Date, including without limitation the valuation policy and procedures of the Seller and Servicer and the Credit Monitoring Guidelines, in each case as amended, modified or supplemented from time to time, a description of which has been provided to the Trust Depositor, the Issuer, the Owner Trustee and the Trustee; and, with respect to any Successor Servicer (including for the avoidance of doubt the Backup Servicer in such capacity), the written credit and collection policies and procedures of such Person at the time such Person becomes a Successor Servicer.

"Credit Monitoring Guidelines" means the written Valuation Policy and Procedures of the Seller and Servicer dated 2021 and in effect as of the Cutoff Date, as amended, modified or supplemented from time to time.

"Curtailment" means, with respect to a Loan, any payment of principal received by the Issuer during a Collection Period as part of a payment allocable to a Loan that is in excess of the principal portion of the Scheduled Payment due for such Collection Period and which is not intended to satisfy the Loan in full, nor is intended to cure a delinquency including any accelerated amortization due to structural features of the related Loan.

"Custodian" has the meaning provided in the Preamble.

"Cutoff Date" means with respect to (i) the Initial Loans, the Initial Cutoff Date or (ii) any Additional Loan or Substitute Loan, the related Transfer Date.

"Cutoff Date Pool Balance" shall have the meaning provided in Section 2.10.

"Defaulted Loan" means a Loan in the Collateral as to which the earliest of the following has occurred: (i) any payment, or any part of any payment, due under such Loan (taking into account any waivers or modifications granted by the Servicer on such Loan) has become 120 days or more delinquent, whether or not the Servicer has foreclosed upon the related Collateral; (ii) the Servicer has foreclosed upon and sold the related collateral; (iii) 90 days has elapsed since the related Collateral was foreclosed upon by the Servicer; or (iv) the Servicer has determined in accordance with its customary practices that the Loan is uncollectible; *provided* if the principal amount of a Loan is reduced, written down or written off by the Servicer, the portion of such Loan (but not the whole Loan) that is so reduced, written down or written off shall be deemed to be a Defaulted Loan; *provided*, *however*, that any Loan that the Seller or the Trust Depositor is obligated to and does repurchase or purchase under this Agreement or any Loan that has been substituted and replaced by the Issuer with a Substitute Loan pursuant to Section 2.04 and Section 2.06 will not be deemed to be a Defaulted Loan.

"Distribution Account" means the non-interest bearing trust account so designated and established and maintained pursuant to Section 7.01.

"Delinquent Loan" means a Loan which is more than forty-five (45) days delinquent in payment; *provided*, *however*, that any Loan that has been substituted and replaced by the Issuer with a Substitute Loan pursuant to Section 2.04 and Section 2.06 will not be deemed to be a Delinquent Loan.

"Dollar" and "$" means the lawful currency of the United States.

"EBITDA" means, with respect to any Loan, (i) "EBITDA" of the Obligor under such Loan or (ii) if the Underlying Loan Agreement for such Loan do not require an Obligor to calculate EBITDA, "operating income" (or such similar financial measurement), in each case as calculated and reported in accordance with the Underlying Loan Agreement for such Loan and with such adjustments as the Servicer determines to be appropriate in accordance with the Servicing Standard.

"ECA Calculation Balance" means, for any Record Date, Payment Date or Transfer Date means the sum of (i) the Pool Balance as of the last day of the related Collection Period (or for any Transfer Date, such Transfer Date), (ii) all funds on deposit in the Reinvestment Account as of the last day of the related Collection Period (or for any Transfer Date, as of such Transfer Date) and (iii) all Principal Collections in the Collection Account that are anticipated to be deposited in the Reinvestment Account on such Payment Date (or in the case of a Record Date or Transfer Date, the immediately following Payment Date) pursuant to Section 7.06(b).

"Eligible Deposit Account" means either (a) a segregated account with a Qualified Institution, or (b) a segregated trust account with the corporate trust department of a depository institution organized under the laws of the United States or any state of the United States or the District of Columbia, or any domestic branch of a foreign bank, having corporate trust powers and acting as trustee for funds deposited in the related account, so long as any of the securities of that depository institution has a credit rating from Moody's or another nationally recognized statistical rating organization in one of its generic rating categories that signifies investment grade.

"Eligible Loan" means, (i) on and as of the Cutoff Date, in the case of the Initial Loans, (ii) on and as of the Additional Loan Cutoff Date, in the case of any Additional Loans, and (iii) on and as of the related Substitute Loan Cutoff Date, in the case of any Substitute Loans, a Loan as to which each of the following is true:

(a) such Loan is either a Life Sciences Loan or a Technology Loan, has been originated or purchased by the Seller in the ordinary course of the Seller's business and has been fully and properly executed by the parties thereto;

(b) such Loan is not a commercial loan to an obligor that is generally a later-stage, established company that is, at the time of origination of such Loan, (i) not venture backed (ii) is generating positive EBITDA and (iii) cash flow positive operations;

(c) provides for periodic payments of interest and/or principal in cash, which are due and payable on a monthly or quarterly basis;

(d) the information provided to the Issuer and its assigns in respect of such Loan pursuant to the Transaction Documents is true and correct in all material respects;

(e) provides for, in the event that such Loan is prepaid in whole, a prepayment that fully pays the principal amount of such prepayment together with interest and fees through the date of payment;

(f) such Loan satisfies in all material respects the requirements under the Credit and Collection Policy and was originated in accordance therewith;

(g) such Loan represents the legal, valid and binding payment obligation in writing of the related Obligor, enforceable by the holder thereof in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;

(h) such Loan is not due from the United States or any state thereof or from any agency, department or instrumentality of the United States or any state thereof;

(i) such Loan is secured by a valid, binding and enforceable first priority or second priority perfected security interest (subject to Permitted Liens) in favor of the underlying secured parties upon certain property of the Obligor identified in the Loan documentation; provided that, if the Seller is the sole lender, pursuant to the Underlying Loan Agreement, immediately prior to its conveyance, transfer, contribution and assignment by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer, such Loan is secured by a valid, binding and enforceable first priority or second priority perfected security interest (subject to Permitted Liens) in favor of the Seller, which security interest in favor of the Seller has been assigned by the Seller to the Trust Depositor, by the Trust Depositor to the Issuer, and pledged by the Issuer to the Trustee;

(j) such Loan is not subject to any right of rescission, setoff, counterclaim or defense, including the defense of usury, and the operation of any of the terms of any contract, or the exercise of any right thereunder, will not render such contract unenforceable in whole or in part or subject to any right of rescission, setoff, counterclaim or defense, including the defense of usury, and neither the Seller nor the Trust Depositor has received written notice of the assertion of any such right of rescission, setoff, counterclaim or defense asserted with respect thereto;

(k) such Loan does not have liens or claims (other than Permitted Liens) that exist or have been filed for work, labor or materials or unpaid state or federal taxes relating to collateral that are prior to, or equal or coordinate with, the security interest in such collateral created by the related Underlying Loan Agreement, except for such liens or claims that have been waived or modified as permitted hereunder;

(l) the Servicer is not aware that any default, breach, violation or event permitting acceleration under the terms of any Underlying Loan Agreement has occurred and is continuing with respect to such Loan, nor is the Servicer aware of any continuing condition with respect to such Loan that, with notice or the lapse of time or both, would constitute a default, breach, violation or event permitting acceleration under the terms of any contract, except for such defaults, breaches, violations or events which have been or are permitted to be waived or modified as permitted under the Servicing Standard and the Credit and Collection Policy;

(m) such Loan does not relate to property that has been foreclosed upon;

(n) such Loan has not been sold, transferred, assigned or pledged to any person other than the Issuer and has not been discharged;

(o) (i) immediately prior to the transfer of such Loan to the Trust Depositor, the Seller had good and marketable title to such Loan free and clear of all liens, encumbrances, security interests and rights of others (other than Permitted Liens) and, immediately upon such transfer, the Trust Depositor shall have good and marketable title to such Loan, free and clear of all liens, encumbrances, security interests and rights of others; and (ii) immediately prior to the transfer of such Loan to the Issuer, the Trust Depositor had good and marketable title to such Loan free and clear of all liens, encumbrances, security interests and rights of others (other than Permitted Liens) and, immediately upon such transfer, the Issuer shall have good and marketable title to such Loan, free and clear of all liens, encumbrances, security interests and rights of others;

(p) has been perfected against the related Obligor by all necessary action under the relevant UCC, Personal Property Security Act or other applicable statutes existing in jurisdictions in Canada that do not use the Personal Property Security Act, or applicable statutes existing in the relevant jurisdictions;

(q) has not been originated in, and is not subject to the laws of, any jurisdiction under which the sale, transfer, assignment and conveyance of such contract under the Sale and Contribution Agreement, this Agreement or the pledge of such Loan under the Indenture, is unlawful, void or voidable;

(r) other than with respect to Noteless Loans and Participated Loans, such Loan has only one original executed promissory note for each note relating to such Loan;

(s) such Loan was not due from an Obligor that was the subject of a proceeding under the Bankruptcy Code or was bankrupt;

(t) such Loan had a Cash Yield Rate, as determined by the Servicer in accordance with the Credit and Collection Policy, of at least 6% *per annum*;

(u) the Required Loan Documents relating to such Loan have been delivered to the Custodian prior to the Closing Date, in the case of any Initial Loan, the Transfer Date, in the case of any Additional Loan, or the applicable date of substitution, in the case of any Substitute Loan;

(v) such Loan had no payment due that was thirty-one (31) or more days past due and such Loan was not a Defaulted Loan;

(w) such Loan is due from an Obligor with its headquarters, principal place of business and primary operations in the United States, Canada (other than in the Province of Quebec), the United Kingdom, Australia or a member state of the European Union;

(x) such Loan is payable in U.S. Dollars;

(y) such Loan is in registered form for U.S. federal income tax purposes (or in registered or bearer form if not a "registration-required obligation" as defined in Section 163(f)(2)(A) of the Code);

(z) such Loan has not been subject to waiver or modified, except as permitted hereunder;

(aa) as of the Transfer Date of such Loan, the Hercules Credit Score of the Loan is Grade 3, Grade 2 or Grade 1;

(bb) the origination of such Loan by the Seller and the transfer of such Loan by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer have complied in all material respects with Applicable Law;

(cc) no selection procedures believed by the Seller, the Trust Depositor or the Servicer to be adverse to the interests of any Noteholder shall have been employed in the selection of such Loan;

(dd) all required notifications, if any, have been given to the collateral agent, the paying agent and any other parties required by the Underlying Loan Agreement of, and all required consents, if any, have been obtained with respect to, the Seller's assignment of such Loan and the Seller's right, title and interest in the Related Property to the Trust Depositor, the assignment thereof to the Issuer and the Trustee's security interest therein on behalf of the Noteholders;

(ee) the scheduled term to maturity of such Loan is no later than six months prior to the Legal Final Payment Date;

(ff) if such Loan is an Agented Loan, Co-Agented Loan or a Third Party Agented Loan:

(i) if the entity serving as the collateral agent of the security for all notes of the Obligor issued under the applicable Underlying Loan Agreement has changed from the time of the origination of the Loan, all appropriate assignments of the collateral agent's rights in and to the collateral on behalf of the holders of the indebtedness of the Obligor under such facility have been executed and filed or recorded as appropriate prior to such Loan becoming a part of the Collateral;

(ii) except as otherwise provided in the related intercreditor agreement, the right to control certain actions of and replace the collateral agent and/or the paying agent of the Obligor's indebtedness under the facility may be exercised by at least a majority in interest of all holders of such indebtedness;

(iii) all required notifications, if any, have been given to the collateral agent, the paying agent and any other parties required by the underlying loan agreement of, and all required consents, if any, have been obtained with respect to, the Seller's assignment of such Loan and the Seller's right title and interest in the Related Property to the Trust Depositor, the assignment thereof to the Issuer and the Trustee's security interest therein on behalf of the Noteholders; and

(iv) all indebtedness of the Obligor of the same priority within each facility is cross-defaulted, the Related Property securing such indebtedness is held by the collateral agent for the benefit of all holders of such indebtedness and all holders of such indebtedness (A) have an undivided *pari passu* interest in the collateral securing such indebtedness, (B) share in the proceeds of the sale or other disposition of such collateral on a *pro rata* basis and (C) may transfer or assign their right, title and interest in the Related Property;

(gg) all actions or additional actions (if any) necessary to perfect the security interest and assignment of such Loan and any material Related Property to the Trust Depositor, the Issuer, and the Trustee have been taken as of or prior to the Transfer Date of such Loan;

(hh) such Loan is not made to an Obligor doing business in the energy, clean energy or alternative energy sector;

(ii) such Loan shall not be a revolving line of credit or include any unfunded commitment; and

(jj) if such Loan is a floating rate Loan, such Loan either (i) has a credit spread over the applicable floating rate index of no less than 3% or (ii) a minimum total interest rate floor of at least 7.5%.

"Eligible Repurchase Obligations" means repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States, in either case entered into with a depository institution or trust company (acting as principal) described in clause (c)(ii) of the definition of Permitted Investments.

"Enterprise Value" means, with respect to the Obligor of a Loan, as determined by the Servicer on a quarterly basis as follows:

(a) If such Obligor is a publicly-traded company, the public market capitalization of such company; or

(b) If such Obligor is a private company, a value based on (1) the market adjusted implied value of the most recent round of financing of such Obligor or (2) market multiples and the most recent financial statements of such Obligor;

provided that the Servicer may adjust the Enterprise Value of an Obligor based on such Obligor's performance since the last round of financing.

"Error" shall have the meaning provided in Section 8.03(e).

"Event of Default" shall have the meaning specified in Section 5.01 of the Indenture.

"Excess Concentration Amounts" means, as to any Determination Date, Payment Date or Transfer Date, the sum of the following amounts (without duplication):

(a) the amount by which the aggregate Outstanding Loan Balance of all Loans made to any single Obligor (together with Affiliates thereof) in the Collateral exceeds five percent (5%) of the ECA Calculation Balance; *plus*

(b) the amount by which the aggregate Outstanding Loan Balance of all Loans made to the five (5) largest Obligors (together, in each case, with Affiliates thereof) in the Collateral (based on the aggregate Outstanding Loan Balance of all Loans in the Collateral as of the Payment Date) exceeds twenty-three percent (23%) of the ECA Calculation Balance; *plus*

(c) the amount by which the aggregate Outstanding Loan Balance of all Loans made to the ten (10) largest Obligors (together, in each case, with Affiliates thereof) in the Collateral (based on the aggregate Outstanding Loan Balance of all Loans in the Collateral as of the Payment Date) exceeds forty-four percent (44%) of the ECA Calculation Balance;

(d) the amount by which the aggregate Outstanding Loan Balance for Technology Loans exceeds 40% of the ECA Calculation Balance;

(e) the amount by which the aggregate Outstanding Loan Balance for fixed rate Loans exceeds 85% of the ECA Calculation Balance;

(f) the amount by which the aggregate Outstanding Loan Balance for Loans with a Hercules Credit Score of Grade 3 or worse exceeds 35% of the ECA Calculation Balance;

(g) the amount by which the aggregate Outstanding Loan Balance for Loans that have more than 15% of their original loan balance due at maturity exceeds 20% of the ECA Calculation Balance;

(h) the amount by which the aggregate Outstanding Loan Balance for Life Sciences Loans that have an original interest only period greater than 24 months measured from the last credit action taken pursuant to the Credit and Collection Policy exceeds 25% of the ECA Calculation Balance;

(i) the amount by which the aggregate Outstanding Loan Balance for Loans that are second lien Loans exceeds 15% of the ECA Calculation Balance;

(j) the amount by which the aggregate Outstanding Loan Balance for Loans that are Participated Loans exceeds 15% of the ECA Calculation Balance;

(k) the amount by which the aggregate Outstanding Loan Balance for Loans with respect to which any Obligor material to the underwriting of such Loan does not have its headquarters, principal place of business or primary operations in the United States exceeds 20% of the ECA Calculation Balance; and

(l) the amount by which the aggregate Outstanding Loan Balance for Loans that are Participated Loans with respect to which the administrative agent on the underlying Loans, other than the Seller or an affiliate thereof, does not have an investment grade corporate rating issued by a national recognized statistical rating organization, exceeds 5% of the ECA Calculation Balance.

provided, for the avoidance of doubt, that the Outstanding Loan Balance of all Loans made to any single Obligor (together with Affiliates thereof) will be assigned to the category above that results in the greatest excess amount and will not be included in more than one category for any date of determination.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Amounts" means (a) any amount received by, on or with respect to any Loan in the Collateral, which amount is attributable to the payment of any tax, fee or other charge imposed by any Governmental Authority on such Loan, (b) any amount representing escrows relating to taxes, insurance and other amounts in connection with any Loan which is held in an escrow account for the benefit of the related Obligor and the secured party pursuant to escrow

arrangements, (c) any amount with respect to any Loan substituted, sold, retransferred or replaced under Sections 2.04, 2.05, 2.06 or 11.01, to the extent such amount is attributable to a time after the effective date of such substitution, sale, retransfer or replacement, (d) any origination fee retained by the Seller in connection with the origination of any Loan, and (e) any amount permitted to be retained by the Servicer as an Excluded Amount hereunder.

"FDIC" means the Federal Deposit Insurance Corporation and any successor thereto.

"Finance Charges" means, with respect to any Loan, any interest or finance charges owing by an Obligor pursuant to or with respect to such Loan.

"First Ratings Trigger Date" means, in the event that the Rating is not obtained on or before the forty-fifth (45th) day following the Closing Date, the forty-sixth (46th) day following the Closing Date.

"Foreclosed Property" means Related Property acquired by the Issuer or a subsidiary thereof for the benefit of the Noteholders in foreclosure or by other legal process.

"Foreclosed Property Disposition" means the final sale of a Foreclosed Property or of Repossessed Property. The proceeds of any "Foreclosed Property Disposition" constitute part of the definition of Liquidation Proceeds.

"Global Note" shall have the meaning provided in the Indenture.

"Governmental Authority" means, with respect to any Person, any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person or its property.

"Hercules" means Hercules Capital, Inc., a Maryland corporation, together with its successors in interest.

"Hercules Credit Score" means, for any Obligor, the internal credit rating grade assigned to such Obligor by the Seller in accordance with the Credit and Collection Policy.

"Holder" means (a) with respect to a Certificate, the Person in whose name such Certificate is registered in the Certificate Register, and (b) with respect to a Note, the Person in whose name such Note is registered in the Note Register; *provided* that a Beneficial Owner of a Note shall be deemed a Holder of such Note as provided in Section 13.17.

"Indebtedness" means, with respect to any Person at any date, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current liabilities incurred in the ordinary course of business and payable in accordance with customary trade practices) or which is evidenced by a note, bond, debenture or similar instrument, (b) all obligations of such Person under capital leases, (c) all obligations of such Person in respect of acceptances issued or created for the account of such Person, and (d) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof.

"Indenture" means the Indenture, dated as of the Closing Date, between the Issuer and the Trustee, as such agreement may be amended, modified, waived, supplemented or restated from time to time.

"Independent" means, when used with respect to any specified Person, such Person (a) is in fact independent of the Issuer, any other obligor on the Notes, the Trust Depositor and any Affiliate of any of the foregoing Persons, (b) does not have any direct financial interest or any material indirect financial interest in the Issuer, any such other obligor, the Trust Depositor or any Affiliate of any of the foregoing Persons and (c) is not connected with the Issuer, any such other obligor, the Trust Depositor or any Affiliate of any of the foregoing Persons as an officer, employee, trustee, partner, director or person performing similar functions; provided that a Person that otherwise satisfies the

requirements of clauses (a) through (c) of this definition, but is a director, officer or manager of a bankruptcy remote special purpose Affiliate of Hercules, will be deemed to be Independent for purposes hereof.

"Independent Accountants" shall have the meaning provided in Section 9.05.

"Ineligible Loan" shall have the meaning provided in Section 11.01.

"Initial Note Principal Balance" means $150,000,000.

"Initial Cutoff Date" means May 31, 2022.

"Initial Loans" means those Loans conveyed to the Issuer on the Closing Date and identified for inclusion in the Collateral on the initial List of Loans required to be delivered pursuant to Section 2.02(d).

"Initial Loan Assets" means any assets acquired by the Issuer from the Trust Depositor on the Closing Date pursuant to Section 2.01, which assets shall include the Trust Depositor's right, title and interest in the following:

(i) the Initial Loans listed in the initial List of Loans and all monies due, to become due or paid in respect thereof accruing on and after the Cutoff Date and all Insurance Proceeds, Liquidation Proceeds and other recoveries thereon, in each case as they arise after the Cutoff Date;

(ii) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Loans;

(iii) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Loans;

(iv) the Transaction Accounts, together with all cash and investments in each of the foregoing;

(v) all collections and Records (including Computer Records) with respect to the foregoing;

(vi) all documents relating to the applicable Loan Files; and

(vii) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, but excluding any Excluded Amount with respect thereto.

"Initial Rate" means 4.95% *per annum*.

"Insolvency Event" means, with respect to a specified Person, (i) the filing of a decree or order for relief by a court having jurisdiction in the premises in respect of such Person or any substantial part of its property in an involuntary case under any applicable Insolvency Law now or hereafter in effect, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its property, or the ordering of the winding-up or liquidation of such Person's affairs, which decree or order shall remain unstayed or undismissed and in effect for a period of 60 consecutive days; or (ii) the commencement by such Person of a voluntary case under any applicable Insolvency Law now or hereafter in effect, or the consent by such Person to the

entry of an order for relief in an involuntary case under any such law, or the consent by such Person to the appointment of or the taking of possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its property, or the making by such Person of any general assignment for the benefit of creditors, or the failure by such Person generally to pay its debts as such debts become due, or the taking of action by such Person in furtherance of any of the foregoing.

"Insolvency Laws" means the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments, or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Insolvency Proceeding" means any case, action or proceeding before any court or other Governmental Authority relating to any Insolvency Event.

"Insurance Policy" means, with respect to any Loan, an insurance policy covering liability and physical damage to or loss of the applicable Related Property, including, but not limited to, title, hazard, life, accident and/or flood insurance policies.

"Insurance Proceeds" means any amounts payable or any payments made on or with respect to a Loan or the Related Property under any Insurance Policy which are not applied or paid by the Obligor, the Servicer or, in the case of Co-Agented Loans or Third Party Agented Loans, the party primarily responsible for servicing such Loans, as applicable, to the restoration or repair of the Related Property or released to the Obligor, another creditor or any other Person in accordance with the Applicable Law, the Required Loan Documents, the Credit and Collection Policy, the Servicing Standard and this Agreement, net of costs of collection.

"Interest Adjustment" means (a) from and including the First Ratings Trigger Date to but excluding the earlier to occur of the Rating Date and the Second Ratings Trigger Date, 0.50% *per annum* and (b) from and including the Second Ratings Trigger Date to but excluding the Rating Date, 1.00% *per annum*.

"Interest Amount" means, for each Interest Period, the sum of (A) product of (i) the Interest Rate for such Interest Period, (ii) the Outstanding Principal Balance of the Notes as of the first day of such Interest Period (after giving effect to all distributions made on such day) and (iii) one-twelfth (or, in the case of the first Interest Period, a fraction, the numerator of which is the number of days from and after the Closing Date to and including the day before the first Payment Date, and the denominator of which is 360) and (B) all unpaid Interest Shortfalls from any prior Payment Dates (and interest accrued thereon at the Interest Rate, to the extent permitted by law).

"Interest Collections" means the aggregate of:

(a) all amounts deposited into the Collection Account in respect of:

(i) all payments received on or after the Cutoff Date on account of interest on the Loans (including Finance Charges and other fees) and all late payment, default and waiver charges; and

(ii) the interest portion of any amounts received (x) in connection with the purchase or repurchase of any Loan (but which shall exclude interest on Loans accrued to the date of acquisition thereof by the Issuer purchased with Principal Collections) and the amount of any adjustment for Substitute Loans and (y) as Servicing Advances (if any); and

(iii) amounts transferred from the Reserve Account or as a result of the amount on deposit in the Reserve Account being in excess of the Reserve Account Required Balance; *plus*

(b) investment earnings on funds invested in Permitted Investments in the Transaction Accounts (other than the Reserve Account); *minus*

(c) the amount of any losses incurred in connection with investments in Permitted Investments in the Transaction Accounts.

"Interest Period" means, for the first Payment Date, the period commencing on the Closing Date and ending on and including the day before the first Payment Date; and thereafter, the period commencing on a Payment Date and ending on and including the day before the next Payment Date.

"Interest Rate" means the annual rate of interest payable with respect to the Notes, which shall be equal to (a) from the Closing Date to but excluding the Rating Date, the sum of the Initial Rate plus the Interest Adjustment and (b) from and after the Rating Date, the Adjusted Interest Rate.

"Interest Shortfall" means, with respect to the Notes and any Payment Date, as applicable, an amount equal to the excess, if any, of (a) the Interest Amount over (b) the amount of interest actually paid to the Notes.

"Issuer" means the trust created by the Trust Agreement and funded pursuant to this Agreement.

"KBRA" means Kroll Bond Rating Agency, LLC and any successor thereto.

"Legal Final Payment Date" means July 20, 2031.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including, without limitation, any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing (including any UCC financing statement or any similar instrument filed against a Person's assets or properties).

"Life Sciences Loan" means a Loan made to an Obligor that is a life sciences company, including, but not limited to, a company involved in drug discovery and development, drug delivery, medical devices and equipment, biotechnology tools, specialty pharmaceuticals and therapeutic, diagnostic and surgical devices.

"Liquidation Expenses" means, with respect to any Loan, the aggregate amount of all out-of-pocket expenses reasonably incurred by the Servicer (including amounts paid to any Subservicer) and any reasonably allocated costs of counsel (if any), in each case in accordance with the Servicer's customary procedures in connection with the repossession, refurbishing and disposition of any Related Property securing such Loan upon or after the expiration or earlier termination of such Loan and other out-of-pocket costs related to the liquidation of any such Related Property, including the attempted collection of any amount owing pursuant to such Loan if it is a Defaulted Loan, and, if requested by the Trustee, the Servicer must provide to the Trustee a breakdown of the Liquidation Expenses for any Loan along with any supporting documentation therefor.

"Liquidation Proceeds" means, with respect to any Defaulted Loan, whatever is receivable or received when such Loan or the Related Property is sold, liquidated, foreclosed, exchanged, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes all amounts representing late fees and penalties relating thereto net of, without duplication, (a) Liquidation Expenses relating to such Loan or Related Property reimbursed to the Servicer therefrom pursuant to the terms of this Agreement and (b) amounts required to be released to other creditors, including any other costs, expenses and taxes, or the related Obligor or grantor pursuant to applicable law or the governing Required Loan Documents.

"Liquidation Report" shall have the meaning provided in Section 5.03(d).

"List of Loans" means the list identifying each Loan constituting part of the Loan Assets, which list shall consist of the initial List of Loans reflecting the Initial Loans transferred to the Issuer on the Closing Date attached to this Agreement as Exhibit G, together with any Subsequent List of Loans amending the most current List of Loans

reflecting any Additional Loans and Substitute Loans transferred to the Issuer on the related Additional Loan Cutoff Date or Substitute Loan Cutoff Date, as applicable (together with, if applicable, a deletion from such list of the related Loan or Loans with respect to which a Substitution Event has occurred), and which list in each case (a) identifies by account number each Loan included in the Collateral, and (b) sets forth as to each such Loan (i) the Outstanding Loan Balance as of the Cutoff Date in the case of the Initial Loans, the related Additional Loan Cutoff Date in the case of Additional Loans and the related Substitute Loan Cutoff Date in the case of Substitute Loans, (ii) the maturity date (iii) the Loan Type, (iv) whether such Loan is a Co-Agented Loan or Third-Party Agented Loan (and the name of the agent thereunder), (v) whether such Loan is a Noteless Loan or a Participated Loan and (vi) whether evidence of filing of UCC-1 financing statements naming the Seller as secured party with respect to such Loan are available.

"Loan" means, to the extent transferred by the Trust Depositor to the Issuer, an individual loan to an Obligor, or portion thereof made by the Seller including, but not limited to, Agented Loans, Co-Agented Loans, Third Party Agented Loans and Participated Loans.

"Loan Assets" means, collectively and as applicable, the Initial Loan Assets, the Additional Loan Assets and the Substitute Loan Assets, as applicable.

"Loan File" means, with respect to any Loan and Related Property, (a) each of the Required Loan Documents and (b) duly executed originals (to the extent indicated on the Annex A to the List of Loans) or copies (including electronic copies) of any credit agreement, intercreditor agreement, subordination agreement, UCC financing statements (or similar instruments) and any amendments to any of the foregoing, in each case, identified on Annex A to the List of Loans with respect to such Loan and Related Property.

"Loan Rate" means, for each Loan and Collection Period, the current cash pay interest rate for such Loan in such period, as specified in the related Underlying Note, Underlying Loan Agreement or related Required Loan Documents.

"Loan Type" means, with respect to any Loan, means the characterization of such Loan as a Technology Loan or Life Sciences Loan.

"Lockbox Account" means the segregated account so designated and established and maintained pursuant to Section 7.01(a).

"Lockbox Bank" shall have the meaning provided in Section 7.01.

"Majority Noteholders" means, as of any date of determination, the Noteholders evidencing at least 51% of the Aggregate Outstanding Principal Balance of all Notes.

"Make-Whole Premium" means the positive difference, if any, between (a) the present value, computed using a discount rate equal to the Treasury Rate *plus* 0.50%, of all interest (less the Interest Amount) and principal that would otherwise be expected to be payable on the Notes assuming such Notes do not amortize and are redeemed in full at the end of the Reinvestment Period at a price of 100% of the Aggregate Outstanding Principal Balance as of such date less (b) the Aggregate Outstanding Principal Balance of the Notes as of the Redemption Date.

"Master Collection Account" means a deposit account at (a) Wells Fargo Bank, National Association or (b) another Qualified Institution, in the name of Hercules, identified in the Master Collection Account Control Agreement.

"Master Collection Account Agency Agreement" means that certain Master Collection Account Agency Agreement, to be dated as of a future date, among the Master Collection Account Agent, Hercules, Hercules Capital Funding Trust 2022-1, the Trustee and any parties joined thereto pursuant to the execution of a Joinder Agreement (as defined therein), which agreement shall be in form and substance reasonably satisfactory to the Majority Noteholders.

"Master Collection Account Agent" means Wells Fargo Bank, National Association, or a national banking association, banking corporation or trust company organized and doing business under the laws of any state or the United States

that has an unsecured and unguaranteed long-term debt obligations rating of at least investment grade or better by the Rating Agency or another nationally recognized statistical rating organization or otherwise does not result in a withdrawal or reduction in rating by the Rating Agency on the Notes, in its role as collateral trustee for the parties to the Master Collection Account Agency Agreement.

"Master Collection Account Control Agreement" means that certain Account Control Agreement, dated as of a future date, among Hercules, the bank at which the Master Collection Account is held, as bank, and the Master Collection Account Agent, with respect to the Master Collection Account, which agreement shall be in form and substance reasonably satisfactory to the Majority Noteholders.

"Monthly Report" shall have the meaning provided in Section 9.01.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Nonrecoverable Advance" means any Scheduled Payment Advance or Servicing Advance, as applicable, previously made in respect of a Loan or any Related Property that, as determined by the Servicer in its reasonable, good faith judgment, will not be ultimately recoverable from subsequent payments or collections with respect to the applicable Loan including, without limitation, payments or reimbursements from the related Obligor, Insurance Proceeds or Liquidation Proceeds on or in respect of such Loan or Related Property.

"Note" means any one of the notes of the Issuer, executed and authenticated in accordance with the Indenture (and including any Additional Notes issued thereunder).

"Note Purchase Agreement" means the Note Purchase Agreement, dated June 22, 2022, by and among the Seller, the Trust Depositor, the Servicer, the Issuer and the Noteholders.

"Note Register" shall have the meaning provided in Section 4.02(a) of the Indenture.

"Noteholder" means each Person in whose name a Note is registered in the Note Register; *provided* that a Beneficial Owner of a Note may be deemed a Holder of such Note as provided in Section 13.17.

"Noteless Loan" means any Loan that, pursuant to the terms of the related credit agreement (or equivalent document), is not evidenced by a note.

"Notice of Substitution" shall have the meaning provided in Section 2.06.

"Obligor" means, with respect to any Loan, any Person or Persons obligated to make payments pursuant to or with respect to such Loan, including any guarantor thereof, but excluding, in each case, any such Person that is an obligor or guarantor that is in addition to the primary obligors or guarantors with respect to the assets, cash flows or credit of which the related Loan is principally underwritten.

"Officer's Certificate" means a certificate delivered to the Trustee signed by a Responsible Officer of (i) the member of the Trust Depositor, (ii) the Servicer, or (iii) the Owner Trustee, the Administrator, or any other Person acting on behalf of the Issuer, as required by this Agreement or any other Transaction Document.

"Opinion of Counsel" means a written opinion of counsel, who may be outside counsel, or internal counsel (except with respect to federal securities law, tax law, bankruptcy law or UCC matters), for the Issuer, the Trust Depositor or the Servicer, including Dechert LLP or other counsel reasonably acceptable to the Owner Trustee or the Trustee, as the case may be.

"Optional Redemption" means a redemption of the Notes pursuant to Section 10.01 of the Indenture.

"Original Trust Agreement" shall have the meaning provided in Section 2.01.

"Outstanding" shall have the meaning provided in Section 1.01 of the Indenture.

"Outstanding Loan Balance" of a Loan means, with respect to any date of determination, the outstanding principal amount of such Loan.

"Outstanding Principal Balance" means, as of date of determination and with respect to any Notes, the original principal amount of such Notes on the Closing Date, as reduced by all amounts paid by the Issuer with respect to such principal amount up to such date.

"Owner Trustee" means the Person acting, not in its individual capacity, but solely as Owner Trustee, under the Trust Agreement, its successors in interest and any successor owner trustee under the Trust Agreement. The Owner Trustee will initially be Wilmington Trust, National Association.

"Owner Trustee Cap" means the portion of the Administrative Expense Cap reserved for the Owner Trustee, subject to an annual maximum amount of $100,000.

"Participated Loans" means the Loans in which the Seller holds a participation interest as of the Closing Date, the related Additional Loan Cutoff Date or the related Substitute Loan Cutoff Date (if after the Closing Date), as the case may be, which interest has been assigned to the Trust Depositor and the Issuer pursuant to the Transfer and Servicing Agreements.

"Paying Agent" has the meaning provided in the Preamble.

"Payment Date" means the 20th day of each month, commencing in August 2022, or if such day is not a Business Day, on the next succeeding Business Day.

"Percentage Interest" means, for the Holder of any Note of any class, the fraction, expressed as a percentage, the numerator of which is the then current Outstanding Principal Balance represented by such Note and the denominator of which is the then current Outstanding Principal Balance of all Notes.

"Permitted Investments" means on any date of determination, book-entry securities, negotiable instruments or securities represented by instruments in registered form for U.S. federal income tax purposes (or in registered or bearer form if not a "registered-required obligation" as defined in Section 163(f)(2)(A)) with maturities not exceeding the next Payment Date that evidence:

(i) direct obligations of, and obligations fully guaranteed by, the United States or any agency or instrumentality of the United States;

(ii) demand deposits, time deposits or certificates of deposit of any depository institution (including any affiliate of the Trust Depositor, the Servicer, the Trustee or the Owner Trustee) or trust company incorporated under the laws of the United States or any state thereof or the District of Columbia (or any domestic branch of a foreign bank) and subject to supervision and examination by Federal or state banking or depository institution authorities (including depository receipts issued by any such institution or trust company as custodian with respect to any obligation referred to in clause (i) above or a portion of such obligation for the benefit of the holders of such depository receipts); provided that at the time of the investment or contractual commitment to invest therein (which shall be deemed to be made again each time funds are reinvested following each Payment Date), the commercial paper or other short-term senior unsecured debt obligations (other than such obligations the rating of which is based on the credit of a person other than such depository institution or trust company) of such depository institution or trust company shall have a credit rating from Moody's of "P-1" or from another nationally recognized statistical rating

organization in its highest investment category, in each case, as notified to the Trustee in writing by the Issuer (or the Servicer on its behalf);

(iii) commercial paper (including commercial paper of any affiliate of the Trust Depositor, the Servicer, the Trustee or the Owner Trustee) having, at the time of the investment or contractual commitment to invest therein, a rating from Moody's of "P-1" or from another nationally recognized statistical rating organization in its highest investment category, in each case, as notified to the Trustee in writing by the Issuer (or the Servicer on its behalf);

(iv) investments in money market funds (including funds for which the Trust Depositor, the Servicer, the Trustee or the Owner Trustee or any of their respective affiliates is investment manager or advisor) having a rating from Moody's of "Aaa (*mf*)" or from another nationally recognized statistical rating organization in its highest investment category, in each case, as notified to the Trustee in writing by the Issuer (or the Servicer on its behalf);

(v) banker's acceptances issued by any depository institution or trust company referred to in clause (ii) above; and

(vi) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States, in either case entered into with a depository institution or trust company (acting as principal) referred to in clause (ii) above.

The Trustee may purchase or sell to itself or an Affiliate, as principal or agent, the Permitted Investments described above.

"Permitted Liens" means

(i) with respect to the interest of the Seller, the Trust Depositor and the Issuer in the Loans included in the Collateral: (a) Liens in favor of the Trust Depositor created pursuant to the Sale and Contribution Agreement and transferred to the Issuer pursuant hereto, (b) Liens in favor of the Issuer created pursuant to this Agreement, (c) Liens in favor of the Trustee created pursuant to the Indenture and/or this Agreement, and (d) Liens, if any, which have priority over first priority perfected security interests in the Loans or any portion thereof under the UCC or any other Applicable Law; and

(ii) with respect to the interest of the Seller, the Trust Depositor and the Issuer in the other Collateral (including any Related Property): (a) materialmen's, warehousemen's, mechanics' and other Liens arising by operation of law in the ordinary course of business for sums not due or sums that are being contested in good faith, (b) purchase money security interests in certain items of equipment, (c) Liens for state, municipal and other local taxes if such taxes shall not at the time be due and payable or the validity or amount thereof is currently being contested by an appropriate Person in good faith by appropriate proceedings, (d) other customary Liens permitted with respect thereto consistent with the Credit and Collection Policy or the Servicing Standard, (e) Liens in favor of the Trust Depositor created by the Seller and transferred by the Trust Depositor to the Issuer pursuant to this Agreement, (f) Liens in favor of the Issuer created pursuant to this Agreement, (g) Liens in favor of the Trustee created pursuant to the Indenture and/or this Agreement, and (h) with respect to Agented Loans, Co-Agented Loans and Third Party Agented Loans, Liens in favor of the lead agent, the collateral agent or the paying agent on behalf of all holders of indebtedness of such Obligor under the related facility.

"Person" means any individual, corporation, estate, partnership, business or statutory trust, limited liability company, sole proprietorship, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof or other entity.

"Physical Note" shall have the meaning provided in the Indenture.

"Pool Balance" means, as of any date of determination, the Aggregate Outstanding Loan Balance minus (a) the Outstanding Loan Balance of all Defaulted Loans and (b) the Outstanding Loan Balance of all Ineligible Loans required to be repurchased by the Seller pursuant to Section 11.01.

"Predecessor Servicer Work Product" shall have the meaning provided in Section 8.03(e).

"Prepayments" means any and all (a) prepayments, including prepayment premiums, on or with respect to a Loan (including, with respect to any Loan and any Collection Period, any Scheduled Payment, Finance Charge or portion thereof that is due in a subsequent Collection Period that the Servicer has received and expressly permitted the related Obligor to make in advance of its scheduled due date, and that will be applied to such Scheduled Payment on such due date), (b) Liquidation Proceeds, and (c) Insurance Proceeds.

"Principal Collections" means amounts deposited into the Collection Account in respect of payments received on or after the Cutoff Date in the case of the Initial Loans, the applicable Additional Loan Cutoff Date in the case of any Additional Loans and the applicable Substitute Loan Cutoff Date in the case of any Substitute Loans on account of principal of the Loans, including (without duplication):

(a) the principal portion of:

(i) any Scheduled Payments and Prepayments; and

(ii) any amounts received other than Interest Collections (1) in connection with the purchase or repurchase of any Loan (and any related Substitution Deficit Amounts) and (2) as Servicing Advances (if any);

(b) all Curtailments;

(c) all Liquidation Proceeds;

(d) all Sale Proceeds;

(e) Insurance Proceeds (other than amounts to be applied to the restoration or repair of the Related Property, or released or to be released to the Obligor or others);

(f) any proceeds from any Related Property securing the Loans (other than amounts released or to be released to the Obligor or others);

(g) all funds transferred from the Reinvestment Account in accordance with the Transaction Documents (other than investment earnings);

(h) following a Rapid Amortization Event or on the Legal Final Payment Date, all funds transferred from the Reserve Account; and

(i) all other amounts not specifically included in Interest Collections.

"Principal Distribution Amount" means, for any Payment Date, an amount equal to the greater of (A) the Outstanding Principal Balance of the Notes (calculated immediately prior to such Payment Date) *minus* the Borrowing Base and (B) zero.

"Priority of Payments" means, collectively, the payments made on each Payment Date in accordance with Section 7.06(a), Section 7.06(b) and Section 7.06(c), as applicable.

"Proceeds" means, with respect to any Collateral, whatever is receivable or received when such Collateral is sold, liquidated, foreclosed, exchanged, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes all rights to payment with respect to any insurance relating to such Collateral.

"Qualified Additional Loan" means a Loan which is an Eligible Loan and meets each of the following additional criteria, as of its date of acquisition by the Issuer:

(a) the sum of (a) the product of (i) the Outstanding Loan Balance of such Loan multiplied by (ii) the Advance Rate, plus (b) accrued and unpaid interest and fees thereon is greater than or equal to the cash amount paid by the Issuer for such Additional Loan;

(b) immediately following the Transfer Date of such Additional Loan, the weighted average Cash Yield Rate of all Loans as of the applicable Transfer Date shall not be decreased by more than 100 basis points from the weighted average Cash Yield Rate of the Initial Loans as of the Initial Cutoff Date; and

(c) immediately prior to and following the Transfer Date of any Additional Loan, no Event of Default is occurring and continuing.

"Qualified Institution" means (a) the corporate trust department of the Trustee, or (b) a depository institution organized under the laws of the United States or any one of the states thereof or the District of Columbia (or any domestic branch of a foreign bank), that has either a long-term unsecured debt rating of at least "Baa3" from Moody's (or another nationally recognized statistical rating organization in one of its generic rating categories that signifies investment grade) or a long-term unsecured debt rating, a short-term unsecured debt rating or a certificate of deposit rating from another nationally recognized statistical rating agency acceptable to KBRA, and whose deposits are insured by the FDIC.

"Qualified Substitute Loan" means a Loan which is an Eligible Loan and meets each of the following additional criteria, as of its date of substitution:

(a) such Substitute Loan is of substantially similar or better credit quality to the Loan it will replace (as measured by reference to the Hercules Credit Score of the replaced Loan at the time such Loan was initially transferred to the Issuer);

(b) immediately following the Transfer Date of such Substitute Loan, the weighted average Cash Yield Rate of all Loans as of the applicable Transfer Date shall not be decreased by more than 100 basis points from the weighted average Cash Yield Rate of the Initial Loans as of the initial Cutoff Date;

(c) the Outstanding Loan Balance of such Substitute Loan (or, if more than one Substitute Loan will replace a Loan or Loans, the sum of the Outstanding Loan Balances of such Substitute Loans) is substantially similar to the Loan it will replace (and in the event that such Substitute Loan has an Outstanding Loan Balance that is less than that of the replaced Loan(s), the applicable Substitution Deficit Amount will be paid to the Issuer, for deposit into the Collection Account, at the time of substitution), and in any case will not be more than 110% of the Aggregate Outstanding Loan Balance(s) of the Loan(s) being replaced;

(d) the scheduled term to maturity of such Substitute Loan (or, if more than one Substitute Loan

will replace a Loan or Loans in the Loan Pool, the combined effect of such Substitute Loans) will not cause the remaining weighted average life of the Aggregate Outstanding Loan Balance (measured immediately prior to the removal of the Loans related to such substitution) to increase by more than four months; *provided* that, in the case of any substitution made after the Reinvestment Period Termination Date, such substitution will not cause the remaining weighted average life of the Aggregate Outstanding Loan Balance (measured immediately prior to the removal from of the Loans related to such substitution) to increase.

"Quarterly Report" has the meaning provided in Section 9.02.

"Rapid Amortization Event" shall mean the occurrence of any of the following:

(i) the aggregate Outstanding Loan Balance of all Delinquent Loans and Restructured Loans that would constitute Delinquent Loans had such Loans not become Restructured Loans exceeds ten percent (10%) of the Aggregate Outstanding Loan Balance for a period of three (3) consecutive Payment Dates;

(ii) the aggregate Outstanding Loan Balance of Defaulted Loans exceeds, for a period of three (3) consecutive Payment Dates, 5% of the initial Pool Balance determined as of the Closing Date;

(iii) the Aggregate Outstanding Principal Balance exceeds the Borrowing Base for a period of three (3) consecutive Payment Dates (after giving effect to all distributions on such Payment Dates);

(iv) the Loans in the Collateral consist of Loans to 10 or fewer Obligors (together, in each case, with Affiliates thereof);

(v) the occurrence and continuance of an Event of Default; and

(vi) the occurrence and continuation of a Servicer Default.

"Rating Agency" means each of KBRA and any other nationally recognized statistical rating organization reasonably acceptable to the Majority Noteholders, so long as such Persons maintain a rating on any of the Notes; and if any of KBRA or such other organization (if any) no longer maintains a rating on any of the Notes, such other nationally recognized statistical rating organization, if any, selected by the Trust Depositor and reasonably acceptable to the Majority Noteholders.

"Rating Date" means the date on which a rating of at least BBB is assigned to the Notes pursuant to Section 13.02.

"Record Date" means, with respect to each Payment Date, (i) for Global Notes, the close of business on the Business Day immediately preceding such Payment Date and (ii) for Physical Notes, the close of business on the last Business Day of the month immediately preceding the month in which such Payment Date occurs.

"Records" means all documents, books, records and other information (including without limitation, Computer Records, computer programs, tapes, disks, data processing software and related property and rights) executed in connection with the origination or acquisition of the Loans or maintained with respect to the Loans and the related Obligors that the Seller or the Servicer have generated, in which the Seller, the Trust Depositor, the Issuer, the Trustee or the Servicer have acquired an interest pursuant to the Transfer and Servicing Agreements or in which the Seller, the Trust Depositor, the Issuer, the Trustee or the Servicer have otherwise obtained an interest to the extent transferable, and subject to any confidentiality and/or transferability restrictions.

"Redemption Date" means any Business Day designated as such by the Issuer in connection with an Optional Redemption.

"Redemption Price" means, in connection with an Optional Redemption, pursuant to Section 10.01 of the Indenture, an amount equal to the sum (without duplication) of: (i) the then Outstanding Principal Balance of the Notes to be redeemed plus accrued and unpaid interest thereon to but excluding the Redemption Date and all other amounts accrued and unpaid with respect thereto; *plus* (ii) the Applicable Premium; *plus* (iii) all administrative and other fees, expenses, advances and other amounts accrued and payable or reimbursable in accordance with the Priority of Payments (including fees and expenses, if any, incurred by the Trustee and the Servicer in connection with any sale of Loans in connection with an Optional Redemption); *minus* (iv) all amounts on deposit in the Transaction Accounts available to satisfy the foregoing amounts.

"Reference Date" means the day of each month that is the third (3rd) Business Day prior to a Payment Date.

"Reinvestment Account" means the interest bearing trust account so designated and established and maintained pursuant to Section 7.04(a).

"Reinvestment Period" means the period beginning on the Closing Date to but excluding the Reinvestment Period Termination Date.

"Reinvestment Period Termination Date" means the earliest to occur of (a) the Payment Date occurring in July 2024, (b) the occurrence of a Rapid Amortization Event or a Reinvestment Period Early Termination Event and (c) the day of any optional redemption of the Notes. For the avoidance of doubt, there will only be one Reinvestment Period, and such period cannot be re-commenced or continue after the occurrence of a Rapid Amortization Event or any Reinvestment Period Early Termination Event.

"Reinvestment Period Early Termination Event" means, as of any date of determination, the aggregate Outstanding Loan Balance of all Defaulted Loans (including any Defaulted Loans optionally sold or substituted by the Issuer or previously liquidated by the Servicer, in each case measured at the time each such Loan becomes a Defaulted Loan) exceeds 13.5% of the Pool Balance as of the Closing Date.

"Related Loan" means, with respect to any Loan, one or more related revolving lines of credit or other related loans to the same Obligor, which may include future funding obligations, made by Hercules, an Affiliate of the Hercules, or an unaffiliated third party.

"Related Property" means, with respect to any Loan and as applicable in the context used, the interest of the Obligor, or the interest of the Seller, Trust Depositor or Issuer under the Loan, in any property or other assets designated and pledged or mortgaged as collateral to secure repayment of such Loan (including, without limitation, a pledge of the stock, membership or other ownership interests in the Obligor, but excluding any warrant interest in an Obligor held by the Seller or any of its Affiliates other than the Issuer or Trust Depositor), including all Proceeds from any sale or other disposition of such property or other assets.

"Repossessed Property" means items of Related Property taken in the name of the Issuer or a subsidiary thereof as a result of legal action enforcing the Lien on the Related Property resulting from a default on the related Loan.

"Required Loan Documents" means, with respect to:

(a) all Loans in the aggregate:

(i) a blanket assignment of all of the Seller's and Trust Depositor's right, title and interest in and to all Related Property securing the Loans at any time transferred to the Issuer including, without limitation, all rights under applicable guarantees and Insurance Policies;

(ii) irrevocable powers of attorney of the Seller, the Trust Depositor and the Issuer to the Trustee to execute, deliver, file or record and otherwise deal with the Related Property for the Loans at any time transferred to the Issuer. The powers of attorney will be delegable by the Trustee to the Servicer and any Successor Servicer and will permit the Trustee or its delegate to prepare, execute and file or record UCC financing statements and notices to insurers;

(iii) blanket UCC-1 financing statements in respect of the Loans to be transferred to the Issuer as Collateral and naming the Issuer and the Trustee, as assignee of the Issuer, as "Secured Party" and the Trust Depositor as the "Debtor";

(b) for each Loan (*provided*, *however*, that in the case of each Participated Loan, in each case, as indicated on the List of Loans, to the extent in the possession of the Seller or reasonably available to the Seller, copies of all documents and instruments described in clause (b)(y), with respect to such Participated Loan): (x) other than in the case of a Noteless Loan or Participated Loan, the original or, if accompanied by a "lost note" affidavit and indemnity, a copy of the Underlying Note, endorsed by the prior holder of record either in blank or to the Trustee (and evidencing an unbroken chain of endorsements from the prior holder thereof evidenced in the chain of endorsements to the Trustee), with any endorsement to the Trustee to be in the following form: "U.S. Bank Trust Company, National Association, its successors and assigns, as Trustee under the Indenture, relating to Hercules Capital Funding Trust 2022-1," (y) in the case of a Participated Loan, a copy of each transfer document or instrument relating to such Participated Loan evidencing the assignment of such Participated Loan to the Seller, from the Seller to the Trust Depositor and from the Trust Depositor to the Trustee or in blank and (z) in the case of a Noteless Loan, a copy of each transfer document or instrument relating to such Noteless Loan evidencing the assignment of such Noteless Loan from the Seller to the Trust Depositor and from the Trust Depositor to the Trustee or in blank;

"Required Payments" shall mean each of the items described in clauses 1 through 4 of Section 7.06(a).

"Reserve Account" means the interest bearing trust account so designated and established and maintained pursuant to Section 7.02(a).

"Reserve Account Required Balance" shall mean, as of any Payment Date, an amount equal to 3.0% of the Aggregate Outstanding Principal Balance of the Notes on such date after taking into account all amounts applied to the Aggregate Outstanding Principal Balance on such date.

"Reserve Available Funds" means all amounts deposited into the Collection Account from the Reserve Account pursuant to Section 7.02.

"Responsible Officer" means, when used with respect to (a) the Owner Trustee or the Trustee, any officer assigned to the Corporate Trust Office with responsibility for administration of the transactions contemplated by the Transaction Documents, including any Chief Executive Officer, President, Executive Vice President, Vice President, Assistant Vice President, Secretary, any Assistant Secretary, Financial Services Officer, trust officer or any other officer of the Owner Trustee or the Trustee customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject and, in each case, responsible for the administration of this Agreement and the other Transaction Documents, (b) the Trust Depositor, the Seller, the Administrator, the Servicer or the Backup Servicer, the President, Chief Executive Officer, Executive Vice President or any Vice President thereof who is also a Servicing Officer of such Person or of the sole member of such Person, as applicable and (c) with respect to the Issuer, a Responsible Officer of the Trust Depositor, Administrator, Servicer or Owner Trustee.

"Restructured Loan" means any Loan (including any portion of a Loan) that has been, or in accordance with the Credit and Collection Policy is required to be, modified or restructured to extend the maturity thereof or reduce the amount (other than by reason of the repayment thereof) or extend the time for payment of principal thereof, or otherwise

modify the payment terms thereof, in each case as a result of the Obligor's material financial underperformance, distress or default. Such Loan shall cease to be a Restructured Loan when such Loan has been performing for at least six (6) consecutive calendar months since the date the most recent modification was made and is no longer required to be so modified or restructured in accordance with the Credit and Collection Policy.

"Sale and Contribution Agreement" means the Sale and Contribution Agreement, dated as of the date hereof, between the Seller and the Trust Depositor, as such agreement may be amended, modified, waived, supplemented or restated from time to time.

"Sale Proceeds" means all proceeds received as a result of sales of Loans (other than Defaulted Loans) pursuant to this Agreement, net of any sales, brokerage and related administrative or sales expenses of the Servicer or the Trustee in connection with any such sale.

"Scheduled Payment" means, with respect to any Loan, each payment of principal and/or interest scheduled to be made by the related Obligor under the terms of such Loan after (a) in the case of the Initial Loans, the Cutoff Date, (b) in the case of Additional Loans, the Additional Loan Cutoff Date or (c) in the case of Substitute Loans, the related Substitute Loan Cutoff Date, as adjusted pursuant to the terms of the related Underlying Note and/or Required Loan Documents.

"Scheduled Payment Advance" means, with respect to any Payment Date, the amounts, if any, deposited by the Servicer in the Collection Account for such Payment Date in respect of Scheduled Payments (or portions thereof) pursuant to Section 5.09.

"Second Ratings Trigger Date" means, in the event that the Rating is not obtained on or before the ninetieth (90^{th}) day following the Closing Date, the ninety-first (91^{st}) day following the Closing Date.

"Secured Parties" means, collectively, the Noteholders, the Trustee, the Servicer, the Backup Servicer, the Custodian, and the Owner Trustee.

"Securities" means the Notes and the Certificate, or any of them.

"Securities Act" means the Securities Act of 1933, as amended.

"Securityholders" means, collectively, the Noteholders and the Certificateholder.

"Seller" shall have the meaning provided in the Preamble.

"Servicer" means initially Hercules, or its successors in interest, until any Servicer Transfer hereunder or the resignation or permitted assignment by the Servicer and, thereafter, means the Backup Servicer or other Successor Servicer appointed pursuant to Article VIII with respect to the duties and obligations required of the Servicer under this Agreement.

"Servicer Default" shall have the meaning specified in Section 8.01.

"Servicer Transfer" shall have the meaning specified in Section 8.02(c).

"Servicing Advances" means all reasonable and customary "out-of-pocket" costs and expenses incurred in the performance by the Servicer of its servicing obligations, including, but not limited to, the cost of (a) the preservation, restoration and protection of any Related Property (including the security interest therein), (b) any pursuit of collections, enforcement or judicial proceedings, including foreclosures, and other actions to realize on the Loans, (c) the management and liquidation of any Foreclosed Property or Repossessed Property, (d) compliance with its obligations under this Agreement and other Transaction Documents and (e) services rendered in connection with the

liquidation of a Loan (other than Liquidation Expenses), for all of which costs and expenses the Servicer is entitled to reimbursement with interest thereon as provided in this Agreement.

"Servicing Fee" shall have the meaning provided in Section 5.11.

"Servicing File" means, for each Loan, the following documents or instruments:

(a) copies of each of the Required Loan Documents; and

(b) any other portion of the Loan File which is not part of the Required Loan Documents.

"Servicing Officer" means any officer of the Servicer involved in, or responsible for, the administration and servicing of Loans whose name appears on a list of servicing officers appearing in an Officer's Certificate furnished to the Trustee by the Servicer, as the same may be amended from time to time.

"Servicing Standard" means, with respect to any Loans and all other assets included in the Collateral, to service and administer such Loans and other assets in the Collateral in accordance with the Underlying Loan Agreements (as applicable) and all customary and usual servicing practices, in a manner consistent with the Servicer's servicing of comparable senior loan agreements that it owns or services for itself or others, without regard to: (i) the Servicer's right to receive compensation for its services hereunder or with respect to any particular transaction, or (ii) the ownership, servicing or management for others by the Servicer of any other loans, debt securities or property by the Servicer.

"Servicing Transfer Costs" means the fees, costs and expenses, if any, incurred by the Trustee or by any Successor Servicer (including the Backup Servicer) in connection with the transfer of servicing to any such Successor Servicer, which shall not exceed the Transition Expense Cap; *provided* that the foregoing limitations shall not apply after the occurrence of an Event of Default that is continuing and the Trustee has initiated proceedings or actions in furtherance of the liquidation of the Collateral.

"Solvent" means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code; (b) such Person is able to realize upon its property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (d) such Person is not engaged in business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute unreasonably small capital.

"Split Loan" means an Additional Loan or Substitute Loan acquired by the Issuer that has one or more Related Loans or other loans under the same facility or tranche that will be financed by Hercules or an Affiliate thereof in a Warehouse Loan Facility.

"Split Loan Account" means any designated account held at the Split Loan Agent in the name of Hercules, as agent for the benefit of the Trustee and the applicable Warehouse Lender, as secured parties in respect of Split Loans and any Related Loans, respectively.

"Split Loan Agent" means USBNA or another Qualified Institution serving as Split Loan Agent pursuant to the Transaction Documents.

"Split Loan Intercreditor Agreement" means any intercreditor agreement entered into by and among the Issuer, the Servicer, the applicable Warehouse Lender, Split Loan Agent, the Trustee, the Custodian and the Backup Servicer, which shall provide, among other things, key terms that are substantially as follows: (a) payments received in respect

of such Split Loans and the Related Loans will be applied pro rata to the outstanding principal exposure among the lenders or, if payment is received in connection with a particular tranche, pro rata among all lenders in the particular tranche; (b) the percentage of lenders required to constitute required lenders under the underlying credit documents will be at least 50.1 percent of the outstanding loan amount thereunder; provided that, upon certain key events, if there are three (3) or fewer unaffiliated lenders (i.e., lenders not affiliated with Hercules) all lenders must consent or vote affirmatively to constitute required lenders under the underlying credit documents; (c) upon an exercise of remedies with respect to such Split Loans and Related Loans, Hercules, as agent for the underlying secured parties, will allocate collateral proceeds pro rata based on outstanding principal exposure of the lenders; (d) each Warehouse Lender, the Trustee and the Custodian will acknowledge the rights and interests of the other secured parties and the Split Loan Agent with respect to such Split Loans and the Related Loans, the underlying loan files and the Split Loan Account; and (e) in the event of either an involuntary bankruptcy filing (which filing remains unstayed for a period of sixty (60) days) or a voluntary bankruptcy filing by Hercules, any exercise of remedies by Hercules (as agent for the underlying secured parties under the underlying credit documents) or amendments or other modifications to the underlying credit documents will be subject to approval of and direction by required lenders under the underlying credit documents (subject to clause (b) above).

"Statutory Trust Statute" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. §§ 3801 et seq., as the same may be amended from time to time.

"Subsequent List of Loans" means a list, in the form of the initial List of Loans delivered on the Closing Date, but listing each Additional Loan or Substitute Loan, as the case may be, transferred to the Issuer from time to time.

"Subservicer" means any direct or indirect wholly owned subsidiary of Hercules that Hercules has identified as a subservicer or additional collateral agent or any other Person with whom the Servicer has entered into a Subservicing Agreement and who satisfies the requirements set forth in Section 5.02(b) of this Agreement in respect of the qualification of a Subservicer.

"Subservicing Agreement" means any agreement between the Servicer and any Subservicer relating to subservicing and/or administration of certain Loans as provided in this Agreement, a copy of which shall be delivered, along with any modifications thereto, to the Trustee.

"Substitute Loan" means one or more Loans transferred by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer under and in accordance with Section 2.06.

"Substitute Loan Assets" means any assets acquired by the Issuer from the Trust Depositor following the Closing Date in connection with substitution of one or more Substitute Loans pursuant to Section 2.04 or Section 2.06, which assets shall include the Trust Depositor's right, title and interest in the following:

(i) the Substitute Loans listed in the related Subsequent List of Loans and all monies due, to become due or paid in respect thereof accruing on and after the Substitute Loan Cutoff Date and all Insurance Proceeds, Liquidation Proceeds and other recoveries thereon, in each case as they arise after the Substitute Loan Cutoff Date;

(ii) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Loans;

(iii) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Loans;

(iv) all collections and Records (including Computer Records) with respect to the foregoing;

(v) all documents relating to the applicable Loan Files; and

(vi) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, but excluding any Excluded Amount with respect thereto.

"Substitute Loan Cutoff Date" means each date on or after the Closing Date on which a Substitute Loan is transferred to the Issuer.

"Substitution Deficit Amount" means, in respect of one or more Loans replaced with one or more Substitute Loans, the amount (if positive) by which the Outstanding Loan Balance of such Loans exceeds the Outstanding Loan Balance of such Substitute Loans.

"Substitution Event" shall have the meaning provided in Section 2.06.

"Successor Servicer" shall have the meaning provided in Section 8.02(b).

"Successor Servicer Engagement Fee" shall have the meaning provided in Section 5.02(y).

"Super-Majority Noteholders" means prior to the payment in full of the Notes, the Noteholders evidencing more than 66 2/3% of the Aggregate Outstanding Principal Balance of Notes (excluding Notes held by the Trust Depositor, the Seller, the Servicer or any of their respective Affiliates).

"Tape" shall have the meaning provided in Section 9.04(a).

"Technology Loan" means a Loan made to an Obligor that is a technology company, including a company involved in, but not limited to, semi-conductor manufacturing, software, internet consumer and business services, content providers, media, communications and networking, clean technologies (excluding companies doing business in the energy, clean energy or alternative energy sectors), information services, or internet consumer and business services.

"Termination Notice" shall have the meaning provided in Section 8.02(a).

"Third Party Agented Loan" means, any Loan with respect to which, (a) the Loan is originated by a Person other than or in addition to the Seller as part of a syndicated loan transaction which has been fully consummated prior to such Loan becoming part of the Collateral, (b) upon the sale of the Loan under the Transfer and Servicing Agreements to the Issuer, the Required Loan Documents shall have been delivered to the Custodian, (c) the Issuer, as assignee of the Loan, has all of the rights (including without limitation voting rights) of the Seller which have been transferred by the Seller with respect to the Loan and the Seller's right, title and interest in and to the Related Property, (d) the Loan is secured by an undivided interest in the Related Property that also secures and is shared by, on a *pro rata* basis, all other holders of such Obligor's indebtedness of equal priority issued in such syndicated loan transaction, and (e) the third party Loan originator (or an affiliate thereof) is the lead agent, collateral agent or paying agent for all lenders in such syndicated loan transaction.

"Transaction Account Property" means the Transaction Accounts, all amounts and investments held from time to time in any Transaction Account (whether in the form of deposit accounts, physical property, book-entry securities, uncertificated securities or otherwise), and all proceeds of the foregoing.

"Transaction Accounts" means, collectively, the Collection Account, the Reserve Account, the Distribution Account, the Reinvestment Account and the Lockbox Account.

"Transaction Documents" means the Transfer and Servicing Agreements, the Trust Agreement, the Administration Agreement, the Notes, the Certificate, any Split Loan Intercreditor Agreement (to the extent the Issuer acquires any Split Loans), the Master Collection Account Control Agreement, if any, the Master Collection Account Agency Agreement, if any, the Note Purchase Agreement, any fee letters, any UCC financing statements filed pursuant to the terms of the Transaction Documents, and any additional document the execution of which is necessary or incidental to carrying out the terms of, or which is identified as a "Transaction Document" in, the foregoing documents, all as such documents are amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Transfer and Servicing Agreements" means, collectively, this Agreement, the Indenture and the Sale and Contribution Agreement.

"Transfer Date" means, with respect to any Loan, the date upon which such Loan is conveyed to or acquired by the Issuer.

"Transfer Deposit Amount" means, on any date of determination with respect to any Loan, an amount equal to the sum of (a) the Outstanding Loan Balance of such Loan, (b) accrued interest thereon through such date of determination at the Loan Rate provided for thereunder and (c) any outstanding Scheduled Payment Advances and Servicing Advances thereon that have not been waived by the Servicer entitled thereto.

"Transition Expense Cap" means, for any given servicing transfer, an aggregate maximum amount of $25,000 for a servicing transfer to the Backup Servicer or $150,000 to any other Successor Servicer.

"Treasury Rate" XE "Treasury Rate" means, in the case of an Optional Redemption of the Notes, the yield to maturity (adjusted to a "mortgage equivalent basis" pursuant to the standards and practices of the Securities Industry and Financial Markets Association) at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days (but not more than five Business Days) prior to the Redemption Date (or, if such statistical release is not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the Redemption Date to the end of the Reinvestment Period; provided, however, that if the period from the Redemption Date to the end of the Reinvestment Period is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to such applicable date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

"Trust Agreement" means the Amended and Restated Trust Agreement, dated as of the Closing Date, between the Trust Depositor and the Owner Trustee, as amended, modified, restated, waived or supplemented from time to time.

"Trust Depositor" shall have the meaning provided in the Preamble.

"Trust Depositor LLC Agreement" means the Amended and Restated Limited Liability Company Agreement of the Trust Depositor, dated as of the Closing Date, between the Seller, as the sole member, and the Independent manager party thereto.

"Trust Estate" shall have the meaning provided in the Trust Agreement.

"Trustee" means the Person acting as Trustee under the Indenture, its successors in interest and any successor trustee under the Indenture.

"Trustees" means the Owner Trustee and the Trustee, or any of them individually as the context may require.

"UCC" means the Uniform Commercial Code, as amended from time to time, as in effect in any specified jurisdiction.

"Underlying Loan Agreement" means, with respect to any Loan, the single-lender or multi-lender commercial loan or credit agreement or other debt agreement or instrument evidencing such Loan or facility pursuant to which such Loan is made.

"Underlying Note" means the one or more promissory notes executed by the applicable Obligor evidencing a Loan.

"United States" means the United States of America.

"USBNA" shall have the meaning provided in the Preamble.

"U.S. Bank" shall have the meaning provided in the Preamble.

"Volcker Rule" means Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), as implemented by regulations jointly adopted by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Corporation and the Commission and any orders or interpretations issued thereby.

"Warehouse Lender" means one or a syndicate of financial institutions providing warehouse loan financing to Hercules or an Affiliate thereof pursuant to a Warehouse Loan Facility.

"Warehouse Loan Facility" means a warehouse loan facility provided to Hercules or an Affiliate thereof by one or more Warehouse Lenders.

Section 1.02. Usage of Terms.

With respect to all terms in this Agreement, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to "writing" include printing, typing, lithography and other means of reproducing words in a visible form; references to agreements and other contractual instruments include all amendments, modifications and supplements thereto or any changes therein entered into in accordance with their respective terms and not prohibited by this Agreement; references to Persons include their permitted successors and assigns; and the term "including" means "including without limitation."

Section 1.03. Section References.

All Section references (including references to the Preamble), unless otherwise indicated, shall be to Sections (and the Preamble) in this Agreement.

Section 1.04. Calculations.

Except as otherwise provided herein, all interest rate and basis point calculations hereunder will be made on the basis of a 360 day year consisting of twelve 30-day months and will be carried out to at least three decimal places.

Section 1.05. Accounting Terms.

All accounting terms used but not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States.

ARTICLE 2.

ESTABLISHMENT OF ISSUER; TRANSFER OF LOAN ASSETS

Section 2.01. Creation and Funding of Issuer; Transfer of Loan Assets.

(a) The Issuer shall be governed pursuant to the terms and conditions of the Trust Agreement, dated as of the Closing Date, between the Trust Depositor and the Owner Trustee (the "Original Trust Agreement"), upon the execution and delivery of the Original Trust Agreement and created by the filing by the Owner Trustee of an appropriately completed Certificate of Trust (as defined in the Original Trust Agreement) under the Statutory Trust Statute. The Trust Depositor, as settlor of the Issuer, shall fund and convey assets to the Issuer pursuant to the terms and provisions hereof. The Issuer shall be administered pursuant to the provisions of this Agreement, the Administration Agreement and the Trust Agreement for the benefit of the Securityholders. Each of the Owner Trustee and the Administrator is hereby specifically recognized by the parties hereto as empowered to conduct business dealings on behalf of the Issuer in accordance with the terms hereof and of the Trust Agreement and Administration Agreement. The initial Servicer is hereby specifically recognized by the parties hereto as empowered to act on behalf of the Issuer in accordance with Section 5.02(g) and Section 5.02(h). The Servicer is hereby specifically recognized by the parties hereto as empowered to perform the duties and obligations required to be performed by the Servicer under the Transaction Documents.

(b) Subject to and upon the terms and conditions set forth herein, and in consideration of the Issuer's delivery to or upon the order of the Trust Depositor of the Notes and the payment to the Trust Depositor of the net proceeds of the Notes, the Trust Depositor hereby sells, transfers, assigns, sets over and otherwise conveys to the Issuer all the right, title and interest of the Trust Depositor in and to the Initial Loan Assets.

To the extent the purchase price paid to the Trust Depositor for any Loan Assets is less than the fair market value of such Loan Assets, the difference between such fair market value and such purchase price shall be deemed to be a capital contribution made by the Trust Depositor to the Issuer on the Closing Date in the case of the Initial Loans, as of the related Additional Loan Cutoff Date in the case of any Additional Loans and as of the related Substitute Loan Cutoff Date in the case of any Substitute Loans. For all purposes of this Agreement, any contributed Loan Assets shall be treated the same as Loan Assets sold for cash, including without limitation for purposes of Section 11.01.

(c) The Seller and the Trust Depositor each acknowledge with respect to itself that the representations and warranties of the Seller in the Sale and Contribution Agreement and of the Trust Depositor in Section 3.01 through Section 3.04 hereof will run to and be for the benefit of the Issuer and the Trustees, and the Issuer and the Trustees may enforce directly (without joinder of the Trust Depositor when enforcing against the Seller) the repurchase obligations of the Seller or Trust Depositor, as applicable, with respect to breaches of such representations and warranties that materially and adversely affect the interests of any Noteholder as set forth in the Sale and Contribution Agreement or in this Agreement; provided that neither the Owner Trustee nor the Trustee shall have a duty or obligation (i) to discover or make and attempt to discover, inquire about or investigate the breach of any of such representations or warranties, (ii) to determine if such breach materially and adversely affects the interests of any Noteholder or (iii) to enforce the repurchase obligations of the Seller and/or the Trust Depositor it being understood that a Trustee's sole duty upon receipt by a Responsible Officer of actual knowledge or written notice of a breach that materially and adversely affects the interests of Noteholders shall be to make demand upon the Seller or Trust Depositor, as applicable, to repurchase the Loan(s) unless the applicable Trustee receives written direction and indemnity reasonably satisfactory to it from the Super-Majority Noteholders specifying the additional action to be taken (or omitted) by the Trustee, including but not limited to commencing litigation against the Seller or Trust Depositor, as applicable.

(d) The sale, transfer, assignment, set-over and conveyance of the Loan Assets by the Trust Depositor to the Issuer pursuant to this Agreement does not constitute and is not intended to result in a creation or an assumption by the Issuer of any obligation of the Seller or the Trust Depositor in connection with the Loan Assets, or

any agreement or instrument relating thereto, including, without limitation, (i) any obligation to any Obligor relating to any unfunded commitment from the Seller or the Trust Depositor, (ii) any taxes, fees, or other charges imposed by any Governmental Authority and (iii) any insurance premiums that remain owing with respect to any Loan Asset at the time such Loan Asset is sold hereunder. Without limiting the foregoing, (x) the Issuer does not assume any obligation to purchase any additional notes or loans under agreements governing the Loan Assets and (y) the sale, transfer, assignment, set-over and conveyance of the Loan Assets by the Trust Depositor to the Issuer pursuant to this Agreement does not constitute and is not intended to result in a creation or an assumption by the Trust Depositor or the Issuer of any obligation of the Seller as lead agent or collateral agent under any Agented Loan or Co-Agented Loan. The Trust Depositor also hereby assigns to the Issuer all of the Trust Depositor's right, title and interest (but none of its obligations) under the Sale and Contribution Agreement, including but not limited to the Trust Depositor's right to exercise the remedies created by the Sale and Contribution Agreement.

(e) The Seller, Trust Depositor and Issuer intend and agree that (i) the transfer of the Loan Assets by the Seller to the Trust Depositor under the Sale and Contribution Agreement and the transfer of the Loan Assets by the Trust Depositor to the Issuer hereunder are intended to be a sale, conveyance and transfer of ownership of the Loan Assets, as the case may be, rather than the mere granting of a security interest to secure a borrowing and (ii) such Loan Assets shall not be part of the Seller's or the Trust Depositor's estate in the event of a filing of a bankruptcy petition or other action by or against such Person under any Insolvency Law. In the event, however, that notwithstanding such intent and agreement, such transfers are deemed to be a mere granting of a security interest to secure indebtedness, the Seller shall be deemed to have granted (and as of the Closing Date hereby grants to) the Trust Depositor and the Trust Depositor shall be deemed to have granted (and as of the Closing Date hereby grants) to the Issuer, as the case may be, a perfected first priority security interest in all right, title and interest of the Seller or of the Trust Depositor, respectively, in such Loan Assets and this Agreement shall constitute a security agreement under Applicable Law, securing the repayment of the purchase price paid hereunder, the obligations and/or interests represented by the Securities, in the order and priorities, and subject to the other terms and conditions of, this Agreement, the Indenture and the Trust Agreement, together with such other obligations or interests as may arise hereunder and thereunder in favor of the parties hereto and thereto.

(f) If any such transfer of the Loan Assets is deemed to be the mere granting of a security interest to secure a borrowing, the Trust Depositor may, to secure the Trust Depositor's own borrowing under this Agreement (to the extent that the transfer of the Loan Assets thereunder is deemed to be a mere granting of a security interest to secure a borrowing) repledge and reassign (i) all or a portion of the Loan Assets pledged to Trust Depositor by the Seller and with respect to which the Trust Depositor has not released its security interest at the time of such pledge and assignment, and (ii) all proceeds thereof. Such repledge and reassignment may be made by Trust Depositor with or without a repledge and reassignment by Trust Depositor of its rights under any agreement with the Seller, and without further notice to or acknowledgment from the Seller. The Seller waives, to the extent permitted by applicable law, all claims, causes of action and remedies, whether legal or equitable (including any right of setoff), against Trust Depositor or any assignee of Trust Depositor relating to such action by Trust Depositor in connection with the transactions contemplated by this Agreement.

(g) The Trust Depositor and the Issuer acknowledge and agree (and the Trustee is hereby directed to acknowledge and does acknowledge) that, solely for administrative convenience, any assignment agreement required to be executed and delivered in connection with the transfer of a Loan in accordance with the terms of related Underlying Loan Agreements may reflect that the Seller is assigning such Loan directly to the Issuer. Nothing in such assignment agreements shall be deemed to impair the transfers of the Loan Assets by the Seller to the Trust Depositor in accordance with the terms of this Agreement and the Sale and Contribution Agreement, as applicable, and the subsequent transfer of the Loan Assets by the Trust Depositor to the Issuer in accordance with the terms hereof.

Section 2.02. Conditions to Transfer of Initial Loan Assets to Issuer.

On or before the Closing Date, or, with respect to clause (g) below, within the period specified therein, the Seller or the Trust Depositor, as applicable, shall deliver or cause to be delivered to the Owner Trustee and Trustee each of

the documents, certificates and other items as follows:

(a) a certificate of an officer of the Seller substantially in the form of Exhibit C hereto;

(b) copies of resolutions of Hercules, as Seller and Servicer, and the sole member of the Trust Depositor approving the execution, delivery and performance of this Agreement, the Transaction Documents to which it is a party and the transactions contemplated hereunder and thereunder, certified in each case by the Secretary or an Assistant Secretary of Hercules and the sole member of the Trust Depositor;

(c) officially certified evidence dated within 30 days of the Closing Date of due formation and good standing of the Seller under the laws of the State of Maryland;

(d) the initial List of Loans, certified by an officer of the Trust Depositor, together with an Assignment with respect to the Initial Loan Assets substantially in the form of Exhibit A (along with the delivery of any instruments and Loan Files as required under Section 2.09);

(e) a certificate of an officer of the sole member of the Trust Depositor substantially in the form of Exhibit B hereto;

(f) a letter from a nationally recognized accounting firm, addressed to the Seller and the Trust Depositor, stating that such firm has reviewed a sample of ten (10) of the Initial Loans and performed specific procedures for such sample with respect to certain loan terms;

(g) officially certified evidence dated within 30 days of the Closing Date of due organization and good standing of the Trust Depositor under the laws of the State of Delaware;

(h) evidence of the proper filing of a UCC-1 financing statement, naming the Seller as seller or debtor, naming the Trust Depositor as assignor, buyer or secured party, and naming the Issuer as total assignee of the Seller, buyer or secured party and describing the Loan Assets as collateral, with the office of the Secretary of State of the State of Delaware and in such other locations as required by the applicable UCC; and evidence of the proper filing of a UCC-1 financing statement, naming the Trust Depositor as seller or debtor, naming the Issuer as assignor, buyer or secured party, and naming the Trustee as total assignee of the Trust Depositor, buyer or secured party and describing the Loan Assets as collateral with the office of the Secretary of State of the State of Delaware and in such other locations as required by the applicable UCC; and evidence of proper filing of a UCC-1 financing statement, naming the Issuer as debtor, naming the Trustee as secured party and describing the Collateral as collateral with the office of the Secretary of State of the State of Delaware and in such other locations as required by the applicable UCC;

(i) an Officer's Certificate listing the Servicer's Servicing Officers;

(j) a fully executed copy of each of the Transaction Documents;

(k) except with respect to (i) Agented Loans, Co-Agented Loans and Third Party Agented Loans where the Seller (or a wholly-owned subsidiary of the Seller) receives payments on behalf of or as agent for the other lenders thereunder or where payments thereunder are made directly to such other lenders on behalf of or as agent for the Seller (or a wholly-owned subsidiary of the Seller) and (ii) Loans described in Section 7.01(d), a copy of the written notice from the Servicer notifying and directing the Obligor with respect to each such Loan to make all payments on the Loans, whether by wire transfer, ACH or otherwise, either (A) directly to the Lockbox Account or (B) following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, to the Master Collection Account;

(l) a copy of the written notice from the Servicer notifying and directing each of Hercules's co-lenders under Co-Agented Loans and Third-Party Agented Loans that receive payments on behalf of the Seller, to transfer such payments received from the Obligors with respect to such Loans either (i) to the Lockbox Account or (ii) following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, to the Master Collection Account, in either case, within one (1) business day of receipt of such payments by such co-lender; and

(m) written evidence with respect to the reconveyance of and release of any Lien upon any portion of Collateral previously secured by another warehouse financing of the Seller or its Affiliates.

Section 2.03. Acceptance by Issuer.

On the Closing Date, if the conditions set forth in Section 2.02 have been satisfied, the Issuer shall issue to, or upon the order of, the Trust Depositor the Certificate representing ownership of a beneficial interest in one hundred percent (100%) of the Issuer and the Issuer shall issue, and the Trustee shall authenticate, to, or upon the order of, the Trust Depositor the Notes secured by the Collateral.

Section 2.04. Conveyance of Substitute Loans.

(a) With respect to any Substitute Loans to be conveyed to the Trust Depositor by the Seller as described in Section 2.06, the Seller hereby sells, transfers, assigns, sets over and otherwise conveys to the Trust Depositor, without recourse other than as expressly provided herein (and the Trust Depositor shall purchase through cash payment and/or by exchange of one or more related Loans released by the Issuer to the Trust Depositor on the related Substitute Loan Cutoff Date), all the right, title and interest of the Seller in and to the Substitute Loans and Related Property.

The purchase price may equal, exceed or be less than the fair market value of such Substitute Loan as of the related Substitute Loan Cutoff Date, plus in each case accrued interest thereon. To the extent the purchase price of any Loan is less than the fair market value thereof, the Seller will be deemed to have made a capital contribution with respect to such excess to the Trust Depositor.

(b) Subject to Sections 2.01(d) and (e) and the conditions set forth in Section 2.06, the Trust Depositor shall sell, transfer, assign, set over and otherwise convey to the Issuer, without recourse other than as expressly provided herein and therein, (i) all the right, title and interest of the Trust Depositor in and to the Substitute Loans and (ii) all other Related Property related to such Substitute Loans (the property in clauses (i) and (ii) above, upon such transfer, becoming part of the Collateral).

(c) The Seller shall transfer to the Trust Depositor under the Sale and Contribution Agreement and the Trust Depositor shall transfer to the Issuer hereunder the applicable Substitute Loans and Related Property only upon the satisfaction of each of the following conditions on or prior to the related Substitute Loan Cutoff Date (in addition to the conditions set forth in Section 2.10):

(i) the Trust Depositor shall have provided the Issuer and the Trustee with timely notice of such substitution, which shall be delivered no later than 11:00 a.m. on the related Substitute Loan Cutoff Date;

(ii) there shall have occurred, with respect to each such Substitute Loan, a corresponding Substitution Event with respect to one or more Loans then in the Collateral;

(iii) the Seller and the Trust Depositor shall have delivered to the Issuer and the Trustee a Subsequent List of Loans listing the applicable Substitute Loans and an assignment agreement as

required by the related Underlying Loan Agreement indicating that the Issuer is the holder of the related Substitute Loan;

(iv) the Seller shall have deposited or caused to be deposited in the Collection Account all Collections received by it with respect to the applicable Substitute Loans on and after the related Substitute Loan Cutoff Date;

(v) each of the representations and warranties made by the Trust Depositor pursuant to Sections 3.02 and 3.04 applicable to the Substitute Loans shall be true and correct as of the related Substitute Loan Cutoff Date;

(vi) the Seller shall bear all incidental transactions costs incurred in connection with a substitution effected pursuant to this Agreement and shall, at its own expense, on or prior to the related Substitute Loan Cutoff Date, indicate in its Computer Records that ownership of each Substitute Loan identified on the Subsequent List of Loans has been sold by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer pursuant to the Transfer and Servicing Agreements; and

(vii) if such Substitute Loan is a Co-Agented Loans or a Third-Party Agented Loan, the Servicer shall have notified and directed each of Hercules's co-lenders under such Substitute Loan that receive payments on behalf of the Seller, to transfer such payments received from the Obligors with respect to such Substitute Loan either (A) to the Lockbox Account or (B) following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, to the Master Collection Account, in either case, within one (1) business day of receipt of such payments by such co-lender.

(d) The Servicer, the Issuer and the Trustee (at the request of the Servicer) shall execute and deliver such instruments, consents or other documents and perform all acts reasonably requested by the Servicer in order to effect the transfer and release of any of the Issuer's interests in the Loans that are being substituted.

Section 2.05. Optional Sales of Loans.

(a) At its option, any Loan may be sold by the Issuer to Hercules (or any of its Affiliates) or a third party if:

(i) such Loan becomes a Defaulted Loan;

(ii) such Loan becomes a Delinquent Loan;

(iii) such Loan becomes a Restructured Loan; or

(iv) the Issuer (or the Servicer on its behalf), in its discretion, elects to sell the Loan.

(b) No optional sale of any Loan (whether to Hercules, any of its affiliates, or a third party) may be executed for a price less than the sum of (i) the Outstanding Loan Balance of such Loan and (ii) interest accrued to the date of such sale on the principal balance of such Loan at the interest rate applicable to such Loan, and any such sale shall be subject to the further limitations described in Section 2.10 below.

The Sale Proceeds from any sale pursuant to this Section 2.05(a) will be deposited into the Collection Account and allocated as provided in Section 7.06. Upon receipt by the Servicer for deposit in the Collection Account of the amounts of Sale Proceeds received in connection with any such sale, the Servicer shall request and the Issuer

and the Trustee shall assign to the party designated by the Servicer (or to the Servicer itself) all of the Issuer's and Trustee's right, title and interest in the repurchased Loan and related Loan Assets without recourse, representation or warranty. Thereafter, such reassigned Loan shall no longer be included in the Collateral.

Section 2.06. Optional Substitution of Loans.

(a) At its option, any Loan may be substituted by the Issuer and replaced with a substitute loan (each such Loan, a "Substitute Loan") if any of the following occur (each, a "Substitution Event"):

(i) such Loan becomes a Defaulted Loan;

(ii) such Loan becomes a Delinquent Loan;

(iii) such Loan becomes a Restructured Loan; or

(iv) the Issuer, in its discretion, elects to substitute the Loan.

Any such substitution shall be initiated by delivery of written notice (a "Notice of Substitution") to the Trustee from the Servicer that the Issuer intends to substitute a Loan pursuant to this Section 2.06 and shall be completed prior to sixty (60) days after delivery of such notice. Each Notice of Substitution shall specify the Loan to be substituted, the reasons for such substitution and the Transfer Deposit Amount with respect to the Loan. The price deemed paid by the Issuer for any Substitute Loan shall be an amount equal to the Outstanding Loan Balance thereof, *plus* accrued interest thereon.

(b) No substitution of a Substitute Loan will be permitted unless the Servicer determines that such Substitute Loan is a Qualified Substitute Loan as of the date each such Substitute Loan is transferred to the Issuer.

(c) Any such substitution shall be subject to the further limitations described in Section 2.10 below.

Section 2.07. Acquisition of Additional Loans.

(a) During the Reinvestment Period, the Servicer may elect to transfer a portion of the Principal Collections in the Collection Account that are anticipated to be otherwise available for deposit in the Reinvestment Account on the immediately following Payment Date pursuant to Section 7.06(b) to the Reinvestment Account in accordance with Section 7.06(b), which amounts, together with other amounts on deposit in the Reinvestment Account, may be used by the Issuer to acquire Additional Loans at any time during the Reinvestment Period.

(b) With respect to any Additional Loans to be conveyed to the Trust Depositor by the Seller in connection with the acquisition of such Additional Loan, the Seller hereby sells, transfers, assigns, sets over and otherwise conveys to the Trust Depositor, without recourse other than as expressly provided herein (and the Trust Depositor shall purchase through cash payment), all the right, title and interest of the Seller in and to the Additional Loans and Related Property.

(c) Subject to Sections 2.01(d) and (e), the Trust Depositor shall sell, transfer, assign, set over and otherwise convey to the Issuer, without recourse other than as expressly provided herein and therein, (i) all the right, title and interest of the Trust Depositor in and to the Additional Loans and (ii) all other Related Property related to such Additional Loans (the property in clauses (i) and (ii) above, upon such transfer, becoming part of the Collateral).

(d) The Seller shall transfer to the Trust Depositor under the Sale and Contribution Agreement and the Trust Depositor shall transfer to the Issuer hereunder the applicable Additional Loans and Related Property only upon the satisfaction of each of the following conditions on or prior to the related Additional Loan Cutoff Date:

(i) such Additional Loan is a Qualified Additional Loan as of the date such Additional Loan is transferred to the Issuer;

(ii) the Trust Depositor shall have provided the Issuer and the Trustee with timely notice of such acquisition, which shall be delivered no later than 11:00 a.m. on the related Additional Loan Cutoff Date;

(iii) the Seller and the Trust Depositor shall have delivered to the Issuer and the Trustee a Subsequent List of Loans listing the applicable Additional Loans and an assignment agreement as required by the related Underlying Loan Agreement indicating that the Issuer is the holder of the related Additional Loan;

(iv) the Seller shall have deposited or caused to be deposited in the Collection Account all Collections received by it with respect to the applicable Additional Loans on and after the related Additional Loan Cutoff Date;

(v) each of the representations and warranties made by the Trust Depositor pursuant to Sections 3.02 and 3.04 applicable to the Additional Loans shall be true and correct as of the related Additional Loan Cutoff Date;

(vi) the Seller shall bear all incidental transactions costs incurred in connection with an acquisition of Additional Loans effected pursuant to this Agreement and shall, at its own expense, on or prior to the related Additional Loan Cutoff Date, indicate in its Computer Records that ownership of each Additional Loan identified on the Additional List of Loans has been sold by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer pursuant to the Transfer and Servicing Agreements; and

(vii) if such Additional Loan is a Co-Agented Loans or a Third-Party Agented Loan, the Servicer shall have notified and directed each of Hercules's co-lenders under such Substitute Loan that receive payments on behalf of the Seller, to transfer such payments received from the Obligors with respect to such Substitute Loan either (A) to the Lockbox Account or (B) following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, to the Master Collection Account, in either case, within one (1) business day of receipt of such payments by such co-lender.

(e) The Issuer's acquisition of Split Loans will be subject to the satisfaction of the following conditions:

(i) on or prior to the Transfer Date on which the Issuer acquires any Split Loans:

(1) USBNA (or another Qualified Institution) shall have been designated as Split Loan Agent by the Issuer, the Servicer and the applicable Warehouse Lender and shall have accepted its appointment as such Split Loan Agent;

(2) the Issuer, the Servicer, the applicable Warehouse Lender, the Split Loan Agent, and acting at the direction of the Issuer, the Trustee, the Custodian and the Backup Servicer shall have implemented an arrangement with the applicable Warehouse Lender governing the

splitting of such Split Loans with the loans financed by the applicable Warehouse Lender pursuant to a Split Loan Intercreditor Agreement satisfying the requirements set forth in this Agreement;

(3) the Issuer (or the Servicer on its behalf) shall have instructed the Obligors under any such Split Loans acquired by the Issuer to make payments to the applicable Split Loan Account;

(4) the original loan files relating to any Split Loans shall have been delivered to the Split Loan Agent to be held by the Split Loan Agent (or its agent), as custodian, and as agent for the benefit of the applicable Warehouse Lender and the Issuer; and

(5) the Servicer shall serve as the sole administrative and/or collateral agent in respect of such Split Loan.

(ii) Collections received in respect of any Split Loans shall be swept on a daily basis by the Split Loan Agent (at the direction of the Servicer) or the Servicer, as applicable, to a subaccount held at the Split Loan Agent in the name of the Issuer and then swept on a daily basis by the Split Loan Agent to the Collection Account.

(f) The Issuer (or the Servicer on its behalf) shall deliver notice to the Rating Agency of the implementation of any Split Loan arrangement and the entry into any Split Loan Intercreditor Agreement.

Section 2.08. Release of Excluded Amounts.

(a) The parties hereto acknowledge and agree that the Issuer has no interest in the Excluded Amounts. The Trustee hereby agrees to release to the Issuer from the Loan Assets, and the Issuer hereby agrees to release to the Trust Depositor, any Excluded Amounts immediately upon identification thereof and upon receipt of an Officer's Certificate of the Servicer, which release shall be automatic and shall require no further act by the Trustee or the Issuer; *provided* that the Trustee and Issuer shall execute and deliver such instruments of release and assignment or other documents, or otherwise confirm the foregoing release, as may reasonably be requested by the Trust Depositor in writing. Such Excluded Amounts shall not constitute and shall not be included in the Loan Assets.

(b) Immediately upon the release to the Trust Depositor by the Trustee of any Excluded Amounts, the Trust Depositor hereby irrevocably agrees to release to the Seller such Excluded Amounts, which release shall be automatic and shall require no further act by the Trust Depositor; *provided* that the Trust Depositor shall execute and deliver such instruments of release and assignment or other documents, or otherwise confirm the foregoing release of such Excluded Amounts, as may be reasonably requested by the Seller in writing.

Section 2.09. Delivery of Documents in the Loan File.

(a) Subject to the delivery requirements set forth in Section 2.09(b), the Issuer hereby authorizes and directs the Seller and the Trust Depositor to deliver possession of all the Loan Files to the Custodian on the Trustee's behalf (with copies to be held by the Servicer), on behalf of and for the account of the Noteholders. The Seller and the Trust Depositor shall also identify on the List of Loans (including any deemed amendment thereof associated with any Additional Loans or Substitute Loans), whether by attached schedule or marking or other effective identifying designation, all Loans that are evidenced by such instruments.

(b) With respect to each Loan in the Collateral, (i) on or prior to the Closing Date in the case of the Initial Loans and two (2) Business Days before the related Additional Loan Cutoff Date in the case of any Additional Loan or the Substitute Loan Cutoff Date in the case of any Substitute Loans (or, in each case, such lesser

time as shall be acceptable to the Custodian), the Trust Depositor or the Seller will deliver or cause to be delivered to the Custodian on the Trustee's behalf, to the extent not previously delivered, each of the Required Loan Documents with respect to such Loan (including electronic copies except to the extent required under the definition of Required Loan Documents or noted on Annex A to the List of Loans); and (ii) on or before the Closing Date in the case of the Initial Loans and on or before the related Additional Loan Cutoff Date in the case of any Additional Loan or the related Substitute Loan Cutoff Date in the case of any Substitute Loan (or, in each case, such lesser time as shall be acceptable to the Custodian), the Trust Depositor or the Seller will deliver or cause to be delivered to the Custodian on the Trustee's behalf, to the extent not previously delivered, each of the documents in the Loan File that is not part of the Required Loan Documents with respect to such Loan (including electronic copies except to the extent noted on Annex A to the List of Loans).

Section 2.10. Limitations on Optional Sale and Substitution.

In no event may (a) the aggregate Outstanding Loan Balance of Delinquent Loans and Restructured Loans optionally sold or substituted by the Issuer hereunder for any reason exceed 7.5% (rounded to the nearest tenth of a percent) of the sum of (i) the Aggregate Outstanding Loan Balance as of the Cutoff Date (the "Cutoff Date Pool Balance") *plus* (ii) the sum of the Outstanding Loan Balance of each Additional Loan acquired by the Issuer after the Closing Date (determined as of the date such Additional Loan is acquired by the Issuer), subject to the limitation in clause (c) below on aggregate optional sales and substitutions with respect to all of the Loans, (b) the aggregate Outstanding Loan Balance of Defaulted Loans sold or substituted by the Issuer exceed 7.5% (rounded to the nearest tenth of a percent) of the sum of (i) the Cutoff Date Pool Balance *plus* (ii) the sum of the Outstanding Loan Balance of each Additional Loan acquired by the Issuer after the Closing Date (determined as of the date such Additional Loan is acquired by the Issuer), subject to the limitation in clause (c) below on aggregate optional sales and substitutions with respect to all of the Loans, or (c) the aggregate Outstanding Loan Balance of all Loans (including any Delinquent Loans, Restructured Loans or Defaulted Loans optionally sold or substituted as described above) optionally sold or substituted by the Issuer for any reason exceed 15% (rounded to the nearest whole number) of the sum of (i) the Cutoff Date Pool Balance *plus* (ii) the sum of the Outstanding Loan Balance of each Additional Loan acquired by the Issuer after the Closing Date (determined as of the date such Additional Loan is acquired by the Issuer). The foregoing limitations shall not apply to sales to unaffiliated third parties of (i) Delinquent Loans, Restructured Loans or Defaulted Loans where the Issuer (or the Servicer on its behalf) has determined in good faith that the best recovery for such Loan is the sale thereof, (ii) a Loan which is subject to contractual purchase rights of unaffiliated third parties and such unaffiliated third party has exercised such right and (iii) a Loan which is being refinanced and the related Obligor or new lender has requested that such Loan be sold to an unaffiliated third party for the purpose of refinancing such Loan. For the purpose of calculating the percentage of the Cutoff Date Pool Balance comprising Loans that are optionally sold or substituted as described above, any Substitute Loans that have been placed into the Collateral in satisfaction of the Trust Depositor's obligations to repurchase or substitute Loans pursuant to Section 11.01 shall be disregarded.

Section 2.11. Certification by Custodian; Possession of Loan Files.

(a) Review; Certification. On or prior to the date that is two (2) Business Days after the Closing Date (in the case of the Initial Loans), the related Additional Loan Cutoff Date (in the case of any Additional Loans) or the related Substitute Loan Cutoff Date (in the case of any Substitute Loans), the Custodian shall review the Required Loan Documents in the Loan File that are required to be delivered pursuant to Section 2.09(b) on the Closing Date (in the case of the Initial Loans), the related Additional Loan Cutoff Date (in the case of any Additional Loans) or the related Substitute Loan Cutoff Date (in the case of any Substitute Loans), and shall deliver to the Seller, the Trust Depositor, the Trustee, and the Servicer a certification with respect to the Required Loan Documents delivered to it at such time in the form attached hereto as Exhibit L-1 on or prior to the date that is two (2) Business Days after the Closing Date (in the case of the Initial Loans), the related Additional Loan Cutoff Date (in the case of any Additional Loans) or the related Substitute Loan Cutoff Date (in the case of any Substitute Loans). Within two (2) Business Days after the Custodian receives the Required Loan Documents in the Loan File that are permitted, pursuant to Section 2.09(b), to be delivered after the related Additional Loan Cutoff Date (in the case of any Additional Loans) or the related Substitute Loan Cutoff Date (in the case of any Substitute Loans), the Custodian shall deliver to the

Seller, the Trust Depositor, the Trustee and the Servicer a certification with respect to the Required Loan Documents delivered to it at such time in the form attached hereto as Exhibit L-1, which updated certification shall supplement any previous certification given. Within 360 days after the Closing Date (in the case of the Initial Loans), the related Additional Loan Cutoff Date (in the case of any Additional Loans) and the related Substitute Loan Cutoff Date (in the case of any Substitute Loans), the Custodian shall deliver to the Seller, the Servicer, the Trust Depositor, the Trustee and any Noteholder who requests a copy from the Trustee a final certification in the form attached hereto as Exhibit L-2. A copy of the final certification will be provided to any Noteholder upon request.

(b) Non-Conforming Loan Files. If the Custodian during the process of reviewing the Required Loan Documents in a Loan File finds any document constituting the Required Loan Documents that is not properly executed (if applicable), has not been received, is unrelated to a Loan identified in the List of Loans, or does not conform on its face in a material respect to the requirements of the definition of Required Loan Documents, or the description thereof as set forth in items (b)(i) and (ii) of the definition of List of Loans, the Custodian shall promptly so notify the Seller, the Trust Depositor and the Servicer in the form of an exception report attached to a certification required to be delivered pursuant to Section 2.11(a). In performing any such review, the Custodian may conclusively rely on the Seller as to the purported genuineness of any such document and any signature thereon. It is understood that the scope of the Custodian's review of the Loan Files is limited solely to confirming that the documents listed in the definition of Required Loan Documents have been executed and received and relate to the Loans identified in the List of Loans. The Seller agrees to use commercially reasonable efforts to remedy a defect in a document constituting part of a Loan File of which it is so notified by the Custodian in an exception report and which the Seller, the Trust Depositor or the Servicer has determined to be material in nature. If, however, within 30 days after the determination by the Seller (notice of which determination shall be provided to the Trust Depositor and the Servicer (with a copy to the Trustee and the Owner Trustee) or notice from the Trust Depositor or Servicer (with a copy to the Trustee and the Owner Trustee) that an exception is material, the Seller has not remedied the defect and such defect materially and adversely affects the value of the related Loan, such Loan will be treated as an Ineligible Loan and the Seller will (i) substitute in lieu of such Loan a Substitute Loan in the manner and subject to the conditions set forth in Section 11.01 or (ii) repurchase such Loan at a purchase price equal to the Transfer Deposit Amount, which purchase price shall be deposited in the Collection Account within such 30 day period. For the avoidance of doubt, neither the Trustee nor the Custodian shall be responsible for determining whether an item listed on an exception report constitutes a material defect or whether such defect materially and adversely affects the value of the related Loan or the interest of any Noteholder.

(c) Release of Entire Loan File upon Sale, Substitution or Repurchase. Subject to Section 5.08(a), upon receipt by the Custodian of a certification of a Servicing Officer of the Servicer of such substitution or of such purchase and the deposit of the amounts then required to be deposited as described in Section 2.05, Section 2.06, Section 2.11(b) or Section 11.01, as applicable, in the Collection Account (which certification shall be in the form of Exhibit M hereto), the Custodian shall release and ship to the Servicer for release to the Seller the related Loan File and, upon request, the Trustee and the Issuer shall execute, without recourse, and deliver such instruments of transfer necessary to transfer all right, title and interest in such Loan to the Seller free and clear of any Liens created by the Transaction Documents. All costs of any such transfer shall be borne by the Seller.

(d) Partial Release of Loan File and/or Related Property. Subject to Section 5.08(b), if in connection with taking any action in connection with a Loan (including, without limitation, the amendment to documents in the Loan File and/or a revision to Related Property) the Servicer requires any item constituting part of the Loan File, or the release from the Lien of the related Loan of all or part of any Related Property, the Servicer shall deliver to the Custodian a certificate to such effect in the form attached as Exhibit M hereto. Subject to Section 5.08(d), upon receipt of such certification, the Custodian shall ship for delivery to the Servicer within two (2) Business Days of such request (if such request was received by 2:00 p.m., central time), the requested documentation, and, upon request of the Servicer, the Trustee shall execute, without recourse, and deliver such instruments of transfer necessary to release all or the requested part of the Related Property from the Lien of the related Loan and/or the Lien under the Transaction Documents.

(e) Annual Certification. Within ninety (90) days of the beginning of each calendar year, commencing in 2023, the Custodian shall deliver to the Seller, the Trust Depositor and the Servicer a certification in the form of Exhibit K.

(f) Notwithstanding any language to the contrary herein, neither the Trustee nor the Custodian makes any representations as to, and shall not be responsible to verify, (i) the validity, legality, enforceability, due authorization, recordability, sufficiency for any purpose, or genuineness of any of the documents contained in each Loan File or (ii) the collectability, insurability, effectiveness or suitability of any such Loan Asset. In its review of documents and instruments pursuant to this Agreement, the Custodian and Trustee shall be under no duty or obligation to inspect, review or examine the Loan Files to determine that the contents thereof are genuine, enforceable or appropriate for the represented purpose or that they are other than what they purport to be on their face.

ARTICLE 3.

REPRESENTATIONS AND WARRANTIES

The Trust Depositor makes, and upon each conveyance of Additional Loans or Substitute Loans, as applicable, is deemed to make, the representations and warranties in Section 3.01 through Section 3.04, on which the Issuer will rely in purchasing the Initial Loan Assets on the Closing Date, any Additional Loan Assets on the relevant Additional Loan Cutoff Date and any Substitute Loan Assets on the relevant Substitute Loan Cutoff Date, and on which the Securityholders will rely.

Such representations and warranties are given as of the execution and delivery of this Agreement and as of the Closing Date (or Additional Loan Cutoff Date or Substitute Loan Cutoff Date, as applicable), but shall survive the sale, transfer and assignment of the Loan Assets to the Issuer. The repurchase obligation or substitution obligation of the Trust Depositor set forth in Section 11.01 constitutes the sole remedy available for a breach of a representation or warranty of the Trust Depositor set forth in Section 3.01 through Section 3.04 of this Agreement.

Section 3.01. Representations and Warranties Regarding the Trust Depositor.

The Trust Depositor represents and warrants to the Issuer and the Trustee that:

(a) Organization and Good Standing. The Trust Depositor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the power to own its assets and to transact the business in which it is currently engaged. The Trust Depositor is duly qualified to do business and is in good standing in each jurisdiction in which the character of the business transacted by it or properties owned or leased by it requires such qualification and in which the failure so to qualify would reasonably be expected to have a material adverse effect on the business, properties, assets, or condition (financial or otherwise) of the Trust Depositor or the Issuer.

(b) Authorization; Valid Sale; Binding Obligations. The Trust Depositor has the power and authority to make, execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party and all of the transactions contemplated under this Agreement and the other Transaction Documents to which it is a party, and to create the Issuer and cause it to make, execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which the Issuer is a party, and the Trust Depositor has taken all necessary limited liability company action to authorize the execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party. This Agreement shall effect a valid sale, transfer and assignment of or grant a security interest in the Loan Assets from the Trust Depositor to the Issuer. This Agreement and the other Transaction Documents to which the Trust Depositor is a party constitute the legal, valid and binding obligation of the Trust Depositor enforceable in accordance with their respective terms, except as enforcement of such terms may be limited by applicable Insolvency Laws and general principles of equity, whether considered in a suit at law or in equity.

(c) No Consent Required. The Trust Depositor is not required to obtain the consent of any other party (other than those that it has already obtained) or any consent, license, approval or authorization from, or registration or declaration with, any Governmental Authority (other than (i) the filing of UCC financing statements and (ii) those that it has already obtained) in connection with the execution, delivery, performance, validity or enforceability of this Agreement or the other Transaction Documents to which it is a party.

(d) No Violations. The execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party by the Trust Depositor, and the consummation of the transactions contemplated hereby and thereby, will not violate in any material respect any Applicable Law applicable to the Trust Depositor, or conflict with, result in a default under or constitute a breach of the Trust Depositor's organizational documents or material Contractual Obligations to which the Trust Depositor is a party or by which the Trust Depositor or any of the Trust Depositor's properties may be bound, or result in the creation or imposition of any Lien of any kind upon any of its properties pursuant to the terms of any such material Contractual Obligations, other than as contemplated by the Transaction Documents.

(e) Litigation. No litigation or administrative proceeding of or before any court, tribunal or governmental body is currently pending, or to the knowledge of the Trust Depositor threatened, against the Trust Depositor or any of its properties or with respect to this Agreement, the other Transaction Documents to which it is a party or the Securities (i) that, if adversely determined, would in the reasonable judgment of the Trust Depositor be expected to have a material adverse effect on the business, properties, assets or condition (financial or otherwise) of the Trust Depositor or the Issuer or the transactions contemplated by this Agreement or the other Transaction Documents to which the Trust Depositor is a party or (ii) seeking to adversely affect the federal income tax or other federal, state or local tax attributes of the Certificate or Notes.

(f) Solvency. The Trust Depositor, at the time of and after giving effect to each conveyance of Loan Assets hereunder, is Solvent on and as of the date thereof.

(g) Taxes. The Trust Depositor has filed or caused to be filed all tax returns which, to its knowledge, are required to be filed and has paid all taxes shown to be due and payable on such returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any amount of tax due, the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with generally accepted accounting principles have been provided on the books of the Trust Depositor); no tax Lien has been filed and, to the Trust Depositor's knowledge, no claim is being asserted, with respect to any such tax, fee or other charge.

(h) Place of Business; No Changes. The Trust Depositor's location (within the meaning of Article 9 of the UCC) is the State of Delaware. The Trust Depositor has not changed its name, whether by amendment of its certificate of formation, by reorganization or otherwise, and has not changed its location within the 4-months preceding the Closing Date.

(i) Not an Investment Company. The Trust Depositor is not and, after giving effect to the transactions contemplated by the Transaction Documents, will not be required to be registered as an "investment company" under the 1940 Act.

(j) Sale Treatment. Other than for accounting and tax purposes, the Trust Depositor has treated the transfer of Loan Assets to the Issuer for all purposes as a sale and purchase on all of its relevant books and records and other applicable documents.

(k) Security Interest.

(i) This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in favor of the Issuer in all right, title and interest of Trust Depositor in the Loan Assets, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from the Trust Depositor;

(ii) the Loans, along with the related Loan Files, constitute "general intangibles," "instruments," "accounts," "investment property," or "chattel paper," within the meaning of the applicable UCC;

(iii) the Trust Depositor owns and has, and upon the sale and transfer thereof by the Trust Depositor to the Issuer, the Issuer will have, good and marketable title to the Loan Assets free and clear of any Lien (other than Permitted Liens), claim or encumbrance of any Person;

(iv) the Trust Depositor has received all consents and approvals required by the terms of the Loan Assets to the sale of the Loan Assets hereunder to the Issuer;

(v) the Trust Depositor has caused the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Loan Assets granted to the Issuer under this Agreement to the extent perfection can be achieved by filing a financing statement;

(vi) other than the security interest granted to the Issuer pursuant to this Agreement, the Trust Depositor has not pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the Loan Assets. The Trust Depositor has not authorized the filing of and is not aware of any financing statements naming the Trust Depositor as debtor that include a description of collateral covering the Loan Assets other than any financing statement (A) relating to the security interest granted by the Trust Depositor under this Agreement, or (B) that has been terminated or for which a release or partial release has been filed. The Trust Depositor is not aware of the filing of any judgment or tax Lien filings against the Trust Depositor;

(vii) all original executed copies of each Underlying Note (if any) that constitute or evidence the Loan Assets have been delivered to the Trustee;

(viii) the Trust Depositor has received a written acknowledgment from the Trustee that the Trustee or its bailee is holding any Underlying Notes that constitute or evidence any Loan Assets solely on behalf of and for the benefit of the Securityholders; and

(ix) none of the Underlying Notes that constitute or evidence any Loan Assets has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Issuer and the Trustee.

(l) Value Given. The cash payments and the Certificate received by the Trust Depositor in respect of the purchase price of the Loan Assets sold hereunder constitute reasonably equivalent value in consideration for the transfer to the Issuer of such Loan Assets under this Agreement, such transfer was not made for or on account of an antecedent debt owed by the Seller to the Trust Depositor, and such transfer was not and is not voidable or subject to avoidance under any Insolvency Law.

(m) Investment Company. The Issuer is not and, after giving effect to the transactions contemplated by the Transaction Documents, will not be required to be registered as an "investment company" within the meaning of the 1940 Act.

(n) No Defaults. The Trust Depositor is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency, which default would reasonably be expected to have consequences that would materially and adversely affect the condition (financial or otherwise) or operations of the Trust Depositor or its respective properties or might have consequences that would materially and adversely affect its performance hereunder.

(o) Bulk Transfer Laws. The transfer, assignment and conveyance of the Loans by the Trust Depositor pursuant to this Agreement are not subject to the bulk transfer laws or any similar statutory provisions in effect in any applicable jurisdiction.

(p) Origination and Collection Practices. The origination and collection practices used by any Affiliate of the Trust Depositor with respect to each Loan have been consistent with the Servicing Standard and have complied with the Credit and Collection Policy in all material respects.

(q) [Reserved].

(r) Lack of Intent to Hinder, Delay or Defraud. Neither the Trust Depositor nor any of its Affiliates sold, or will sell, any interest in any Loan Asset with any intent to hinder, delay or defraud any of their respective creditors.

(s) Nonconsolidation. The Trust Depositor conducts its affairs such that the Issuer would not be substantively consolidated in the estate of the Trust Depositor and their respective separate existences would not be disregarded in the event of the Trust Depositor's bankruptcy.

(t) Accuracy of Information. All written factual information heretofore furnished by the Trust Depositor for purposes of or in connection with this Agreement or the other Transaction Documents to which Trust Depositor is a party, or any transaction contemplated hereby or thereby is, and all such written factual information hereafter furnished by the Trust Depositor to any party to the Transaction Documents will be, true and accurate in all material respects, on the date such information is stated or certified; *provided* that the Trust Depositor shall not be responsible for any factual information furnished to it by any third party not affiliated with it, or the Seller or the Servicer, except to the extent that a Responsible Officer of the Trust Depositor has actual knowledge that such factual information is inaccurate in any material respect.

The representations and warranties set forth in Section 3.01(k) may not be waived by any Person and shall survive the termination of this Agreement. The Trust Depositor and Issuer shall provide the Rating Agency with prompt written notice upon obtaining knowledge of any breach of the representations and warranties set out in Section 3.01(k).

Section 3.02. Representations and Warranties Regarding Each Loan and as to Certain Loans in the Aggregate.

The Trust Depositor represents and warrants as to each Initial Loan as of the Closing Date, as of each Additional Loan Cutoff Date with respect to each Additional Loan and as of each Substitute Loan Cutoff Date with respect to each Substitute Loan, that:

(a) List of Loans. The information set forth in the List of Loans attached hereto as Exhibit G (as the same may be amended or deemed amended in respect of a conveyance of Additional Loans on an Additional Loan Cutoff Date or Substitute Loans on a Substitute Loan Cutoff Date) is true, complete and correct as of the Closing Date and each Substitute Loan Cutoff Date, as applicable.

(b) Eligible Loan. Such Loan satisfies the criteria for the definition of Eligible Loan set forth in this Agreement as of the date of its conveyance hereunder.

Section 3.03. [Reserved].

Section 3.04. Representations and Warranties Regarding the Required Loan Documents.

The Trust Depositor represents and warrants on the Closing Date with respect to the Initial Loans (or as of the related Additional Loan Cutoff Date (with respect to Additional Loans) or as of the related Substitute Loan Cutoff Date (with respect to Substitute Loans), as applicable), that except as otherwise provided in Section 2.09, the Required Loan Documents and each other item included in the Loan File for each Loan are in the possession of the Trustee (or the Custodian, on behalf of the Trustee).

Section 3.05. [Reserved].

Section 3.06. Representations and Warranties Regarding the Servicer.

The initial Servicer represents and warrants to the Owner Trustee and the Trustee that:

(a) Organization and Good Standing. The Servicer is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has the power to own its assets and to transact the business in which it is currently engaged. The Servicer is duly qualified to do business and is in good standing in each jurisdiction in which the character of the business transacted by it or properties owned or leased by it requires such qualification and in which the failure so to qualify would have a material adverse effect on the business, properties, assets, or condition (financial or otherwise) of the Servicer or the Issuer. The Servicer is properly licensed in each jurisdiction to the extent required by the laws of such jurisdiction to service the Loans in accordance with the terms hereof and in which the failure to so qualify would reasonably be expected to have a material adverse effect on the business, properties, assets, or condition (financial or otherwise) of the Servicer or Issuer.

(b) Authorization; Binding Obligations. The Servicer has the power and authority to make, execute, deliver and perform this Agreement and the other Transaction Documents to which the Servicer is a party and all of the transactions contemplated under this Agreement and the other Transaction Documents to which the Servicer is a party, and has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and the other Transaction Documents to which the Servicer is a party. This Agreement and the other Transaction Documents to which the Servicer is a party constitute the legal, valid and binding obligations of the Servicer enforceable in accordance with their respective terms, except as enforcement of such terms may be limited by applicable Insolvency Laws and general principles of equity, whether considered in a suit at law or in equity.

(c) No Consent Required. The Servicer is not required to obtain the consent of any other party (other than those that it has already obtained) or any consent, license, approval or authorization from, or registration or declaration with, any Governmental Authority (other than those that it has already obtained) in connection with the execution, delivery, performance, validity or enforceability of this Agreement or the other Transaction Documents to which the Servicer is a party.

(d) No Violations. The execution, delivery and performance by the Servicer of this Agreement and the other Transaction Documents to which the Servicer is a party will not violate any Applicable Law applicable to the Servicer, or conflict with, result in a default under or constitute a breach of the Servicer's organizational documents or any material Contractual Obligations to which the Servicer is a party or by which the Servicer or any of the Servicer's properties may be bound, or result in the creation of or imposition of any Lien of any kind upon any of its properties pursuant to the terms of any such material Contractual Obligations, other than as contemplated by the Transaction Documents.

(e) Litigation. No litigation or administrative proceeding of or before any court, tribunal or governmental body is currently pending, or to the knowledge of the Servicer threatened, against the Servicer or any of its properties or with respect to this Agreement, or any other Transaction Document to which the Servicer is a party that, if adversely determined, would in the reasonable judgment of the Servicer be expected to have a material adverse effect on the business, properties, assets or condition (financial or otherwise) of the Servicer or the Issuer or the transactions contemplated by this Agreement or any other Transaction Document to which the Servicer is a party.

(f) Reports. All reports, certificates and other written information furnished by the Servicer with respect to the Loans are correct in all material respects on the date such information is furnished or certified; *provided* that the Servicer shall not be responsible for any information furnished to it by any third party not affiliated with the Servicer contained in any such reports, certificates or other written information, except to the extent that a Responsible Officer of the Servicer has actual knowledge that such factual information is inaccurate in any material respect.

Section 3.07. Representations of the Backup Servicer.

The Backup Servicer represents and warrants to the Owner Trustee and the Trustee that:

(a) Organization and Good Standing. The Backup Servicer has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with power, authority and legal right to own its properties and to conduct its business as such properties are currently owned and such business is currently conducted, and had at all relevant times, and now has, power, authority and legal right to enter into and perform its obligations under this Agreement;

(b) Due Qualification. The Backup Servicer is duly qualified to do business, is in good standing and has obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including the servicing of the Loans as required by this Agreement) requires or shall require such qualification;

(c) Power and Authority. The Backup Servicer has the power and authority to execute and deliver this Agreement and the other Transaction Documents to which the Backup Servicer is a party and to carry out its terms and their terms, respectively, and the execution, delivery and performance of this Agreement and the other Transaction Documents to which the Backup Servicer is a party have been duly authorized by the Backup Servicer by all necessary corporate action;

(d) Binding Obligation. This Agreement and the other Transaction Documents to which the Backup Servicer is a party shall constitute the legal, valid and binding obligations of the Backup Servicer enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and by equitable limitations on the availability of specific remedies, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the other Transaction Documents to which the Backup Servicer is a party, and the fulfillment of the terms of this Agreement and the other Transaction Documents to which the Backup Servicer is a party, shall not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time) a default under, the articles of incorporation or bylaws of the Backup Servicer, or any indenture, agreement, mortgage, deed of trust or other instrument to which the Backup Servicer is a party or by which it is bound, or result in the creation or imposition of any Lien upon any of its properties pursuant to the terms of any such indenture, agreement, mortgage, deed of trust or other instrument, other than this Agreement, or violate any law, order, rule or regulation applicable to the Backup Servicer of any court or of any federal or state regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Backup Servicer or any of its properties;

(f) No Proceedings. There are no proceedings or investigations pending or, to the Backup Servicer's knowledge, threatened against the Backup Servicer, before any court, regulatory body, administrative agency or other tribunal or governmental instrumentality having jurisdiction over the Backup Servicer or its properties (A) asserting the invalidity of this Agreement or any of the Transaction Documents to which the Backup Servicer is a party, (B) seeking to prevent the issuance of the Notes or the consummation of any of the transactions contemplated by this Agreement or any of the Transaction Documents to which the Backup Servicer is a party, (C) seeking any determination or ruling that would reasonably be expected to materially and adversely affect the performance by the Backup Servicer of its obligations under, or the validity or enforceability of, this Agreement or any of the Transaction Documents to which the Backup Servicer is a party or (D) seeking to adversely affect the federal income tax or other federal, state or local tax attributes of the Notes;

(g) No Consents. The Backup Servicer is not required to obtain the consent of any other party or any consent, license, approval or authorization, or registration or declaration with, any governmental authority, bureau or agency in connection with the execution, delivery, performance, validity or enforceability of this Agreement which has not already been obtained.

ARTICLE 4.

PERFECTION OF TRANSFER AND PROTECTION OF SECURITY INTERESTS

Section 4.01. Custody of Loans.

The contents of each Loan File shall be held in the custody of the Custodian (on behalf of the Trustee) under the Indenture for the benefit of, and as agent for, the Securityholders.

Section 4.02. Filing.

On the Closing Date, the Seller, Trust Depositor and Servicer shall cause the UCC financing statement(s) referred to in Section 2.02(h) hereof to be filed, and from time to time the Servicer, on behalf of the Issuer, shall take and cause to be taken such actions and execute such documents as are necessary or desirable or as the Owner Trustee (acting at the direction of the Certificateholder) or Trustee (acting at the direction of the Majority Noteholders) may reasonably request to perfect and protect the Trustee's first priority perfected security interest in the Loan Assets against all other Persons, including, without limitation, the filing of financing statements, amendments thereto and continuation statements, the execution of transfer instruments and the making of notations on or taking possession of all records or documents of title. Notwithstanding the obligations of the Seller, Trust Depositor and Servicer set forth in the preceding sentence, the Issuer hereby authorizes the Servicer to prepare and file, at the expense of the initial Servicer, such UCC financing statements (including but not limited to renewal, continuation or in lieu statements) and amendments or supplements thereto or other instruments as the Servicer may from time to time deem necessary or appropriate in order to perfect and maintain the security interest granted hereunder in accordance with the UCC.

Section 4.03. Changes in Name, Organizational Structure or Location.

(a) During the term of this Agreement, none of the Seller, the Servicer, the Trust Depositor or the Issuer shall change its name, form of organization, existence, state of formation or location without first giving at least 30 days' prior written notice to the other parties hereto and the Owner Trustee.

(b) If any change in either the Servicer's, the Seller's or the Trust Depositor's name, form of organization, existence, state of formation, location or other action would make any financing or continuation statement or notice of ownership interest or Lien relating to any Loan Asset seriously misleading within the meaning of applicable provisions of the UCC or any title statute, the Servicer, no later than ten (10) Business Days after the

effective date of such change, shall file such amendments as may be required (including, but not limited to, any filings and other acts necessary or advisable under the UCC of each relevant jurisdiction) to preserve and protect the Trustee's security interest in the Loan Assets and the proceeds thereof.

Section 4.04. Costs and Expenses.

The initial Servicer agrees to pay all reasonable costs and disbursements in connection with the perfection and the maintenance of perfection, as against all third parties, of the Trustees' and Issuer's right, title and interest in and to the Loan Assets (including, without limitation, the security interest in the Related Property related thereto and the security interests provided for in the Indenture); *provided* that to the extent permitted by the Required Loan Documents, the Servicer may seek reimbursement for such costs and disbursements from the related Obligors.

Section 4.05. Sale Treatment.

Other than for accounting and tax purposes, the Trust Depositor shall treat the transfer of Loan Assets made hereunder for all purposes as a sale and purchase on all of its relevant books and records.

Section 4.06. Separateness from Trust Depositor.

The Seller agrees to take or refrain from taking or engaging in with respect to the Trust Depositor each of the actions or activities specified in the "substantive consolidation" opinion of Dechert LLP (including any certificates of the Seller delivered in connection therewith) delivered on the Closing Date, upon which the conclusions therein are based.

ARTICLE 5.

SERVICING OF LOANS

Section 5.01. Appointment and Acceptance.

(a) Hercules is hereby appointed as Servicer pursuant to this Agreement and pursuant to the other Transaction Documents under which the Servicer has any rights, duties or obligations. Hercules accepts such appointment and agrees to act as the Servicer pursuant to this Agreement and pursuant to the other Transaction Documents under which Hercules, as Servicer, has any rights, duties or obligations.

(b) U.S. Bank National Association is hereby appointed as Backup Servicer pursuant to this Agreement and pursuant to the other Transaction Documents under which the Backup Servicer has any rights, duties or obligations. U.S. Bank National Association hereby accepts such appointment and agrees to act as the Backup Servicer pursuant to this Agreement and pursuant to the other Transaction Documents under which U.S. Bank National Association, as Backup Servicer, has any rights, duties or obligations, subject to the terms of this Agreement. If the Backup Servicer consolidates with, merges or converts into another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Backup Servicer.

Section 5.02. Duties of the Servicer and the Backup Servicer.

(a) The Servicer, as an independent contract servicer, shall service and administer the Loans (including, with respect to Agented Loans, Co-Agented Loans and Third Party Agented Loans, the Issuer's interest as a lender thereunder) and shall have full power and authority, acting alone, to do any and all things in connection with such servicing and administration which the Servicer may deem necessary or desirable and consistent with the terms of this Agreement, the Credit and Collection Policy and the Servicing Standard and the Issuer's rights under the applicable Underlying Loan Agreements. The parties hereto each acknowledge, and the Noteholders and the

Certificateholder are hereby deemed to acknowledge, that the Servicer, as Servicer under this Agreement, possesses only such rights with respect to the enforcement of rights and remedies with respect to the Loans and the Related Property and under the Required Loan Documents as those which have been transferred to the Issuer with respect to the related Loan. Therefore, the provisions of this Article V shall not apply to Third Party Agented Loans or Participated Loans except to the extent the Servicer, on behalf of the Issuer, has the right to vote, consent, give directions, make advances or receive payments with respect thereto, and these provisions shall only apply to Agented Loans and Co-Agented Loans with respect to which the Servicer is the lead agent and to the extent not inconsistent with the related Required Loan Documents.

(b) The Servicer may perform its duties directly or, consistent with the Servicing Standard, through agents, accountants, experts, attorneys, brokers, consultants or nominees selected with reasonable care by the Servicer. The Servicer will remain fully responsible and fully liable for its duties and obligations hereunder and under any other Transaction Document notwithstanding any such delegation to a third party. Performance by any such third party of any of the duties of the Servicer hereunder or under any other Transaction Document shall be deemed to be performance thereof by the Servicer. In addition, the Servicer may enter into Subservicing Agreements for any servicing and administration of Loans with any entity; *provided* that for any Subservicing Agreement that delegates all or substantially all of the Servicer's duties hereunder, the Holders of 100% of the Notes shall have consented in writing to such Subservicing Agreement and the Servicer shall have provided the Rating Agency with written notice of such Subservicing Agreement; *provided*, *further*, that the Backup Servicer shall not be required to obtain such consent if, after such time as the Backup Servicer shall have become the Servicer hereunder, it shall enter into a Subservicing Agreement that delegates all or substantially all of the Servicer's duties hereunder. The Servicer shall be entitled to terminate any Subservicing Agreement in accordance with the terms and conditions of such Subservicing Agreement and to either itself directly service the related Loans or enter into a Subservicing Agreement with a successor Subservicer as permitted in this clause (b); *provided* that the Servicer shall promptly notify the Rating Agency of the termination of any Subservicing Agreement that had delegated all or substantially all of the Servicer's duties hereunder. Notwithstanding any Subservicing Agreement, any of the provisions of this Agreement relating to agreements or arrangements between the Servicer and a Subservicer or referencing actions taken through a Subservicer or otherwise, so long as this Agreement shall remain effective, the Servicer shall remain obligated and primarily liable to the Trustee, for the benefit of Holders and on behalf of the Issuer, for the servicing and administering of the Loans in accordance with the provisions of this Agreement, the Credit and Collection Policy and the Servicing Standard, without diminution of such obligation or liability by virtue of such Subservicing Agreements or other arrangements with third parties pursuant to this clause (b) or by virtue of indemnification from the Subservicer and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Loans. For purposes of this Agreement, the Servicer shall be deemed to have received payments on Loans when any Subservicer has received such payments. The Servicer shall be entitled to enter into any agreement with a Subservicer for indemnification of the Servicer by such Subservicer, and nothing contained in this Agreement shall be deemed to limit or modify such indemnification.

(c) Any Subservicing Agreement that may be entered into and any transactions or services relating to the Loans involving a Subservicer in its capacity as such and not as an originator shall be deemed to be between the Subservicer and the Servicer alone, and the Trustee and the Securityholders shall not be deemed parties thereto and shall have no claims, rights, obligations, duties or liabilities with respect to the Subservicer except as set forth in Section 5.02(d). Notwithstanding the foregoing, the Servicer shall (i) at its expense and without reimbursement, deliver to the Trustee a copy of each Subservicing Agreement and (ii) provide notice of the termination of any Subservicer within a reasonable time after such Subservicer's termination to the Trustee.

(d) In the event the initial Servicer shall for any reason no longer be the Servicer, the initial Servicer at its expense and without right of reimbursement therefor, shall, upon request of the Trustee, deliver to the Backup Servicer or other Successor Servicer all documents and records (including computer tapes and diskettes) in its possession relating to each Subservicing Agreement and the Loans then being serviced hereunder and an accounting of amounts collected and held by it hereunder and otherwise use its best efforts to effect the orderly and efficient transfer of the Subservicing Agreements and of any other arrangements with third parties pursuant to clause (a) of this

Section 5.02 to the Backup Servicer or other Successor Servicer to the extent permitted thereby; provided, further that, if the Backup Servicer is the successor Servicer, then such Subservicing Agreements shall, to the extent permitted under such Subservicing Agreements, by assigned to the Issuer or terminated, at the election of the Issuer, if the relevant sub-servicer is not an approved vendor of the Backup Servicer.

(e) Modifications and Waivers Relating to Loans.

(i) So long as it is consistent with the Credit and Collection Policy and the Servicing Standard, the Servicer may agree to waive, modify or vary any term of any Loan, if in the Servicer's determination such waiver, modification or variance will not be materially adverse to the interests of the Noteholders; *provided* that the Servicer may not:

(1) agree to amend, waive, modify or vary any Loan in any manner that would extend the stated maturity date of such Loan beyond the Legal Final Payment Date; or

(2) enter into any amendment, waiver, modification or variance with respect to any Loan solely in order to render such Loan eligible for repurchase or substitution hereunder.

(ii) Except as expressly set forth in Section 5.02(e)(i), the Servicer may execute any amendments, waivers, modifications or variances related to such Loan and any documents related thereto on behalf of the Issuer.

(iii) [Reserved].

(iv) Although costs incurred by the Servicer or any Subservicer in respect of Servicing Advances, including any interest owed with respect thereto, may be added to the amount owing by the Obligor under the related Loan, such amounts shall not be so added for the purposes of calculating distributions to Noteholders. Any fees and costs imposed in connection therewith on the Obligor of the related Loan, and any reimbursement of Servicing Advances by any Obligor or out of Sale Proceeds, Liquidation Proceeds or Insurance Proceeds, in each case, received with respect to the related Loan or its Related Property shall be withdrawn and payable to the Servicer from the Collection Account pursuant to Section 7.03(h) as additional servicing compensation or reimbursement, as applicable. Without limiting the generality of the foregoing, so long as it is consistent with the Credit and Collection Policy and the Servicing Standard, the Servicer shall continue, and is hereby authorized and empowered to execute and deliver on behalf of the Issuer, the Trustee and each Securityholder, all instruments of amendment, waiver, satisfaction or cancellation, or of partial or full release, discharge and all other comparable instruments, with respect to the Loans and with respect to any Related Property. Such authority shall include, but not be limited to, the authority to substitute or release items of Related Property consistent with the Credit and Collection Policy and the Servicing Agreement and sell Loans previously transferred to the Issuer. The Issuer and the Trustee have granted a power of attorney to the Servicer with respect thereto, pursuant to Section 5.02(t). In connection with any such sale, the Servicer shall deposit in the Collection Account, pursuant to Section 7.03(b), all proceeds received upon such sale (other than Excluded Amounts). If reasonably required by the Servicer, the Issuer and the Trustee shall furnish the Servicer, within five (5) Business Days of receipt of the Servicer's request, with any powers of attorney and other documents necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties under this Agreement or under any of the other Transaction Documents. Any such request by the Servicer to the Issuer or the Trustee shall be accompanied by a certification in the form of Exhibit F attached hereto signed by a Servicing Officer. In connection with any substitution of Related Property, the Servicer shall deliver to the Trustee the items required by, and within the time frame set forth in, Section 2.09, assuming that the date of substitution is the relevant Substitute Loan Cutoff Date.

(v) The Servicer will not be in breach of its obligations under this Agreement by reason of any waiver, modification or variance taken by the administrative agent, syndicate agent or other Person acting in a similar capacity in respect of a Third Party Agented Loan or Participated Loan pursuant to its own authority or in respect of an Agented Loan, Co-Agented Loan or Third Party Agented Loan at the direction of the requisite percentage of the lenders in violation of this Agreement if the Servicer, acting on behalf of the Issuer, did not consent to such waiver, modification or variance on behalf of the Issuer.

(f) The Servicer shall service and administer the Loans (including collection, foreclosure, foreclosed property and repossessed collateral management procedures other than for Third Party Agented Loans and Participated Loans, and with respect to Third Party Agented Loans and Participated Loans, the Issuer's interest as a lender or purchaser thereunder) in accordance with the Required Loan Documents and other documents in the Loan File, the Credit and Collection Policy and the Servicing Standard.

(g) In accordance with the power set forth in Section 2.01(a), the initial Servicer shall perform the duties of the Issuer under the Transaction Documents. In furtherance of the foregoing, the initial Servicer shall consult with the Owner Trustee as the Servicer deems appropriate regarding the duties of the Issuer under the Transaction Documents. The initial Servicer shall monitor the performance of the Issuer and the Owner Trustee of their respective duties under the Transaction Documents and shall advise the Owner Trustee when action is necessary to comply with the Issuer's or the Owner Trustee's duties under the Transaction Documents. The initial Servicer shall prepare for execution by the Owner Trustee or the Issuer or shall cause the preparation by other appropriate Persons of all such documents, reports, filings, instruments, certificates and opinions as it shall be the duty of the Issuer or the Owner Trustee to prepare, file or deliver pursuant to the Transaction Documents.

(h) In addition to the duties of the Servicer set forth in this Agreement or any of the Transaction Documents, the initial Servicer shall perform or shall cause to be performed such calculations and shall prepare for execution by the Issuer or the Owner Trustee or shall cause the preparation by other appropriate Persons of all such documents, reports, filings, instruments, certificates and opinions as it shall be the duty of the Issuer to prepare, file or deliver pursuant to state and federal tax and securities laws. In accordance with the directions of the Issuer or the Owner Trustee, as applicable, the initial Servicer shall administer, perform or supervise the performance of such other activities in connection with the Issuer as are not covered by any of the foregoing provisions and as are expressly requested by the Issuer or the Owner Trustee and are reasonably within the capability of the Servicer. The Servicer is hereby authorized to execute documents, instruments and certificates on behalf of the Issuer.

(i) Notwithstanding anything in this Agreement or any of the Transaction Documents to the contrary, the Servicer shall be responsible for promptly (upon a Responsible Officer of the Servicer having actual knowledge thereof) notifying the Owner Trustee and the Trustee in the event that any withholding tax is imposed on the Issuer's payments (or allocations of income) to a Securityholder. Any such notice shall be in writing and specify the amount of any withholding tax required to be withheld by the Owner Trustee or the Trustee pursuant to such provision.

(j) All tax returns required to be signed by the Issuer, if any, will be signed by the Servicer (so long as the Servicer is the Seller) on behalf of the Issuer if permitted under applicable law and otherwise by the Owner Trustee on behalf of the Issuer.

(k) The Servicer shall maintain appropriate books of account and records relating to services performed under this Agreement, which books of account and records shall be reasonably accessible for inspection by the Owner Trustee and Trustee at any time during the Servicer's normal business hours upon not less than three (3) Business Days' prior written notice.

(l) The initial Servicer shall provide written notice to the Rating Agency, the Backup Servicer and the Trustee of any change to the Servicing Standard and any material adverse change to the Credit and Collection Policy.

(m) For so long as any of the Notes are outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) of the Securities Act, (i) the initial Servicer will provide or cause to be provided to any holder of such Notes and any prospective purchaser thereof designated by such holder, upon the request of such a holder or prospective purchaser, the information required to be provided to such holder or prospective purchaser by Rule 144A(d)(4) under the Securities Act; and (ii) the initial Servicer shall update such information from time to time in order to prevent such information from becoming false and misleading and will take such other actions as are necessary to ensure that the safe harbor exemption from the registration requirements of the Securities Act under Rule 144A is and will be available for resales of such Notes conducted in accordance with Rule 144A.

(n) The initial Servicer will keep in full force and effect its existence, rights and franchise as a Maryland corporation, and the Servicer shall obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement and of any of the Loans and to perform its duties under this Agreement.

(o) The Servicer shall be entitled to reimbursement for any Servicing Advances or Scheduled Payment Advances from Collections. Notwithstanding anything contained herein to the contrary, in no event shall the application of Scheduled Payment Advances prevent a Loan from being or becoming a Defaulted Loan.

(p) The Servicer shall not be responsible for any taxes payable by the Issuer or any Servicing Fees payable to any Successor Servicer.

(q) All payments received on Loans by the Servicer will be applied by the Servicer to amounts due by each Obligor in accordance with the provisions of the related Required Loan Documents or, if to be applied at the discretion of the Servicer, then consistent with the Credit and Collection Policy and the Servicing Standard.

(r) To the extent permitted by applicable law, the initial Servicer shall be responsible for any tax reporting, disclosure, record keeping or list maintenance requirements of the Issuer under Code Sections 6011(a), 6111 or 6112, including, but not limited to, the preparation of IRS Form 8886 pursuant to Treasury Regulations Section 1.6011-4(d) or any successor provision and any required list maintenance under Treasury Regulations Section 301.6112-1 or any successor provision.

(s) The Servicer will maintain the Servicing Files at the principal place of business of the Servicer at the address set forth in Section 13.04 hereof in accordance with the Servicing Standard.

(t) The Trust Depositor, the Issuer and the Trustee each hereby irrevocably (except as provided below) appoint the Servicer its respective true and lawful agent and attorney-in-fact (with full power of substitution) in its name, place and stead and at the Issuer's expense, in connection with the performance of the Servicer's duties provided for in this Agreement and in the other Transaction Documents, including the following powers: (a) to give any necessary receipts or acquittance for amounts collected or received on or with respect to the Loans and the Related Property, (b) to make all necessary transfers of the Loans, and/or of the Related Property, as applicable, in accordance herewith and therewith, (c) to execute (under hand under seal or as a deed) and deliver all necessary or appropriate bills of sale, assignments, agreements and other instruments and endorsements in connection with any such transfer, and (d) to execute (under hand, under seal or as a deed) any votes, consents, directions, releases, amendments, waivers, satisfactions and cancellations, agreements, instruments, orders or other documents or certificates in connection with or pursuant to this Agreement or the other Transaction Documents relating thereto or to the duties of the Servicer hereunder or thereunder, the Trust Depositor, the Issuer and the Trustee hereby ratifying and confirming all that such attorney-in-fact (or any substitute) shall lawfully do under this power of attorney and in accordance with this

Agreement and the other Transaction Documents as applicable thereto. Nevertheless, if so requested by the Servicer, the Trust Depositor, the Issuer and the Trustee or any thereof, as requested, shall ratify and confirm any such act by executing and delivering to the Servicer or as directed by the Servicer all proper bills of sale, assignments, releases, endorsements and other certificates, instruments and documents of whatever nature as may reasonably be designated in any such request. This power of attorney shall, however, expire, and the Servicer and any substitute agent or attorney-in-fact appointed by the Servicer pursuant hereto shall cease to have any power to act as the agent or attorney-in-fact of the Trust Depositor, the Issuer or of the Trustee upon termination of this Agreement or upon a Servicer Transfer from and after which the Successor Servicer shall be deemed to have the rights of the Servicer pursuant to this clause (t).

(u) The Servicer shall execute and file such financing statements and cause to be executed and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve, maintain and protect the interest of the Issuer, the Securityholders, the Trustee and the Owner Trustee in the Loans and in the proceeds thereof. The Servicer shall deliver (or cause to be delivered) to the Owner Trustee and the Trustee file-stamped copies of, or filing receipts for, any document filed as provided above, as soon as available following such filing.

(v) The Servicer shall provide the Backup Servicer with a list of attorneys used in servicing or collecting on the Loans and shall provide an updated list to the Backup Servicer on an annual basis.

(w) Notwithstanding any other provision of this Agreement, if any material conflict or material inconsistency exists among the Required Loan Documents, the Credit and Collection Policy and the Servicing Standard, the provisions of the Required Loan Documents shall control.

(x) As set forth in and subject to the provisions of Article VIII, in the event the Servicer fails to perform its obligations hereunder, the Backup Servicer, should it assume the role of Successor Servicer, shall be responsible for the Servicer's duties in this Agreement as if it were the Servicer, provided that the Backup Servicer shall not be liable for the Servicer's breach of its obligations.

(y) The Backup Servicer shall receive a one-time fee of $125,000 ("the "Successor Servicer Engagement Fee") if it assumes the obligations of the Servicer hereunder.

(z) The Backup Servicer shall have the following duties: (i) within 90 days of the Closing Date and receipt of a complete data set from the Servicer, the Backup Servicer shall have completed all data-mapping and (ii) not more than once per year, the Backup Servicer shall update or amend the data-mapping by effecting a data-map refresh upon receipt of written notice from the Servicer specifying updated or amended fields, if any, in (a) fields in the Tape or (b) fields confirmed in the original data-mapping referred to in clause (i) above. The Backup Servicer shall have the right but not the obligation to periodic on-site visits not more than once every 12 months to meet with appropriate operations personnel to discuss any changes in processes and procedures that have occurred since the last visit. Each on-site visit shall be at the cost of Hercules.

Section 5.03. Liquidation of Loans.

(a) In the event that any payment due under any Loan and not postponed pursuant to Section 5.02 is not paid when the same becomes due and payable, or in the event the Obligor fails to perform any other covenant or obligation under the Loan which results in an event of default thereunder, the Servicer in accordance with the Required Loan Documents, the Credit and Collection Policy and the Servicing Standard shall take such commercially reasonable action as shall maximize the amount of recovery thereon and as the Servicer shall deem to be in the best interests of the Issuer; *provided* that if such Loan is an Agented Loan, Co-Agented Loan or a Third Party Agented Loan, the Servicer's obligations shall be limited to exercising the Issuer's rights thereunder; *provided*, *further*, that in

lieu of taking such action, the Servicer, consistent with its Credit and Collection Policy and the Servicing Standard, may amend or modify such Loan.

(b) The Servicer will not be in breach of its obligations under this Section 5.03 by reason of any action taken by the administrative agent, syndicate agent or other Person acting in a similar capacity in respect of a Third Party Agented Loan or a Participated Loan pursuant to its own authority or in respect of an Agented Loan, Co-Agented Loan, Third Party Agented Loan or Participated Loan at the direction of the requisite percentage of the lenders in violation of this Agreement if the Servicer, acting on behalf of the Issuer, did not consent to such action on behalf of the Issuer. The Servicer, consistent with its Credit and Collection Policy and the Servicing Standard, may accelerate all payments due under any Loan to the extent permitted by the Required Loan Documents and foreclose upon at a public or private sale or otherwise comparably effect the ownership of Related Property relating to Defaulted Loans for which the related Loan is still outstanding and as to which no satisfactory arrangements can be made for collection of delinquent payments in accordance with the provisions of Section 5.10 nor satisfactory amendment or modification is made in accordance with Section 5.03(a). Subject to applicable law, the Servicer shall act, or shall engage an experienced Person qualified to act, as sales and processing agent for the Related Property that is foreclosed upon. In connection with such foreclosure or other conversion and any other liquidation action or enforcement of remedies, the Servicer shall exercise collection and foreclosure procedures in accordance with the Credit and Collection Policy and the Servicing Standard. Any sale of the Related Property is to be evidenced by a certificate of a Responsible Officer of the Servicer delivered to the Trustee setting forth the Loan, the Related Property, the sale price of the Related Property and certifying that such sale price is the fair market value of such Related Property. In any case in which any such Related Property has suffered damage, the Servicer will not expend funds in connection with any repair or toward the repossession of such Related Property unless it reasonably determines that such repair and/or repossession will increase the Liquidation Proceeds by an amount greater than the amount of such expenses.

(c) No later than two (2) Business Days following its receipt thereof, the Servicer will remit to the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, for subsequent deposit, in either case, to the Collection Account, the Liquidation Proceeds and any Insurance Proceeds received in connection with the sale or disposition of Related Property relating to a Defaulted Loan.

(d) After a Loan has been liquidated, the Servicer shall promptly prepare and forward to the Trustee and upon request, any Securityholder, a report (the "Liquidation Report"), in the form attached hereto as Exhibit D, detailing the Liquidation Proceeds received from such Loan, the Liquidation Expenses incurred and reimbursed to the Servicer with respect thereto, any Scheduled Payment Advances and Servicing Advances, together with interest due thereon, reimbursed to the Servicer therefrom, any loss incurred in connection therewith, and any Nonrecoverable Advances to be reimbursed to the Servicer with respect thereto in accordance with the Priority of Payments in Section 7.06.

Section 5.04. [Reserved.]

Section 5.05. Maintenance of Insurance.

In connection with its activities as Servicer of the Loans, the Servicer agrees to present claims to the insurer under any applicable Insurance Policy (other than with respect to Third Party Agented Loans) and, with respect to any Foreclosed Property, any applicable general liability policy, and to settle, adjust and compromise such claims, in each case, consistent with the terms of the Required Loan Documents, the Credit and Collection Policy and the Servicing Standard. Any amounts collected by the Servicer under any such Insurance Policies in respect of the related Loan (other than amounts to be applied to the restoration or repair of the Related Property or amounts to be released to the Obligor or other creditors or Persons in accordance with Applicable Law, the Required Loan Documents, the Credit and Collection Policy and the Servicing Standard) shall be deposited in the Collection Account, subject to withdrawal pursuant to Section 7.03(h).

Section 5.06. Collection of Certain Loan Payments.

(a) The Servicer shall make reasonable efforts, consistent with the Credit and Collection Policy and the Servicing Standard, to collect all payments required under the terms and provisions of the Loans as and when the same become due. Consistent with the foregoing and the Credit and Collection Policy and the Servicing Standard, the Servicer may in its discretion waive or permit to be waived any fee or charge which the Servicer would be entitled to retain hereunder as servicing compensation and extend the due date for payments due on a Loan as provided in Section 5.02(e).

(b) Except as otherwise permitted under this Agreement, the Servicer agrees not to make, or consent to, any change, in the direction of, or instructions with respect to, any payments to be made by an Obligor or, in connection with an Agented Loan, Co-Agented Loan or a Third Party Agented Loan, the paying agent with respect thereto, in any manner that would diminish, impair, delay or otherwise adversely affect the timing or receipt of such payments without the prior written consent of the Trustee (acting at the direction of a Majority of Noteholders) and with the consent of the Majority Noteholders.

Section 5.07. Access to Certain Documentation and Information Regarding the Loans.

The Servicer shall provide to the Issuer, the Trustee, the Backup Servicer, any Noteholder, any bank, thrift or insurance company regulatory authority and the supervisory agents and examiners of any regulated Noteholder, access to the documentation regarding the Loans required by applicable local, state and federal regulations, such access being afforded without charge but only upon not less than three Business Days prior written request by the Issuer, the Trustee, the Backup Servicer or any such regulated Noteholder and during normal business hours at the offices of the Servicer designated by it and in a manner that does not unreasonably interfere with the Servicer's normal operations or customer or employee relations. The Trustee, the Backup Servicer, the Issuer, such Noteholder and the representative of any such regulatory authority designated by the related Noteholder to view such information shall and shall cause their representatives to hold in confidence all such information except to the extent disclosure may be required by law (and all reasonable applications for confidential treatment are unavailing) and except to the extent that the Trustee and the Issuer may reasonably determine that such disclosure is consistent with their obligations hereunder. The Servicer may request that any such Person not a party hereto enter into a confidentiality agreement reasonably acceptable to the Servicer prior to permitting such Person to view such information.

Section 5.08. Satisfaction of Collateral and Release of Loan Files.

(a) Upon the payment in full of any Loan, the receipt by the Servicer of a notification that payment in full will be escrowed in a manner customary for such purposes or the deposit into the Collection Account of the purchase price of any Loan acquired by the Trust Depositor, the Servicer or another Person pursuant to this Agreement, or any other Transaction Document, the Servicer will immediately notify the Trustee by a certification in the form of Exhibit M attached hereto (which certification shall include a statement to the effect that all amounts received or to be received in connection with such payment which are required to be deposited in the Collection Account pursuant to Section 7.03(b) have been or will be so deposited) of a Servicing Officer and shall request delivery to it of the Loan File. Upon receipt of such certification and request, the Trustee in accordance with Section 2.11(c), shall release, within two (2) Business Days (if such request was received by 2:00 p.m. Eastern time), the related Loan File to the Servicer. Expenses incurred in connection with any instrument of satisfaction or deed of reconveyance shall be payable by the Servicer and shall not be chargeable to the Collection Account or the Distribution Account; *provided* that the Servicer may collect and retain such expenses from the underlying Obligor.

(b) From time to time and as appropriate for the servicing or foreclosure of any Loan, the Trustee shall, upon request of the Servicer and delivery to the Trustee of a certification in the form of Exhibit M attached hereto signed by a Servicing Officer, release the related Loan File to the Servicer within two (2) Business Days (if such request was received by 2:00 p.m. Eastern time). The Servicer shall return the Loan File to the Trustee when the

need therefor by the Servicer no longer exists, unless the Loan has been liquidated and the Liquidation Proceeds relating to the Loan have been deposited in the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, for further credit, in either case, to the Collection Account, and remitted to the Trustee for deposit in the Distribution Account or the Loan File or such document has been delivered to an attorney, or to a public trustee or other public official as required by law, for purposes of initiating or pursuing legal action or other proceedings for the foreclosure or repossession of Related Property either judicially or non-judicially, and the Servicer has delivered to the Trustee a certificate of a Servicing Officer certifying as to the name and address of the Person to whom such Loan File or such document was delivered and the purpose or purposes of such delivery. Upon receipt of a certificate of a Servicing Officer stating that such Loan was liquidated, the servicing receipt relating to such Loan shall be released by the Trustee to the Servicer.

(c) The Trustee shall execute and deliver to the Servicer any court pleadings, requests for trustee's sale or other documents provided to it necessary to the servicing or foreclosure or trustee's sale in respect of Related Property or to any legal action brought to obtain judgment against any Obligor on the related loan agreement (including any Underlying Note or other agreement securing Related Property) or to obtain a deficiency judgment, or to enforce any other remedies or rights provided by the related loan agreement (including any Underlying Note or other agreement securing Related Property) or otherwise available at law or in equity. Together with such documents or pleadings, the Servicer shall deliver to the Trustee a certificate of a Servicing Officer requesting that such pleadings or documents be executed by the Trustee and certifying as to the reason such documents or pleadings are required and that the execution and delivery thereof by the Trustee will not invalidate or otherwise adversely affect the Lien of the agreement securing Related Property, except for the termination of such a Lien upon completion of the foreclosure or trustee's sale. The Trustee shall, upon receipt of a written request from a Servicing Officer, execute any document provided to the Trustee by the Servicer or take any other action requested in such request, that is, in the opinion of the Servicer as evidenced by such request, required by any state or other jurisdiction or appropriate to discharge the Lien securing Related Property upon the satisfaction thereof and the Trustee will sign and post, but will not guarantee receipt of, any such documents to the Servicer, or such other party as the Servicer may direct, within five (5) Business Days of the Trustee's receipt of such certificate or documents. Such certificate or documents shall state that the related Loan has been paid in full by or on behalf of the Obligor (or subject to a deficiency claim against such Obligor) and that such payment has been deposited in the Collection Account.

(d) Notwithstanding anything contained in this Section 5.08 to the contrary, in no event may the Servicer possess in excess of ten (10) Loan Files (excluding Loan Files for Loans which have been paid in full, sold or repurchased) at any given time.

Section 5.09. Scheduled Payment Advances; Servicing Advances and Nonrecoverable Advances.

(a) With respect to each Collection Period, the Servicer will determine: (i) on or before the related Record Date, the amount of Available Funds described in clauses (a) and (b) of the definition thereof for the following Payment Date, and (ii) the amount required to be paid on the related Payment Date pursuant to clauses 1 through 4 of Section 7.06(a) (the amounts described in this clause (ii), the "Scheduled Amount"). If the Servicer determines that any Scheduled Payments (or portion thereof) that were due and payable pursuant to one or more Loans in the Collateral during the related Collection Period were not received prior to the end of such Collection Period and determines that, as a result of this, the Scheduled Amount for the related Payment Date exceeds the amount of Available Funds described in clauses (a) and (b) of the definition thereof for such Payment Date, then, subject to Section 5.09(b), the Servicer has the right to elect, at its option, but is not obligated, to make a Scheduled Payment Advance in an amount up to lesser of (1) the amount of such excess and (2) the amount of such delinquent Scheduled Payments (or portion thereof). The Servicer will deposit any Scheduled Payment Advances into the Collection Account on or prior to 11:00 a.m. (New York City time) on the related Reference Date, in immediately available funds. The Servicer will be entitled to be reimbursed for Scheduled Payment Advances, together with accrued and unpaid interest thereon at the rate published in The Wall Street Journal from time to time as the prime rate in the United States pursuant to Section 5.09(c), Section 7.03 or the Priority of Payments, as applicable. In addition, the Servicer may, at its option, make

Servicing Advances in the performance of its servicing duties, unless it believes in good faith that the advance plus interest expected to accrue thereon will be a Nonrecoverable Advance. The Servicer will be entitled to reimbursement for Servicing Advances, with interest thereon to accrue at the rate published in The Wall Street Journal from time to time as the prime rate in the United States, from the Collections received from the Loan to which the Servicing Advance relates as well as pursuant to Section 5.09(c), Section 7.03 or the Priority of Payments, as applicable.

(b) The Servicer will not make a Scheduled Payment Advance or a Servicing Advance if the Servicer has determined in its sole discretion, exercised in good faith and consistent with the Servicing Standard, that the amount of such Scheduled Payment Advance or Servicing Advance proposed to be advanced plus interest expected to accrue thereon will be a Nonrecoverable Advance. Absent bad faith, the Servicer's determination as to whether any Scheduled Payment Advance or Servicing Advance is expected to be a Nonrecoverable Advance or whether, once advanced, it is a Nonrecoverable Advance shall be conclusive and binding on the Issuer and on the Noteholders. Any such determination shall be made by the Servicer and shall be evidenced by an Officer's Certificate delivered promptly to the Trustee, setting forth the basis for such determination. For the avoidance of doubt, the Servicer has the right to elect, at its sole option, but is not obligated, to make a Scheduled Payment Advance.

(c) The Servicer will be entitled to recover any Scheduled Payment Advance made by it, together with accrued interest due thereon, from Collections; *provided* that if at any time any Scheduled Payment Advance, together with accrued interest thereon, made by the Servicer is subsequently determined to be a Nonrecoverable Advance, the Servicer will be entitled to recover the amount of such Nonrecoverable Advance on a Payment Date to the extent then permitted in accordance with the Priority of Payments. The Servicer will be entitled to recover the amount of any Servicing Advance, together with accrued interest thereon in accordance with the Priority of Payments.

(d) The Servicer shall be entitled to an annual rate of interest payable at the rate specified in Section 5.09(a) with respect to each Scheduled Payment Advance and each Servicing Advance from and including the date such advance is made by the Servicer to but not including the date of reimbursement of such advance to the Servicer.

Section 5.10. Title, Management and Disposition of Foreclosed Property.

(a) Except for Agented Loans, Co-Agented Loans and Third Party Agented Loans (in which case, the provisions of the Underlying Loan Agreement relating to taking title to collateral shall apply) in the event that title to Related Property is acquired by the Servicer hereunder in foreclosure or by deed in lieu of foreclosure or by other legal process, the deed, certificate of sale, or Repossessed Property may be taken in the name of the Issuer or in the name of a subsidiary of the Issuer, the equity securities of which will be pledged as Collateral by the Issuer to the Trustee pursuant to the Indenture. Any such Issuer subsidiary shall be serviced by the Servicer, which may perform such services through a nominee or agent as set forth in Section 5.02(b).

(b) [Reserved].

(c) The Servicer, subject to the provisions of this Article V, shall manage, conserve, protect and operate each such Foreclosed Property or other Repossessed Property for the Issuer or such Issuer subsidiary, as applicable, solely for the purpose of its prudent and prompt disposition and sale. The Servicer shall, either itself or through an agent selected by the Servicer, manage, conserve, protect and operate the Foreclosed Property or other Repossessed Property in a manner consistent with the Credit and Collection Policy and the Servicing Standard. The Servicer shall attempt to sell the same (and may temporarily rent the same) on such terms and conditions as the Servicer deems to be in the best interest of the Issuer.

(d) Subject to Section 5.10(e), the Servicer shall cause to be deposited in the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, no later than two (2) Business

Days after the receipt thereof, all revenues received by the Issuer with respect to the conservation and disposition of the related Foreclosed Property or other Repossessed Property net of Liquidation Expenses or received by the Issuer as distributions from any Issuer subsidiary. Any Issuer subsidiary formed pursuant to Section 5.10(b) may utilize and set aside revenues received in respect of such real estate Related Property to pay for the normal operations of the business of such Issuer subsidiary and of such real estate Related Property, and for such other fees, costs and expenses relating thereto as are deemed appropriate to maximize value or reduce or prevent loss with respect thereto by the Servicer, consistent with the Credit and Collection Policy and the Servicing Standard, and establish and maintain such cash reserves as the Servicer (or its agent) deem reasonably necessary with respect thereto; *provided* that no other funds of the Issuer shall be expended in connection with such Issuer subsidiary.

(e) Pursuant to the Priority of Payments, the Servicer shall receive reimbursement for any related unreimbursed Scheduled Payment Advances and Servicing Advances, together with accrued and unpaid interest due thereon relating to the related Loan or such Foreclosed Property or Repossessed Property, and the Servicer shall deposit in the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, the net cash proceeds of the sale of any Foreclosed Property or other Repossessed Property to be distributed in accordance with Section 7.06 hereof.

(f) Notwithstanding any provision to the contrary contained in this Agreement, the Servicer shall not cause the Issuer or any Issuer subsidiary to foreclose on and obtain title to any Related Property pursuant to Section 5.10(b) or otherwise take any other action with respect to any such Related Property if, as a result of any such action, such Issuer subsidiary would be considered to hold title to, to be a "mortgagee-in-possession" of, or to be an "owner" or "operator" of, such Related Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, or any comparable state or local environmental law, unless the Servicer has previously determined in accordance with the Servicing Standard and the Credit and Collection Policy that:

(i) such Related Property is in compliance in all material respects with applicable environmental laws or, if not, after consultation with an environmental consultant, that it would be in the best economic interest of the Issuer and such Issuer subsidiary to take such actions as are necessary to bring such Related Property in compliance therewith, and

(ii) there are no circumstances present at such Related Property relating to the use, management or disposal of any hazardous materials for which investigation, testing, monitoring, containment, clean-up or remediation would reasonably be expected to be required by the owner, occupier or operator of the Related Property under applicable federal, state or local law or regulation, or that, if any such hazardous materials are present for which such action would reasonably be expected to be required, after consultation with an environmental consultant, it would be in the best economic interest of the Issuer and the Issuer subsidiary to take such actions with respect to the affected Related Property.

Section 5.11. Servicing Compensation.

(a) As compensation for its servicing activities hereunder and reimbursement for its expenses, the Servicer shall be entitled to receive a servicing fee (the "Servicing Fee") calculated and payable monthly in arrears on each Payment Date prior to the termination of the Issuer. The Servicing Fee shall be equal to the product of: (i) one-twelfth of 2.00% (or, with respect to the first Collection Period, a fraction equal to the number of days from and including the Cutoff Date through and including July 4, 2022 over 360) and (ii) the Aggregate Outstanding Loan Balance as of the beginning of the related Collection Period. If Backup Servicer becomes the Successor Servicer, servicing shall be subject to a monthly minimum of $10,000. In addition to the Servicing Fee, the Backup Servicer, upon becoming the Servicer shall be entitled to be reimbursed for all Servicing Transfer Costs. If any entity other than Hercules or the Backup Servicer becomes the Servicer, the Servicing Fee may be adjusted as agreed upon by the Majority Noteholders and such Successor Servicer, *provided* that if no Event of Default, Rapid Amortization Event,

Servicer Default, or Reinvestment Period Early Termination Event is then occurring and continuing, the Issuer shall have received confirmation that the ratings provided by KBRA will not be lowered or withdrawn as a result of such adjustment to the Servicing Fee. The Servicing Fee is payable out of Collections pursuant to the Priority of Payments. For the avoidance of doubt, the Backup Servicer shall have no obligation to assume or accept any obligations as Successor Servicer unless and until it receives payment of its one-time servicer engagement fee of $125,000.

(b) In addition to the Servicing Fee, the Servicer shall be entitled to retain for itself as additional servicing compensation: (i) reimbursement for Scheduled Payment Advances on the Loans, together with accrued interest thereon, (ii) reimbursement for Servicing Advances on the Loans, together with accrued interest thereon, and (iii) any mistaken deposits or other related amounts due on Loans that the Servicer is entitled to retain, including without limitation any amounts payable as additional servicing compensation pursuant to Section 5.02(e)(iv).

Section 5.12. Assignment; Resignation.

The Servicer shall not assign its rights and duties under this Agreement (other than in connection with a subservicing arrangement or other arrangement permitted under this Agreement) or resign from the obligations and duties imposed on it pursuant to this Agreement, in each case except (a) upon a determination by the Servicer that its performance of its duties as Servicer is no longer permissible under Applicable Law or administrative determination and such incapacity cannot be cured by commercially reasonable efforts of the Servicer, or (b) an assignment in connection with a merger, conversion, consolidation or sale of substantially all of the Servicer's business or substantially all of the Servicer's lending business permitted pursuant to Section 5.13 (in which case the Person resulting from the merger, conversion or consolidation shall be the successor of the Servicer). Any such determination pursuant to clause (a) permitting the resignation of the Servicer shall be evidenced by a written Opinion of Counsel (who may be counsel for the Servicer) to such effect delivered to the Trustee, which Opinion of Counsel shall be in form and substance reasonably acceptable to the Trustee. No such resignation shall become effective until a successor has been appointed pursuant to Section 8.02(b) and has assumed the Servicer's responsibilities and obligations in accordance with Section 8.03.

Section 5.13. Merger or Consolidation of Servicer.

Any Person into which the Servicer may be merged or consolidated, or any Person resulting from such merger, conversion or consolidation to which the Servicer is a party, or any Person succeeding to substantially all of the business or substantially all of the investment management business of the Servicer, which Person assumes the obligations of the Servicer, shall be the successor to the Servicer hereunder, notwithstanding any provision in Section 8.02 or Section 8.03 and without execution or filing of any paper or any further act on the part of any of the parties hereto, notwithstanding anything herein to the contrary; *provided* that no such entity resulting from the merger, conversion or consolidation of the Servicer or the sale of all or substantially all of the Servicer's assets or business or substantially all of the Servicer's lending business shall be the successor Servicer hereunder unless either (i) such Person has assets of at least $50,000,000 and such Person's regular business includes the servicing of assets similar to the Loan Assets or (ii) the Majority Noteholders shall have consented thereto in writing. Such Successor Servicer shall be a permitted assignee of the Servicer. The provisions of Section 8.03(c) and (e) shall apply to any such servicing transfer.

Section 5.14. Limitation on Liability of the Servicer and Others.

The Servicer and any stockholder, partner, member, manager, director, officer, employee or agent of the Servicer may rely on any document of any kind which it in good faith reasonably believes to be genuine and to have been adopted or signed by the proper authorities or persons respecting any matters arising hereunder. Except as otherwise provided in Section 5.02(b), the Servicer shall not be liable for any errors, inaccuracies or omissions of any Person not affiliated with the Servicer contained in any information, report, certificate, data or other document delivered to the Servicer or on which the Servicer reasonably relies in order to perform its obligations hereunder and under the other Transaction Documents except to the extent that a Responsible Officer of the Servicer has actual

knowledge of any such material error, inaccuracy or omission. The Servicer shall not be in default hereunder or incur any liability, except as provided in the proviso in the last sentence of this Section 5.14, for any failure, error or delay in carrying out its duties hereunder or under any other Transaction Document if such failure, error or delay results from the Servicer acting in accordance with information prepared or supplied by a Person other than the Servicer or any of its Affiliates or the failure or delay of any such Person to prepare or provide such information. The Servicer shall not be in default and shall incur no liability for any act or failure to act by any servicer primarily responsible for servicing Third Party Agented Loans. Subject to the terms of Section 12.01 herein, the Servicer shall have no obligation to appear with respect to, prosecute or defend any legal action which is not incidental to the Servicer's duty to service the Loans in accordance with this Agreement, and that, in its opinion, may cause the Servicer to incur any expense or liability. The Servicer shall not be responsible for the payment of any taxes imposed on or with respect to the Issuer or for the fees of any Successor Servicer. Except as provided herein, neither the Servicer nor any of its directors, officers, employees or agents shall be under any liability to any other party to this Agreement, any Noteholder, any Certificateholder or any other Person for any action taken or for refraining from taking any action pursuant to this Agreement, whether arising from express or implied duties under this Agreement or any other Transaction Document, or for errors in judgment; *provided* that, notwithstanding anything to the contrary contained herein, neither the Servicer nor any of its directors, officers, employees or agents shall be protected against any liability that would otherwise be imposed by reason of willful misconduct, bad faith or gross negligence in the performance of the Servicer's duties or by reason of its reckless disregard of its obligations and duties hereunder; *provided*, *however*, that the Servicer will not indemnify any party for any costs, expenses, losses, claims, damages or liabilities arising from its breach of any covenant for which the purchase of the affected Loans is specified as the sole remedy hereunder. The Servicer is not required to indemnify any Person for any costs, expenses, losses, claims, damages or liabilities arising from its breach of any covenant for which the purchase of the affected Loans is specified as the sole remedy hereunder.

Section 5.15. Determination of Reserve Account Required Balance.

The Servicer shall deposit funds into and withdraw funds from the Reserve Account in accordance with Sections 7.02 and 7.06. The Servicer shall maintain a complete and accurate record of the amount of funds on deposit in the Reserve Account. Prior to each Payment Date, the Servicer shall determine the Reserve Account Required Balance applicable to such Payment Date.

Section 5.16. Rights of and Limitation of Liability of Backup Servicer.

The Backup Servicer and any stockholder, partner, member, manager, director, officer, employee or agent of the Backup Servicer may rely on any document of any kind which it in good faith reasonably believes to be genuine and to have been adopted or signed by the proper authorities or persons respecting any matters arising hereunder. In the performance of its duties hereunder, the Backup Servicer is entitled to rely conclusively, and shall be fully protected in so relying, on the contents of each Tape, including, but not limited to, the completeness and accuracy thereof, provided by the Servicer. The Backup Servicer shall have no liability for any errors in the content of such Tape, and, except as specifically provided herein, shall not be required to verify, recompute, reconcile or recalculate any such information or data. Without limiting the generality of any terms of the foregoing, the Backup Servicer shall have no liability for any failure, inability or unwillingness on the part of the Servicer to provide accurate and complete information on a timely basis to the Backup Servicer, or otherwise on the part of any such party to comply with the terms of this Agreement, or other Transaction Document, and shall have no liability for any inaccuracy or error in the performance or observance on the Backup Servicer's part of any of its duties hereunder that is caused by or results from any such inaccurate, incomplete or untimely information received by it, or other failure on the part of any such other party to comply with the terms hereof. The Backup Servicer undertakes to perform only such duties and obligations as are specifically set forth in this Agreement, it being expressly understood by all parties hereto that there are no implied duties or obligations of the Backup Servicer hereunder. Without limiting the generality of the foregoing, the Backup Servicer, except as expressly set forth herein, shall have no obligation to supervise, verify, monitor or administer the performance of the Servicer, the Trust Depositor or Seller and shall have no liability for any action taken or omitted by the Servicer (including any successor to the Servicer other than USBNA) or the Trust Depositor or Seller. The Backup Servicer may act through its agents, attorneys and custodians in performing any of

its duties and obligations under this Agreement. Neither the Backup Servicer nor any of its officers, directors, employees or agents shall be liable, directly or indirectly, for any damages or expenses arising out of the services performed under this Agreement other than damages or expenses that result from the gross negligence or willful misconduct of it or them or the failure to perform materially in accordance with this Agreement. If any party is prevented from fulfilling its obligations hereunder as a result of government actions, regulations, fires, strikes, accidents, pandemics, acts of God or other causes beyond the control of either party, all parties' obligations shall be suspended for a reasonable time during which such conditions exist and the Backup Servicer shall be without liability for any damage or loss resulting from such condition. In no event will the Backup Servicer (in its capacity as such or as Successor Servicer) be liable for indirect, special, consequential or incidental damages. The Backup Servicer may resign, either as Backup Servicer or as Successor Servicer, upon ninety (90) days prior written notice to the Trustee, the Issuer, the Servicer (in the case of a resignation as the Backup Servicer) and the Trust Depositor; *provided*, *however*, such resignation shall not become effective until there is a replacement Successor Servicer or Backup Servicer in place that is acceptable to, unless an Event of Default shall have occurred and be continuing, the Servicer and the Issuer, in each case, in their sole discretion, and a Majority Noteholders, which acceptance, in each case, shall not be unreasonably withheld. Upon the resignation of the Backup Servicer, the Servicer shall appoint a successor Backup Servicer (subject to the previous sentence) and if it does not do so within thirty (30) days of the Backup Servicer's resignation, the Backup Servicer may petition a court of competent jurisdiction for the appointment of a successor.

ARTICLE 6.

COVENANTS OF THE TRUST DEPOSITOR

Section 6.01. Legal Existence.

During the term of this Agreement, the Trust Depositor will keep in full force and effect its existence, rights and franchises as a limited liability company under the laws of the jurisdiction of its organization and will obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, the other Transaction Documents and each other instrument or agreement necessary or appropriate for the proper administration of this Agreement and the transactions contemplated hereby. In addition, all transactions and dealings between the Trust Depositor and its Affiliates will be conducted on an arm's-length basis.

Section 6.02. Maintenance of Interest in Certificates.

During the term of this Agreement, the Trust Depositor will not sell, transfer or otherwise encumber its interest in the Certificates issued by the Issuer without the prior written consent of the Trustee, acting at the direction of the Majority Noteholders.

Section 6.03. Security Interests.

The Trust Depositor will not sell, pledge, assign or transfer to any Person other than the Issuer, or grant, create, incur, assume or suffer to exist any Lien on any Loan in the Collateral or its interest in any Related Property, other than the Lien granted to the Issuer, whether now existing or hereafter transferred to the Issuer, or as otherwise expressly contemplated by this Agreement. The Trust Depositor will promptly notify the Owner Trustee and the Trustee upon obtaining knowledge of the existence of any Lien on any Loan in the Collateral or its interest in any Related Property; and the Trust Depositor shall defend the right, title and interest of the Issuer in, to and under the Loans in the Collateral and the Issuer's interest in any Related Property, against all claims of third parties; *provided* that nothing in this Section 6.03 shall prevent or be deemed to prohibit the Trust Depositor from suffering to exist Permitted Liens upon any of the Loans in the Collateral or its interest in any Related Property.

Section 6.04. Delivery of Collections.

The Trust Depositor agrees to pay to the Servicer promptly (but in no event later than two Business Days after receipt) all Collections received by the Trust Depositor in respect of the Loans and Related Property, for application in accordance with this Agreement.

Section 6.05. Regulatory Filings.

The Trust Depositor shall make any filings, reports, notices, applications and registrations with, and seek any consents or authorizations from, the Commission and any state securities authority on behalf of the Issuer as may be necessary or that the Trust Depositor deems advisable to comply with any federal or state securities or reporting requirements laws.

Section 6.06. Compliance with Law.

The Trust Depositor hereby agrees to comply in all material respects with all Applicable Law applicable to the Trust Depositor except where the failure to do so would not reasonably be expected to have a material adverse effect on the Issuer.

Section 6.07. Activities; Transfers of Notes or Certificates by Trust Depositor.

Except as contemplated by the Trust Depositor LLC Agreement, this Agreement or the other Transaction Documents, the Trust Depositor shall not engage in any business or activity of any kind, or enter into any transaction or indenture, mortgage, instrument, agreement, contract, lease or other undertaking, which is not directly related to the transactions contemplated and authorized by this Agreement or the other Transaction Documents. Notwithstanding anything to the contrary contained herein, the Trust Depositor may assign, transfer, convey or finance all or any portion of any Notes or Certificates owned by it.

Section 6.08. Indebtedness.

The Trust Depositor shall not create, incur, assume or suffer to exist any Indebtedness or other liability whatsoever, except (a) obligations incurred under this Agreement or the other Transaction Documents or to the Seller and (b) liabilities incident to the maintenance of its limited liability company existence in good standing.

Section 6.09. Guarantees.

The Trust Depositor shall not become or remain liable, directly or contingently, in connection with any Indebtedness or other liability of any other Person, whether by guarantee, endorsement (other than endorsements of negotiable instruments for deposit or collection in the ordinary course of business), agreement to purchase or repurchase, agreement to supply or advance funds, or otherwise.

Section 6.10. Investments.

Except as contemplated by the Trust Depositor LLC Agreement, the Trust Depositor shall not make or suffer to exist any loans or advances to, or extend any credit to, or make any investments (by way of transfer of property, contributions to capital, purchase of stock or securities or evidences of indebtedness, acquisition of the business or assets, or otherwise) in, any Person except for transfers of Loan Assets to the Issuer as contemplated by the Transaction Documents. Without limiting the generality of the foregoing or restricting the ability of the Trust Depositor to make capital contributions to the Issuer, the Trust Depositor shall not (i) provide credit to any other Securityholder for the purpose of enabling such Securityholder to purchase any Securities or (ii) lend any money to the Issuer.

Section 6.11. Merger; Sales.

The Trust Depositor shall not enter into any transaction of merger or consolidation, or liquidate or dissolve itself (or suffer any liquidation or dissolution) or acquire or be acquired by any Person, or (other in connection with the transfer of assets to a special purpose subsidiary in connection with a financing transaction) convey, sell, lease or otherwise dispose of all or substantially all of its property or business, except that the Trust Depositor shall sell Loan Assets to the Issuer as contemplated by this Agreement.

Section 6.12. Distributions.

The Trust Depositor shall not declare or pay, directly or indirectly, any dividend or make any other distribution (whether in cash or other property) with respect to the profits, assets or capital of the Trust Depositor or any Person's interest therein, or purchase, redeem or otherwise acquire for value any of its members' interests now or hereafter outstanding, except that, so long as no Event of Default has occurred and is continuing and no Event of Default would occur as a result thereof or after giving effect thereto and the Trust Depositor would continue to be Solvent as a result thereof and after giving effect thereto, the Trust Depositor may declare and pay distributions to its members.

Section 6.13. Other Agreements.

Except as provided in the Trust Depositor LLC Agreement, this Agreement or the other Transaction Documents, the Trust Depositor shall not become a party to, or permit any of its properties to be bound by, any indenture, mortgage, instrument, contract, agreement, lease or other undertaking, except this Agreement and the other Transaction Documents to which it is a party; nor shall it amend or modify the provisions of its organizational documents which relate to its bankruptcy remote nature or separateness covenants as required in connection with the true sale and substantive nonconsolidation opinions delivered on the Closing Date, or issue any power of attorney except to the Owner Trustee, the Trustee or the Servicer in accordance with the Transaction Documents.

Section 6.14. Separate Legal Existence.

The Trust Depositor shall (a) maintain compliance with the covenants set forth in Section 9(j) of the Trust Depositor LLC Agreement, and (b) to the extent in addition to the covenants referred to in clause (a) of this Section 6.14, take or refrain from taking, as applicable, each of the activities specified in the "substantive consolidation" opinion of Dechert LLP, on the Closing Date, upon which the conclusions expressed therein are based.

Section 6.15. Location; Records.

The Trust Depositor shall (a) not move its location outside the State of California or its jurisdiction of formation outside of the State of Delaware without 30 days' prior written notice to the Owner Trustee and the Trustee and (b) will promptly take all actions (if any) required (including, but not limited to, all filings and other acts necessary or advisable under the UCC of each relevant jurisdiction) in order to continue the first priority perfected security interest of the Trustee in all Collateral.

Section 6.16. Liability of Trust Depositor.

The Trust Depositor shall be liable in accordance herewith only to the extent of the obligations specifically undertaken by the Trust Depositor under this Agreement.

Section 6.17. Bankruptcy Limitations.

The Trust Depositor shall not, without the prior unanimous written consent of its member and all of the

Independent managers of the Trust Depositor (a) dissolve or liquidate, in whole or in part, or institute proceedings to be adjudicated bankrupt or insolvent, (b) consent to the institution of bankruptcy or insolvency proceedings against it, (c) file a petition seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy, (d) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the limited liability company or a substantial part of its property, (e) make a general assignment for the benefit of creditors, (f) admit in writing its inability to pay its debts generally as they become due, or (g) take any limited liability company action in furtherance of the actions set forth in clauses (a) through (f) above; *provided* that no Independent manager may be required by any member of the Trust Depositor to consent to the institution of bankruptcy or insolvency proceedings against the Trust Depositor so long as it is Solvent.

Section 6.18. Limitation on Liability of Trust Depositor and Others.

The Trust Depositor and any director, officer, employee or agent of the Trust Depositor may rely in good faith on any document of any kind, prima facie properly executed and submitted by the appropriate Person respecting any matters arising hereunder. The Trust Depositor and any director, officer, employee or agent of the Trust Depositor shall be reimbursed by the Trustee for any liability or expense incurred by reason of the Trustee's willful misfeasance, bad faith or gross negligence (except errors in judgment) in the performance of its duties hereunder, or by reason of the Trustee's material breach of the obligations and duties under this Agreement or the Transaction Documents. The Trust Depositor shall not be under any obligation to appear in, prosecute or defend any legal action that shall not be incidental to its obligations under this Agreement, and that in its opinion may involve it in any expense or liability.

Section 6.19. Payments from Obligors.

The Trust Depositor agrees not to make, or consent to, any change in the direction of, or instructions with respect to, any payments to be made by an Obligor in any manner that would diminish, impair, delay or otherwise adversely affect the timing or receipt of such payments into the Lockbox Account or the Master Collection Account, as applicable, or otherwise without (a) the prior written consent of the Trustee and the consent of the Majority Noteholders and (b) delivery of prior written notice of such change to the Rating Agency.

ARTICLE 7.

ESTABLISHMENT OF ACCOUNTS; DISTRIBUTIONS;

Section 7.01. Distribution Account; Lockbox Account and Other Accounts.

(a) Distribution Account and Lockbox Account. On or before the Closing Date, the Trustee shall establish and maintain the Distribution Account as a non-interest bearing trust account in the name of the Issuer, for the benefit of the Trustee and the Noteholders. On or before the Closing Date, the Issuer shall establish the Lockbox Account as a non-interest bearing, segregated account with U.S. Bank National Association (the "Lockbox Bank") and in the name of the Issuer, for the benefit of the Trustee and the Noteholders. The Servicer is, and so long as such accounts are maintained with the Trustee and the Lockbox Bank, the Trustee and the Lockbox Bank are, hereby required to ensure that each of the Distribution Account and the Lockbox Account is established and maintained as an Eligible Deposit Account with a Qualified Institution. The Servicer will monitor the Lockbox Account on a daily basis and review the previous day's Lockbox Account activity. If any institution with which any of the accounts established pursuant to this Section 7.01(a) and pursuant to Sections 7.02, 7.03 and 7.04 ceases to be a Qualified Institution, the Servicer, or if the Servicer fails to do so, the Trustee or the Lockbox Bank (as the case may be) shall within ten (10) Business Days of actual knowledge of such failure by a Responsible Officer establish a replacement account at a Qualified Institution after notice of such event. In no event shall the Trustee or the Lockbox Bank, as appropriate, be responsible for monitoring whether such institution shall remain a Qualified Institution. Each Qualified Institution maintaining an Eligible Deposit Account shall agree in writing to comply with all instructions originated by the Trustee or Lockbox Bank, as applicable.

(b) Master Collection Account. On or after the Closing Date, Hercules may, with the consent of the Trustee (acting upon the direction of the Majority Noteholders in their reasonable discretion), designate or establish a non-interest bearing, segregated account with Wells Fargo Bank, National Association or another Qualified Institution as the Master Collection Account (the "Master Collection Account Bank") in the name of Hercules, for the benefit of the Trustee and the Noteholders and each other secured party from time to time executing a joinder to the Master Collection Account Agency Agreement. Following the date on which Hercules designates (with the consent of the Trustee (acting upon the direction of the Majority Noteholders in their reasonable discretion)), an account as the Master Collection Account, the Servicer is hereby required to ensure that the Master Collection Account is established and maintained as an Eligible Deposit Account with a Qualified Institution. The Servicer will monitor the Master Collection Account on a daily basis and review the previous day's Master Collection Account activity. If any institution with which the Master Collection Account is established pursuant to this Section 7.01(b) ceases to be a Qualified Institution, the Servicer, or if the Servicer fails to do so, the Trustee or the Master Collection Account Bank (as the case may be) shall within ten (10) Business Days of receipt of notice or actual knowledge of such failure by a Responsible Officer establish a replacement account at a Qualified Institution after notice of such event. In no event shall the Trustee or the Master Collection Account Bank, as appropriate, be responsible for monitoring whether such institution shall remain a Qualified Institution. The Servicer will cause all Collections deposited into the Master Collection Account to be transferred to the Collection Account no later than two (2) Business Days following identification of such Collections.

(c) [Reserved].

(d) Alternative Collection Practices. With respect to certain Loans, the Servicer may make Collections thereon by debiting the appropriate amounts from designated accounts of the related Obligor. Within two (2) Business Days of receipt by the Servicer of the amounts so debited, the Servicer will cause the amounts so received belonging to the Issuer to be deposited into the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, and in either case thereupon credited to the Collection Account.

(e) Other Accounts. Amounts representing payments sent by Obligors and by paying agents under Agented Loans, Co-Agented Loans and Third Party Agented Loans with respect to Loans pledged to the Trustee as well as with respect to Loans not pledged to the Trustee may be deposited into accounts other than the Lockbox Account or the Master Collection Account. Within two (2) Business Days of receipt by the Seller or the Issuer of any amounts representing payments sent by Obligors and/or by paying agents under Agented Loans, Co-Agented Loans and Third Party Agented Loans with respect to Loans pledged to the Trustee, the Servicer, as agent for the Issuer, and the Seller will cause the amounts so received belonging to the Issuer to be deposited into the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, and thereupon credited to the Collection Account.

Section 7.02. Reserve Account.

(a) The Trustee shall establish and maintain the Reserve Account in the name of the Issuer for the benefit of the Trustee and the Noteholders. The Reserve Account shall be held in one Eligible Deposit Account with a Qualified Institution in the form of an interest-bearing trust account wherein the moneys therein are invested in Permitted Investments. The Servicer will monitor the Reserve Account in accordance with its customary policies and procedures.

(b) Deposits to the Reserve Account shall be made in accordance with Section 7.06(b).

(c) Subject to Sections 7.02(d) and (e) below, if on any Payment Date, Interest Collections, Principal Collections and any other amounts on deposit in the Collection Account (without giving effect to any deposit

from the Reserve Account) would be insufficient to pay any portion of the Required Payments on such Payment Date, the Servicer shall direct the Trustee to withdraw from the Reserve Account an amount equal to the lesser of such insufficiency and the amount on deposit in the Reserve Account and deposit such amount in the Distribution Account on the Business Day immediately preceding such Payment Date.

(d) Upon the occurrence of an Event of Default, the Servicer shall direct the Trustee to withdraw all amounts on deposit in the Reserve Account and deposit such amounts to the Distribution Account for distribution in accordance with Section 7.06(c).

(e) On the earlier to occur of the Legal Final Payment Date and the Payment Date on which the Outstanding Principal Balance of the Notes is reduced to zero, the Servicer shall direct the Trustee to withdraw all amounts on deposit in the Reserve Account and deposit such amounts to the Distribution Account.

(f) Unless an Event of Default shall have occurred and is continuing, on any Payment Date, if amounts on deposit in the Reserve Account are greater than the Reserve Account Required Balance (after giving effect to all other distributions and disbursements on such Payment Date), the Servicer shall direct the Trustee to withdraw funds in excess of the Reserve Account Required Balance from the Reserve Account and disburse such amounts in accordance with Section 7.06(a).

(g) Upon the occurrence of a Rapid Amortization Event, the Servicer shall provide written notice thereof to the Trustee and shall direct the Trustee to (and the Trustee shall) withdraw all amounts on deposit in the Reserve Account and deposit such amounts to the Distribution Account for distribution in accordance with Section 7.06(b).

Section 7.03. Collection Account.

(a) The Trustee shall establish and maintain the Collection Account in the name of the Issuer for the benefit of the Trustee and the Noteholders. The Collection Account shall be held in one or more Eligible Deposit Accounts with a Qualified Institution in the form of interest-bearing trust accounts wherein the moneys therein are invested in Permitted Investments. The Servicer will monitor the Collection Account in accordance with its customary policies and procedures.

(b) The Servicer shall deposit or cause to be deposited into the Collection Account within two (2) Business Days of the deposit thereof into the Lockbox Account all Collections (including, for the avoidance of doubt, amounts received from co-lenders, collateral agents or paying agents under Agented Loans, Co-Agented Loans and Third Party Agented Loans and amounts debited from Obligor accounts as described in Section 7.01(d)) so deposited into the Lockbox Account. The Servicer shall deposit or cause to be deposited into the Collection Account within two (2) Business Days of the deposit thereof into the Master Collection Account all Collections (including, for the avoidance of doubt, amounts received from co-lenders, collateral agents or paying agents under Agented Loans, Co-Agented Loans and Third Party Agented Loans and amounts debited from Obligor accounts as described in Section 7.01(d)) so deposited into the Master Collection Account. The Servicer will retain in the Collection Account, subject to withdrawal as permitted by this Section 7.03, the following amounts received by the Servicer, without duplication:

(i) all Collections accruing and received on or after the Cutoff Date, the Additional Loan Cutoff Date or Substitute Loan Cutoff Date, as applicable;

(ii) any other proceeds from any other Related Property securing the Loans (other than amounts released to the Obligor, other creditors or any other Person in accordance with Applicable Law, the Required Loan Documents, the Credit and Collection Policy and the Servicing Standard) and any disbursements, payments or proceeds from any other Collateral;

(iii) any amounts paid in connection with the purchase or repurchase of any Loan;

(iv) any amount required to be deposited in the Collection Account pursuant to Section 5.10 or this Section 7.03; and

(v) the amount of any gains and interest earned in connection with investments in Permitted Investments.

(c) The Servicer shall have no obligation to deposit into the Collection Account any Excluded Amounts.

(d) Not later than the close of business on each Reference Date immediately preceding a Payment Date, the Servicer will remit to the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, any Scheduled Payment Advance that the Servicer determines to make at its option. The application of Scheduled Payment Advances will not prevent a Loan from being or becoming a Defaulted Loan.

(e) Notwithstanding Section 7.03(b), if (i) the Servicer makes a deposit into the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account in respect of a Collection of a Loan in the Collateral and such Collection was received by the Servicer in the form of a check that is not honored for any reason or (ii) the Servicer makes a mistake with respect to the amount of any Collection and deposits an amount that is less than or more than the actual amount of such Collection, the Servicer shall appropriately adjust the amount subsequently deposited into the Lockbox Account or the Master Collection Account, as applicable, to reflect such dishonored check or mistake. Any Scheduled Payment in respect of which a dishonored check is received shall be deemed not to have been paid.

(f) The foregoing requirements for deposit in the Collection Account and the Lockbox Accounts and Master Collection Account shall be exclusive, it being understood and agreed that, without limiting the generality of the foregoing, payments with respect to Liquidation Expenses and Excluded Amounts may not be deposited by the Servicer in the Collection Account.

(g) Prior to the occurrence of a Servicer Default or an Event of Default and acceleration of the Notes, to the extent there are uninvested available amounts deposited in the Collection Account on or before 3:00 p.m. (New York, New York time), all such amounts shall be invested by the Trustee in Permitted Investments selected by the Servicer in written instructions (which may be in the form of standing instructions) delivered to the Trustee and, if other than the Trustee in its corporate capacity, the Qualified Institution holding such Transaction Account, that mature no later than the Business Day immediately preceding the next Payment Date; to the extent that there are uninvested available funds deposited after 3:00 p.m. (New York, New York time), such funds shall be swept into the overnight funds investment which shall be a Permitted Investment selected by the Servicer in written instructions (which may be in the form of standing instructions) delivered to the Trustee and, if applicable, the Qualified Institution holding such Transaction Account. From and after the occurrence of a Servicer Default or an Event of Default and acceleration of the Notes, to the extent there are uninvested amounts in the Collection Account (net of losses and investment expenses), all amounts may be invested in Permitted Investments of the type described in clause (iv) of the definition of Permitted Investments and if any such Transaction Account is held by a Qualified Institution other than the Trustee, then upon written instructions (which may be in the form of standing instructions) from the Trustee to such Qualified Institution, that mature no later than the Business Day immediately preceding the next Payment Date. Once such funds are invested, the Trustee shall not change, or instruct the Qualified Institution to change, the investment of such funds other than in connection with the withdrawal or liquidation of such investments and the transfer of such funds as provided herein on or prior to the next succeeding Payment Date. Funds in the Distribution Account must be insured to the extent and the amount permitted by law by the FDIC. Subject to the restrictions herein,

the Servicer or Trustee may purchase a Permitted Investment from itself or an Affiliate with respect to investment of funds in the Transaction Accounts. Any investment earnings (net of losses and investment expenses) on funds held in the Collection Account shall be treated as Interest Collections and shall be deposited therein pursuant to this Section 7.03 and distributed on the next Payment Date pursuant to Section 7.06. All investment earnings (net of losses and investment expenses) on investments of funds in the Transaction Accounts shall be deposited in the Collection Account pursuant to Section 7.03 and distributed on the next Payment Date pursuant to Section 7.06. The Trust Depositor and the Issuer agree and acknowledge that the Trustee is to have "control" (within the meaning of the UCC) of collateral composed of "Investment Property" (within the meaning of the UCC) for all purposes of this Agreement.

(h) The Servicer may (and, for the purposes of clause (i) below, shall), at any time upon one (1) Business Day's notice to the Trustee or, if different, the depository institution then holding the Collection Account, make withdrawals from the Collection Account for the following purposes:

(i) to remit to the Trustee on the Business Day immediately preceding any Payment Date, for deposit in the Distribution Account, Collections received during the immediately preceding Collection Period (other than any Transfer Deposit Amounts still available to invest in Substitute Loans pursuant to Section 11.01) and all amounts deposited into the Collection Account from the Reserve Account pursuant to Section 7.02;

(ii) [Reserved];

(iii) to withdraw any amount received from an Obligor that is recoverable and sought to be recovered as a voidable preference by a trustee in bankruptcy pursuant to the Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction;

(iv) [Reserved];

(v) to make investments in Permitted Investments;

(vi) to withdraw any funds deposited in the Collection Account that were not required or permitted to be deposited therein or were deposited therein in error;

(vii) at any time during the Reinvestment Period, to acquire Additional Loans as contemplated by Section 2.07;

(viii) to acquire Substitute Loans as contemplated by Section 2.07 to the extent funds have been deposited by the Seller for such purpose pursuant to Section 11.01;

(ix) to clear and terminate the Collection Account upon the termination of this Agreement.

Section 7.04. Reinvestment Account.

(a) The Trustee shall establish and maintain the Reinvestment Account in the name of the Issuer for the benefit of the Trustee and the Noteholders. The Reinvestment Account shall be held in one Eligible Deposit Account with a Qualified Institution in the form of an interest-bearing trust account wherein the moneys therein are invested in Permitted Investments. The Servicer will monitor the Reinvestment Account in accordance with its customary policies and procedures.

(b) Deposits to the Reinvestment Account shall be made in accordance with Section 7.06(b).

(c) On or prior to any Payment Date, the Servicer may elect to transfer funds from the Reinvestment Account to the Distribution Account to be treated as Principal Collections and applied on such Payment Date in accordance with Section 7.06(b).

(d) Upon the first Payment Date following the Reinvestment Period Termination Date, the Servicer shall direct the Trustee to withdraw all amounts on deposit in the Reinvestment Account and deposit such amounts to the Distribution Account for distribution in accordance with Section 7.06(b).

(e) On the earlier to occur of the Legal Final Payment Date and the Payment Date on which the Outstanding Principal Balance of the Notes is reduced to zero, the Servicer shall direct the Trustee to withdraw all amounts on deposit in the Reinvestment Account and deposit such amounts to the Distribution Account for distribution in accordance with the Priority of Payments.

(f) Upon the occurrence of an Event of Default, the Servicer shall direct the Trustee to withdraw all amounts on deposit in the Reinvestment Account and deposit such amounts to the Distribution Account for distribution in accordance with Section 7.06(c).

Section 7.05. Securityholder Distributions.

(a) Each Securityholder as of the related Record Date shall be paid on the next succeeding Payment Date by wire transfer to the account directed by such Securityholder if such Securityholder provides written instructions to the Trustee or Owner Trustee, respectively, at least ten (10) days prior to such Payment Date, which instructions may be in the form of a standing order, or if no such instructions are provided, by check mailed to such Securityholder at the address for such Securityholder appearing on the Note Register or Certificate Register.

(b) The Trustee shall serve as the paying agent hereunder and shall make the payments to the Securityholders required hereunder. The Trustee hereby agrees that all amounts held by it for payment hereunder will be held in trust for the benefit of the Securityholders.

Section 7.06. Allocations and Distributions.

(a) Allocations of Interest Collections. On the Business Day immediately preceding each Payment Date, the Trustee, upon written instructions from the Servicer, will transfer (i) all Interest Collections on deposit in the Collection Account and (ii) any amounts required to be transferred from the Reserve Account to the Distribution Account. Such amounts will remain uninvested while deposited in the Distribution Account. On each Payment Date (other than a Payment Date following an Event of Default and acceleration of the Notes), the Trustee, upon written instructions from the Servicer, will distribute Interest Collections on deposit in the Distribution Account to the following parties in the order of priority set forth below; *provided* that amounts, if any, transferred from the Reserve Account will be distributed solely with respect to items 1 through 4 below. With respect to the Notes then Outstanding, payments shall be made *pro rata* to the Holders of Notes based on their respective Percentage Interests.

1. first, to the Trustee, the Backup Servicer (including in its capacity as Successor Servicer), the Custodian, the Owner Trustee, the Split Loan Agent (if USBNA), if any, the Paying Agent and the Lockbox Bank, fees, expenses and indemnities then due, in each case subject to the Administrative Expense Cap and Owner Trustee Cap and second, *pro rata*, based on amounts due and owing to such Persons under this clause 1, to the Owner Trustee, solely with respect to amounts in excess of the Owner Trustee Cap, the Trust Depositor, the Split Loan Agent, if any, the Paying Agent and the Lockbox Bank (in each case, if other than U.S. Bank, USBNA or an affiliate thereof), any accrued and unpaid fees (other than the Servicing Fee), expenses and indemnities then due in each case subject to the Administrative Expense Cap; *provided* that, pursuant to this clause 1, the Trust Depositor shall only be entitled to the fees of the independent manager of the Trust Depositor and any indemnity amounts owing to the Backup Servicer as Successor Servicer shall not be subject to the Administrative Expense Cap and shall instead

be paid in accordance with clause 2 below and *provided* further that (for the avoidance of doubt) on the Payment Date occurring in December of each calendar year (and on an Optional Redemption Date), any unused portion of the $100,000 allocated to the Owner Trustee will be available to be applied to other accrued and unpaid fees, expenses and indemnities payable under this clause 1;

2. *pro rata* based on amounts owing to such Persons under this clause 2, (i) to the Servicer or any Successor Servicer (including for the avoidance of doubt the Backup Servicer in such capacity), any previously unreimbursed Scheduled Payment Advances, together with accrued interest thereon (calculated at a rate equal to 5.0%), Servicing Advances, together with accrued interest thereon (calculated at a rate equal to 5.0%), the Servicing Fee for the related calendar month payable pursuant to this Agreement for the related calendar month, any reimbursements for mistaken deposits, any accrued and unpaid fees (other than the Servicing Fee), expenses and indemnities then due to the initial Servicer (such expenses and indemnities in each case subject to a rolling twelve-month limit of $50,000) and any indemnities then due to the Backup Servicer in its capacity as Successor Servicer (such indemnities subject to a rolling twelve-month limit of $250,000) and other related amounts and certain other amounts due on the Loans that the Servicer is entitled to retain; (ii) to the Seller, amounts deposited into the Lockbox Account but not related to interest or principal due on the Loans or fees, reimbursements or indemnities payable to the Issuer in respect of the Loans; (iii) to the Backup Servicer, the Successor Servicer Engagement Fee; and (iv) costs and expenses, if any, incurred by the Trustee or by any Successor Servicer (including the Backup Servicer) in connection with the transfer of servicing to any Successor Servicer, subject to the Transition Expense Cap;

3. to the Noteholders, the Interest Amount for the related Interest Period, if any, *plus* the Interest Shortfall, if any, *plus* interest on any such Interest Shortfall at the Interest Rate for the related Interest Period(s) (to the extent permitted by Applicable Law);

4. unless Principal Collections (after giving effect to all prior interest payments and assuming no draws on the Reserve Account or redirection of Principal Collections to pay interest) are sufficient to make the payments in clause 2 of Section 7.06(b) and the Servicer notifies the Trustee by the related Record Date to make such payment solely from Principal Collections pursuant to Section 7.06(b), on a *pro rata* basis to the Noteholders, all amounts required by clause 2 of Section 7.06(b);

5. if the amount on deposit in the Reserve Account is less than the Reserve Account Required Balance, to the Reserve Account, the lesser of (i) 50% of any remaining Interest Collections and (ii) the amount required so that the amount on deposit in the Reserve Account equals the Reserve Account Required Balance;

6. to pay each of the Trustee, the Owner Trustee, the Backup Servicer, any Successor Servicer, the Custodian, the Split Loan Agent, if any, the Paying Agent and the Lockbox Bank, *pro rata* based on the amounts due and owing thereto, any fees, expenses and indemnities then due to such party that are in excess of the Administrative Expense Cap or Transition Expense Cap, as applicable; and

7. to pay all remaining Interest Collections to or at the direction of the Certificateholder.

To the extent that any fees of the Owner Trustee or the Trustee (in all capacities hereunder (including for avoidance of doubt as Backup Servicer or Successor Servicer)) are not paid on a Payment Date due to insufficiency of funds, such unpaid fees shall be paid on the next Payment Date on which funds are available to pay such fees in accordance with the priority of payments set forth above in this Section 7.06(a).

(b) Allocations of Principal Collections and Reserve Available Funds. On the Business Day immediately preceding each Payment Date, the Trustee, upon written instructions from the Servicer, will transfer (i) all Principal Collections on deposit in the Collection Account, (ii) all amounts, if any, required to be transferred pursuant to Section 7.02(g) to the Distribution Account, (iii) any amounts transferred from the Reinvestment Account at the direction of the Servicer pursuant to Section 7.04(c), and (iv) on the Business Day immediately preceding the

first Payment Date following the Reinvestment Period Termination Date, all amounts, if any, on deposit the Reinvestment Account, to the Distribution Account. Such amounts will remain uninvested while deposited in the Distribution Account. On each Payment Date (other than a Payment Date following an Event of Default or acceleration of the Notes or following the institution of Proceedings for foreclosure of the Indenture and liquidation of the Collateral), the Trustee, upon written instructions from the Servicer, will distribute the Principal Collections, any Reserve Available Funds on deposit in the Distribution Account and any amounts transferred from the Reinvestment Account to the following parties in the order of priority set forth below. With respect to the Notes then Outstanding, payments shall be made *pro rata* to the Holders of Notes based on their respective Percentage Interests.

1. to pay any unpaid amounts referred to in clauses 1 through 3 of Section 7.06(a) (in the priority stated therein) after the application of Interest Collections;

2. (I) for so long as no Rapid Amortization Event has occurred, the Principal Distribution Amount (x) on or prior to the Reinvestment Period Termination Date, to the Reinvestment Account and (y) after the Reinvestment Period Termination Date, on a pro rata basis to the Noteholders, to pay outstanding principal on the Notes and (II) following the occurrence of any Rapid Amortization Event, or on the Legal Final Payment Date, on a *pro rata* basis to the Noteholders, until the Outstanding Note Balance is reduced to zero;

3. to pay any unpaid amounts referred to in clause 6 of Section 7.06(a), after the application of Interest Collections;

4. on or prior to the Reinvestment Period Termination Date, to the extent of amounts on deposit in (or to be deposited to) the Reinvestment Account, the amount determined by the Servicer, at its option, (i) upon prior notice thereof to the Trustee, the Rating Agency and the Noteholders, to be applied as a prepayment of principal on the Notes on a pro rata basis, in each case together with the Applicable Premium, and (ii) otherwise all remaining funds to be deposited in the Reinvestment Account; and

5. to pay all remaining Principal Collections to or at the direction of the Certificateholder.

To the extent that any fees of the Owner Trustee or the Trustee (in all capacities hereunder (including for avoidance of doubt as Backup Servicer or Successor Servicer)) are not paid on a Payment Date due to insufficiency of funds, such unpaid fees shall be paid on the next Payment Date on which funds are available to pay such fees in accordance with the priority of payments set forth above in this Section 7.06(b).

(c) Default Allocations. On each Payment Date (or such other date as selected by the Trustee pursuant to the Indenture) (i) following the occurrence of an Event of Default, (ii) following an acceleration of the Notes pursuant to Section 5.02 of the Indenture that has not been rescinded and annulled in accordance with the terms of the Indenture, or (iii) following the institution of Proceedings for the foreclosure of the Indenture and the liquidation of the Collateral pursuant to Section 5.04(a)(ii) of the Indenture, the Trustee will transfer all Collections on deposit in the Collection Account as of the end of the applicable Collection Period, including Proceeds from the liquidation of the Collateral, to the Distribution Account. On each Payment Date (or such other date as selected by the Trustee pursuant to the Indenture), the Trustee will distribute such amounts together with Available Funds and all other funds available for distributions on the Notes, to the extent there are sufficient funds, to the following parties in the order of priority set forth below. With respect to the Notes then Outstanding, payments shall be made *pro rata* to the Holders of Notes based on their respective Percentage Interests.

1. to the Trustee, the Owner Trustee, the Servicer, the Backup Servicer (including in its capacity as Successor Servicer), the Custodian, the Split Loan Agent, if any, the Paying Agent and the Lockbox Bank amounts due and owing to such entities pursuant to the priorities in clauses 1 and 2 of Section 7.06(a), and without regard to the cap set forth in clauses 1 and 2 of Section 7.06(a);

2. to the Holders of the Notes, on a *pro rata* basis, for any unpaid amounts on such Notes for interest;

3. to the Holders of the Notes, on a *pro rata* basis, for any unpaid amounts on such Notes for principal, until such Notes are paid in full; and

4. to pay all remaining amounts to the Certificateholder.

ARTICLE 8.

SERVICER DEFAULT; SERVICER TRANSFER

Section 8.01. Servicer Default.

"Servicer Default" means the occurrence of any of the following:

(a) any failure by the Servicer to remit or cause to be remitted when due any payment, transfer or deposit required to be remitted by the Servicer to the Trustee under the terms of this Agreement or the other Transaction Documents and such failure continues unremedied for a period of two (2) Business Days, it being understood that the Servicer shall not be responsible for the failure of either the Issuer or the Trustee to remit funds that were received by the Issuer or the Trustee from or on behalf of the Servicer in accordance with this Agreement or the other Transaction Documents; or

(b) failure by the Servicer duly to observe or perform any other covenants or agreements of the Servicer set forth in this Agreement or the other Transaction Documents, which failure materially and adversely affects the rights of the Issuer or the Noteholders and continues unremedied for a period of 60 days (if such failure or breach can be cured) after the first to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to a Responsible Officer of the Servicer by the Trustee or to a Responsible Officer of the Servicer and the Trustee by any Noteholder or the Certificateholder or (ii) the date the Servicer shall assign any of its duties hereunder other than as expressly permitted hereby (which includes the ability of the Servicer to assign such duties to any Affiliate); or

(c) any representation or warranty of the Servicer in this Agreement or any other Transaction Document or in any certificate delivered under this Agreement or any other Transaction Document (other than any representation or warranty relating to a Loan that has been purchased by the Servicer) shall prove to have been incorrect when made, which has a material adverse effect on the Noteholders and which continues unremedied for 30 days after discovery thereof by a Responsible Officer of the Servicer or after the date on which written notice of such failure, requiring the same to be remedied, shall have been delivered to the Servicer by the Trustee; or

(d) a decree or order of a court or agency or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any Insolvency Proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against the Servicer and such decree or order shall have remained in force, undischarged or unstayed for a period of 60 consecutive days; or

(e) the Servicer shall consent to the appointment of a conservator or receiver or liquidator in any Insolvency Proceedings of or relating to the Servicer or of or relating to all or substantially all of the Servicer's property; or

(f) the Servicer shall cease to be eligible to continue as Servicer under this Agreement pursuant to Section 5.12(a); or

(g) the Servicer shall file a petition to take advantage of any applicable Insolvency Laws, make an assignment for the benefit of its creditors or generally fail to pay its debts as they become due; or

(h) so long as Hercules is the Servicer, Hercules shall fail to maintain a statutory asset coverage ratio within the 2:1 regulatory limit on Hercules as a business development company under the Investment Company Act of 1940 and such failure continues unremedied for a period of forty-five (45) days.

Notwithstanding the foregoing, a delay in or failure of performance referred to under Section 8.01(a) above for a period of five Business Days or referred to under Section 8.01(b) above for a period of sixty (60) days (in addition to the 60-day period provided therein) shall not constitute a Servicer Default until the expiration of such additional five (5) Business Days or sixty (60) days, respectively, if such delay or failure could not be prevented by the exercise of reasonable diligence by the Servicer and such delay or failure was caused by an act of God or other events beyond the Servicer's control.

Section 8.02. Servicer Transfer.

(a) If a Servicer Default has occurred and is continuing, the Trustee or the Issuer may, upon direction of a Supermajority of the Noteholders, terminate all of the rights and obligations of the Servicer hereunder by notice to the Servicer (a "Termination Notice"), whereupon the Backup Servicer will succeed to all of the Servicer's management, administrative, servicing, custodial and collection functions as Servicer hereunder within sixty (60) days of receiving a Termination Notice.

(b) If the Backup Servicer is unable to assume the role of the Servicer after a Termination Notice is delivered pursuant to Section 8.02(a), and the Trustee is unwilling or unable to act as the successor servicer as provided in Section 8.03 (the "Successor Servicer"), the Trustee (i) will provide the Trust Depositor with written notice of such circumstances (and the Trust Depositor shall promptly forward a copy of such notice to the Rating Agency) and (ii) may appoint a Successor Servicer with assets of at least $50,000,000 and whose regular business includes the servicing of assets similar to the Loan Assets. Such proposed Successor Servicer shall become the Successor Servicer once it assumes the Servicer's responsibilities and obligations in accordance with Section 8.03. If such proposed Successor Servicer is unable to assume the responsibilities and obligations of the Servicer, the Trustee shall propose an alternative established servicing institution to serve as the Successor Servicer. Such other proposed Successor Servicer shall become the Successor Servicer once it assumes the Servicer's responsibilities and obligations in accordance with this Agreement. If no Successor Servicer has been appointed and approved following the above procedures within 120 days of the delivery of a Termination Notice or notice of resignation by the Servicer, then any of the Issuer, Trustee, removed or resigning Servicer or any Securityholder may petition any court of competent jurisdiction for the appointment of a Successor Servicer, which appointment will not require the consent of, nor be subject to the approval of the Issuer, the Trustee or any Securityholder.

(c) On the date that a Successor Servicer (including for the avoidance of doubt the Backup Servicer acting as such) shall have been appointed and accepted such appointment pursuant to Section 8.03 (such appointment being herein called a "Servicer Transfer"), all rights, benefits, fees, indemnities, authority and power of the Servicer under this Agreement, whether with respect to the Loans, the Loan Files or otherwise, shall pass to and be vested in such Successor Servicer pursuant to and under this Section 8.02; and, without limitation, the Successor Servicer is authorized and empowered to execute and deliver on behalf of the Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do any and all acts or things necessary or appropriate to effect the purposes of such notice of termination. The Servicer agrees to cooperate with the Successor Servicer in effecting the termination of the responsibilities and rights of the Servicer hereunder, including, without limitation, the transfer to the Successor Servicer for administration by it of all cash amounts which shall at the time be held by the Servicer for deposit, or have been deposited by the Servicer, in the Collection Account and the Reserve Account, or thereafter received with respect to the Loans and Related Property. The Servicer shall transfer to the Successor Servicer (i) all records held by the Servicer relating to the Loans and Related Property in such electronic form as the Successor Servicer may reasonably request and (ii) any Loan Files in the Servicer's possession. In addition, the Servicer shall

permit access to its premises (including all computer records and programs) to the Successor Servicer or its designee, and shall pay the reasonable transition expenses of the Successor Servicer. Upon a Servicer Transfer, the Successor Servicer shall also be entitled to receive the Servicing Fee thereafter payable for performing the obligations of the Servicer and any additional amounts payable to the Servicer hereunder. Any indemnities provided in this Agreement or the other Transaction Documents in favor of the Servicer, any Servicing Fee (together with accrued interest thereon), any other fees, costs and expenses and any Scheduled Payment Advances, Servicing Advances and Nonrecoverable Advances (in each case together with accrued interest due the Servicer thereon), in any case, that have accrued and/or are due and unpaid or unreimbursed to the Servicer shall survive the termination of the Servicer and its replacement with a Successor Servicer and the Servicer being replaced shall remain entitled thereto until paid hereunder out of the Collection Account or the Distribution Account in accordance with the Priority of Payments.

Section 8.03. Acceptance by Successor Servicer; Reconveyance; Successor Servicer to Act.

(a) Subject to Section 8.04, no appointment of a Successor Servicer (other than the Backup Servicer) shall be effective until the Successor Servicer shall have executed and delivered to the Issuer and the Trustee a written acceptance of such appointment and of the duties of Servicer hereunder, subject to Section 8.03(d). The Servicer shall continue to perform all servicing functions under this Agreement until the date the Successor Servicer shall have so executed and delivered such written acceptance.

(b) [Reserved].

(c) As compensation, a Successor Servicer (including for the avoidance of doubt, the Backup Servicer acting as such) so appointed shall be entitled to receive the Servicing Fee, together with any other servicing compensation in the form of assumption fees, late payment charges or otherwise as provided in the Transaction Documents that thereafter are payable under this Agreement, including, without limitation, all reasonable costs (including reasonable attorneys' fees) incurred in connection with transferring the servicing obligations under this Agreement and amending this Agreement (if necessary) to reflect such transfer. None of the Trustee, the Backup Servicer, nor any Successor Servicer shall be held liable by reason of any failure to make, or any delay in making, any distribution hereunder or any portion thereof caused by (i) the failure of the Servicer to deliver, or any delay in delivering, cash, documents or records to it, or (ii) restrictions imposed by any regulatory authority having jurisdiction over the Servicer. To the extent that the Trustee or the Backup Servicer incurs any extraordinary expenses in connection with a servicing transfer, it shall be entitled to reimbursement therefor as an Administrative Expense pursuant to the Priority of Payments.

(d) On or after a Servicer Transfer, the Successor Servicer shall be the successor in all respects to the Servicer in its capacity as servicer under this Agreement and the transactions set forth or provided for herein with respect to servicing of the Collateral and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof (except, for the avoidance of doubt, any obligations stated to be imposed solely on the "initial Servicer"), and the terminated Servicer shall be relieved of such responsibilities, duties and liabilities arising after such Servicer Transfer; *provided* that (i) the Successor Servicer will not assume any obligations of the Servicer described in Section 8.02(c), (ii) the Successor Servicer shall not be liable for any acts or omissions of the Servicer occurring prior to such Servicer Transfer or for any breach by the Servicer of any of its representations and warranties contained herein or in any other Transaction Document, (iii) other than in respect of Servicing Advances relating to taxes, the Successor Servicer shall have no obligation to pay any taxes required to be paid by the Servicer (provided, that the Successor Servicer shall pay any income taxes for which it is liable), (iv) the Successor Servicer shall have no obligation to pay any of the fees and expenses of any other party to the transactions contemplated hereby, (v) the Successor Servicer shall have no liability or obligation with respect to any Servicer indemnification obligations of any prior Servicer, including the initial Servicer, and (vi) the Successor Servicer shall have no liability or obligation to perform any repurchase or advancing obligations of the Servicer. Notwithstanding anything else herein to the contrary, in no event shall the Trustee be liable for any Servicing Fee or for any differential in the amount of the servicing fee paid hereunder and the amount necessary to induce any Successor Servicer to act as Successor Servicer under this Agreement and the transactions set forth or provided for herein,

including any Servicing Transfer Costs. The Trustee and such successor shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession. The terminated Servicer shall remain entitled to payment and reimbursement of the amounts set forth in the last sentence of Section 8.02(b) notwithstanding its termination hereunder, to the same extent as if it had continued to service the Loans hereunder. The Backup Servicer, as Backup Servicer or Successor Servicer, shall not be required to expend or risk its own funds.

(e) Notwithstanding anything contained in this Agreement or the Indenture to the contrary, in the event that USBNA becomes Successor Servicer pursuant to this Agreement, USBNA shall not be responsible for the accounting, records (including computer records) and work of Hercules Capital, Inc. or any other predecessor Servicer relating to the Loans (collectively, the "Predecessor Servicer Work Product"). If any error, inaccuracy, omission or incorrect or non-standard practice or procedure (collectively, "Errors") exists in any Predecessor Servicer Work Product and such Errors make it materially more difficult to service or should cause or materially contribute to USBNA making or continuing any Errors (collectively, "Continued Errors"), USBNA shall have no liability for such Continued Errors; provided, however, that USBNA agrees to use commercially reasonable efforts to prevent Continued Errors. In the event that USBNA becomes aware of Errors or Continued Errors, U.S. Bank shall, with the prior consent of the Trustee, use commercially reasonable efforts to reconstruct and reconcile such data to correct such Errors and Continued Errors and to prevent future Continued Errors. USBNA shall be entitled to recover its costs thereby expended in accordance with the Priority of Payments.

(f) The Successor Servicer is authorized to accept and rely on all accounting records (including computer records) and work product of the prior Servicer hereunder relating to the Collateral without any audit or other examination.

(g) With respect to any Loan that relates to a foreign Obligor that is not registered to do business in the United States or Canada (excluding Quebec), does not have contact information in the United States or Canada (excluding Quebec) or the collateral securing such Loan is located outside of the United States or Canada (excluding Quebec) (in each case, a "Foreign Loan"), the Backup Servicer acting as successor Servicer shall only be responsible for invoicing (unless such Foreign Loan relates to a foreign Obligor that is registered to do business in Quebec or secured by collateral located in Quebec, in which case the Backup Servicer shall not be responsible for invoicing) and acting as system of record with respect to such Loan and will not be responsible for exercising the Issuer's rights and remedies with respect to such Foreign Loan.

Section 8.04. Notification to Securityholders.

(a) Promptly following the occurrence of any Servicer Default, the Servicer shall give written notice thereof to the Trustee, the Backup Servicer, the Owner Trustee, the Trust Depositor and the Rating Agency at the addresses described in Section 13.04 hereof and the Trustee shall promptly forward such notice to the Noteholders and Certificateholder at their respective addresses appearing on the Note Register and the Certificate Register, respectively.

(b) Within ten (10) days following receipt of a Termination Notice or notice of appointment of a Successor Servicer pursuant to this Article VIII, the Trustee shall give written notice thereof to the Trust Depositor (and the Trust Depositor shall promptly forward a copy of such notice to the Rating Agency) at the addresses described in Section 13.04 hereof and to the Noteholders and Certificateholder at their respective addresses appearing on the Note Register and the Certificate Register, respectively.

Section 8.05. Effect of Transfer.

(a) After a Servicer Transfer, the terminated Servicer shall have no further obligations with respect to the management, administration, servicing, custody or collection of the Loans as Servicer hereunder and, subject to Section 8.03(d), the Successor Servicer appointed pursuant to Section 8.03 shall have all of such obligations,

except that the terminated Servicer will transmit or cause to be transmitted directly to the Successor Servicer promptly on receipt and in the same form in which received, any amounts (properly endorsed where required for the Successor Servicer to collect them) received as Collections upon or otherwise in connection with the Collateral.

(b) A Servicer Transfer shall not affect the rights and duties of the parties hereunder (including but not limited to the obligations and indemnities of the Servicer) other than those relating to the management, administration, servicing, custody or collection of the Loans.

Section 8.06. Database File.

Upon reasonable request by the Trustee or the Successor Servicer, the Servicer will provide the Successor Servicer with a magnetic tape or Microsoft Excel or similar spreadsheet file containing the database file for each Loan on and as of the Business Day before the actual commencement of servicing functions by the Successor Servicer following the occurrence of a Servicer Default.

Section 8.07. Waiver of Defaults.

The Majority Noteholders may, on behalf of all the Securityholders, waive any default by the Servicer of its obligations hereunder and all consequences of such default, except a default in making any required deposits to the Collection Account or the Distribution Account. No such waiver or cure shall extend to any subsequent or other default or impair any right consequent thereto except to the extent expressly so waived.

ARTICLE 9.

REPORTS

Section 9.01. Monthly Reports.

(a) With respect to each Payment Date and the related Collection Period, the Servicer shall prepare a statement (a "Monthly Report") containing the information set forth in Exhibit H-2 hereto with respect to the preceding Collection Period and will deliver a copy of such Monthly Report to the Trustee and the Backup Servicer no later than the related Reference Date.

(b) In the first Monthly Servicer Report delivered after the Closing Date, the following additional information will be provided by the Servicer to the Trustee: (i) the fair value (expressed as a percentage of the fair value of all Notes and the Certificate and as a dollar amount) of the actual principal amount of the Certificate acquired and retained by the Trust Depositor as of the Closing Date (based on actual initial Loans, sale prices and finalized class size for the Notes); (ii) the fair value (expressed as a percentage of the fair value of all Notes and the Certificate and dollar amount) of the Certificate that the Trust Depositor is required to retain pursuant to the U.S. credit risk retention requirements set forth in Section 941 of the Dodd-Frank Act and the joint final implementation rules promulgated thereunder; and (iii) a description of the valuation methodology or any of the key inputs and assumptions.

(c) On or before each Payment Date, the Trustee will provide or make available at its website at https://pivot.usbank.com (or at such other address as the Trustee shall notify the Issuer, the Servicer, the Trust Depositor, the Backup Servicer, the Owner Trustee, the Rating Agency and the Noteholders) the Monthly Report received by it on the related Reference Date to the Issuer, the Servicer, the Backup Servicer, the Rating Agency and the Securityholders in accordance with Section 3.29 of the Indenture.

Section 9.02. Quarterly Reports.

(a) The Servicer shall prepare a quarterly statement (a "Quarterly Report") containing the information set forth in Exhibit H-1 hereto with respect to the three (3) most recently preceding Collection Periods.

(b) [Reserved].

(c) Within 45 days of the end of each Fiscal Quarter, beginning on the Reference Date occurring in April 2023, the Servicer will provide to the Trustee and the Backup Servicer a Quarterly Report relating to the calendar quarter immediately preceding the calendar quarter in which such Reference Date occurs. Not later than the Payment Date relating to such Reference Date, the Trustee will provide or make available at its website at https://pivot.usbank.com (or at such other address as the Trustee shall notify the Issuer, the Servicer, the Trust Depositor, the Backup Servicer, the Owner Trustee, the Rating Agency and the Noteholders) such Quarterly Report to the Issuer, the Servicer, the Backup Servicer, the Rating Agency and the Noteholders in accordance with Section 3.29 of the Indenture.

Section 9.03. Preparation of Reports; Officer's Certificate.

(a) The Servicer shall cooperate with the Trustee in connection with the delivery of the Monthly Reports and Quarterly Reports. Without limiting the generality of the foregoing and the obligation of the Servicer to deliver Monthly Reports and Quarterly Reports to the Trustee, the Servicer shall supply in a timely fashion any information as to any determinations required to be made by the Servicer hereunder or under the Indenture and such other information as is maintained by the Servicer that the Trustee may from time to time request with respect to the Collateral. Nothing herein shall obligate the Trustee to determine independently any characteristic of a Loan, including without limitation whether any item of Collateral is an Agented Loan, Co-Agented Loan, Third Party Agented Loan or Participated Loan, any such determination being based exclusively upon notification the Trustee receives from the Servicer, and except as otherwise specifically set forth in any of the Transaction Documents, nothing in this Article IX shall obligate the Trustee to review or examine any underlying instrument or contract evidencing, governing or guaranteeing or securing any Loan in order to verify, confirm, audit or otherwise determine any characteristic thereof.

(b) In performing its duties hereunder to provide the Monthly Reports and Quarterly Reports, the Trustee shall in no event have any liability for the actions or omissions of the Servicer or any other Person, and shall have no liability for any inaccuracy or error in any Monthly Report or Quarterly Report it distributes pursuant to Sections 9.01 and 9.02, except to the extent that such inaccuracies or errors are caused by the Trustee's own fraud, bad faith, willful misfeasance, gross negligence or reckless disregard of its duties hereunder. The Trustee shall not be liable for failing to perform or delay in performance of its specified duties hereunder that results from or is caused by a failure or delay on the part of the Servicer or another Person in furnishing necessary, timely and accurate information to the Trustee or the Servicer or a review by the Independent Accountants of a Monthly Report or a Quarterly Report.

Section 9.04. Other Data; Obligor Financial Information.

(a) Not later than 4:00 p.m. (Eastern Time) on the Reference Date, the Servicer shall provide to the Trustee (in a format agreed to by the Trustee and the Servicer) and the Backup Servicer such information (the "Tape") the Servicer relied upon to prepare the Monthly Report and Quarterly Report, as applicable, for such month. Each Tape shall include, but not be limited to, the information set forth in Exhibit H-2 (in the case of Monthly Reports) and Exhibit H-1 (in the case of Quarterly Reports). The Backup Servicer shall use such tape or diskette (or other electronic transmission acceptable to the Trustee and the Backup Servicer) to (i) confirm that such tape, diskette or other electronic transmission is in readable form, and (ii) calculate and confirm (A) the aggregate amount distributable as principal on the related Payment Date to the Notes, (B) the aggregate amount distributable as interest on the related Payment Date to the Notes, (C) the outstanding principal amount of the Notes after giving effect to all distributions made pursuant to clause (A), above, and (D) the aggregate amount of principal and interest to be carried over on such Payment Date after giving effect to all distributions made pursuant to clauses (A) and (B), above, respectively. The

Backup Servicer shall certify to the Trustee that it has verified the Monthly Report or the Quarterly Report in accordance with this Section and shall notify the Servicer and the Trustee of any discrepancies, in each case, on or before the fifth Business Day following the related Payment Date. In the event that the Backup Servicer reports any discrepancies, the Servicer and the Backup Servicer shall attempt to reconcile such discrepancies prior to the next succeeding Payment Date, but in the absence of reconciliation, the Monthly Report or the Quarterly Report shall control for the purpose of calculations and distributions with respect to the next succeeding Payment Date. In the event that the Backup Servicer and the Servicer are unable to reconcile discrepancies with respect to a Monthly Report or Quarterly Report by the next succeeding Payment Date, the Servicer shall cause the Independent Accountants, at the Servicer's expense, to perform agreed-upon procedures to the information within the Tape in connection with such Monthly Report or the Quarterly Report and, prior to the last day of the month after the month in which such Monthly Report or Quarterly Report was delivered, reconcile the discrepancies. The effect, if any, of such reconciliation shall be reflected in the Monthly Report for such next succeeding Payment Date following the last date of the Collection Period. In addition, upon the occurrence of a Servicer Default the Servicer shall deliver to the Backup Servicer or any successor Servicer its files within 15 days after demand therefor and a computer tape containing as of the close of business on the date of demand all of the data maintained by the Servicer in computer format in connection with servicing the Loans. Other than the duties specifically set forth in this Agreement, the Backup Servicer shall have no obligations hereunder, including, without limitation, to supervise, verify, monitor or administer the performance of the Servicer. The Backup Servicer shall have no liability for any actions taken or omitted by the Servicer.

(b) In addition, the Servicer shall, upon the request of the Trustee or any Rating Agency, furnish the Trustee, the Backup Servicer, the Issuer or Rating Agency, as the case may be, such underlying data in the possession of the Servicer used to generate a Monthly Report or Quarterly Report as may be reasonably requested. The initial Servicer will also forward to the Trustee and the Rating Agency (i) within sixty (60) days after each fiscal quarter of the Servicer (except the fourth fiscal quarter), commencing with the quarter ending March 31, 2022, the unaudited quarterly financial statements of the Servicer and (ii) within 120 days after each fiscal year of the initial Servicer, commencing with the fiscal year ending December 31, 2022, the audited annual financial statements of the Servicer; *provided* that so long as the Servicer is required under the Securities Act to file its financial statements with the Securities and Exchange Commission, the foregoing requirement to provide such financial statements to the Trustee, the Issuer, the Backup Servicer and the Rating Agency shall not apply.

(c) [Reserved].

(d) [Reserved].

(e) The Servicer will forward to the Rating Agency promptly upon request any additional financial information in the Servicer's possession or reasonably obtainable by the Servicer as the Rating Agency shall reasonably request with respect to an Obligor as to which any Scheduled Payment is past due for at least ten (10) days.

Section 9.05. Annual Report of Accountants.

The initial Servicer shall cause a firm of nationally recognized independent certified public accountants (the "Independent Accountants"), who may also render other services to the Servicer or its Affiliates, to furnish to the Servicer and the Trustee, upon signature of an acknowledgment letter, one hundred twenty (120) days following the end of each fiscal year beginning with the calendar year ending December 31, 2022, a report addressed to the Servicer and the Trustee indicating that the Independent Accountants have performed certain procedures as agreed by the Servicer and the Trustee. As a part of such review, the Independent Accountants will obtain the Monthly Report with respect to two (2) Collection Periods during the 12 months ended the immediately preceding December 31 and, for each such Monthly Report, the Independent Accountants will reconcile certain amounts in the Monthly Report to the Servicer's computer, accounting and other reports. The Independent Accountants will include in such report any unreconciled amounts in such records that are not in agreement with the amounts in the Quarterly Reports. In the event the Independent Accountants require the Trustee to agree to the procedures performed by the Independent Accountants the Servicer shall direct the Trustee in writing to so agree; it being understood and agreed that the Trustee

will deliver such letter of agreement in conclusive reliance upon the direction of the Servicer, and the Trustee will not make any independent inquiry or investigation as to, and shall have no obligation or liability in respect of, the sufficiency, validity or correctness of such procedures. Without limiting the generality of the foregoing, the Trustee shall have no responsibility to make any inquiry or investigation as to, and shall have no obligation in respect of, the terms of any engagement of the Independent Accountants by the Servicer or the terms of any agreed upon procedures in respect of such engagement; *provided*, *however* that the Trustee shall be authorized, at the direction of the Servicer, to execute any acknowledgement or other agreement with the Independent Accountants required for the Trustee to receive any of the reports or instructions provided for herein, which acknowledgement or agreement may include, among other things, (i) acknowledgement that the Servicer has agreed that the procedures to be performed by the Independent Accountants are sufficient for the purposes of this Section 9.05, (ii) releases by the Trustee (on behalf of itself and the Holders) of claims against the Independent Accountants and acknowledgement of other limitations of liability in favor of the Independent Accountants and (iii) restrictions or prohibitions on the disclosure of information or documents provided to it by such firm of Independent Accountants (including to the Holders). Notwithstanding the foregoing, in no event shall the Trustee be required to execute any agreement in respect of the Independent Accountants that the Trustee reasonably determines adversely affects it. The Independent Accountants' report shall also indicate that the firm is independent of the Servicer within the meaning of the Code of Professional Ethics of the American Institute of Certified Public Accountants. If the Backup Servicer becomes the Successor Servicer it shall be entitled to reimbursement (as Administrative Expenses) for its expenses incurred in connection with this Section 9.05.

Section 9.06. Statements of Compliance from Servicer.

The Servicer will deliver to the Trustee, the Backup Servicer and KBRA within 120 days of the end of each fiscal year commencing with the year ending December 31, 2022, an Officer's Certificate stating that (a) the Servicer has fully complied in all material respects with certain provisions of the Agreement relating to servicing of the Loans and payments on the Notes, (b) a review of the activities of the Servicer during the prior calendar year and of its performance under this Agreement was made under the supervision of the officer signing such certificate and (c) to the best of such officer's knowledge, based on such review, the Servicer and Issuer have fully performed or caused to be performed in all material respects all their obligations under this Agreement for such year, or, if there has been a default in any of their respective obligations specifying each such default known to such officer and the nature and status thereof including the steps being taken by the Servicer to remedy such event.

Section 9.07. [Reserved].

Section 9.08. Notices of Event of Default, Servicer Default or Rapid Amortization Event.

Promptly, but in any case no later than within two (2) Business Days of discovery by a Responsible Officer of the Servicer or Issuer (or receipt of notice thereof by the Servicer or the Issuer, as applicable), such Person shall furnish to the Trustee (with a copy to the Backup Servicer) (i) in the case of any proposed or pending litigation or investigation relating to it by any governmental authority or any legal proceeding which involve or may involve the possibility of materially and adversely affecting the Issuer, a written notice specifying the nature of such litigation, investigation or proceeding and what action the Issuer is taking or proposes to take with respect thereto, (ii) written notice of the occurrence of any condition or event which constitutes an Event of Default, Rapid Amortization Event or Servicer Default, including a description of its nature and period of existence and what action the Servicer or Issuer is taking or proposes to take with respect thereto and (iii) written notice of any event or occurrence (including changes in applicable law) of which the Servicer or Issuer (as applicable) has knowledge that may reasonably affect, materially and adversely, the ability of the Servicer to service the Loans or to otherwise perform and carry out its duties, responsibilities and obligations under the Transaction Documents; provided, that in the case of any notice required pursuant to (ii) or (iii) above, the Servicer or the Issuer, as applicable, shall provide a copy of such notice to KBRA. The Trustee shall make available (including by posting to its website) to Holders any notice delivered to it pursuant to (i), (ii) or (iii) above, but shall not be under any obligation to review or evaluate any such notice, or to investigate or inquire further into any matter described therein.

Section 9.09. Trustee's Right to Examine Servicer Records, Audit Operations and Deliver Information to Noteholders.

The Trustee shall have the right upon reasonable prior notice, during normal business hours, in a manner that does not unreasonably interfere with the Servicer's normal operations or customer or employee relations, no more often than once a year unless an Event of Default or Servicer Default shall have occurred and be continuing in which case as often as reasonably required, to examine and audit any and all of the books, records or other information of the Servicer, whether held by the Servicer or by another on behalf of the Servicer, which may be relevant to the performance or observance by the Servicer of the terms, covenants or conditions of this Agreement. No amounts payable in respect of the foregoing shall be paid from the Loan Assets except that after an Event of Default, fees and expenses of the Trustee not paid by the Servicer shall be reimbursed to the Trustee as an Administrative Expense.

The Trustee shall have the right, in accordance with the Indenture, to deliver information provided by the Servicer to any Noteholder requesting the same; *provided* that the Servicer may request that any such Noteholder not a party hereto enter into a confidentiality agreement reasonably acceptable to the Servicer prior to permitting such Noteholder to view such information.

ARTICLE 10.

TERMINATION

Section 10.01. Optional Redemption of Notes; Rights of Certificateholders Following Satisfaction and Discharge of Indenture.

(a) Optional Redemption.

(i) The Issuer may elect to effect an Optional Redemption of the Notes, in whole but not in part, on any Redemption Date in accordance with the requirements of the Indenture. To effect an Optional Redemption, the Trust Depositor shall deposit in the Distribution Account an amount equal to the Redemption Price and shall comply with the Optional Redemption provisions set forth in Section 10.01 and Section 10.04 of the Indenture.

(ii) Notice of an Optional Redemption shall be provided by the Trust Depositor to the Trustee, the Owner Trustee and the Rating Agency in accordance with the Indenture.

(b) [Reserved].

(c) Following the satisfaction and discharge of the Indenture, the payment in full of the principal of and interest on the Notes, and payment of fees and expenses and other amounts owing to Trustee, the Certificateholders will succeed to the rights of the Noteholders hereunder.

Section 10.02. Termination.

(a) This Agreement shall terminate upon notice to the Trustee of the earlier of the following events: (i) the final payment on or the disposition or other liquidation by the Issuer of the last Loan (including, without limitation, in connection with a redemption by the Issuer of all outstanding Notes pursuant to Section 10.01) or the disposition of all other Collateral, including property acquired upon foreclosure or deed in lieu of foreclosure of any Loan and the remittance of all funds due thereunder with respect thereto, (ii) mutual written consent of the Servicer, the Backup Servicer, the Trust Depositor, the Issuer, the Trustee, the Seller and all Outstanding Securityholders or (iii) the payment in full of all amounts owing in respect of the Notes.

(b) Notice of any termination, specifying the Payment Date upon which the Issuer will terminate and that the Noteholders shall surrender their Notes to the Trustee for payment of the final distribution and cancellation shall be given promptly by the Servicer to the Trustee and by the Trustee to all Noteholders and the Rating Agency during the month of such final distribution before the Reference Date in such month, specifying (i) the Payment Date upon which final payment of the Notes (or Redemption Price) will be made upon presentation and surrender of Notes at the office of the Trustee therein designated, (ii) the amount of any such final payment and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of the Notes at the office of the Trustee therein specified.

ARTICLE 11.

REMEDIES UPON MISREPRESENTATION; REPURCHASE OPTION

Section 11.01. Repurchases of, or Substitution for, Loans for Breach of Representations and Warranties.

Upon a discovery by a Responsible Officer of the Trust Depositor, a Responsible Officer of the Servicer or any subservicer, a Responsible Officer of the Backup Servicer or a Responsible Officer of the Trustee of (i) a breach of a representation or warranty as set forth in Section 3.01, Section 3.02, or Section 3.04 or as made or deemed made in any notice relating to Substitute Loans, as applicable, that materially and adversely affects the interests of the Securityholders (each such Loan with respect to which such breach exists, an "Ineligible Loan"), the party discovering such breach or failure shall give prompt written notice to the other parties to this Agreement; *provided* that neither the Trustee nor the Backup Servicer shall have a duty or obligation (i) to discover or make an attempt to discover, inquire about or investigate the breach of any of such representations or warranties or any duty to provide such notice unless a Responsible Officer of the Trustee or Backup Servicer, as applicable, receives written notice of breach or alleged breach (without regard to whether such breach or alleged breach is a material breach as set forth in Section 3.01, Section 3.02, or Section 3.04 or (ii) to determine if such breach materially and adversely affects the interests of the Securityholders. Within 30 days of the earlier of (x) its discovery or (y) its receipt of notice of any breach of a representation or warranty, the Trust Depositor shall, or shall require the Seller pursuant to the Sale and Contribution Agreement to, and the Seller shall, (a) promptly cure such breach in all material respects, (b) repurchase each such Ineligible Loan by depositing in the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, for further credit, in either case, to the Collection Account, within such 30 day period, an amount equal to the Transfer Deposit Amount for such Ineligible Loan, or (c) remove such Loan from the Collateral, deposit the Transfer Deposit Amount with respect to such Loan into the Lockbox Account or, following the date on which the Master Collection Account Control Agreement and Master Collection Account Agency Agreement become effective, the Master Collection Account, as applicable, for further credit, in either case, to the Collection Account, and, not later than the date a repurchase of such affected Loan would be required hereunder, effect a substitution for such affected Loan with a Substitute Loan in accordance with the substitution requirements set forth in Sections 2.07 and 2.06.

Section 11.02. Reassignment of Repurchased or Substituted Loans.

Upon receipt by the Trustee for deposit in the Collection Account of the amounts described in Section 11.01 (or upon the Substitute Loan Cutoff Date related to a Substitute Loan described in Section 11.01), and upon receipt of an Officer's Certificate of the Servicer in the form attached hereto as Exhibit F, the Trustee and the Issuer shall assign to the Trust Depositor and the Trust Depositor shall assign to the Seller all of the Trustee's and the Issuer's (or Trust Depositor's, as applicable) right, title and interest in the Loans being repurchased or substituted for the related Loan Assets without recourse, representation or warranty. Such reassigned Loan shall no longer thereafter be included in any calculations of Outstanding Loan Balances required to be made hereunder or otherwise be deemed a part of the Collateral.

ARTICLE 12.

INDEMNITIES

Section 12.01. Indemnification by Servicer.

The initial Servicer agrees to indemnify, defend and hold harmless the Trustee (as such and in its individual capacity), the Custodian (as such and in its individual capacity), the Owner Trustee (as such and in its individual capacity), the Backup Servicer (as such, in its individual capacity and in its capacity as Successor Servicer) and any Successor Servicer (as such and in its individual capacity) and each of their officers, directors, employees and agents for and from and against any and all claims, losses, penalties, fines, forfeitures, judgments (provided that any indemnification for damages is limited to actual damages, not consequential, special or punitive damages), reasonable documented and out-of-pocket legal fees and related costs and any other reasonable costs, fees and expenses that such Person may sustain (including the reasonable costs and expenses of enforcing the indemnity against the Servicer) as a result of the Servicer's fraud or the failure of the Servicer to perform its duties and service the Loans in compliance in all material respects with the terms of this Agreement, except to the extent arising from gross negligence, willful misconduct or fraud by the Person claiming indemnification. Any Person seeking indemnification hereunder shall promptly notify the Servicer if such Person receives a complaint, claim, compulsory process or other notice of any loss, claim, damage or liability giving rise to a claim of indemnification hereunder but failure to provide such notice shall not relieve the Servicer of its indemnification obligations hereunder unless the Servicer is deprived of material substantive or procedural rights or defenses as a result thereof. The Servicer shall assume (with the consent of the indemnified party, such consent not to be unreasonably withheld) the defense and any settlement of any such claim and pay all expenses in connection therewith, including reasonable counsel fees, and promptly pay, discharge and satisfy any judgment or decree which may be entered against the indemnified party in respect of such claim; *provided* that any settlement of a claim shall include an unconditional release of the indemnified Person from all liability respecting such claim and shall not include any statement as to, or an admission of fault, culpability or a failure to act on behalf of the indemnified party without the indemnified party's consent. If the consent of the indemnified party required in the immediately preceding sentence is unreasonably withheld, the Servicer shall be relieved of its indemnification obligations hereunder with respect to such Person. The parties agree that the provisions of this Section 12.01 shall not be interpreted to provide recourse to the Servicer against loss by reason of the bankruptcy, insolvency or lack of creditworthiness of an Obligor with respect to a Loan. The Servicer shall have no liability for making indemnification hereunder to the extent any such indemnification constitutes recourse for uncollectible or uncollected Loans.

Section 12.02. Indemnification by Trust Depositor.

The Trust Depositor agrees to indemnify, defend, and hold the Trustee (as such and in its individual capacity), the Custodian (as such and in its individual capacity), the Owner Trustee (as such and in its individual capacity), the Backup Servicer (as such, in its individual capacity and in its capacity as Successor Servicer), any Successor Servicer (as such and in its individual capacity) and each of their officers, directors, employees and agents and each Securityholder harmless from and against any and all claims, losses, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments (*provided* that any indemnification for damages is limited to actual damages, not consequential, special or punitive damages), and any other reasonable costs, fees and expenses that such Person may sustain (including the reasonable costs and expenses of enforcing the indemnity against the Trust Depositor) as a result of the Trust Depositor's fraud or the failure of the Trust Depositor to perform its duties in compliance in all material respects with the terms of this Agreement and in the best interests of the Issuer, except to the extent arising from the gross negligence, willful misconduct or fraud by the Person claiming indemnification. Any Person seeking indemnification hereunder shall promptly notify the Trust Depositor if such Person receives a complaint, claim, compulsory process or other notice of any loss, claim, damage or liability giving rise to a claim of indemnification hereunder but failure to provide such notice shall not relieve the Trust Depositor of its indemnification obligations hereunder unless the Trust Depositor is deprived of material substantive or procedural rights or defenses as a result thereof. The Trust Depositor shall assume (with the consent of the indemnified party, such consent not to be

unreasonably withheld) the defense and any settlement of any such claim and pay all expenses in connection therewith, including reasonable counsel fees, and promptly pay, discharge and satisfy any judgment or decree which may be entered against the indemnified party in respect of such claim; *provided* that any settlement of a claim shall include an unconditional release of the indemnified Person from all liability respecting such claim and shall not include any statement as to, or an admission of fault, culpability or a failure to act on behalf of the indemnified party without the indemnified party's consent. If the consent of the indemnified party required in the immediately preceding sentence is unreasonably withheld, the Trust Depositor is relieved of its indemnification obligations hereunder with respect to such Person.

Section 12.03. Survival.

The indemnities provided in this Article 12 shall survive the discharge and termination of this Agreement or earlier resignation or removal of the indemnitee.

ARTICLE 13.

MISCELLANEOUS

Section 13.01. Amendment.

(a) This Agreement may be amended from time to time by the Issuer, the Trust Depositor, the Seller and the Servicer, with the consent of the Trustee and the Backup Servicer, by written agreement, with notice to the Owner Trustee and the Rating Agency but without the consent of any Securityholder, to (i) cure any ambiguity or to correct or supplement any provisions herein that may be inconsistent with any other provisions in this Agreement, (ii) comply with any changes in the Code, USA PATRIOT Act, or U.S. securities laws (including the regulations implementing such laws), (iii) evidence the succession of another Person to the Issuer, a Successor Servicer or a successor Trustee, and the assumption by any such successor of the applicable covenants therein, (iv) add to the covenants of any party hereto for the benefit of the Securityholders, (v) amend any provision to this Agreement to reflect any written change to the guidelines, methodology or standards established by any Rating Agency that are applicable to this Agreement, (vi) modify Exhibit G, or (vii) to amend, modify or otherwise accommodate changes to this Agreement relating to compliance with Rule 17g-5 under the Exchange Act or to permit compliance with the Dodd-Frank Act (including, without limitation, the Volcker Rule), as applicable to the Issuer, the Servicer or the Notes, or to comply with any rule or regulation enacted by regulatory agencies of the United States federal government after the Closing Date that are applicable to the Notes or the transactions contemplated by this Agreement. Notice of any proposed amendment must be sent to all Securityholders at least ten (10) Business Days prior to the execution of such amendment. Any amendment shall not be deemed to materially and adversely affect the interests of any Noteholder if the Person requesting such amendment obtains an Opinion of Counsel addressed to the Owner Trustee and the Trustee to that effect. No amendment of this Agreement which affects the rights, duties, liabilities, indemnities or immunities of the Owner Trustee, shall be effective without, in each specific instance, the prior written approval of the Owner Trustee. Notwithstanding anything contained herein to the contrary, with respect to any proposed amendment, the Owner Trustee shall not have any obligation to determine whether any such proposed amendment materially and adversely affects any Securityholder which determination shall be made by the Servicer with written notification thereof to the Owner Trustee.

(b) Except as provided in Section 13.01(a) hereof, this Agreement may be amended from time to time by the Issuer, the Trust Depositor, the Seller and the Servicer, with the consent of the Trustee and the Majority Noteholders and with prior notice to the Owner Trustee and the Rating Agency, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Securityholders; *provided* that (i) no such amendment shall, without the consent of each Noteholder that may be adversely affected, reduce the percentage of the principal balance of the Notes that is required to consent to any amendment to this Agreement and (ii) no such amendment shall increase or reduce in any manner the amount of, or accelerate or delay the timing of, or change the allocation or priority of, collections of payments on

or in respect of the Loans or distributions that are required to be made for the benefit of the Noteholders or change the interest rate applicable to the Notes, without the consent of all adversely affected Noteholders.

(c) Promptly after the execution of any such amendment or consent, written notification of the substance of such amendment or consent shall be furnished by the Trustee to the Noteholders and by the Issuer to the Certificateholders. It shall not be necessary for the consent of any Securityholders required pursuant to Section 13.01(b) to approve the particular form of any proposed amendment or consent, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents and of evidencing the authorization by the Securityholders of the execution thereof shall be subject to such reasonable requirements as the Trustee may prescribe for the Noteholders and as the Issuer may prescribe for the Certificateholders. Notwithstanding anything contained herein, any amendment which affects the Owner Trustee, the Custodian or the Backup Servicer shall require the Owner Trustee's, the Custodian's or the Backup Servicer's, as applicable, written consent. In connection with any amendment, the Owner Trustee and the Trustee shall be entitled to receive an Officer's Certificate and an Opinion of Counsel, if so requested, addressed to the Owner Trustee and the Trustee to the effect that such amendment is permitted hereunder and under the other Transaction Documents, has been duly authorized by all necessary action, and all conditions precedent to such amendment have been satisfied.

Section 13.02. Expected Rating.

(a) The Issuer, the Trust Depositor and the Servicer shall (i) use their best efforts to structure the Notes to obtain a rating of A (the "Expected Rating") from the Rating Agency, (ii) provide the Rating Agency with any information any analysis reasonably requested by the Rating Agency for purposes of assigning a rating to the Notes, (iii) cooperate with, and use their best efforts to secure the cooperation of the Noteholders, Placement Agent, Trustee and Owner Trustee, all reasonable requests of the Rating Agency in connection with assigning the Expected Rating to the Notes, including entering into any amendments to this Agreement and the other Transaction Documents reasonably acceptable to the respective parties thereto.

(b) If, notwithstanding the efforts of the parties hereto, the Rating Agency is unable to issue a rating on the Notes on or before the ninetieth (90^{th}) day following the Closing Date or the rating assigned to the Notes by the Rating Agency is BBB- or lower, the Trustee shall, at the direction of the Majority Noteholders (in their sole discretion), demand in writing that the Issuer repurchase the Notes from the Noteholders. No later than ten (10) Business Days following its receipt of such demand, the Issuer shall repurchase all, but not less than all, of such Notes from the Noteholders at a price equal to the then Outstanding Principal Balance of such Notes plus accrued and unpaid interest thereon to but excluding the date of such repurchase plus all expenses, fees and indemnities then due and payable on the Notes so repurchased.

Section 13.03. Governing Law.

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

(b) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN

INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.03(b).

Section 13.04. Notices.

All notices, demands, certificates, requests and communications hereunder ("notices") shall be in writing and shall be effective (a) upon receipt when sent through the U.S. mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, or (b) one Business Day after delivery to an overnight courier, or (c) on the date personally delivered to a Responsible Officer of the party to which sent, or (d) on the date transmitted by legible telecopier or electronic mail transmission with a confirmation of receipt, in all cases addressed to the recipient as follows:

(a) if to the Servicer or the Seller:

Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: Chief Financial Officer
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

with a copy to:

Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: General Counsel
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

(b) if to the Trust Depositor:

Hercules Capital Funding 2022-1 LLC
c/o Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310

Palo Alto, California 94301
Attention: Chief Financial Officer
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

with a copy to:

Hercules Capital Funding 2022-1 LLC
c/o Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: General Counsel
Re: Hercules Capital Funding Trust 2022-1

Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

(c) if to the Trustee:

U.S. Bank Trust Company, National Association
Global Corporate Trust
One Federal Street 3rd Floor
Boston, MA 02110
Attention: Jack Lindsay
Ref: Hercules Capital Funding Trust 2022-1
Tel: (617) 603-6789
Fax: (855) 869-2187

(d) if to the Backup Servicer:

U.S. Bank National Association
60 Livingston Avenue
St. Paul, MN 55107
Attention: John L. Linssen
Email: john.linssen@usbank.com
Telephone: (651) 466-5032
Ref: Hercules Capital Funding Trust 2022-1

(e) if to the Custodian with respect to Loan Files

U.S. Bank National Association
Document Custody Services
1719 Otis Way
Florence, South Carolina 29501
Attention: Steven Garrett
E-mail:steven.garrett@usbank.com
Telephone: 843-676-8901
Facsimile: 843-673-0162
Ref: Hercules Capital Funding Trust 2022-1

(f) if to the Owner Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration- Hercules Capital Funding Trust 2022-1

Email: BMcCammon@WilmingtonTrust.com

with a copy to:
the Seller and the Servicer as provided in clause (a) above

(g) if to the Issuer:

Hercules Capital Funding Trust 2022-1

c/o Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration- Hercules Capital Funding Trust 2022-1

Email: BMcCammon@WilmingtonTrust.com

with a copy to:
the Seller and the Servicer as provided in clause (a) above

(h) if to the Rating Agency:

Kroll Bond Rating Agency, LLC
805 Third Avenue, 29th Floor
New York, New York 10022
Attn: ABS Surveillance

Each party hereto may, by notice given in accordance herewith to each of the other parties hereto, designate any further or different address to which subsequent notices shall be sent.

Section 13.05. Severability of Provisions.

If one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever prohibited or held invalid or unenforceable, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement, the Notes or Certificates or the rights of the Securityholders, and any such prohibition, invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenants, agreements, provisions or terms in any other jurisdiction.

Section 13.06. Third Party Beneficiaries.

The Owner Trustee is an express third-party beneficiary of this Agreement and, as such, shall have full power and authority to enforce the provisions of this Agreement against the parties hereto. Except as otherwise specifically provided herein, the parties hereto hereby manifest their intent that no third party shall be deemed a third party beneficiary of this Agreement, and specifically that the Obligors are not third party beneficiaries of this Agreement.

Section 13.07. Counterparts.

This Agreement may be executed by facsimile signature and in several counterparts, each of which shall be an original and all of which shall together constitute but one and the same instrument. This Agreement shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise

verify the validity or authenticity thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument.

Section 13.08. Headings.

The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 13.09. No Bankruptcy Petition; Disclaimer.

(a) Each of the Seller, the Trustee, the Custodian, the Backup Servicer, the Trust Depositor, the Servicer, the Issuer (acting through the Owner Trustee) and each Holder (by acceptance of the applicable Securities) covenants and agrees that, prior to the date that is one year and one day (or, if longer, the then applicable preference period and one day) after the payment in full of all amounts owing in respect of all outstanding Notes, it will not institute against the Trust Depositor or the Issuer, or join any other Person in instituting against the Trust Depositor or the Issuer, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceedings under the laws of the United States or any state of the United States; *provided* that nothing herein shall prohibit the Trustee from filing proofs of claim or otherwise participating in any such proceedings instituted by any other Person.

(b) The Issuer acknowledges and agrees that the Certificates represent ownership of a beneficial interest in the Issuer and Loan Assets only and the Securities do not represent an interest in any assets (other than the Loan Assets) of the Trust Depositor (including by virtue of any deficiency claim in respect of obligations not paid or otherwise satisfied from the Loan Assets, other Collateral and proceeds thereof).

(c) The provisions of this Section 13.09 shall be for the third party benefit of those entitled to rely thereon, including the Securityholders, and shall survive the termination of this Agreement.

Section 13.10. Jurisdiction.

Any legal action or proceeding with respect to this Agreement may be brought in the courts of the United States for the Southern District of New York, and by execution and delivery of this Agreement, each party hereto consents, for itself and in respect of its property, to the non-exclusive jurisdiction of those courts. Each such party irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or any document related hereto.

Section 13.11. Tax Characterization.

Notwithstanding the provisions of Section 2.01, Section 2.04 and Section 2.07 hereof, the Trust Depositor and the Issuer agree that, pursuant to Treasury Regulations Section 301.7701-3(b)(1) and for federal, state and local income tax purposes, in the event that the Certificates are owned by more than one beneficial owner for federal income tax purposes, the Issuer will be treated as a partnership the partners of which are the beneficial owners of the Certificates, and in the event that the Certificates are owned by a single beneficial owner for federal income tax purposes, the Issuer will be disregarded as an entity separate from such beneficial owner.

Section 13.12. [Reserved].

Section 13.13. Limitation of Liability of Owner Trustee.

It is expressly understood and agreed by the parties hereto that (i) this Agreement is executed and delivered

by Wilmington Trust, National Association, not individually or personally but solely as Owner Trustee on behalf of the Issuer under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose of binding only the Issuer, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties to this Agreement and by any person claiming by, through or under them, (iv) Wilmington Trust, National Association has made no investigation as to the accuracy or completeness of any representations and warranties made by the Owner Trustee or the Trust in this Agreement and (v) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaking by the Issuer under this Agreement or any related documents. For the purposes of this Agreement, in the performance of its duties or obligations hereunder, the Owner Trustee shall be subject to, and entitled to the benefits of, the terms and provisions of Articles VI, VII and VIII of the Trust Agreement.

Section 13.14. [Reserved].

Section 13.15. No Partnership.

Nothing herein contained shall be deemed or construed to create a co-partnership or joint venture between the parties hereto, and the services of the Servicer shall be rendered as an independent contractor and not as agent or as a fiduciary for any party hereto or for the Securityholders.

Section 13.16. Successors and Assigns.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

Section 13.17. Acts of Holders.

Except as otherwise specifically provided herein, whenever Holder action, consent or approval is required under this Agreement or any other Transaction Document, such action, consent or approval shall be deemed to have been taken or given on behalf of, and shall be binding upon, all Holders if the Majority Noteholders agree to take such action or give such consent or approval. In all cases except where otherwise required by law or regulation, any act by a Holder of a Note may be taken by the Beneficial Owner of such Note.

Section 13.18. Duration of Agreement.

This Agreement shall continue in existence and effect until terminated as herein provided.

Section 13.19. Limited Recourse.

Notwithstanding any other provisions of the Notes, this Agreement or any other Transaction Document, the obligations of the Issuer under the Notes, this Agreement and any other Transaction Document are limited recourse obligations of the Issuer payable solely from the Collateral in accordance with the Priority of Payments and, following realization of the Collateral and distribution in accordance with the Priority of Payments, any claims of the Noteholders and the other Secured Parties, and any other parties to any Transaction Document shall be extinguished. The obligations of the Trust Depositor, the Seller, the Issuer and the Servicer under this Agreement and the other Transaction Documents are solely the obligations of the Trust Depositor, the Seller, the Issuer and the Servicer, respectively. No recourse shall be had for the payment of any amount owing by the Trust Depositor, the Seller, the

Issuer or the Servicer or otherwise under this Agreement or under the other Transaction Documents or for the payment by the Trust Depositor, the Seller, the Issuer or the Servicer of any fee in respect hereof or thereof or any other obligation or claim of or against the Trust Depositor, the Seller, the Issuer or the Servicer arising out of or based upon this Agreement or on any other Transaction Document, against any Affiliate, shareholder, partner, manager, member, director, officer, employee, representative or agent of the Trust Depositor, the Seller, the Issuer or the Servicer or of any Affiliate of such Person. The provisions of this Section 13.19 shall survive termination of this Agreement.

Section 13.20. Confidentiality.

Each of the Issuer, the Trust Depositor, the Servicer (if other than Hercules) and the Trustee shall maintain and shall cause each of its employees, officers, agents and Affiliates to maintain the confidentiality of material non-public information concerning Hercules and its Affiliates or about the Obligors obtained by it or them in connection with the structuring, negotiating, execution and performance of the transactions contemplated by the Transaction Documents, except that each such party and its employees, officers, agents and Affiliates may disclose such information to other parties to the Transaction Documents and to its external accountants, attorneys, any potential subservicers and the agents of such Persons provided such Persons expressly agree to maintain the confidentiality of such information, and as required by an applicable law or order of any judicial or administrative proceeding. This Section 13.20 shall constitute a confidentiality agreement for purposes of Regulation FD under the Exchange Act. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to disclose any confidential information it is restricted from disclosing by law or contract; *provided* that the Servicer will use its commercially reasonable efforts to enter into, or cause the Issuer to enter into, a confidentiality agreement permitting such disclosure satisfactory to the Servicer with any Person to whom such information is required to be delivered.

Section 13.21. Non-Confidentiality of Tax Treatment.

All parties hereto agree that each of them and each of their managers, officers, employees, representatives, and other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to any of them relating to such tax treatment and tax structure. "Tax treatment" and "tax structure" shall have the same meaning as such terms have for purposes of Treasury Regulation Section 1.6011-4.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

HERCULES CAPITAL FUNDING TRUST 2022-1, as the Issuer

By: WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee on behalf of the Issuer

By:
Name:
Title:

HERCULES CAPITAL FUNDING 2022-1 LLC, as the Trust Depositor

By:
Name:
Title:

HERCULES CAPITAL, INC., as the Seller and as the Servicer

By:
Name:
Title:

[Signatures Continued on the Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, not in its individual capacity but as the Trustee

By:
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but as Custodian

By:
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but as the Backup Servicer

By:
Name:
Title:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, not in its individual capacity but as the Paying Agent

By:
Name:
Title:

Exhibit A
to Sale and
Servicing Agreement

FORM OF ASSIGNMENT

[__], 202[ ]

Pursuant to and in accordance with the Sale and Servicing Agreement (such agreement as amended, modified, waived, supplemented or restated from time to time, the "Agreement"), dated as of June 22, 2022, made by and among Hercules Capital Funding 2022-1 LLC, as the trust depositor (the "Trust Depositor" or "Assignor"), Hercules Capital, Inc., as the seller and as the servicer, U.S. Bank Trust Company, National Association, as the trustee and the paying agent, U.S. Bank National Association, as the backup servicer and the custodian and Hercules Capital Funding Trust 2022-1, as the issuer (the "Issuer" or "Assignee"), the undersigned does hereby sell, transfer, assign, set over and otherwise convey to the Issuer all right, title and interest of the Trust Depositor in and to the following: (i) the Initial Loans listed in the initial List of Loans and all monies due, to become due or paid in respect thereof accruing on and after the Cutoff Date and all Insurance Proceeds, Liquidation Proceeds, Released Mortgaged Property Proceeds and other recoveries thereon, in each case as they arise after the Cutoff Date; (ii) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Loans; (iii) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Loans; (iv) the Transaction Accounts, together with all cash and investments in each of the foregoing; (v) all collections and records (including Computer Records) with respect to the foregoing; (vi) all documents relating to the applicable Loan Files; and (vii) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, *provided, however*, that all right, title and interest, if any, of Hercules Capital Funding 2022-1 LLC in and to each Excluded Amount and any proceeds of any Excluded Amount shall be excluded from the foregoing transfer by Hercules Capital Funding 2022-1 LLC.

This Assignment shall be governed by the laws of the State of New York applicable to agreements made and to be performed therein. Capitalized terms used herein have the meaning given such terms in the Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have caused this Assignment to be duly executed as of the date first written above.

HERCULES CAPITAL FUNDING 2022-1 LLC, as Assignor

By:
Name:
Title:

Exhibit B
to Sale and
Servicing Agreement

FORM OF CLOSING CERTIFICATE OF TRUST DEPOSITOR

June 22, 2022

The undersigned certifies that she/he is an authorized officer of Hercules Capital, Inc., the sole Member of Hercules Capital Funding 2022-1 LLC, a Delaware limited liability company (the "Trust Depositor"), and that, in the capacity as such officer and not individually, is duly authorized to execute and deliver this certificate on behalf of the Trust Depositor in connection with the Sale and Servicing Agreement (such agreement as amended, modified, waived, supplemented or restated from time to time, the "Agreement"), dated as of June 22, 2022, by and among Hercules Capital Funding Trust 2022-1, as the Issuer, the Trust Depositor, U.S. Bank Trust Company, National Association, as the trustee and the paying agent, U.S. Bank National Association, as the backup servicer and the custodian and Hercules Capital, Inc., as the Seller and as the Servicer (all capitalized terms used herein without definition have the respective meanings set forth in the Agreement), and further certifies in his capacity as such officer and not individually as follows as of the date hereof:

1. Attached hereto as Annex I is a true, correct and complete copy of the Certificate of Formation of the Trust Depositor, together with all amendments thereto as in effect on the date hereof, which documents were in full force and effect on the date hereof, and at all times subsequent thereto, and no other amendments have been authorized by the members or managers of the Trust Depositor.

2. Attached hereto as Annex II is a Certificate of the Secretary of State of the State of Delaware, dated June 21, 2022, stating that the Trust Depositor is duly formed under the laws of the State of Delaware and is in good standing.

3. Attached hereto as Annex III is a true, correct and complete copy of the Limited Liability Company Agreement of the Trust Depositor (providing for the authorization, execution, delivery and performance of (among other things) the Agreement and the other Transaction Documents), together with all amendments thereto in effect on the date hereof, which documents are in full force and effect on the date hereof.

4. Each person named on Annex IV attached hereto is a duly elected, qualified and incumbent officer of the Trust Depositor, and the signature set forth opposite his or her name on such Annex IV is that person's genuine signature.

5. Attached hereto as Annex V is a true, correct and complete copy of the written resolutions duly adopted by the board of managers of the Trust Depositor relating to the authorization, execution, delivery and performance of (among other things) the Agreement and the other Transaction Documents. Said resolutions have not been amended, modified, annulled or revoked, are in full force and effect on the date hereof and at all times subsequent thereto, and are the only resolutions relating to these matters which have been adopted by the sole member.

6. I have carefully examined the Transaction Documents.

8. No event with respect to the Trust Depositor has occurred and is continuing that constitutes an Event of Default or an event that, with notice or the passage of time or both, would become an Event of Default as defined in the Transaction Documents. To my knowledge, after reasonable investigation, there has been no material, adverse change in the condition, financial or otherwise, or the earnings, business affairs or business prospects, of the Trust Depositor, whether or not arising in the ordinary course of business, or in the ability of the Trust Depositor to perform its obligations under the Transaction Documents or in the characteristics of the Initial Loans since its date of formation.

9. All federal, state and local taxes of the Trust Depositor due and owing as of the date hereof have been paid or adequate provisions for the payment thereof have been made.

10. All representations and warranties of the Trust Depositor contained in the Transaction Documents or any other related documents, or in any document, certificate or financial or other statement delivered in connection therewith, are true and correct in all material respects as of the date hereof.

11. There is no action, investigation or proceeding pending or, to my knowledge, threatened against the Trust Depositor before any court, administrative agency or other tribunal (a) asserting the invalidity of the Transaction Documents; (b) seeking to prevent the consummation of any of the transactions contemplated by the Transaction Documents; or (c) seeking any determination or ruling that is would reasonably be expected to materially and adversely affect the Trust Depositor's performance of its obligations under, or the validity or enforceability of, the Transaction Documents.

12. The Trust Depositor is not required to obtain the consent of any other party (other than those that it has already obtained) or any consent, license, approval or authorization from, or registration or declaration with, any Governmental Authority (other than (i) the filing of UCC financing statements and (ii) those that it has already obtained) in connection with the execution, delivery, performance, validity or enforceability of the Sale and Servicing Agreement or the other Transaction Documents to which it is a party.

13. The Trust Depositor is not a party to any agreements or instruments evidencing or governing indebtedness for money borrowed or by which the Trust Depositor or its property is bound (other than the Transaction Documents).

14. The execution, delivery and performance of the Sale and Servicing Agreement and the other Transaction Documents to which it is a party by the Trust Depositor, and the consummation of the transactions contemplated hereby and thereby, will not violate in any material respect any Applicable Law applicable to the Trust Depositor, or conflict with, result in a default under or constitute a breach of the Trust Depositor's organizational documents or material Contractual Obligations to which the Trust Depositor is a party or by which the Trust Depositor or any of the Trust Depositor's properties may be bound, or result in the creation or imposition of any Lien of any kind upon any of its properties pursuant to the terms of any such material Contractual Obligations, other than as contemplated by the Transaction Documents.

15. In connection with the transfer of the Initial Loan Assets contemplated in the Transaction Documents, the Trust Depositor (a) has not made such transfer with the actual intent to hinder, delay or defraud any creditor of the Trust Depositor; (b) has not received less than a reasonably equivalent value in exchange for such transfer; (c) at the time of and after giving effect to the conveyance of Loan Assets as of the date hereof, is Solvent; and (d) does not intend to incur or believe it will incur debts beyond its ability to pay when matured.

16. Each of the agreements and conditions of the Trust Depositor to be performed on or before the Closing Date pursuant to the Transaction Documents have been performed in all material respects.

17. The Trust Depositor has not authorized for filing any UCC financing statements listing the Initial Loan Assets as collateral other than (a) financing statements relating to the transactions contemplated in the Agreement and (b) financing statements that will be terminated on or before the Closing Date.

****

IN WITNESS WHEREOF, I have affixed my signature hereto as of the date written above.

HERCULES CAPITAL FUNDING 2022-1 LLC, as trust depositor

By: Hercules Capital, Inc., its sole member

By:
Name:
Title:

ANNEX I
to Closing Certificate of
Trust Depositor

CERTIFICATE OF FORMATION

ANNEX II
to Closing Certificate of
Trust Depositor

CERTIFICATE OF GOOD STANDING

ANNEX III
to Closing Certificate of
Trust Depositor

LIMITED LIABILITY COMPANY AGREEMENT

BUSINESS.29147459.4

ANNEX IV
to Closing Certificate of
Trust Depositor

INCUMBENCY OF SIGNING OFFICERS

Name of Officer	Title	Signature
1. [_____]	[_____]	_____
2. [_____]	[_____]	_____
3. [_____]	[_____]	_____

ANNEX V
to Closing Certificate of
Trust Depositor

WRITTEN RESOLUTIONS

Exhibit C
to Sale and
Servicing Agreement

FORM OF CLOSING CERTIFICATE OF SERVICER/SELLER

June 22, 2022

THIS OFFICER'S CERTIFICATE is executed and delivered as of date first set forth above, pursuant to the Sale and Servicing Agreement (such agreement as amended, modified, waived, supplemented or restated from time to time, the "Agreement"), dated as of the date hereof, by and among Hercules Capital, Inc., as the Seller and as the Servicer ("Hercules" or the "Company"), Hercules Capital Funding 2022-1 LLC, as the Trust Depositor, U.S. Bank Trust Company, National Association, as the Trustee and the Paying Agent, U.S. Bank National Association, as the Custodian and the Backup Servicer, and Hercules Capital Funding Trust 2022-1, as the Issuer. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

I, Kiersten Zaza Botelho, do herby certify that I am the General Counsel and Secretary of the Company and that, as such, I am authorized to execute this certificate on behalf of the Company and do further certify that:

1. Attached hereto as Annex I is a true, correct and complete copy of the Certificate of Incorporation of the Company, as amended, together with all amendments thereto, and as in effect on the date hereof, which documents were in full force and effect in such form on the date hereof, and at all times subsequent thereto, without modification or amendment in any respect.

2. Attached hereto as Annex II is a Certificate of the Secretary of State of the State of Maryland, dated June 14, 2022, stating that Hercules is duly incorporated under the laws of the State of Maryland and is in good standing and a Certificate of the Secretary of State of the State of California, dated June 15, 2022, stating that Hercules is in good standing as a foreign corporation in the State of California.

3. Attached hereto as Annex III is a true, correct and complete copy of the By-Laws of Hercules, together with all amendments thereto in effect on the date hereof, which documents are in full force and effect on the date hereof.

4. Attached hereto as Annex IV is a true, correct and complete copy of the written resolutions duly adopted by the board of directors of Hercules relating to the authorization, execution, delivery and performance of (among other things) the Agreement and the other Transaction Documents. Said resolutions have not been amended, modified, annulled or revoked, are in full force and effect on the date hereof and at all times subsequent thereto, and are the only resolutions relating to these matters which have been adopted by the sole member.

5. Each person named on Annex V attached hereto is a duly elected, qualified and incumbent officer of Hercules and the signature set forth opposite his or her name on such Annex V is that person's genuine signature.

6. I have carefully examined the Transaction Documents.

7. No event with respect to Hercules has occurred and is continuing that constitutes an Event of Default or Servicer Default or an event that, with notice or the passage of time, would constitute an Event of Default or Servicer Default as defined in the Transaction Documents. To my knowledge, after reasonable investigation, there has been no material, adverse change in the condition, financial or otherwise, or the earnings, business affairs or business prospects, of the Hercules, whether or not arising in the ordinary course of business, or in the ability of Hercules to perform its obligations under the Transaction Documents or in the characteristics of the Initial Loans since March 31, 2022.

8. All federal, state and local taxes of Hercules due and owing as of the date hereof have been paid or adequate provisions for the payment thereof have been made.

9. All representations and warranties of Hercules contained in the Transaction Documents or in any document, certificate or financial or other statement delivered in connection therewith are true and correct in all material respects as of the date hereof.

10. There is no action, investigation or proceeding pending or, to my knowledge, threatened against Hercules before any court, administrative agency or other tribunal (a) asserting the invalidity of any Transaction Document to which Hercules is a party; (b) seeking to prevent the issuance of the Notes or the consummation of any of the transactions contemplated by the Transaction Documents; or (c) seeking any determination or ruling that would reasonably be expected to materially and adversely affect Hercules's performance of its obligations under, or the validity or enforceability of, the Transaction Documents.

11. Hercules is not required to obtain the consent of any other party (other than those that it has already obtained) or any consent, license, approval or authorization from, or registration or declaration with, any Governmental Authority (other than (i) the filing of UCC financing statements and (ii) those that it has already obtained) in connection with the execution, delivery, performance, validity or enforceability of the Sale and Service Agreement or the other Transaction Documents to which it is a party.

12. Hercules's (a) transfer and assignment of the Loan Assets to the Trust Depositor; (b) Hercules's entering into of the Transaction Documents; and (c) consummation of any of the transactions contemplated in the Transaction Documents, in each case will not violate or conflict with any agreement or instrument to which Hercules is a party or by which it or its property is otherwise bound.

13. In connection with the transfers of the Initial Loan Assets contemplated in the Transaction Documents, Hercules (a) has not made such transfer with actual intent to hinder, delay or defraud any creditor of Hercules; (b) has not received less than a reasonably equivalent value in exchange for such transfer; (c) at the time of and after giving effect to the conveyance of Loan Assets as of the date hereof, is Solvent; (d) is not engaged (or about to engage) in a business or transaction for which it has unreasonably small capital; and (e) does not intend to incur or believe it will incur debts beyond its ability to pay when matured.

14. Each of the agreements and conditions of Hercules to be performed or satisfied on or before the Closing Date under the Transaction Documents has been performed or satisfied in all material respects.

15. Hercules has not authorized for filing any UCC financing statements listing the Initial Loan Assets as collateral other than financing statements relating to the transactions contemplated in the Agreement.

******

IN WITNESS WHEREOF, I have affixed my signature hereto as of the date written above.

HERCULES CAPITAL, INC.

By:
Name: Kiersten Zaza Botelho
Title: General Counsel and Secretary

ANNEX I
to Closing Certificate of
Servicer/Seller

CERTIFICATE OF INCORPORATION

ANNEX II
to Closing Certificate of
Servicer/Seller

CERTIFICATES OF GOOD STANDING

ANNEX III
to Closing Certificate of
Servicer/Seller

BY-LAWS

ANNEX IV
to Closing Certificate of
Servicer/Seller

WRITTEN RESOLUTIONS

ANNEX V
to Closing Certificate of
Servicer/Seller

INCUMBENCY OF SIGNING OFFICERS

Name of Officer	Title	Signature
1. Scott Bluestein	Chief Executive Officer	_____
2. Kiersten Zaza Botelho	General Counsel and Secretary	_____
3. Seth H. Meyer	Chief Financial Officer	_____

BUSINESS.29147459.4

Exhibit D
to Sale and
Servicing Agreement

FORM OF LIQUIDATION REPORT

Obligor Name:
Account number:
Original Outstanding Loan Balance:

1. Amounts received or receivable

Principal Prepayment		$_____
Property Sale Proceeds		$_____
Other (Itemize)		$_____
2. Liquidation Expenses	$_____	
3. Line 1 minus Line 2	$_____	
4. Nonrecoverable Advances	$_____	
5. Scheduled Payment Advances, Servicing Advances and interest thereon reimbursed	$_____	
6. Insurance Proceeds	$_____	
7. Outstanding Loan Balance of the Loan on date of liquidation	$_____	
8. Realized (Loss) or Gain (Line 3 minus Line 4 minus Line 5 plus line 6 minus line 7)	$_____	

Exhibit E
to Sale and
Servicing Agreement

[Reserved]

Exhibit F
to Sale and
Servicing Agreement

HERCULES CAPITAL FUNDING TRUST 2022-1

SERVICER OFFICER'S CERTIFICATE

[●], 201[_]

Reference is made to the Sale and Servicing Agreement, dated as of June 22, 2022 (the "Servicing Agreement"), by and among Hercules Capital Funding Trust 2022-1, as the Issuer, Hercules Capital Funding 2022-1 LLC, as the Trust Depositor, Hercules Capital, Inc., as the Seller and the Servicer (in such capacity, the "Servicer") U.S. Bank Trust Company, National Association, as the trustee and the paying agent, and U.S. Bank National Association, as the backup servicer and the custodian relating to the Hercules Capital Funding Trust 2022-1 Asset Backed Notes. Terms defined by the Servicing Agreement, wherever used herein, unless otherwise defined herein, shall have the same meanings as are prescribed by the Servicing Agreement.

OPTION 1:

Pursuant to Section 5.02(e), the undersigned, in its capacity as Servicer, hereby requests the documents described on Schedule A hereto in connection with its servicing activities.

OPTION 2:

The undersigned, in its capacity as Servicer, hereby certifies that the Loan described on Schedule A hereto is required to be repurchased or substituted pursuant to and in accordance with Section 11.01 of the Servicing Agreement. Enclosed herewith is a completed Request for

Release of Documents in the form of Exhibit M to the Servicing Agreement with respect such Loan.

Executed as of the date set forth above.

HERCULES CAPITAL, INC.,
as Servicer

By:_
Name:
Title:

Schedule A

Exhibit G
to Sale and
Servicing Agreement

List of Loans

See below

Accounting System Number / Collateral ID	Outstanding Balance at Cutoff Date	Funding Maturity Date	Loan Type	Agent Status	Agent	Note Status	UCC Filing in Seller's Name

Exhibit H-1
to Sale and
Servicing Agreement

FORM OF QUARTERLY REPORT

[On file with the Servicer.]

BUSINESS.29147459.4

Exhibit H-2
to Sale and
Servicing Agreement

FORM OF MONTHLY REPORT

[On file with the Servicer.]

BUSINESS.29147459.4

Exhibit I
to Sale and
Servicing Agreement

[RESERVED]

Exhibit J
to Sale and
Servicing Agreement

[RESERVED]

BUSINESS.29147459.4

Exhibit K
to Sale and
Servicing Agreement

FORM OF ANNUAL CERTIFICATION REGARDING REQUIRED LOAN DOCUMENTS

[●], 20[__]

Hercules Capital Funding 2022-1 LLC,
as the Trust Depositor
c/o Hercules Capital, Inc.
Palo Alto, California 94301
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060

Hercules Capital, Inc., as Seller and Servicer
Palo Alto, California 94301
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060

Re: Sale and Servicing Agreement dated as of June 22, 2022 – Hercules Capital Funding Trust 2022-1

Ladies and Gentlemen:

In accordance with Section 2.11(e) of the above–captioned Sale and Servicing Agreement (such agreement as amended, modified, waived, supplemented or restated from time to time, the "Agreement"), the undersigned, as the Custodian, hereby certifies that during the calendar year ended December 31, 20[__] (the "Certification Period"): (i) in accordance with the terms of the Agreement, the Custodian held the Required Documents for each of the Loans identified on Annex I hereto, (ii) during the Certification Period, the Custodian released from its custody the Required Loan Documents relating to the Loans identified on the release report, attached to the list of Loans attached as Annex I hereto, and (iii) the reason given for the release, as applicable, of all Required Loan Documents relating to the Loans described in clause (ii) above are described in Annex I.

The Custodian has made no independent examination of any such documents beyond the review specifically required in the Agreement.

****

U.S. BANK NATIONAL ASSOCIATION, as the Custodian

By:
Name:
Title:

Annex I

LOANS FOR WHICH REQUIRED DOCUMENTS WERE HELD IN CUSTODY

([_] 1, 20[__] to December 31, 20[__])

Loan Number	Obligor's Name	Address	Required Documents

Exhibit L-1
to Sale and
Servicing Agreement

FORM OF INITIAL CERTIFICATION

June [__], 2022

Hercules Capital Funding 2022-1 LLC,
as the Trust Depositor
c/o Hercules Capital, Inc.
Palo Alto, California 94301
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060

Hercules Capital, Inc., as Seller and Servicer
Palo Alto, California 94301
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060

Re: Sale and Servicing Agreement dated as of June 22, 2022 – Hercules Capital Funding Trust 2022-1

Ladies and Gentlemen:

In accordance with Section 2.11(a) of the above–captioned Sale and Servicing Agreement (such agreement as amended, modified, waived, supplemented or restated from time to time, the "Agreement"), the undersigned, as the Custodian, hereby certifies that, except as noted on the attachment hereto, if any (the "Loan Exception Report"), it has received each of the Required Loan Documents required to be delivered to it pursuant to Section 2.09 of the Agreement with respect to each Loan listed in the List of Loans and the documents contained therein appear to be properly executed (if applicable) and related to such Loan and bear original signatures to the extent required under the definition of Required Loan Documents. Capitalized terms used but not defined herein have the meanings set forth in the Agreement.

The Custodian has made no independent examination of any such documents beyond the review specifically required in the Agreement.

****

The Custodian makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any such documents or any of the Loans identified on the List of Loans, or (ii) the collectibility, insurability, effectiveness or suitability of any such Loan.

U.S. BANK NATIONAL ASSOCIATION, as the Custodian

By:
Name:
Title:

LOAN EXCEPTION REPORT

[_____]

BUSINESS.29147459.4

Exhibit L-2
to Sale and
Servicing Agreement

FORM OF FINAL CERTIFICATION

[_____], 2022

Hercules Capital Funding 2022-1 LLC,
as the Trust Depositor
c/o Hercules Capital, Inc.
Palo Alto, California 94301
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060

Hercules Capital, Inc., as Seller and Servicer
Palo Alto, California 94301
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060

Re: Sale and Servicing Agreement dated June 22, 2022 – Hercules Capital Funding Trust 2022-1

Ladies and Gentlemen:

In accordance with Section 2.11 of the above-captioned Sale and Servicing Agreement (such agreement as amended, modified, waived, supplemented or restated from time to time, the "Agreement"), the undersigned, as the Custodian, hereby certifies that, except as noted on the attachment hereto, if any (the "Loan Exception Report") as to each Loan listed on the List of Loans (other than any Loan paid in full or listed on the attachment hereto), it has reviewed the documents identified on the related List of Loans and required to be delivered to it pursuant to Section 2.08 of the Agreement and has determined that all such documents are in its possession, and relate to such Loan. Capitalized terms used but not defined herein have the same meanings set forth in the Agreement.

The Custodian has made no independent examination or inquiry of such documents beyond the review specifically required in the Agreement.

The Custodian makes no representations as to: (i) the validity, legality, enforceability or genuineness of any such documents contained in each or any of the Loans identified on the List of Loans, (ii) the collectibility, insurability, effectiveness or suitability of any such Loan, or (iii) the compliance by such documents with statutory or regulatory guidelines.

****

U.S. BANK NATIONAL ASSOCIATION, as the Custodian

By:
Name:
Title:

LOAN EXCEPTION REPORT

[_____]

Exhibit M
to Sale and
Servicing Agreement

REQUEST FOR RELEASE OF DOCUMENTS

To: U.S. Bank Trust Company, National Association,
as the Trustee
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attn: Jack Lindsay
Ref: Hercules 2022-1

U.S. Bank National Association,
as the Custodian
1719 Otis Way
Florence, South Carolina 29501
Attention: Steven Garrett
Ref: Hercules Capital Funding Trust 2022-1

Re: Sale and Servicing Agreement dated June 22, 2022 – Hercules Capital Funding Trust 2022-1

In connection with the administration of the pool of Loans held by you, we request the release, and acknowledge receipt, of the (Loan File/[specify document]) for the Loan described below, for the reason indicated.

Obligor's Name, Address & Zip Code:

Loan Number:

Reason for Requesting Documents (check one)

_____1.	Loan paid in full (Servicer hereby certifies that all amounts received in connection therewith have been credited to the Principal and Interest Account.)
_____2.	Loan liquidated (Servicer hereby certifies that all proceeds of foreclosure, insurance or other liquidation have been finally received and credited to the Principal and Interest Account.)
_____3.	Loan in foreclosure
_____4.	Loan sold, repurchased or substituted pursuant to Article II or XI of the Sale and Servicing Agreement (Servicer hereby certifies that the repurchase price to the extent required has been credited to the Principal and Interest Account and/or remitted to the Trustee for deposit into the Note Distribution Account pursuant to the Sale and Servicing Agreement.)
_____5.	Collateral being released pursuant to Sections 2.10 or 5.02 of the Sale and Servicing Agreement.
_____6.	Loan Collateral or associated loan document being substituted, released, revised or subordinated.
_____7.	Other [Specify.]

If box 1, 2 or 4 above is checked, and if all or part of the Trustee's document file was previously released to us, please release to us our previous receipt on file with you, as well as any additional documents in your possession relating to the above specified Loan.

If box 3, 5 or 6 above is checked, upon our return of all of the above documents (or the appropriate substitutes therefor, if applicable) to you, please acknowledge your receipt by signing in the space indicated below, and returning this form.

HERCULES CAPITAL, INC., as the Servicer

By:
Name:
Title:
Date:

Documents returned to Trustee:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as the Trustee

By:
Name:
Title:
Date:

SALE AND CONTRIBUTION AGREEMENT

by and between

HERCULES CAPITAL, INC.,
as the Seller

and

HERCULES CAPITAL FUNDING 2022-1 LLC,
as the Trust Depositor

Dated as of June 22, 2022

Hercules Capital Funding Trust 2022-1
Asset-Backed Notes

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SALE AND CONTRIBUTION AGREEMENT

THIS SALE AND CONTRIBUTION AGREEMENT, dated as of June 22, 2022 (as amended, modified, restated, waived, or supplemented from time to time, this "Agreement"), is between HERCULES CAPITAL, INC., a Maryland corporation (together with its successors and assigns, "Hercules," and in its capacity as originator, together with its successors and assigns, the "Seller") and HERCULES CAPITAL FUNDING 2022-1 LLC, a Delaware limited liability company (together with its successors and assigns, the "Trust Depositor").

WHEREAS, in the regular course of its business, the Seller originates and/or otherwise acquires Loans;

WHEREAS, the Trust Depositor desires to acquire the Initial Loans (as defined herein) from the Seller and may acquire from time to time thereafter certain Substitute Loans, or during the Reinvestment Period, certain Additional Loans;

WHEREAS, it is a condition to the Trust Depositor's acquisition of the Initial Loans and any Substitute Loans or any Additional Loans from the Seller that the Seller make certain representations, warranties and covenants regarding the Initial Loan Assets for the benefit of the Trust Depositor as well as Hercules Capital Funding Trust 2022-1, a Delaware statutory trust (the "Issuer");

WHEREAS, on the Closing Date, the Trust Depositor will purchase and accept assignment of the Initial Loan Assets and certain other assets from the Seller as provided herein; and

WHEREAS, on the Closing Date, the Trust Depositor will sell, convey and assign all its right, title and interest in the Initial Loan Assets, to the Issuer, pursuant to a Sale and Servicing Agreement, dated as of the date hereof (as amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time, the "Sale and Servicing Agreement"), among Hercules, as the seller and the servicer, the Trust Depositor, as the trust depositor, the Issuer, as the issuer, and U.S. Bank Trust Company, National Association, as the trustee and paying agent, and U.S. Bank National Association, as backup servicer and custodian.

NOW, THEREFORE, based upon the above recitals, the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions.

Capitalized terms used but not defined in this Agreement shall have the meanings attributed to such terms in the Sale and Servicing Agreement, unless the context otherwise requires. In addition, as used herein, the following defined terms, unless the context otherwise requires, shall have the following meanings:

"Additional Loan Assets" means any assets acquired by the Trust Depositor after the Closing date in connection with the conveyance of one or more Additional Loans pursuant to Section 2.05, which assets shall include the Seller's right, title and interest in the following:

(a) the Additional Loans listed in the related Subsequent List of Loans and all monies due, to become due or paid in respect thereof accruing on and after the applicable Additional Loan Cutoff Date and all Insurance Proceeds, Liquidation Proceeds and other recoveries thereon, in each case as they arise after the applicable Additional Loan Cutoff Date;

(b) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Loans;

(c) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Loans;

(d) all collections and Records (including Computer Records) with respect to the foregoing;

(e) all documents relating to the applicable Loan Files; and

(f) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, but excluding any Excluded Amounts with respect thereto.

"Indemnified Party" shall have the meaning provided in Section 7.01.

"Ineligible Loan" shall have the meaning provided in Section 6.01.

"Initial Loan Assets" means any assets acquired by the Trust Depositor from the Seller on the Closing Date pursuant to Section 2.01, which assets shall include the Seller's right, title and interest in the following:

(a) the Initial Loans, and all monies due, to become due or paid in respect thereof accruing on and after the Cutoff Date and all Insurance Proceeds, Liquidation Proceeds and other recoveries thereon, in each case as they arise after the Cutoff Date;

(b) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Initial Loans;

(c) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Initial Loans;

(d) the Transaction Accounts, together with all cash and investments in each of the foregoing;

(e) all collections and Records (including Computer Records) with respect to the foregoing;

(f) all documents relating to the applicable Loan Files; and

(g) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, but excluding any Excluded Amounts with respect thereto.

"Initial Loans" means those Loans listed on Schedule A hereto, which Loans shall be conveyed to the Trust Depositor on the Closing Date.

"Loan" means an individual loan to an Obligor, or any portion thereof, made by the Seller.

"Loan Assets" means, collectively and as applicable, the Initial Loan Assets, the Substitute Loan Assets and the Additional Loan Assets.

"Substitute Loan Assets" means any assets acquired by the Trust Depositor in connection with a substitution of one or more Substitute Loans pursuant to Section 2.04, which assets shall include the Seller's right, title and interest in the following:

(a) the Substitute Loans listed in the related Subsequent List of Loans and all monies due, to become due or paid in respect thereof accruing on and after the applicable Substitute Loan Cutoff Date and all Insurance Proceeds, Liquidation Proceeds and other recoveries thereon, in each case as they arise after the applicable Substitute Loan Cutoff Date;

(b) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Loans;

(c) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Loans;

(d) all collections and Records (including Computer Records) with respect to the foregoing;

(e) all documents relating to the applicable Loan Files; and

(f) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, but excluding any Excluded Amounts with respect thereto.

Section 1.02 **Other Terms**

All accounting terms used but not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States. The symbol " " shall mean the lawful currency of the United States of America. All terms used in Article 9 of the UCC in the State of New York, and not specifically defined herein, are used herein as defined in such Article 9.

Section 1.03 **Computation of Time Periods.**

Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding," and the word "within" means "from and excluding a specified date and to and including a later specified date."

Section 1.04 **Interpretation.**

In this Agreement, unless a contrary intention appears:

(a) the singular number includes the plural number and *vice versa*;

(b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Transaction Documents;

(c) reference to any gender includes each other gender;

(d) reference to day or days without further qualification means calendar days;

(e) unless otherwise stated, reference to any time means New York, New York time;

(f) references to "writing" include printing, typing, lithography, electronic or other means of reproducing words in a visible form;

(g) reference to any agreement (including any Transaction Document), document or instrument means such agreement, document or instrument as amended, modified, supplemented, replaced, restated, waived or extended and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Transaction Documents, and reference to any promissory note includes any promissory note that is an extension or renewal thereof or a substitute or replacement therefor; and

(h) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any Section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such Section or other provision.

Section 1.05 References.

All section references (including references to the Preamble), unless otherwise indicated, shall be to Sections (and the Preamble) in this Agreement.

Section 1.06 Calculations.

Except as otherwise provided herein, all interest rate and basis point calculations hereunder will be made on the basis of a 360 day year and the actual days elapsed in the relevant period and will be carried out to at least three decimal places.

ARTICLE II

TRANSFERS

Section 2.01 Transfer of Loan Assets.

(a) The Seller shall sell, assign and convey Loan Assets to the Trust Depositor pursuant to the terms and provisions hereof.

(b) Subject to and upon the terms and conditions set forth herein, the Seller hereby sells, transfers, assigns, sets over and otherwise conveys to the Trust Depositor, for a purchase price equal to the fair market value of the Loan Assets, a portion of which shall be paid by wire transfer of immediately available funds and the remainder of which will be deemed to be a contribution to the capital of the Trust Depositor, all the right, title and interest of the Seller in and to the Initial Loan Assets.

To the extent the purchase price paid to the Seller for any Loan Assets is less than the fair market value of such Loan Assets, the difference between such fair market value and such purchase price shall be deemed to be a capital contribution made by the Seller to the Trust Depositor on the Closing Date in the case of the Initial Loans, as of the related Substitute Loan Cutoff Date in the case of any Substitute Loans and as of the related Additional Loan Cutoff Date in the case of any Additional Loans. For all purposes of this Agreement, any contributed Loan Assets shall be treated the same as Loan Assets sold for cash, including without limitation for purposes of Section 6.01.

(c) The Seller and the Trust Depositor each acknowledge with respect to itself that the representations and warranties of the Seller in Sections 3.01, 3.02 and 3.04 hereof and of the Trust Depositor in the Sale and Servicing Agreement and in Section 3.06 hereof will run to and be for the benefit of the Issuer and the Trustees, and the Issuer and the Trustees may enforce directly (without joinder of the Trust Depositor when enforcing against the Seller) the repurchase obligations of the Seller or the Trust Depositor, as applicable, with respect to breaches of such representations and warranties that materially and adversely affect the interest of any Noteholder as set forth in the Sale and Servicing Agreement or in this Agreement.

(d) The sale, transfer, assignment, set-over and conveyance of the Loan Assets by the Seller to the Trust Depositor pursuant to this Agreement does not constitute and is not intended to result in a creation or an assumption by the Trust Depositor of any obligation of the Seller in connection with the Loan Assets, or any agreement or instrument relating thereto, including, without limitation, (i) any obligation to any Obligor relating to any unfunded commitment from the Seller, (ii) any taxes, fees, or other charges imposed by any Governmental Authority and (iii) any insurance premiums that remain owing with respect to any Loan Asset at the time such Loan Asset is sold hereunder. Without limiting the foregoing, (x) the Trust Depositor does not assume any obligation to purchase any additional notes or loans under agreements governing the Loan Assets and (y) the sale, transfer, assignment, set-over and conveyance of the Loan Assets by the Seller to the Trust Depositor pursuant to this Agreement does not constitute and is not intended to result in a creation or an assumption by the Trust Depositor or the Issuer of any obligation of the Seller as lead agent, collateral agent or paying agent under any Agented Loan or Co-Agented Loan.

(e) The Seller and the Trust Depositor intend and agree that (i) the transfer of the Loan Assets by the Seller to the Trust Depositor hereunder and the transfer of the Loan Assets by the Trust Depositor to the Issuer under the Sale and Servicing Agreement are each intended to be an absolute sale, conveyance and transfer of ownership of the applicable Loan Assets, as the case may be, rather than the mere granting of a security interest to secure a borrowing and (ii) such Loan Assets shall not be part of the Seller's or the Trust Depositor's estate in the event of a filing of a bankruptcy petition or other action by or against such Person under any Insolvency Law. In the event, however, that notwithstanding such intent and agreement, such transfers are deemed to be a mere granting of a security interest to secure indebtedness, the Seller shall be deemed to have granted (and as of the Closing Date hereby grants) to the Trust Depositor and the Trust Depositor shall be deemed to have granted and assigned (and as of the Closing Date hereby grants and assigns) to the Issuer, as the case may be, a security interest in all right, title and interest of the Seller or of the Trust Depositor, respectively, in such Loan Assets, and this Agreement shall constitute a security agreement under Applicable Law, securing the repayment of the purchase price paid hereunder, the obligations and/or interests represented by the Securities, in the order and priorities, and subject to the other terms and conditions of, this Agreement, the Sale and Servicing Agreement, the Indenture and the Trust Agreement, together with such other obligations or interests as may arise hereunder and thereunder in favor of the parties hereto and thereto.

(f) If any such transfer of the Loan Assets is deemed to be the mere granting of a security interest to secure a borrowing, the Trust Depositor may, to secure the Trust Depositor's own borrowing under the Sale and Servicing Agreement (to the extent that the transfer of the Loan Assets thereunder is deemed to be a mere granting of a security interest to secure a borrowing), repledge and reassign (i) all or a portion of the Loan Assets pledged to the Trust Depositor by the Seller and with respect to which the Trust Depositor has not released its security interest at the time of such pledge and assignment, and (ii) all proceeds thereof. Such repledge and reassignment may be made by the Trust Depositor with or without a repledge and reassignment by the Trust Depositor of its rights under any agreement with the Seller, and without further notice to or acknowledgment from the Seller. The Seller waives, to the extent permitted by Applicable Law, all claims, causes of action and remedies, whether legal or equitable (including any right of setoff), against the Trust Depositor or any assignee of the Trust Depositor relating to such action by the Trust Depositor in connection with the transactions contemplated by this Agreement and the other Transaction Documents.

(g) The Seller and the Trust Depositor acknowledge and agree that, solely for administrative convenience, any assignment agreement required to be executed and delivered in connection with the transfer of an Initial Loan, Substitute Loan or Additional Loan in accordance with the terms of related Underlying Loan Agreements may reflect that the Seller or any Affiliate thereof is assigning such Initial Loan, Substitute Loan or Additional Loan directly to the Issuer. Nothing in such assignment agreements shall be deemed to impair the transfers of the Loan Assets by the Seller to the Trust Depositor in accordance with the terms of this Agreement and the subsequent transfer of the Loan Assets by the Trust Depositor to the Issuer in accordance with the terms of the Sale and Servicing Agreement.

Section 2.02 **Conditions to Transfer of Loan Assets to the Trust Depositor.**

On or before the Closing Date, the Seller shall deliver or cause to be delivered to the Trust Depositor, the Owner Trustee and the Trustee each of the documents, certificates and other items as follows:

(a) a certificate of an officer of the Seller substantially in the form of Exhibit C to the Sale and Servicing Agreement;

(b) copies of resolutions of Hercules, as Seller and Servicer, approving the execution, delivery and performance of this Agreement, the Transaction Documents to which it is a party and the transactions contemplated hereunder and thereunder, certified in each case by an authorized officer of Hercules;

(c) officially certified evidence dated within 30 days of the Closing Date of due formation and good standing of the Seller under the laws of the State of Delaware;

(d) the initial List of Loans, certified by an officer of the Seller, together with an Assignment with respect to the Initial Loan Assets substantially in the form of Exhibit A, attached hereto (along with the delivery of any instruments and Loan Files as required under Section 2.07);

(e) a UCC-1 financing statement, naming the Seller as seller or debtor, naming the Trust Depositor as assignor, buyer or secured party and naming the Issuer as assignee of assignor, buyer or secured party and describing the Loan Assets being sold by it to the Trust Depositor as collateral, which financing statement shall be filed on the Closing Date with the office of the Department of Assessments and Taxation of the State of Maryland and in such other locations as the Trust Depositor shall have required;

(f) an Officer's Certificate listing the Servicer's Servicing Officers;

(g) a fully executed copy of each of the Transaction Documents;

(h) except with respect to (i) Agented Loans, Co-Agented Loans, Third Party Agented Loans and Participated Loans where the Seller (or a wholly-owned subsidiary of the Seller) receives payments on behalf of or as agent for the other lenders thereunder or where payments thereunder are made directly to such other lenders on behalf of or as agent for the Seller (or a wholly-owned subsidiary of the Seller) and (ii) Loans described in Section 7.01(d) of the Sale and Servicing Agreement, the Servicer shall have notified and directed the Obligor with respect to each such Loan to make all payments on the Loans, whether by check, wire transfer, ACH or otherwise, either (A) directly to the Lockbox Account or (B) to the Master Collection Account; and

(i) the Servicer shall have notified and directed each of Hercules's co-lenders under Co-Agented Loans and Third Party Agented Loans that receive payments on behalf of the Seller, to transfer such payments received from the Obligors with respect to such Loans either (i) to the Lockbox Account or (ii) to the Master Collection Account, in either case, within one (1) Business Day of receipt of such payments by such co-lender.

Section 2.03 **Acceptance by the Trust Depositor.**

On the Closing Date, if the conditions set forth in Section 2.02 have been satisfied, the Seller shall deliver, on behalf of the Trust Depositor, to the Trustee the Initial Loan Assets and such delivery to and acceptance by the Trustee shall be deemed to be delivery to and acceptance by the Trust Depositor.

Section 2.04 **Conveyance of Substitute Loans.**

(a) With respect to any Substitute Loans to be conveyed to the Issuer by the Trust Depositor pursuant to Section 2.04 and Section 2.06 of the Sale and Servicing Agreement, the Seller hereby sells, transfers, assigns, sets over and otherwise conveys to the Trust Depositor, without recourse other than as expressly provided herein (and the Trust Depositor shall purchase through cash payment and/or by exchange of one or more related Loans released by the Issuer to the Trust Depositor on the related Substitute Loan Cutoff Date), all the right, title and interest of the Seller in and to such Substitute Loans and Related Property.

The purchase price may equal, exceed or be less than the fair market value of such Substitute Loan as of the related Substitute Loan Cutoff Date, plus in each case accrued interest thereon. To the extent the purchase price of any Substitute Loan is less than the fair market value thereof, the Seller will be deemed to have made a capital

contribution with respect to such excess to the Trust Depositor. In the event that the Trust Depositor is no longer the sole Certificateholder, the Trust Depositor will obtain the approval of an independent pricing advisor prior to receiving any Substitute Loan from the Seller.

(b) [Reserved].

(c) The Seller shall transfer to the Trust Depositor hereunder the applicable Substitute Loans and Related Property only upon the satisfaction of each of the following conditions on or prior to the related Substitute Loan Cutoff Date (in addition to the conditions set forth in Section 2.09 of the Sale and Servicing Agreement):

(i) the Seller shall have provided the Trust Depositor with timely notice of such substitution, which shall be delivered no later than 11:00 a.m. on the related Substitute Loan Cutoff Date;

(ii) there shall have occurred, with respect to each such Substitute Loan, a corresponding Substitution Event with respect to one or more Loans then in the Collateral;

(iii) the Seller and the Trust Depositor shall have delivered to the Issuer and the Trustee a Subsequent List of Loans listing the applicable Substitute Loans and an assignment agreement as required by the related Underlying Loan Agreement indicating that the Issuer is the holder of the related Substitute Loan;

(iv) the Seller shall have deposited or caused to be deposited in the Collection Account all Collections received by it with respect to the applicable Substitute Loans on and after the related Substitute Loan Cutoff Date;

(v) each of the representations and warranties made by the Seller pursuant to Sections 3.02 and 3.04 applicable to the Substitute Loans shall be true and correct as of the related Substitute Loan Cutoff Date;

(vi) the Seller shall bear all incidental transaction costs incurred in connection with a substitution effected pursuant to this Agreement and shall, at its own expense, on or prior to the related Substitute Loan Cutoff Date, indicate in its Computer Records that ownership of each Substitute Loan identified on the Subsequent List of Loans has been sold by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer pursuant to the Transfer and Servicing Agreements; and

(vii) if such Substitute Loan is a Co-Agented Loan or a Third-Party Agented Loan, the Servicer shall have notified and directed each of Hercules's co-lenders under such Substitute Loan that receive payments on behalf of the Seller, to transfer such payments received from the Obligors with respect to such Substitute Loan either (A) to the Lockbox Account or (B) the Master Collection Account, in either case, within one (1) business day of receipt of such payments by such co-lender.

(d) The Servicer, the Issuer and the Trustee (at the request of the Servicer) shall execute and deliver such instruments, consents or other documents and perform all acts reasonably requested by the Servicer in order to effect the transfer and release of any of the Issuer's interests in the Loans that are being substituted.

(e) The Seller represents and warrants that each Substitute Loan is a Qualified Substitute Loan as of the date such Substitute Loan is transferred to the Trust Depositor hereunder.

Section 2.05 **Conveyance of Additional Loans.**

(a) With respect to any Additional Loans to be conveyed to the Issuer by the Trust Depositor pursuant to Section 2.07 of the Sale and Servicing Agreement, the Seller hereby sells, transfers, assigns, sets over and otherwise conveys to the Trust Depositor, without recourse other than as expressly provided herein (and the Trust Depositor shall purchase through cash payment and/or by exchange of one or more related Loans released by the Issuer to the Trust

Depositor on the related Additional Loan Cutoff Date), all the right, title and interest of the Seller in and to such Additional Loans and Related Property.

(b) During the Reinvestment Period, the Seller shall transfer to the Trust Depositor hereunder the applicable Additional Loans and Related Property only upon the satisfaction of each of the following conditions on or prior to the related Additional Loan Cutoff Date:

(i) such Additional Loan is a Qualified Additional Loan as of the date such Additional Loan is transferred to the Issuer;

(ii) the Seller shall have provided the Trust Depositor with timely notice of such acquisition, which shall be delivered no later than 11:00 a.m. on the related Additional Loan Cutoff Date;

(iii) the Seller and the Trust Depositor shall have delivered to the Issuer and the Trustee a Subsequent List of Loans listing the applicable Additional Loans and an assignment agreement as required by the related Underlying Loan Agreement indicating that the Issuer is the holder of the related Additional Loan;

(iv) the Seller shall have deposited or caused to be deposited in the Collection Account all Collections received by it with respect to the applicable Additional Loans on and after the related Additional Loan Cutoff Date;

(v) each of the representations and warranties made by the Seller pursuant to Sections 3.02 and 3.04 applicable to the Additional Loans shall be true and correct as of the related Additional Loan Cutoff Date;

(vi) the Seller shall bear all incidental transaction costs incurred in connection with and acquisition of Additional Loans effected pursuant to this Agreement and shall, at its own expense, on or prior to the related Additional Loan Cutoff Date, indicate in its Computer Records that ownership of each Additional Loan identified on the Subsequent List of Loans has been sold by the Seller to the Trust Depositor and by the Trust Depositor to the Issuer pursuant to the Transfer and Servicing Agreements; and

(vii) if such Additional Loan is a Co-Agented Loan or a Third-Party Agented Loan, the Servicer shall have notified and directed each of Hercules's co-lenders under such Additional Loan that receive payments on behalf of the Seller, to transfer such payments received from the Obligors with respect to such Substitute Loan to either (A) the Lockbox Account or (B) the Master Collection Account, in either case, within one (1) business day of receipt of such payments by such co-lender.

(c) The Servicer, the Issuer and the Trustee (at the request of the Servicer) shall execute and deliver such instruments, consents or other documents and perform all acts reasonably requested by the Servicer in order to effect the transfer and release of any of the Issuer's interests in the Loans that are being conveyed.

(d) The Seller represents and warrants that each Additional Loan is a Qualified Additional Loan as of the date such Additional Loan is transferred to the Trust Depositor hereunder.

Section 2.06 **Release of Excluded Amounts.**

The parties acknowledge and agree that the Trust Depositor has no interest in the Excluded Amounts. Immediately upon the release to the Trust Depositor by the Issuer of any Excluded Amounts, the Trust Depositor hereby irrevocably agrees to release to the Seller such Excluded Amounts, which release shall be automatic and shall require no further act by the Trust Depositor; *provided* that the Trust Depositor shall execute and deliver such instruments of release and assignment or other documents, or otherwise confirm the foregoing release of such Excluded Amounts, as may be reasonably requested by the Seller in writing.

Section 2.07 **Delivery of Documents in the Loan File; Recording of Assignments of Mortgage.**

(a) Subject to the delivery requirements set forth in Section 2.07(b), the Seller shall deliver, on behalf of the Trust Depositor, possession of all the Loan Files to the Trustee (or the Custodian on its behalf) on behalf of and for the account of the Noteholders. The Seller shall also identify on the List of Loans (including any deemed amendment thereof associated with any Substitute Loans or Additional Loans), whether by attached schedule or marking or other effective identifying designation, all Loans that are evidenced by such instruments.

(b) With respect to each Loan in the Collateral, at least two (2) Business Days before the Closing Date in the case of the Initial Loans, two (2) Business Days before the related Substitute Loan Cutoff Date in the case of any Substitute Loans and two (2) Business Days before the related Additional Loan Cutoff Date in the case of any Additional Loans (or, in each case, such lesser time as shall be acceptable to the Trustee), the Seller or the Trust Depositor will deliver or cause to be delivered to the Trustee (or to the Custodian on its behalf), to the extent not previously delivered, each of the documents in the Loan File with respect to such Loan, *provided*, *however*, that, to the extent required to be delivered pursuant to the Sale and Servicing Agreement as part of the Required Loan Documents with respect to such Loan, the original recorded Mortgage and the originals of all intervening assignments, if any, of the Mortgage, in those instances where a copy thereof, certified as described in clause (b)(iii)(x) of the definition of Required Loan Document, was delivered to the Trustee as a Required Loan Document, will be delivered or caused to be delivered within ten (10) Business Days after receipt thereof, and in any event within one year after the Closing Date in the case of the Initial Loans, the related Substitute Loan Cutoff Date in the case of any Substitute Loans and the related Additional Loan Cutoff Date in the case of any Additional Loans. Notwithstanding the proviso in the immediately preceding sentence, in those instances where the public recording office retains the original Mortgage or any intervening assignments of the Mortgage after it has been recorded, the Seller or the Trust Depositor (as applicable) shall be deemed to have satisfied its obligations hereunder upon delivery to the Trustee of a copy of such Mortgage or intervening assignments of the Mortgage certified by the public recording office to be a true copy of the recorded original thereof.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

The Seller makes, and upon each conveyance of Substitute Loans and each conveyance of Additional Loans, as applicable, is deemed to make, the representations and warranties in Section 3.01 through Section 3.04, on which the Trust Depositor will rely in conveying the Initial Loan Assets on the Closing Date (any Substitute Loan Assets on the relevant Substitute Loan Cutoff Date and any Additional Loan Asset on the relevant Additional Loan Cutoff Date) to the Issuer, and on which the Issuer and the Securityholders will rely. The Seller acknowledges that such representations and warranties are being made by the Seller for the benefit of the Issuer and the Securityholders.

Such representations and warranties are given as of the execution and delivery of this Agreement and as of the Closing Date (or Substitute Loan Cutoff Date or Additional Loan Cutoff Date, as applicable), but shall survive the sale, transfer and assignment of the Loan Assets to the Trust Depositor and the sale, transfer and assignment of the Loan Assets by the Trust Depositor to the Issuer. The repurchase obligation or substitution obligation of the Seller set forth in Section 6.01 constitutes the sole remedy available for a breach of a representation or warranty of the Seller set forth in Section 3.01 through Section 3.04 of this Agreement.

Section 3.01 **Representations and Warranties Regarding the Seller.**

The Seller represents and warrants that:

(a) Organization and Good Standing. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland and has the power to own its assets and to transact the business in which it is currently engaged. The Seller is duly qualified to do business and is in good standing in each jurisdiction in which the character of the business transacted by it or properties owned or leased by it requires such qualification

and in which the failure so to qualify would reasonably be expected to have a material adverse effect on the business, properties, assets, or condition (financial or otherwise) of the Seller.

(b) Authorization; Valid Sale; Binding Obligations. The Seller has the power and authority to make, execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party and all of the transactions contemplated under this Agreement and the other Transaction Documents to which it is a party, and to create the Trust Depositor and cause the Trust Depositor to make, execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which the Trust Depositor is a party and has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party. This Agreement shall effect a valid sale, transfer and assignment of or grant of a security interest in the Loan Assets from the Seller to the Trust Depositor, enforceable against the Seller and creditors of and purchasers from the Seller. This Agreement and the other Transaction Documents to which the Seller is a party constitute the legal, valid and binding obligation of the Seller enforceable in accordance with their respective terms, except as enforcement of such terms may be limited by applicable Insolvency Laws and general principles of equity, whether considered in a suit at law or in equity.

(c) No Consent Required. The Seller is not required to obtain the consent of any other party (other than (i) the filing of UCC financing statements and (ii) those that it has already obtained) or any consent, license, approval or authorization from, or registration or declaration with, any Governmental Authority (other than those that it has already obtained) in connection with the execution, delivery, performance, validity or enforceability of this Agreement or the other Transaction Documents to which it is a party.

(d) No Violations. The execution, delivery and performance by the Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, will not violate in any material respect any Applicable Law applicable to the Seller, or conflict with, result in a default under or constitute a breach of the Seller's organizational documents or the material Contractual Obligations to which the Seller is a party or by which the Seller or any of the Seller's properties may be bound, or result in the creation or imposition of any Lien of any kind upon any of its properties pursuant to the terms of any such material Contractual Obligations, other than as contemplated by the Transaction Documents.

(e) Litigation. No litigation or administrative proceeding of or before any court, tribunal or governmental body is currently pending, or to the knowledge of the Seller threatened, against the Seller or any of its properties or with respect to this Agreement or the other Transaction Documents to which it is a party or the Securities (1) that, if adversely determined, would in the reasonable judgment of the Seller be expected to have a material adverse effect on the business, properties, assets or condition (financial or otherwise) of the Seller or the transactions contemplated by this Agreement or the other Transaction Documents to which the Seller is a party or (2) seeking to adversely affect the federal income tax or other federal, state or local tax attributes of the Certificate or Notes.

(f) Solvency. The Seller, at the time of and after giving effect to each conveyance of Loan Assets hereunder, is Solvent on and as of the date thereof.

(g) Taxes. The Seller has filed or caused to be filed all tax returns which, to its knowledge, are required to be filed and has paid all taxes shown to be due and payable on such returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any amount of tax due, the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with generally accepted accounting principles have been provided on the books of the Seller); no tax Lien has been filed and, to the Seller's knowledge, no claim is being asserted, with respect to any such tax, fee or other charge.

(h) Place of Business; No Changes. The Seller's location (within the meaning of Article 9 of the UCC) is the State of Maryland. The Seller has not changed its name, whether by amendment of its Certificate of Incorporation, by reorganization or otherwise, within the four months preceding the Closing Date. The Seller has not changed its location within the four months preceding the Closing Date.

(i) Not an Investment Company. The Seller is not and, after giving effect to the transactions contemplated by the Transaction Documents, will not be required to be registered as an "investment company" under the 1940 Act.

(j) Sale Treatment. Other than for accounting and tax purposes, the Seller has treated the transfer of the Loan Assets to the Trust Depositor for all purposes as a sale and purchase on all of its relevant books and records and other applicable documents.

(k) Security Interest.

(i) This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in favor of the Trust Depositor in all right, title and interest of the Seller in the Loan Assets, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from the Seller;

(ii) the Loan Assets, along with the related Loan Files, constitute "general intangibles," "instruments," "accounts," "investment property," or "chattel paper," within the meaning of the applicable UCC;

(iii) the Seller owns and has, and upon the sale and transfer thereof by the Seller to the Trust Depositor, the Trust Depositor will have good and marketable title to the Loan Assets free and clear of any Lien (other than Permitted Liens), claim or encumbrance of any Person;

(iv) the Seller has received all consents and approvals required by the terms of the Loan Assets to the sale of the Loan Assets hereunder to the Trust Depositor;

(v) the Seller has caused the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Loan Assets granted to the Trust Depositor under this Agreement to the extent perfection can be achieved by filing a financing statement;

(vi) other than the security interest granted to the Trust Depositor pursuant to this Agreement, the Seller has not pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the Loan Assets. The Seller has not authorized the filing of and is not aware of any financing statements naming the Seller as debtor that include a description of collateral covering the Loan Assets other than any financing statement (A) relating to the security interest granted to the Trust Depositor under this Agreement, or (B) that has been terminated or for which a release or partial release has been filed. The Seller is not aware of the filing of any judgment or tax Lien filings against the Seller;

(vii) all original executed copies of each Underlying Note (if any) that constitute or evidence the Loan Assets have been delivered to the Trustee;

(viii) the Seller has received a written acknowledgment from the Trustee that the Trustee or its bailee is holding any Underlying Notes that constitute or evidence any Loan Assets solely on behalf of and for the benefit of the Securityholders; and

(ix) none of the Underlying Notes that constitute or evidence any Loan Assets has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Trust Depositor.

(l) Value Given. The cash payments and the corresponding increase in the Seller's equity interest in the Trust Depositor received by the Seller in respect of the purchase price of the Loan Assets sold hereunder constitute reasonably equivalent value in consideration for the transfer to the Trust Depositor of such Loan Assets under this Agreement, such transfer was not made for or on account of an antecedent debt owed by the Seller to the Trust Depositor, and such transfer was not and is not voidable or subject to avoidance under any Insolvency Law.

(m) No Defaults. The Seller is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency, which default would reasonably be expected to have consequences that would materially and adversely affect the condition (financial or otherwise) or operations of the Seller or its respective properties or might have consequences that would materially and adversely affect its performance hereunder.

(n) Bulk Transfer Laws. The transfer, assignment and conveyance of the Loan Assets by the Seller pursuant to this Agreement are not subject to the bulk transfer laws or any similar statutory provisions in effect in any applicable jurisdiction.

(o) Origination and Collection Practices. The origination and collection practices used by the Seller and any of its Affiliates with respect to each Loan have been consistent with the Servicing Standard and have complied in all material respects with the Credit and Collection Policy.

(p) Lack of Intent to Hinder, Delay or Defraud. Neither the Seller nor any of its Affiliates sold, or will sell, any interest in any Loan Asset with any intent to hinder, delay or defraud any of their respective creditors.

(q) Nonconsolidation. The Seller conducts its affairs such that the Trust Depositor would not be substantively consolidated in the estate of the Seller and their respective separate existences would not be disregarded in the event of the Seller's bankruptcy.

(r) Accuracy of Information. All written factual information heretofore furnished by the Seller for purposes of or in connection with this Agreement or the other Transaction Documents to which the Seller is a party, or any transaction contemplated hereby or thereby is, and all such written factual information hereafter furnished by the Seller to any party to the Transaction Documents will be, true and accurate in all material respects, on the date such information is stated or certified; *provided* that the Seller shall not be responsible for any factual information furnished to it by any third party not affiliated with it, or the Trust Depositor or the Servicer, except to the extent that a Responsible Officer of the Seller has actual knowledge that such factual information is inaccurate in any material respect.

The representations and warranties set forth in Section 3.01(k) may not be waived by any Person and shall survive the termination of this Agreement. The Seller and the Trust Depositor shall provide the Rating Agency with prompt written notice upon obtaining knowledge of any breach of the representations and warranties set out in Section 3.01(k).

Section 3.02 Representations and Warranties Regarding Each Loan and as to Certain Loans in the Aggregate.

The Seller represents and warrants (x) with respect to Section 3.02(a), Section 3.02(b), Section 3.02(d) and Section 3.02(e), as to each Initial Loan as of the Closing Date, as of the related Substitute Loan Cutoff Date with respect to each Substitute Loan and as of the related Additional Loan Cutoff Date with respect to each Additional Loan, and (y) with respect to Section 3.02(c), as to the Initial Loans in the aggregate as of the Closing Date, as of the related Substitute Loan Cutoff Date with respect to Substitute Loans and as of the related Additional Loan Cutoff Date with respect to Additional Loans (after giving effect to the addition of such Substitute Loans and Additional Loans to the Collateral), that:

(a) List of Loans. The information set forth in the List of Loans attached to the Sale and Servicing Agreement as Exhibit G (as the same may be amended or deemed amended in respect of a conveyance of Substitute Loans on the related Substitute Loan Cutoff Date or Additional Loans on the related Additional Loan Cutoff Date) is true, complete and correct.

(b) Eligible Loan. Each Initial Loan, each Substitute Loan and each Additional Loan satisfies the criteria for the definition of Eligible Loan set forth in the Sale and Servicing Agreement.

(c) No Liens. Each Initial Loan, each Substitute Loan and each Additional Loan is free and clear of all Liens, other than Permitted Liens, and, to the Seller's knowledge, no offsets, defenses or counterclaims against the Seller have been asserted or threatened with respect to such Initial Loan, such Substitute Loan and such Additional Loan, respectively.

(d) Security Interest. Each Initial Loan, each Substitute Loan and each Additional Loan is secured by a first priority perfected security interest in certain property of the related Obligor identified in the loan documentation in favor of the Seller, as registered lienholder, or the Seller has taken all necessary action with respect to each Initial Loan, each Substitute Loan and each Additional Loan to secure a first priority perfected security interest in such property.

(e) Compliance with Law. Each Initial Loan, each Substitute Loan and each Additional Loan complies in all material respects, as of such date and as of the date on which it was originated, with applicable federal and state laws.

Section 3.03 [Reserved].

Section 3.04 Representations and Warranties Regarding the Required Loan Documents.

The Seller represents and warrants on the Closing Date with respect to the Initial Loans (or as of the related Substitute Loan Cutoff Date, with respect to Substitute Loans, or as of the related Additional Loan Cutoff Date, with respect to Additional Loans), that except as otherwise provided in Section 2.07, the Required Loan Documents and each other item included in the Loan File for each Initial Loan (or Substitute Loan or Additional Loan, as applicable) are in the possession of the Trustee or the Custodian, on behalf of the Trustee.

Section 3.05 [Reserved].

Section 3.06 Representations and Warranties Regarding the Trust Depositor.

By its execution of this Agreement, the Trust Depositor represents and warrants to the Seller that:

(a) Organization and Good Standing. The Trust Depositor is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and has the power to own its assets and to transact the business in which it is currently engaged. The Trust Depositor is duly qualified to do business as and is in good standing in each jurisdiction in which the character of the business transacted by it or properties owned or leased by it requires such qualification and in which the failure so to qualify would have a material adverse effect on the business, properties, assets or condition (financial or other) of the Trust Depositor or the Issuer.

(b) Authorization; Valid Sale; Binding Obligations. The Trust Depositor has the power and authority to make, execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party and all of the transactions contemplated under this Agreement and the other Transaction Documents to which it is a party, and to create the Issuer and cause it to make, execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which the Issuer is a party, and the Trust Depositor has taken all necessary limited liability company action to authorize the execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party and to cause the Issuer to be created. This Agreement shall effect a valid sale, transfer and assignment of or grant of a security interest in the Loan Assets from the Seller to the Trust Depositor. This Agreement and the other Transaction Documents to which the Trust Depositor is a party constitute the legal, valid and binding obligation of the Trust Depositor enforceable in accordance with their respective terms, except as enforcement of such terms may be limited by applicable Insolvency Laws and general principles of equity, whether considered in a suit at law or in equity.

(c) No Consent Required. The Trust Depositor is not required to obtain the consent of any other party (other than those that it has already obtained) or any consent, license, approval or authorization from, or registration or declaration with, any Governmental Authority (other than those that it has already obtained) in connection with the execution,

delivery, performance, validity or enforceability of this Agreement or the other Transaction Documents to which it is a party.

(d) No Violations. The execution, delivery and performance by the Trust Depositor of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, will not violate in any material respect any Applicable Law applicable to the Trust Depositor, or conflict with, result in a default under or constitute a breach of the Trust Depositor's organizational documents or any material Contractual Obligations to which the Trust Depositor is a party or by which the Trust Depositor or any of the Trust Depositor's properties may be bound, or result in the creation or imposition of any Lien of any kind upon any of its properties pursuant to the terms of any such material Contractual Obligations, other than as contemplated by the Transaction Documents.

(e) Litigation. No litigation or administrative proceeding of or before any court, tribunal or governmental body is currently pending, or to the knowledge of the Trust Depositor threatened, against the Trust Depositor or any of its properties or with respect to this Agreement, any other Transaction Documents to which it is a party or the Securities (i) that, if adversely determined, would in the reasonable judgment of the Trust Depositor be expected to have a material adverse effect on the business, properties, assets or condition (financial or otherwise) of the Trust Depositor or the Issuer or the transactions contemplated by this Agreement or any other Transaction Documents to which the Trust Depositor is a party or (ii) seeking to adversely affect the federal income tax or other federal, state or local tax attributes of the Securities.

(f) Solvency. The Trust Depositor, at the time of, and after giving effect to each conveyance of Loan Assets hereunder and under the Sale and Servicing Agreement, is Solvent.

(g) Taxes. The Trust Depositor has filed or caused to be filed all tax returns which, to its knowledge, are required to be filed and has paid all taxes shown to be due and payable on such returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any amount of tax due, the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with generally accepted accounting principles have been provided on the books of the Trust Depositor); no tax Lien has been filed and, to the Trust Depositor's knowledge, no claim is being asserted, with respect to any such tax, fee or other charge.

(h) Place of Business; No Changes. The Trust Depositor's location (within the meaning of Article 9 of the UCC) is the State of Delaware. The Trust Depositor has not changed its name, whether by amendment of its certificate of formation, by reorganization or otherwise, and has not changed its location, within the four months preceding the Closing Date.

(i) Not an Investment Company. The Trust Depositor is not and, after giving effect to the transactions contemplated by the Transaction Documents, will not be required to be registered as an "investment company" within the meaning of the 1940 Act.

(j) Sale Treatment. Other than for accounting and tax purposes, the Trust Depositor has treated the transfer of Loan Assets from the Seller for all purposes as a sale and purchase on all of its relevant books and records and other applicable documents.

ARTICLE IV

PERFECTION OF TRANSFER AND PROTECTION OF SECURITY INTERESTS

Section 4.01 **Custody of Loans.**

The contents of each Loan File shall be held in the custody of the Custodian (on behalf of the Trustee) under the terms of the Sale and Servicing Agreement for the benefit of, and as agent for, the Securityholders.

Section 4.02 **Filing.**

On the Closing Date, the Seller shall cause the UCC financing statement(s) referred to in Section 2.02(f) hereof to be filed. Notwithstanding the obligations of the Seller set forth in the preceding sentence, the Trust Depositor hereby authorizes the Servicer to prepare and file, at the expense of the Seller, such UCC financing statements (including but not limited to renewal, continuation or in lieu statements) and amendments or supplements thereto or other instruments as the Servicer may from time to time deem necessary or appropriate in order to perfect and maintain the security interest granted hereunder in accordance with the UCC.

Section 4.03 **Changes in Name, Organizational Structure or Location.**

(a) During the term of this Agreement, the Seller shall not change its name, principal place of business, form of organization, existence, state of formation or location without first giving at least 30 days' prior written notice to the Trust Depositor and Servicer.

(b) If any change in the Seller's name, form of organization, existence, state of formation, location or other action would make any financing or continuation statement or notice of ownership interest or Lien relating to any Initial Loan Asset, Substitute Loan Asset, or Additional Loan Asset seriously misleading within the meaning of applicable provisions of the UCC or any title statute, the Seller, or the Servicer on its behalf, no later than five (5) Business Days after the effective date of such change, shall file such amendments as may be required (including, but not limited to, any filings and other acts necessary or advisable under the UCC of each relevant jurisdiction) to preserve and protect the Trust Depositor's, the Issuer's and the Trustee's interests in the Initial Loan Assets, any Substitute Loan Assets, any Additional Loan Asset and the proceeds thereof.

Section 4.04 **Costs and Expenses.**

The initial Servicer will be obligated to pay all reasonable costs and disbursements in connection with the perfection and the maintenance of perfection, as against all third parties, of the Trust Depositor's and Issuer's right, title and interest in and to the Initial Loan Assets, the Substitute Loan Assets and the Additional Loan Assets (including, without limitation, the security interests in the Related Property related thereto and the security interests provided for in the Indenture); *provided* that to the extent permitted by the Underlying Loan Agreements, the Servicer may seek reimbursement for such costs and disbursements from the related Obligors.

Section 4.05 **Sale Treatment.**

Other than for accounting and tax purposes, the Seller shall treat the transfer of Loan Assets made hereunder for all purposes as a sale and purchase on all of its relevant books and records.

Section 4.06 **Separateness from Trust Depositor.**

The Seller agrees to take or refrain from taking or engaging in with respect to the Trust Depositor, each of the actions or activities specified in the "substantive consolidation" opinion of Dechert LLP (including any certificates

of the Seller delivered in connection therewith) delivered on the Closing Date, upon which the conclusions therein are based.

ARTICLE V

COVENANTS OF THE ORIGINATOR

Section 5.01 **Corporate Existence.**

During the term of this Agreement, the Seller will keep in full force and effect its existence, rights and franchises as a corporation under the laws of the jurisdiction of its formation and will obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, the other Transaction Documents and each other instrument or agreement necessary or appropriate for the proper administration of this Agreement and the transactions contemplated hereby. In addition, all transactions and dealings between the Seller and the Trust Depositor will be conducted on an arm's-length basis.

Section 5.02 **[Reserved].**

Section 5.03 **Security Interests.**

The Seller will not sell, pledge, assign or transfer to any Person other than the Trust Depositor, or grant, create, incur, assume or suffer to exist any Lien on any Loan in the Collateral or its interest in any Related Property, other than the Lien granted to the Trust Depositor, whether now existing or hereafter transferred to the Trust Depositor, or as otherwise expressly contemplated by this Agreement. The Seller will promptly notify the Trust Depositor upon obtaining knowledge of the existence of any Lien on any Loan in the Collateral or its interest in any Related Property; and the Seller shall defend the right, title and interest of the Trust Depositor in, to and under the Loans in the Collateral and the Trust Depositor's interest in any Related Property, against all claims of third parties; *provided* that nothing in this Section 5.03 shall prevent or be deemed to prohibit the Seller from suffering to exist Permitted Liens upon any of the Loans in the Collateral or its interest in any Related Property.

Section 5.04 **Compliance with Law.**

The Seller hereby agrees to comply in all material respects with all Applicable Law applicable to the Seller except where the failure to do so would not reasonably be expected to have a material adverse effect on the Securityholders.

Section 5.05 **Liability of Seller.**

The Seller shall be liable in accordance herewith only to the extent of the obligations specifically undertaken by the Seller under this Agreement.

Section 5.06 **Limitation on Liability of Seller and Others.**

The Seller and any director, officer, employee or agent of the Seller may rely in good faith on any document of any kind, prima facie properly executed and submitted by the appropriate Person respecting any matters arising hereunder. The Seller shall not be under any obligation to appear in, prosecute or defend any legal action that shall not be incidental to its obligations under this Agreement, and that in its opinion may involve it in any expense or liability.

Section 5.07 **Reserved.**

Section 5.08 **Merger or Consolidation of Seller.**

Any Person into which the Seller may be merged or consolidated, or any Person resulting from such merger, conversion or consolidation to which the Seller is a party, or any Person succeeding to substantially all of the business or substantially all of the lending business of the Seller shall be the successor to the Seller hereunder, without execution or filing of any paper or any further act on the part of any of the parties hereto, notwithstanding anything herein to the contrary; *provided* that if the Seller is the Servicer at the time of such merger, conversion, consolidation or sale, such transaction meets the requirements set forth in Section 5.13 of the Sale and Servicing Agreement.

Section 5.09 **Delivery of Collections.**

The Seller agrees to deposit into the Collection Account promptly (but in no event later than two (2) Business Days after receipt) all Collections received by the Seller in respect of any Initial Loan, Substitute Loan or Additional Loan, for application in accordance with Section 7.06 of the Sale and Servicing Agreement.

Section 5.10 **Underlying Custodial Agreements.**

The Seller agrees to fully cooperate with the Trust Depositor, the Issuer and the Trustee, and from and after the occurrence and during the continuance of an Event of Default or Servicer Default to take such actions as may be requested in the reasonable discretion of the Trustee, under any Underlying Loan Agreements. The Seller further agrees to fully cooperate with the Trust Depositor, the Issuer and the Trustee, and from and after the occurrence and during the continuance of an Event of Default or Servicer Default to take such actions as may be requested in the sole and absolute discretion of the Trustee to cause to be defended, enforced, preserved and protected the rights and privileges of the Trust Depositor, the Issuer, the Trustee and the Secured Parties under or with respect to the Underlying Loan Agreements and any underlying loan documents or other collateral held by the underlying custodians.

ARTICLE VI

REMEDIES UPON MISREPRESENTATION

Section 6.01 **Repurchases of, or Substitution for, Loans for Breach of Representations and Warranties.**

Upon a discovery by a Responsible Officer of the Trust Depositor, a Responsible Officer of the Servicer, the Backup Servicer or any subservicer, a Responsible Officer of the Owner Trustee or a Responsible Officer of the Trustee of a breach of a representation or warranty as set forth in Section 3.01, Section 3.02 or Section 3.04 or as made or deemed made relating to any Initial Loan, Substitute Loan or Additional Loan, as applicable, that materially and adversely affects the interests of the Securityholders (each such Loan with respect to which such breach exists, an "Ineligible Loan"), the party discovering such breach or failure shall give prompt written notice to the other parties to this Agreement; *provided* that neither the Owner Trustee, the Backup Servicer, nor the Trustee shall have a duty or obligation (i) to inquire or to investigate the breach of any of such representations or warranties or (ii) to determine if such breach materially and adversely affects the interests of the Securityholders. Within 30 days of the earlier of (x) its discovery or (y) its receipt of notice of any breach of a representation or warranty, the Seller shall (a) promptly cure such breach in all material respects, (b) repurchase each such Ineligible Loan by depositing in the Lockbox Account, for further credit to the Collection Account, within such 30 day period, an amount equal to the Transfer Deposit Amount for such Ineligible Loan, or (c) remove such Initial Loan, Substitute Loan or Additional Loan from the Collateral, deposit the Transfer Deposit Amount with respect to such Loan into the Lockbox Account, for further credit to the Collection Account, and, not later than the date a repurchase of such affected Loan would be required hereunder, effect a substitution for such affected Loan with a Substitute Loan in accordance with the substitution requirements set forth in Section 2.04.

Section 6.02 **Reassignment of Repurchased Substituted Loans or Acquired Additional Loans**

Upon receipt by the Trustee for deposit in the Collection Account of the amounts described in Section 6.01 (or upon the Substitute Loan Cutoff Date related to a Substitute Loan described in Section 6.01 or the Additional Loan Cutoff Date related to an Additional Loan described in Section 6.01), and upon receipt of an Officer's Certificate of the Servicer in the form attached as Exhibit F to the Sale and Servicing Agreement, the Trustee and the Issuer shall assign to the Trust Depositor and the Trust Depositor shall assign to the Seller all of the Trustee's and the Issuer's (or Trust Depositor's, as applicable) right, title and interest in the Initial Loans, Substitute Loans or Additional Loans being repurchased or substituted for the related Loan Assets without recourse, representation or warranty. Such reassigned Initial Loan, Substitute Loan or Additional Loan shall no longer thereafter be included in any calculations of Outstanding Loan Balances or otherwise be deemed a part of the Collateral.

ARTICLE VII

INDEMNIFICATION BY THE ORIGINATOR

Section 7.01 **Indemnification.**

The Seller agrees to indemnify, defend and hold harmless the Trust Depositor, its officers, directors, employees and agents (any one of which is an "Indemnified Party") from and against any and all claims, losses, penalties, fines, forfeitures, judgments (*provided* that any indemnification for damages is limited to actual damages, not consequential, special or punitive damages), reasonable legal fees and related costs and any other reasonable costs, fees and expenses that such Person may sustain as a result of the Seller's fraud or the failure of the Seller to perform its duties in compliance in all material respects with the terms of this Agreement, except to the extent arising from gross negligence, willful misconduct or fraud by the Person claiming indemnification. Any Person seeking indemnification hereunder shall promptly notify the Seller if such Person receives a complaint, claim, compulsory process or other notice of any loss, claim, damage or liability giving rise to a claim of indemnification hereunder but failure to provide such notice shall not relieve the Seller of its indemnification obligations hereunder unless the Seller is deprived of material substantive or procedural rights or defenses as a result thereof. The Seller shall assume (with the consent of the Indemnified Party, such consent not to be unreasonably withheld) the defense and any settlement of any such claim and pay all expenses in connection therewith, including reasonable counsel fees, and promptly pay, discharge and satisfy any judgment or decree which may be entered against the Indemnified Party in respect of such claim. If the consent of the Indemnified Party required in the immediately preceding sentence is unreasonably withheld, the Seller shall be relieved of its indemnification obligations hereunder with respect to such Person. The parties agree that the provisions of this Section 7.01 shall not be interpreted to provide recourse to the Seller against loss by reason of the bankruptcy, insolvency or lack of creditworthiness of an Obligor with respect to an Initial Loan, Substitute Loan or Additional Loan. The Seller shall have no liability for making indemnification hereunder to the extent any such indemnification constitutes recourse for uncollectible or uncollected Initial Loans, Substitute Loans or Additional Loans.

Section 7.02 **Liabilities to Obligors.**

No obligation or liability to any Obligor under any of the Initial Loans, Substitute Loans or Additional Loans is intended to be assumed by the Trust Depositor, the Trustees, the Issuer or the Securityholders under or as a result of this Agreement and the transactions contemplated hereby.

Section 7.03 **Operation of Indemnities.**

If the Seller has made any indemnity payments to an Indemnified Party pursuant to this Article VII and such Indemnified Party thereafter collects any such amounts from others, such Indemnified Party will repay such amounts collected to the Seller.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 **Amendment.**

(a) This Agreement may be amended from time to time by the parties hereto by written agreement, with the prior written consent of the Trustee but without the consent of any Securityholder, to (i) cure any ambiguity or to correct or supplement any provisions herein that may be inconsistent with any other provisions in this Agreement or in the Offering Memorandum, (ii) comply with any changes in the Code, USA PATRIOT Act, or U.S. securities laws (including the regulations implementing such laws), (iii) add to the covenants of any party hereto for the benefit of the Securityholders, and (iv) add any new provisions with respect to matters or questions arising under this Agreement which shall not be inconsistent with the provisions of this Agreement; *provided* that no such amendment shall materially and adversely affect the interests of any Noteholder. Notice of any such proposed amendment must be sent to all Securityholders and the Rating Agency at least ten (10) Business Days prior to the execution of such amendment and (y) such amendment shall not be deemed to materially and adversely affect the interests of any Noteholder if the Person requesting such amendment obtains an Opinion of Counsel addressed to the Trustee to that effect.

(b) Except as provided in Section 8.01(a) hereof, this Agreement may be amended from time to time by the parties hereto by written agreement, with the prior written consent of the Trustee and with the consent of the Majority Noteholders and with notice to each of the Rating Agency and the Owner Trustee, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Securityholders; *provided* that (i) if such amendment materially and adversely affects any Notes, such amendment shall also require the consent of the majority of the Outstanding Principal Balance of such Notes and (ii) no such amendment shall reduce in any manner the amount of, or delay the timing of, any amounts received on any Initial Loans, Substitute Loans or Additional Loans which are required to be distributed on any Note or the Certificate without the consent of the Holder of such Note or the Certificate or reduce the percentage of Securityholders that are required to consent to any such amendment without the consent of the Securityholders holding 100% of the Notes or the Certificate affected thereby.

(c) [Reserved].

(d) Promptly after the execution of any such amendment or consent, written notification of the substance of such amendment or consent shall be furnished by the Trustee to the Noteholders, by the Owner Trustee to the Certificateholders and by the Seller to the Rating Agency. It shall not be necessary for the consent of any Securityholders required pursuant to Section 8.01(b) to approve the particular form of any proposed amendment or consent, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents and of evidencing the authorization by the Securityholders of the execution thereof shall be subject to such reasonable requirements as the Trustee may prescribe for the Noteholders and as the Owner Trustee may prescribe for the Certificateholders.

(e) Prior to the execution of any amendment to this Agreement, the Owner Trustee and the Trustee shall be entitled to receive and conclusively rely upon an Opinion of Counsel (which Opinion of Counsel may rely upon an Officer's Certificate of the Servicer with respect to the effect of any such amendment on the economic interests of any Securityholders) stating that the execution of such amendment is authorized or permitted by this Agreement. Each of the Trustee and the Owner Trustee may, but shall not be obligated to, enter into or consent to any such amendment that affects such Person's own rights, duties, indemnities or immunities under this Agreement or otherwise.

Section 8.02 **Governing Law.**

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

THE OBLIGATIONS, RIGHTS, AND REMEDIES OF THE PARTIES UNDER THE AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.02(b).

Section 8.03 Notices.

All notices, demands, certificates, requests and communications hereunder ("notices") shall be in writing and shall be effective (a) upon receipt when sent through the U.S. mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, or (b) one Business Day after delivery to an overnight courier, or (c) on the date personally delivered to a Responsible Officer of the party to which sent, or (d) on the date transmitted by legible telecopier with a confirmation of receipt, in all cases addressed to the recipient as follows:

(i) if to the Servicer or the Seller:

Hercules Capital, Inc.

400 Hamilton Avenue, Suite 310

Palo Alto, California 94301

Attention: Chief Financial Officer

Re: Hercules Capital Funding Trust 2022-1

Telephone: (650) 289-3060

Facsimile No.: (650) 473-9194

with a copy to:

Hercules Capital, Inc.

400 Hamilton Avenue, Suite 310

Palo Alto, California 94301

Attention: General Counsel

Re: Hercules Capital Funding Trust 2022-1

Telephone: (650) 289-3060

Facsimile No.: (650) 473-9194

(ii) if to the Trust Depositor:

Hercules Capital Funding 2022-1 LLC

c/o Hercules Capital, Inc.

400 Hamilton Avenue, Suite 310

Palo Alto, California 94301

Attention: Chief Financial Officer

Re: Hercules Capital Funding Trust 2022-1

Telephone: (650) 289-3060

Facsimile No.: (650) 473-9194

with a copy to:

Hercules Capital Funding 2022-1 LLC

c/o Hercules Capital, Inc.

400 Hamilton Avenue, Suite 310

Palo Alto, California 94301

Attention: General Counsel

Re: Hercules Capital Funding Trust 2022-1

Telephone: (650) 289-3060

Facsimile No.: (650) 473-9194

(iii) if to the Trustee:

U.S. Bank Trust Company, National Association

Global Corporate Trust

One Federal Street, Third Floor

Boston, Massachusetts 02110

Attention: Jack Lindsay

Ref: Hercules Capital Funding Trust 2022-1

Facsimile No.: (855) 869-2187

(iv) if to the Backup Servicer:

U.S. Bank National Association

60 Livingston Avenue

EP-MN-WS3D

St. Paul, Minnesota 55107

Attention: Deborah Jones Franco

Ref: Hercules Capital Funding Trust 2022-1

Facsimile No.: (651) 495-8090

(v) If to the Custodian with respect to Loan Files:

U.S. Bank National Association

Document Custody Services

1719 Otis Way

Florence, South Carolina 29501

Attention: Steven Garrett

Ref: Hercules Capital Funding Trust 2022-1

(vi) if to the Owner Trustee:

Wilmington Trust, National Association

1100 North Market Street

Wilmington, Delaware 19890

Attention: Corporate Trust Administration-Hercules Capital Funding Trust 2022-1

Email: BMcCammon@wilmingtontrust.com

with a copy to:

the Seller and the Servicer as provided in clause (i) above

(vii) if to the Issuer:

Hercules Capital Funding Trust 2022-1

c/o Wilmington Trust, National Association

1100 North Market Street

Wilmington, Delaware 19890

Attention: Corporate Trust Administration-Hercules Capital Funding Trust 2022-1

Email: BMcCammon@wilmingtontrust.com

with a copy to:

the Seller and the Servicer as provided in clause (i) above

(viii) if to the Rating Agency:

Kroll Bond Rating Agency LLC

805 Third Avenue, 29th Floor

New York, New York 10022

Attn: ABS Surveillance

Each party hereto may, by notice given in accordance herewith to each of the other parties hereto, designate any further or different address to which subsequent notices shall be sent.

Section 8.04 Severability of Provisions.

If one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever prohibited or held invalid or unenforceable, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement, the Notes or Certificates or the rights of the Securityholders, and any such prohibition, invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenants, agreements, provisions or terms in any other jurisdiction.

Section 8.05 Third Party Beneficiaries.

Except as otherwise specifically provided herein, the parties hereto hereby manifest their intent that no third party (other than the Issuer, the Trustee and the Owner Trustee) shall be deemed a third party beneficiary of this Agreement, and specifically that the Obligors are not third party beneficiaries of this Agreement.

Section 8.06 Counterparts.

This Agreement may be executed by facsimile signature and in several counterparts, each of which shall be an original and all of which shall together constitute but one and the same instrument. This Agreement shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to

conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument.

Section 8.07 **Headings.**

The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 8.08 **No Bankruptcy Petition; Disclaimer.**

(a) Each of the Seller and the Trust Depositor covenants and agrees that, prior to the date that is one year and one day (or, if longer, the preference period then in effect and one day) after the payment in full of all amounts owing in respect of all outstanding Notes rated by any Rating Agency, it will not institute against the Trust Depositor (in the case of the Seller), or the Issuer, or join any other Person in instituting against the Trust Depositor or the Issuer, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceedings under the laws of the United States or any state of the United States. This Section 8.08 will survive the termination of this Agreement.

(b) The provisions of this Section 8.08 shall be for the third party benefit of those entitled to rely thereon, including the Securityholders, and shall survive the termination of this Agreement.

Section 8.09 **Jurisdiction.**

Any legal action or proceeding with respect to this Agreement may be brought in the courts of the United States for the Southern District of New York, and by execution and delivery of this Agreement, each party hereto consents, for itself and in respect of its property, to the non-exclusive jurisdiction of those courts. Each such party irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or any document related hereto.

Section 8.10 **Prohibited Transactions with Respect to the Issuer.**

The Seller shall not:

(a) Provide credit to any Noteholder or Certificateholder for the purpose of enabling such Noteholder or Certificateholder to purchase Notes or Certificates, respectively;

(b) Purchase any Notes or Certificates in an agency or trustee capacity; or

(c) Except in its capacity as Servicer as provided in the Sale and Servicing Agreement, lend any money to the Issuer.

Section 8.11 **No Partnership.**

Nothing herein contained shall be deemed or construed to create a co-partnership or joint venture between the parties hereto.

Section 8.12 **Successors and Assigns.**

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

Section 8.13 **Duration of Agreement.**

This Agreement shall continue in existence and effect until the termination of the Sale and Servicing Agreement.

Section 8.14 **Limited Recourse.**

The obligations of the Trust Depositor and the Seller under this Agreement and the other Transaction Documents are solely the obligations of the Trust Depositor and the Seller, respectively. No recourse shall be had for the payment of any amount owing by the Trust Depositor or the Seller or otherwise under this Agreement, any other Transaction Document or for the payment by the Trust Depositor or the Seller of any fee in respect hereof or thereof or any other obligation or claim of or against the Trust Depositor or the Seller arising out of or based upon this Agreement or any other Transaction Document, against any Affiliate, shareholder, partner, manager, member, director, officer, employee, representative or agent of the Trust Depositor or the Seller or of any Affiliate of such Person. The provisions of this Section 8.14 shall survive the termination of this Agreement.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

HERCULES CAPITAL, INC.,
as the Seller

By:
Name:
Title:

HERCULES CAPITAL FUNDING 2022-1 LLC
as the Trust Depositor

By:
Name:
Title:

Exhibit A
Form of Assignment

[____], 20[__]

In accordance with the Sale and Contribution Agreement (the "Agreement"), dated as of June 22, 2022, made by and between the undersigned, Hercules Capital, Inc., as the Seller, and Hercules Capital Funding 2022-1 LLC, as the Trust Depositor (the "Trust Depositor"), as assignee thereunder, the undersigned does hereby sell, transfer, convey and assign, set over and otherwise convey to the Issuer, on behalf of the Trust Depositor, all of the Seller's right, title and interest in and to the following:

(1) the Loans listed on Schedule A of the Agreement and all monies due, to become due or paid in respect thereof accruing on and after the Closing Date and all Insurance Proceeds, Liquidation Proceeds, Released Mortgaged Property Proceeds and other recoveries thereon, in each case as they arise after the Closing Date;

(2) all security interests and Liens and Related Property subject thereto from time to time purporting to secure payment by Obligors under such Loans;

(3) all guaranties, indemnities and warranties, and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Loans;

(4) the Transaction Accounts, together with all cash and investments in each of the foregoing;

(5) all collections and Records (including Computer Records) with respect to the foregoing;

(i) all documents relating to the applicable Loan Files; and

(ii) all income, payments, proceeds and other benefits of any and all of the foregoing, including but not limited to, all accounts, cash and currency, chattel paper, electronic chattel paper, tangible chattel paper, copyrights, copyright licenses, equipment, fixtures, general intangibles, instruments, commercial tort claims, deposit accounts, inventory, investment property, letter of credit rights, software, supporting obligations, accessions, and other property consisting of, arising out of, or related to the foregoing, but excluding any Excluded Amount with respect thereto.

Capitalized terms used herein have the meaning given such terms in the Agreement.

This Assignment is made pursuant to and in reliance upon the representations and warranties on the part of the undersigned contained in Article III of the Agreement and no others.

IN WITNESS WHEREOF, the undersigned has caused this Assignment to be duly executed on the date written above.

HERCULES CAPITAL, INC., as the Seller

By: _____
Name:
Title:

HERCULES CAPITAL FUNDING 2022-1 LLC, as the Trust Depositor

By: _____
Name:
Title:

Schedule A

Initial Loans

Accounting System Number / Collateral ID	Outstanding Balance at Cutoff Date	Funding Maturity Date	Loan Type	Agent Status	Agent	Note Status	UCC Filing in Seller's Name

EXECUTION VERSION

Exhibit 10.5

HERCULES CAPITAL FUNDING TRUST 2022-1

$150,000,000

Senior Secured Notes

Note Purchase Agreement

Dated June 22, 2022

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HERCULES CAPITAL FUNDING TRUST 2022-1

Senior Secured Notes due July 20, 2031

June 22, 2022

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

Ladies and Gentlemen:

HERCULES CAPITAL FUNDING TRUST 2022-1, a Delaware statutory trust (the "**Issuer**"), the Depositor and Hercules (each, as defined below) agree with each of the Purchasers as follows:

SECTION 1. AUTHORIZATION OF NOTES.

The Issuer will authorize the issue and sale of $150,000,000 aggregate principal amount of its Senior Secured Notes due July 20, 2031 (the "**Notes**"). The Notes will be issued by the Issuer pursuant to an indenture (as the same may be amended, supplemented or otherwise modified from time to time, the "**Indenture**"), dated as of June 22, 2022, by and among the Issuer and U.S. Bank Trust Company, National Association ("**U.S. Bank**"), a national banking association, not in its individual capacity, but solely in its capacity as the trustee (in such capacity, the "**Trustee**"). The Notes shall be issued in accordance with the Indenture and backed by a portfolio of Loan Assets and Related Property. The Issuer, the Depositor and Hercules are referred to herein each, as a "**Securitization Party**" and collectively, as the "**Securitization Parties**".

On the Closing Date, the Issuer will enter into a sale and servicing agreement (as the same may be amended, supplemented or otherwise modified, the "**Sale and Servicing Agreement**"), dated as of the Closing Date, by and among the Issuer, Hercules Capital Funding 2022-1 LLC, a Delaware limited liability company, in its capacity as the trust depositor thereunder (the "**Depositor**"), Hercules Capital, Inc., a Maryland corporation ("**Hercules**"), in its capacity as the seller and the servicer thereunder (the "**Servicer**"), U.S. Bank, in its capacities as the Trustee and the paying agent thereunder, and U.S. Bank National Association ("**USBNA**") in its capacities as the backup servicer and the custodian thereunder, pursuant to which, among other things, the Depositor will convey and contribute to the Issuer the Loan Assets and Related Property and the Servicer will perform the servicing duties specified therein in respect of the Loan Assets. On the Closing Date, the Depositor will enter into a sale and contribution agreement (as the same may be amended, supplemented or otherwise modified, the "**Sale and Contribution Agreement**"), dated as of the Closing Date, by and between the Depositor, as the purchaser, and Hercules, as the seller, pursuant to which, among other things, Hercules will convey and contribute to the Depositor the Loan Assets and Related Property.

The Notes will be offered and sold by the Issuer to the Purchasers pursuant to this Agreement without being registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**"), in reliance upon the exemption provided by Section 4(a)(2) thereof.

Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Schedule A attached hereto and made a part hereof and, to the extent not set forth therein, shall have the meanings set forth or incorporated by reference in the Sale and Servicing Agreement or the Indenture, as applicable. The rules of construction set forth in Section 15.3 hereof shall govern for all purposes under this Agreement.

SECTION 2. SALE AND PURCHASE OF NOTES.

Subject to the terms and conditions of this Agreement, the Issuer will issue and sell to each Purchaser, and each Purchaser will purchase from the Issuer, at the Closing provided for in Section 3, Notes in the principal amount specified opposite such Purchaser's name in the purchaser schedule to this Agreement listing the Purchasers of the Notes and including their notice information (the **"Purchaser Schedule"**) at the purchase price of 99.50% of the principal amount of $150,000,000. The Purchasers' obligations hereunder (to the extent there is more than one Purchaser) 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. CLOSING.

The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Winston & Strawn LLP, 200 Park Avenue, New York, NY 10166, at closing (the "**Closing**") on the date hereof (the "**Closing Date**"). At the Closing, the Issuer will deliver to such Purchaser the Notes to be purchased by such Purchaser in the form of a single Note ((or such greater number of Notes) in minimum denominations of $10,000 and integral multiples of $1,000 in excess thereof as the Purchaser may request at least two (2) Business Days prior to the Closing Date) dated as of June 22, 2022 and registered in such Purchaser's name (or in the name of its nominee), against delivery by such Purchaser to or at the direction of the Issuer of an amount equal to the purchase price therefor by wire transfer of immediately available funds in accordance with the wiring instructions set forth in the Funding Notice (defined below). If at the Closing the Issuer shall fail to tender such Notes to any Purchaser as provided in this Section 3, or any of the conditions specified in Section 4 hereof shall not have been fulfilled to any Purchaser's satisfaction or waived by such Purchaser in writing, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement (other than its obligations under Section 13 hereof), without thereby waiving any rights such Purchaser may have by reason of such failure by the Issuer to tender such Notes or any of the conditions specified in Section 4 hereof not having been fulfilled to such Purchaser's satisfaction or waived by such Purchaser in writing.

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 in the manner set forth in Section 3 hereof is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions, except to the extent such conditions are waived by a Purchaser in writing:

Section 4.1. Representations and Warranties**.** The representations and warranties of each Securitization Party contained in this Agreement and the other Transaction Documents to which such Securitization Party is a party shall be true and correct when made and as of the Closing or such other date specified therein. Each Purchaser is entitled to rely on the representations and warranties of the Securitization Parties in any Transaction Document as though such representations and warranties were addressed to such Purchaser.

Section 4.2. Performance**.** Each Securitization Party shall have performed and complied with all agreements and conditions contained in this Agreement and the other Transaction Documents to which it is a party required to be performed or complied with by it prior to or at the Closing.

Section 4.3. No Rapid Amortization Event, Default, Event of Default or Servicer Default**.** Before and after giving effect to the issue and sale of the Notes by the Issuer (and the application of the proceeds thereof in the manner contemplated by this Agreement and the other Transaction Documents), no Rapid Amortization Event, Default, Event of Default or Servicer Default shall have occurred and be continuing.

Section 4.4. Compliance Certificates.

(a) *Officer's Certificate*. Each Securitization Party shall have delivered to the Trustee an Officer's Certificate, dated as of the Closing Date, certifying that (i) the conditions specified in Sections 4.2, 4.3, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11. 4.13, 4.14 and 4.17 hereof have been fulfilled, (ii) its representations and warranties in this Agreement and the other Transaction Documents to which it is a party are true and correct, (iii) it has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder and under the other Transaction Documents

to which it is a party at or prior to the Closing Date and (iv) there has been no event or development since March 31, 2022 that has resulted in or can reasonably be expected to result in a Material Adverse Effect.

(b) *Secretary's Certificate*. Each Securitization Party shall have delivered to the Trustee a certificate of its Secretary or Assistant Secretary or the equivalent, dated as of the Closing Date, certifying as to (i) the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of this Agreement, the Notes and the other Transaction Documents to which it is a party, (ii) its organizational documents as then in effect and (iii) the names, titles and true signatures of its directors and officers or the equivalent who are authorized to sign the Transaction Documents to which it is a party.

Section 4.5. Opinions of Counsel.

(a) Dechert LLP, as counsel to the Securitization Parties, shall have furnished to the Trustee, written opinions that are customary for transactions of this type and reasonably satisfactory in form and substance to the Trustee and the Purchasers on corporate matters, UCC-related matters, bankruptcy law-related matters (including true sale or true contribution matters and non-consolidation matters), matters of Maryland law and securities law-related matters, addressed to the Trustee and the Purchasers and dated the Closing Date.

(b) Nixon Peabody LLP, as counsel to the Trustee, shall have furnished to the Trustee, written opinions that are customary for transactions of this type and reasonably satisfactory in form and substance to the Trustee and the Purchasers on general corporate and enforceability matters, addressed to the Trustee and the Purchasers and dated the Closing Date.

(c) Richards, Layton & Finger, P.A., as special Delaware counsel to the Owner Trustee, shall have furnished to the Trustee and the Purchasers, written opinions that are customary for transactions of this type and reasonably satisfactory in form and substance to the Trustee and the Purchasers on matters of Delaware law.

Section 4.6. Purchase Permitted By Applicable Law, Etc. On the Closing Date, 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, without limitation, Section 5 of the Securities Act and 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 4.7. Sale and Delivery of Notes**.** The Notes to be sold to the Purchasers at the Closing in the manner set forth in Section 3 hereof are authenticated, executed and delivered to the Purchasers at the Closing and the original of such Notes shall be delivered to the Purchasers (or their respective custodians as designated by the applicable Purchaser) no later than two (2) Business Days following the Closing. Contemporaneously with the Closing the Issuer shall sell, on a joint and several basis, to each Purchaser and each Purchaser shall purchase the Notes to be purchased by it at the Closing as specified in the Purchaser Schedule.

Section 4.8. Payment of Special Counsel Fees**.** Without limiting Section 8.1 hereof, the Issuer shall have paid on or before the Closing the fees, charges and disbursements of the Purchasers' special counsel to the extent reflected in a statement of such counsel rendered to the Issuer on or prior to the Closing on the Closing Date.

Section 4.9. Private Placement Number**.** A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for the Notes.

Section 4.10. Changes in Corporate Structure**.** No Securitization Party shall 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 March 31, 2022 except as contemplated by the Transaction Documents on or prior to the Closing Date.

Section 4.11. Funding Instructions**.** Prior to the Closing Date, each Purchaser shall have received written instructions signed by a Responsible Officer of the Issuer confirming the wiring instructions for the purchase of the Notes specified in Section 3 including (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 (the "**Funding Notice**").

Section 4.12. [Reserved]**.**

Section 4.13. Proceedings and Documents**.** Each of the Transaction Documents shall have been duly executed and delivered by the respective parties thereto. All corporate and other proceedings in connection with the transactions contemplated by this Agreement, the Notes, the other Transaction Documents 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 electronic signatures as permitted by Section 15.4 hereof) or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

Section 4.14. Liens**.** The Purchasers shall have received evidence reasonably satisfactory to the Purchasers and their counsel that on or before the Closing Date, all existing Liens on the Collateral shall have been released and all UCC-1 financing statements and assignments and other instruments required to be filed prior to or at the Closing Date pursuant to the Transaction Documents have been or are being filed on the Closing Date.

Section 4.15. [Reserved]**.**

Section 4.16. KYC**.** At least five (5) days prior to the Closing Date (or such shorter time frame as acceptable to the related Purchaser), such Purchaser shall have received all documentation and other information required by such Purchaser under applicable "know-your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; provided that such Purchaser has provided at least ten (10) Business Day's prior written notice to the Issuer regarding the documentation and other information so required.

Section 4.17. Solvency**.** On the Closing Date, each of the Securitization Parties shall have furnished to the Purchasers a certificate, dated as of the Closing Date, of an officer of each such entity that such entity shall be Solvent immediately after the consummation of the transactions contemplated by this Agreement and the other Disclosure Documents on the Closing Date.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE SECURITIZATION PARTIES.

Each Securitization Party, with respect to itself, represents and warrants to each Purchaser that:

Section 5.1. Organization; Power and Authority.

(a) Each Securitization Party (i) is a corporation, limited liability company or statutory trust, as applicable, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, as applicable, and (ii) is duly qualified as a foreign legal entity and is in good standing in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each Securitization Party has the legal 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 this Agreement, the Notes and the other Transaction Documents to which it is a party and to perform the provisions hereof and thereof.

Section 5.2. Authorization, Etc.

(a) This Agreement and the other Transaction Documents to which each Securitization Party is a party (other than the Notes which are addressed in clause (b) below) have been duly and validly authorized by all requisite legal action and duly executed and delivered by such Securitization Party and, assuming the authorization, execution and delivery by the other parties thereto, will constitute the valid and binding agreement of such Securitization Party, as applicable, enforceable against it in accordance with its terms, except that the enforceability of this Agreement and such other Transaction Documents may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium and similar laws affecting creditors' rights generally and subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(b) The Notes have been duly authorized by all requisite legal action on the part of the Issuer and when duly executed by the Issuer in accordance with the terms of the Indenture, assuming due authentication of the Notes by the Trustee, upon delivery to each Purchaser against payment therefor in accordance with the terms hereof, will be validly issued and delivered and will constitute valid and binding obligations of the Issuer entitled to the benefits of the Indenture, enforceable against the Issuer in accordance with their terms, except that the enforceability of the Notes may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium and similar laws affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). On the Closing Date, the Notes will conform in all material respects to the description thereof in the Indenture.

(c) Assuming the accuracy of the representations and warranties of the Purchaser contained in Section 6 hereof, no qualification of the Indenture under the Trust Indenture Act of 1939, as amended, is required in connection with the offer and sale of the Notes in the manner contemplated hereby.

Section 5.3. Disclosure**.** This Agreement, the Transaction Documents and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Issuer on or prior to the Closing Date in connection with the transactions contemplated hereby and identified in Schedule 5.3 attached hereto (this Agreement, the Transaction Documents and such other documents, certificates or other writings and such financial statements delivered to each Purchaser being referred to, collectively, as 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 to the Purchasers in writing, there has been no change in the financial condition, operations, business, properties or prospects of the Securitization Parties except changes that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no fact known to the Securitization Parties that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents.

Section 5.4. Organization and Ownership of Equity Interests of the Securitization Parties; Affiliates.

(a) Schedule 5.4 attached hereto contains (except as noted therein) complete and correct lists of (i) each Securitization Party, showing the name thereof, the jurisdiction of its organization, the employer identification number, the percentage and class of outstanding shares of capital stock, membership interests, partnership interests or other similar equity interests owned by the other Securitization Parties, (ii) the Securitization Parties' Affiliates, and (iii) the Securitization Parties' directors and senior officers.

(b) All of the outstanding shares of capital stock, membership interests, partnership interests or other similar equity interests of each Securitization Party shown in Schedule 5.4 attached hereto as being owned by the other Securitization Parties have been validly issued, are fully paid and non-assessable and are owned by the Securitization Parties free and clear of any Lien that is prohibited by this Agreement.

(c) The Issuer is a statutory trust company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite power to own its assets and to transact the business in which it is currently engaged, and had at all relevant times, and now has, all necessary power, authority and legal right under its organizational documents and under applicable law to acquire, own and pledge the Collateral.

(d) No Securitization Party is subject to any legal, regulatory, contractual or other restriction (other than the agreements listed on Schedule 5.4 attached hereto and customary limitations imposed by corporate, limited liability company or statutory trust law or similar statutes) restricting the ability of such Securitization Party to pay dividends out of profits or make any other similar distributions of profits to the other Securitization Parties that own outstanding equity interests of such Securitization Party.

(e) Except as disclosed on such Schedule 5.4 attached hereto, to the Issuer' actual knowledge, no Securitization Party has had any other legal names in the previous five (5) years.

Section 5.5. Financial Statements; Material Liabilities.

(a) [Reserved].

(b) The Securitization Parties other than Hercules Capital, Inc. do not have any Material liabilities that are not disclosed in the Disclosure Documents or on Schedule 5.5 attached hereto.

(c) Since March 31, 2022, except as described in or contemplated by the Disclosure Documents and the Transaction Documents, none of the Securitization Parties has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities, (iii) incurred any Material liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any Material transaction not in the ordinary course of business, (v) caused or permitted any change in its equity interest, or (vi) except for changes in the economy and changes in law, experienced any adverse change in or affecting the condition (financial or otherwise), results of operations, properties, management, business or prospects of Hercules, the Depositor or any of their Subsidiaries, except as would not in each case with respect to clauses (i) through (vi) above, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Hercules maintains a system of internal control over financial reporting and that has been designed by, or under the supervision of, Hercules' principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Hercules maintains internal controls sufficient to provide reasonable assurance that (i) records are maintained that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Securitization Parties, (ii) transactions are recorded as necessary to permit preparation of the Securitization Parties' financial statements in accordance with GAAP and that receipts and expenditures are being made only in accordance with authorizations of management and directors of the Securitization Parties and (iii) the unauthorized acquisition, use or disposition of the assets of the Securitization Parties that could have a material effect on the consolidated financial statements are prevented or timely detected. The auditors' report regarding the last audited financial statements of the Securitization Parties included in the Disclosure Documents, while expressing no opinion on the effectiveness of internal control, included no qualification regarding internal control. Since the date of the last audited or reviewed financial statements of the Securitization Parties included in the Disclosure Documents, (i) Hercules has not been advised of or has become aware of any fraud that involves management or other employees who have a significant role in the internal control over financial reporting of the Securitization Parties taken as a whole or that is otherwise Material to the Securitization Parties taken as a whole; and (ii) there have been no significant changes in the internal control over financial reporting of the Securitization Parties that have Materially affected or are reasonably likely to Materially affect the internal control of the Securitization Parties taken as a whole over financial reporting.

Section 5.6. Compliance with Laws, Other Instruments, Etc.

(a) No Securitization Party is a party to any contract or agreement or subject to any charter or other legal restriction which materially and adversely affects its business, property or assets, condition (financial or otherwise) or operations.

(b) Without limitation of Section 5.6(a), the execution and delivery by each Securitization Party of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Notes by the Issuer in the manner contemplated herein, and the performance by each Securitization Party of the terms and provisions of this Agreement and the other Transaction Documents to which it is a party will not (i) 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 Securitization 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 the any Securitization Party is bound or by which any Securitization Party or any of their respective properties may be bound or affected, (ii) 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 Securitization Party or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to any Securitization Party except in the cases of clauses (i) through (iii) such conflicts, breaches, violations, defaults, liens, charges, encumbrances or violations as would not, individually or in the aggregate, result in a Material Adverse Effect.

(c) The Issuer is not a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of any Securitization Party, any agreement relating thereto or any other contract or agreement (including its charter) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Issuer of the type to be evidenced by the Notes.

(d) Without limitation of any of the foregoing, no Securitization Party is (i) in violation of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or (ii) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including, without limitation, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 5.23 hereof), which default or violation would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) On the Closing Date, the Securitization Parties will be in compliance with the credit risk retention requirements of Section 15G of the Exchange Act, as added by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and the federal interagency credit risk retention rules promulgated thereunder, codified at 17 C.F.R. Part 246 (the "**U.S. Risk Retention Rules**").

Section 5.7. Consents, Governmental Authorizations, Etc. No consent, permit, approval or authorization of, or order, registration, filing, qualification or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by any Securitization Party of this Agreement and the other Transaction Documents to which such Securitization Party is a party, the issuance and sale of the Notes by the Issuer, and the performance by the Securitization Parties of the terms and provisions of this Agreement and the other Transaction Documents to which such Securitization Party is a party, except for such consents, permits, approvals, authorizations, orders, registrations, filings, qualifications or declarations as shall have been obtained or made prior to the Closing Date or are permitted to be obtained or made subsequent to the Closing Date pursuant to this Agreement or the other Transaction Documents, except in each case if the failure to obtain such consent, permit, approval or authorization of, or order, registration, filing, qualification or declaration would not reasonably be expected to have a Material Adverse Effect.

Section 5.8. Litigation; Observance of Agreements, Statutes and Orders.

(a) Except as described in Schedule 5.8 attached hereto, there are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Securitization Parties threatened against or affecting the Securitization Parties or any Subsidiary or any property of any Securitization Party or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) No Securitization Party, or any Subsidiary is (i) in default under any agreement or instrument to which it is a party or by which it is bound, (ii) in violation of any order, judgment, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (iii) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including, without limitation, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 5.16 hereof), which default or violation could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.9. Taxes**.** The Securitization 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 levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which, individually or in the aggregate, is not Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the any Securitization Party, as the case may be, has established adequate reserves in accordance with GAAP. The Securitization Parties know of no basis for any other tax or assessment that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Securitization 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 Securitization 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 2021. There are no transfer taxes or other similar fees or charges under federal tax law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement or the issuance or sale by the Issuer of the Notes.

Section 5.10. Title to Property; Leases; Collateral**.** The Securitization Parties have good and sufficient title to, leasehold interests in, or license or easement to use, their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 hereof or purported to have been acquired by the Securitization Parties 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. All leases, licenses or easements that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects. On each date on which the Issuer acquires property of the type required to be treated as Collateral subject to the security interest granted to the Trustee for the benefit of the holders of the Notes pursuant to the Indenture, (i) the Issuer will have the power to grant a security interest in such Collateral and will have taken all necessary actions to authorize the granting of that security interest, (ii) the Issuer will be the sole owner of such Collateral, free and clear of any security interest, lien, encumbrance or other restriction other than the security interest granted pursuant to the Indenture and other than Permitted Liens, (iii) the Trustee will have a valid and perfected first priority security interest in such Collateral subject to no prior security interest, lien or encumbrance except for the security interest granted pursuant to the Indenture; and (iv) the performance by the Issuer of their obligations under the Indenture will not result in the creation of any security interest, lien or other encumbrance on any Collateral other than the security interest granted under the Indenture.

Section 5.11. Licenses, Permits, Etc. The Securitization 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.

(b) To the best knowledge of the Securitization Parties, no product or service of the Securitization Parties infringes in any material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person.

(c) To the best knowledge of the Securitization Parties, there is no Material violation by any Person of any right of the Securitization Parties with respect to any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Securitization Parties.

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

(a) Neither the Issuer nor the Depositor maintains any employees.

(b) Each ERISA Affiliate has 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 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 could, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Depositor, Hercules or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Depositor,

Hercules 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.

(c) 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. 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.

(d) No ERISA Affiliate has incurred withdrawal liabilities (and is not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(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 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 Depositor and Hercules 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 6.3 as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

Section 5.13. Private Offering by the Issuer**.** No Securitization Party 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, each of which has been offered the Notes at a private sale for investment. No Securitization Party nor anyone acting on their behalf has sold or issued any Securities that would be integrated with the offering of the Notes contemplated by this Agreement pursuant to the Securities Act, the rules and regulations thereunder or the interpretations thereof by the U.S. Securities and Exchange Commission. No Securitization Party 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 proceeds of the issuance and sale of the Notes will be used in the manner contemplated by this Agreement and the other Transaction Documents. 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 any Securitization Party 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). No Securitization Party owns nor has any present intention of acquiring any margin stock. 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; Future Liens**.** Except as described therein, Schedule 5.15 attached hereto sets forth a complete and correct list of all outstanding Indebtedness of the Issuer as of June 22, 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 Issuer. The Issuer is not in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Issuer and no event or condition exists with respect to any Indebtedness of the Issuer 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) Except as expressly contemplated by the Transaction Documents, the Issuer has not agreed or consented to cause or permit any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures

Indebtedness or to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness.

(c) Except as expressly contemplated by the Transaction Documents, the Issuer is not a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Issuer, 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.

(d) Except as disclosed in Schedule 5.15 attached hereto, other than the security interests to be granted to the Trustee under the Indenture, pursuant to the other Disclosure Documents or any other Permitted Liens, no Securitization Party shall have pledged, assigned, sold or granted as of the Closing Date a security interest in the Collateral (except for any such security interest that will be released on the Closing Date). As of the Closing Date, all action necessary (including the filing of UCC-1 financing statements to protect and evidence the Trustee's security interest in the Collateral in the United States will have been duly and effectively taken (as described in, and subject to any exceptions to be set forth in the Indenture). As of the Closing Date, no security agreement, financing statement, equivalent security or lien instrument or continuation statement authorized by any Securitization Party and listing such Person as debtor covering all or any part of the Collateral shall be on file or of record in any jurisdiction except (i) in respect of Permitted Liens, (ii) in respect of any such security interest that will be released on the Closing Date or (iii) such as may have been filed, recorded or made by such Person in favor of the Trustee on behalf of the Secured Parties in connection with the Indenture, and no such Person has authorized any such filing.

Section 5.16. Foreign Assets Control Regulations, Etc.

(a) No Securitization Party, nor any Controlled Entity, nor any director, officer, manager, member, employee, agent, affiliate or other person acting on behalf of any of the Securitization Parties or their respective subsidiaries, (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, the United Kingdom or the European Union. No Securitization Party, nor any Controlled Entity, is located, organized or resident in a country or territory that is the subject of comprehensive Sanctions (currently, Cuba, Iran, Syria, North Korea, the Crimea Region of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic); and the Securitization Parties and their respective subsidiaries will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other individual or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that at the time of such funding is the subject of any comprehensive Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of Sanctions.

(b) No Securitization Party, 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 each Securitization Party'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. The operations of the Securitization Parties and each of their respective subsidiaries are and have been conducted at all times in compliance with applicable 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 Securitization Party 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 Securitization Party has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Securitization Party 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.

(a) No Securitization Party is, and after giving effect to the issuance and sale of the Notes and the application of the proceeds therefrom in the manner contemplated herein and in the other Transaction Documents will be, an "investment company" or a company "controlled" by an "investment company" within the meaning of the U.S. Investment Company Act of 1940, as amended (the "**Investment Company Act**").

(b) The Issuer does not constitute a "covered fund" (a "**Covered Fund**") for purposes of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, otherwise known as the "**Volcker Rule**."

Section 5.18. [Reserved].

Section 5.19. Solvent. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, each of the Securitization Parties will be Solvent. As used in this Agreement, the term "Solvent" means, with respect to a particular date, that on such date (i) the present fair market value (or present fair saleable value) of the assets of such relevant entity are not less than the total amount required to pay the liabilities of such relevant entity on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured, (ii) the relevant entity is able to pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business, (iii) assuming the completion of the transactions contemplated by the Transaction Documents, the relevant entity is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature, (iv) the relevant entity is not engaged in any business or transaction, and is not about to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such entity is engaged, and (v) the relevant entity is not otherwise insolvent under the standards set forth in any U.S. or non-U.S. federal, state or local statute, law or ordinance. In computing the amount of such contingent liabilities at any time, it is intended that such liabilities will be computed at the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Section 5.20. Brokerage Fees, Etc. Other than as contemplated by this Agreement and as agreed between the Securitization Parties and the Placement Agent, the Securitization Parties are not a party to any other contract, agreement or understanding with any person or entity that would give rise to a valid claim against the Securitization Parties for a brokerage commission, finder's fee or like payment in connection with the issuance and sale of the Notes.

SECTION 6. REPRESENTATIONS OF THE PURCHASERS.

Section 6.1. Purchase for Investment**.** Each Purchaser severally and not jointly represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained or managed 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 Issuer is not required to register the Notes.

Section 6.2. Representation of the Purchasers**.** Each Purchaser severally and not jointly hereby represents and warrants as follows:

(a) Each Purchaser (i) has had the opportunity to make such inquiries as necessary or desirable by such Purchaser to make its investment decision with respect to the Notes, including the opportunity to ask questions of and receive answers from the Securitization Parties or any other person acting on behalf of the Securitization Parties concerning the terms and conditions of an investment in the Notes and to review the Transaction Documents and no statement or printed material that is contrary to the Transaction Documents has been made or given to such Purchaser by or on behalf of the Securitization Parties and (ii) has evaluated the merits and risks of the transactions contemplated by this Agreement based exclusively on its own independent review and consultations with such investment, legal, tax accounting and other advisers as it deemed necessary or appropriate.

(b) Each Purchaser hereby acknowledges that upon original issuance thereof, and until such time as the same is no longer required under the applicable requirements of the 1933 Act, the Notes (and all securities issued in exchange therefor or in substitution thereof) shall bear legends substantially in the forms as set forth in the Indenture (along with such other legends as the Issuer and their counsel deem necessary).

(c) Each Purchaser hereby acknowledges and agrees that it has full power and authority (corporate, regulatory and other) to execute and deliver this Agreement and to purchase and hold the Notes. Its purchase of the Notes and the execution and delivery of this Agreement have been, or as of the Closing Date will be, duly authorized by all necessary action (corporate, regulatory and other) on its behalf, and upon execution by the such Purchaser, this Agreement will be a legal, valid and binding obligation of such Purchaser, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance and similar laws affecting creditors' rights generally and to general principles of equity. Each Purchaser's purchase of the Notes will not directly or indirectly contravene any law, charter, trust instrument or other operative document, investment guidelines or list of permissible or impermissible investments applicable to such Purchaser.

(d) Each Purchaser has carefully read and understands the Indenture and this Agreement, the transfer instructions contained therein, and all additional information considered by it to be necessary to verify the accuracy of or to supplement the information therein. Each Purchaser acknowledges that in making a decision to purchase the Notes, such Purchaser has relied solely upon this Agreement, the Transaction Documents and its own due diligence. Each Purchaser is represented by its own counsel and advisors who are experienced in asset-backed transactions and is not relying on the Placement Agent Parties, with respect to the legal, tax and other economic considerations involved in this investment. Each Purchaser's investment in the Notes is consistent with the investment purposes, objectives and cash flow requirements of such Purchaser and will not adversely affect such Purchaser's overall need for diversification and liquidity.

(e) Each Purchaser has such knowledge and experience in investing in securities (including, without limitation, securities backed by trade receivables and other financial assets) and related financial and business matters and is capable of evaluating the merits and risks of investment in the Notes. Each Purchaser represents that such Purchaser, with the assistance of such Purchaser's advisors (which for purposes of the purchase of the Notes did not include the Placement Agent): (i) has evaluated and is voluntarily assuming all risks of investing in the Notes; (ii) has sought such accounting, legal, tax, regulatory, business, financial and investment advice as it has considered necessary to make an informed investment decision; (iii) understands there are substantial risks of loss incidental to the purchase of the Notes and is able to bear such risks for an indefinite period of time; (iv) can afford a complete loss of its investment in the Notes; and (v) has determined that the Notes are a suitable investment for it.

(f) Each Purchaser understands that the sale of the Notes to such Purchaser is not a recommendation by the Placement Agent to purchase the Notes. Each Purchaser represents that such Purchaser, with the assistance of such Purchaser's advisors (which for purposes of the purchase of the Notes did not include the Placement Agent), understands the risks of an investment in the Notes, and has not relied upon the Placement Agent for any assessment of the risks of an investment in the Notes. Each Purchaser is aware that there are substantial risks incident to an investment in the Notes. Each Purchaser has made an independent investment decision to purchase the Notes after conducting such investigation as such Purchaser has deemed appropriate, which has included a review of the terms of the Notes and related matters, of the risks relating to an investment in the Notes, and of the tax, accounting and regulatory implications relating to an investment in the Notes. Each Purchaser expressly represents, warrants and

agrees that: (i) it is voluntarily assuming all risks associated with the purchase of the Notes and expressly represents and warrants that (x) the Placement Agent has not made, and it disclaims the existence of or its reliance on, any representation by the Placement Agent concerning the Notes; (ii) it is not relying on any disclosure or non-disclosure made or not made by or on behalf of the Placement Agent (directly or indirectly through an agent or representative), or the completeness thereof, in connection with or arising out of the purchase of the Notes (including, for the avoidance of doubt, the Disclosure Package), and therefore has no claims against the Placement Agent with respect thereto; (iii) if any such claim may exist, the Purchasers, recognizing its disclaimer of reliance as a condition to entering into the purchase of the Notes, covenants and agrees not to assert any such claim against the Placement Agent or any of its officers, directors, employees, shareholders, partners, agents, representatives or affiliates; and (iv) the Placement Agent has no liability to the Purchasers, and the Purchasers expressly waives, releases and holds the Placement Agent harmless from any claim that it (or any account with respect to which it acts as fiduciary or agent) might have against the Placement Agent or its officers, directors, employees, shareholders, partners, agents, representatives or affiliates, directly or indirectly relating to its purchase of the Notes, whether under applicable securities law or otherwise.

(g) In connection with its purchase of the Notes, each Purchaser acknowledges and agrees that: (i) the Placement Agent has not acted as a fiduciary or financial or investment adviser for it; (ii) it is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Placement Agent or any of its agents; (iii) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent it has deemed necessary and has made its own investment decisions (including decisions based on suitability) based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Placement Agent (directly or indirectly through any other person); (iv) its purchase of the Notes will comply with all applicable laws in any applicable jurisdiction; (v) it has received and carefully reviewed this Agreement and the Transaction Documents; and (vi) it has received no assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of the Notes or the agreements and documentation with respect to the Notes from the Placement Agent (directly or indirectly through any other person).

(h) Each Purchaser is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act.

Section 6.3. Source of Funds**.** Each Purchaser severally and not jointly represents that with respect 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 the Source does not and will not (throughout the period during which an interest in the Notes is held by or on behalf of such Purchaser) constitute assets subject to Title I of ERISA or Section 4975 of the Code (including, without limitation, by reason of 29 CFR 2510.3-101, as modified by Section 3(42) of ERISA) or any governmental plan or governmental plans (within the meaning of Section 3(32) of ERISA) or any church plan or church plans (within the meaning of Section 3(33) of ERISA) that is subject to any law, regulation, rule, policy or procedure that is similar to Section 406 of ERISA or Section 4975 of the Code.

SECTION 7. COVENANTS AND FURTHER ASSURANCES.

Each of the Securitization Parties agrees with the Purchasers:

(a) The Securitization Parties will use the proceeds from the sale of the Notes in the manner contemplated by this Agreement and the other Transaction Documents.

(b) The Securitization Parties (i) shall complete on or prior to the Closing Date all filings and other similar actions required in connection with the creation and perfection of security interests in the Collateral as and to the extent required by the Indenture, the Notes and the other Transaction Documents and (ii) after the Closing Date, shall complete all filings and other similar actions that need not be completed on the Closing Date but which may be required in connection with the creation and perfection or maintenance of security interests in the Collateral as and to the extent required by the Indenture, the Notes and the other Transaction Documents. Within a reasonable period following the Closing Date, the Securitization Parties will furnish the Trustee certified copies of such documents or instruments necessary to (i) evidence the filings in each jurisdiction required to perfect by filing the lien purported to be created by the Indenture and (ii) evidence of registered lien, security interest, encumbrance, judgment and other

lien searches that the Trustee and its counsel may reasonably request, which searches shall reflect no prior liens on any of the Collateral other than Permitted Liens.

(c) So long as the Notes are outstanding, the Securitization Parties will not be a company that is, or is required to be registered as, an "investment company" under the Investment Company Act or a "covered fund".

(d) For a period of 180 days from the date of the Indenture, the Securitization Parties will not offer for sale, sell, contract to sell or otherwise dispose of, directly or indirectly, or file a registration statement for, or announce any offer, sale, contract for sale or other disposition of any debt securities issued or guaranteed by the Issuer (other than the Notes) without the prior written consent of the Trustee. The Securitization Parties will not at any time offer, sell, contract to sell or otherwise dispose of, directly or indirectly, any securities under circumstances where such offer, sale, contract or disposition would cause the exemption afforded by Section 4(a)(2) of the Securities Act to cease to be applicable to the issuance and sale of the Notes.

(e) So long as the U.S. Risk Retention Rules apply to the Notes, the Securitization Parties will comply with the U.S. Risk Retention Rules.

(f) The Issuer will at all times on or after September 20, 2022 (the "**Rating Deadline**") maintain a Private Rating by a Rating Agency on the Notes. On or prior to the Rating Deadline, the Issuer shall deliver to the holders of the Notes, with respect to each Private Rating on each class of Notes, a Private Rating Letter and a rating rationale report, in each case, dated on or prior to the Rating Deadline. Thereafter (i) on each anniversary of the Rating Deadline, the Issuer shall deliver to each holder of the Notes, for each Private Rating on each class of Notes, an updated Private Rating Letter, dated as of such date of delivery, and (ii) promptly following any change in any Private Rating on any class of Notes, Issuer shall deliver to each holder of the Notes an updated Private Rating Letter in respect of such affected class of Notes, dated as of such date of delivery. On or prior to the Rating Deadline, Dechert LLP, as counsel to the Securitization Parties, shall have furnished to the Trustee, a written opinion that is customary for transactions of this type and reasonably satisfactory in form and substance to the Trustee and the Purchasers on tax related matters (including tax treatment of the Notes and the Issuer), addressed to the Trustee and the Purchasers.

(g) The Securitization Parties shall deliver to each holder of a Note, with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of a Securitization Party or relating to the ability of a Securitization Party to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by such holder of a Note.

(h) The Securitization Parties will provide notice to the holders of the Notes to the extent it or 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, the United Kingdom or the European Union.

(i) No Securitization Party, nor any Controlled Entity will be in violation of any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws. Each Securitization Party shall maintain or be subject to procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Securitization Party 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. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, in violation of, or cause any holder of a Note to be in violation of, any applicable Anti-Money Laundering Laws; or 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 holder of a Note to be in violation of, any applicable Anti-Corruption Laws.

(j) Each Securitization Party shall comply in all material respects with the 17g-5 Representation and shall take the actions specified in paragraphs (a)(3)(iii)(A) through (E) of Rule 17g-5 of the Exchange Act with respect to the Notes.

(k) Each Securitization Party will permit any authorized representative or agent designated by a Noteholder to visit and inspect any of the properties of such Securitization Party, as the case may be, to examine the corporate books and financial records of such Securitization Party and to inspect its records relating to the Loans and to discuss the affairs, finances, and accounts of such Securitization Party, as the case may be, with its principal officers, as applicable, and its independent accountants. For the avoidance of doubt no Noteholder may make any copies or extracts of any loan agreement pertaining to the Loans. In each case, such access shall be afforded only upon reasonable request and during normal business hours; provided, that prior to the occurrence of a Rapid Amortization Event or Event of Default, the Noteholders, collectively, may conduct only one such visit per calendar year. The Issuer shall reimburse the Noteholders for reasonable and documented expenses related to such visits and inspections. Each Securitization Party and each Noteholder and the representative of any such regulatory authority designated by the related Noteholder to view such information shall and shall cause their representatives to hold in confidence all such information except to the extent disclosure may be required by law (and all reasonable applications for confidential treatment are unavailing) and except to the extent that such Noteholder and the Issuer may reasonably determine that such disclosure is consistent with their obligations hereunder. The Servicer may request that any such Person not a party hereto enter into a confidentiality agreement reasonably acceptable to the Servicer prior to permitting such Person to view such information.

(l) If, notwithstanding the efforts of the parties hereto, the Rating Agency is unable to issue a rating on the Notes on or before the ninetieth (90^{th}) day following the Closing Date or the rating assigned to the Notes by the Rating Agency is BBB- or lower, the Majority Noteholders (in their sole discretion) may demand in writing that the Issuer repurchase the Notes from the Noteholders. No later than ten (10) Business Days following its receipt of such demand, the Securitization Parties shall, or shall cause the Issuer to, repurchase all, but not less than all, of such Notes from the Noteholders at a price equal to the then Outstanding Principal Balance of such Notes plus accrued and unpaid interest thereon to but excluding the date of such repurchase plus all expenses, fees and indemnities then due and payable to the applicable Notes so repurchased

SECTION 8. EXPENSES, ETC.

Section 8.1. Transaction Expenses. Whether or not the transactions contemplated hereby are consummated, the Securitization Parties will jointly and severally pay all costs and expenses incurred by the Purchasers and each other holder of a Note in connection with this Agreement, any Transaction Document or the Notes and the transactions contemplated thereby, and in connection with any amendments, waivers or consents (other than the costs and expenses of any holder of a Note requesting such amendments, waivers or consents (other than amendments, waivers or consents requested following an Event of Default or resulting from the process of obtaining a Private Rating)) under or in respect thereof (whether or not such amendment, waiver or consent becomes effective), in each case, including, without limitation: (a) the reasonable attorneys' fees, charges and disbursements of a special counsel and, if reasonably required by the Required Holders, local or other counsel; (b) the costs and expenses incurred in enforcing any rights under this Agreement, any Transaction Document or the Notes; and (c) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Securitization Parties or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and any Transaction Document.

The Securitization Parties will jointly and severally pay, to the extent not paid pursuant to any other Transaction Document, 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 Issuer.

All amounts payable pursuant to this Section 8.1 shall be paid promptly following demand but in any event within thirty (30) days following delivery of an invoice therefor by any of the Purchasers to the Issuer.

Section 8.2. Certain Taxes. Each Securitization Party agrees, jointly and severally, 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 Transaction 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 any Securitization Party has assets or of any amendment of, or waiver or consent under or with respect to, this Agreement or any Transaction Document or of any of the Notes (other than the taxes or fees payable by any holder of a Note requesting such amendments, waivers or consents (other than amendments, waivers or consents requested following an Event of Default or resulting from the process of obtaining a Private Rating)), and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Securitization Parties pursuant to this Section 8, 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 any Securitization Party hereunder.

Section 8.3. Indemnification**.** Each Securitization Party agrees, jointly and severally, to indemnify and hold each holder of the Notes and each of its Related Parties (each an "**Indemnitee**") harmless from and against any damage, loss, cost or expense (including reasonable and documented attorneys' fees) which such Indemnitee may incur or be subject to as a consequence, direct or indirect, of (a) any breach by such Securitization Party, or by any other of them of any warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement, the Notes, any other Transaction Document or any other instrument referred to therein, together with all expenses resulting from the compromise or defense of any claims or liabilities arising as a result of any such breach or default, (b) any legal action commenced to challenge the validity or enforceability of this Agreement, the Notes, any other Transaction Document or any other instrument referred to therein, and (c) enforcing or defending (or determining whether or how to enforce or defend) the provisions of this Agreement, the Notes or any other Transaction Document; provided that the foregoing indemnity will not, as to any Indemnitee, apply to Losses or related legal or other expenses to the extent they represent Losses on the Notes or the Loan Assets arising out of any credit related reasons (including discharge in bankruptcy or similar insolvency proceedings) with respect to any underling obligor on a receivable or other payment instrument that is part of the collateral. For purposes of this Section 8.3, any claim of, and losses resulting from, any breach of any representation or warranty or covenant made by a Securitization Party in this Agreement or the other Transaction Documents shall be determined without regard to any materiality, context of disclosure, knowledge or other similar qualification contained in or otherwise applicable to such representation, warranty or covenant. The remedies provided for in this Section 8.3 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Purchaser Indemnified Person at law or in equity.

Section 8.4. Survival**.** The obligations of the Securitization Parties under this Section 8 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement, the Indenture, the Sale and Servicing Agreement, any other Transaction Document or the Notes, and the termination of this Agreement.

SECTION 9. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All indemnities (including, without limitation, those in Section 8.3 hereof), representations and warranties contained herein shall survive the execution and delivery of this Agreement, the Transaction Documents 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 any Securitization Party to the Trustee or any holder pursuant to this Agreement shall be deemed representations and warranties of such Securitization Party, made jointly and severally, under this Agreement. Subject to the preceding sentence, this Agreement, the Notes and any Transaction Document embody the entire agreement and understanding between each Purchaser and the Securitization Parties and supersede all prior agreements and understandings, including as documented in any engagement letter (except as specifically set forth therein), relating to the subject matter hereof.

SECTION 10. AMENDMENT AND WAIVER.

Section 10.1. Requirements**.** This Agreement may be amended, and the observance of any term hereof may be waived (either retroactively or prospectively), only with the written consent of the Securitization Parties and the Required Holders, except that:

(a) no amendment or waiver of any of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 or 14 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) change the percentage of the principal amount of the Notes the holders of which are required to consent to any amendment or waiver, or (ii) amend any of this Section 10 or Section 13.

Section 10.2. Solicitation of Holders of Notes.

(a) *Solicitation.* The Securitization Parties will provide each holder of a Note with sufficient information, sufficiently far in advance of the date a decision is required, to enable 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. The Securitization Parties will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 10 to 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 holders of Notes.

(b) *Payment.* The Securitization Parties 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 holder of a Note as consideration for or as an inducement to the entering into by such holder of any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each holder of a Note even if such holder did not consent to such waiver or amendment.

(c) *Consent in Contemplation of Transfer*. Any consent given pursuant to this Section 10 by a holder of a Note that has transferred or has agreed to transfer its Note to (i) the Securitization Parties, (ii) any Securitization Party 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 any Securitization Party and/or any of its Affiliates (either pursuant to a waiver under Section 10.1(c)), 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 10.3. Binding Effect, Etc. Any amendment or waiver consented to as provided in this Section 10 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Securitization Parties 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 any Securitization Party and any holder of a Note and no delay in exercising any rights hereunder or under any Note or any other Transaction Document shall operate as a waiver of any rights of any holder of such Note.

Section 10.4. Notes Held by any Securitization Party, 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 have directed the taking of any action provided herein to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by any Securitization Party or any of its Affiliates shall be deemed not to be outstanding.

SECTION 11. NOTICES.

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 Issuer 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 Issuer in writing, or

(iii) if to the Depositor, to the Depositor at the address set forth below or at such other address as the Depositor shall have specified to the holder of each Note in writing:

Hercules Capital Funding 2022-1 LLC
c/o Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: Chief Financial Officer
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

with a copy to:

Hercules Capital Funding 2022-1 LLC
c/o Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: General Counsel
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

(iv) if to Hercules, to Hercules at the address set forth below or at such other address as Hercules shall have specified to the holder of each Note in writing:

Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: Chief Financial Officer
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

with a copy to:

Hercules Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, California 94301
Attention: General Counsel
Re: Hercules Capital Funding Trust 2022-1
Telephone: (650) 289-3060
Facsimile No.: (650) 473-9194

Notices under this Section 11 will be deemed given only when actually received.

SECTION 12. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including without limitation (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. Each Securitization Party 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 12 shall not prohibit the Securitization Parties 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 13. CONFIDENTIAL INFORMATION.

For the purposes of this Section 13, "**Confidential Information"** means information delivered to any Purchaser by or on behalf of any Securitization Party 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 such Securitization Party 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 any Securitization Party or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 5.5 hereof 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 13, (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 13), (v) any federal or state regulatory authority having jurisdiction over such Purchaser, (vi) 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 (vii) 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 Transaction 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 13 as though it were a party to this Agreement. On reasonable request by a Securitization Party 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 such Securitization Party embodying this Section 13.

In the event that as a condition to receiving access to information relating to the Securitization Parties or their Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement or the other Transaction Documents, 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 13, this Section 13 shall not be amended thereby and, as between such Purchaser or such holder and Securitization Parties, this Section 13 shall supersede any such other confidentiality undertaking.

SECTION 14. SUBSTITUTION OF PURCHASER.

Each Purchaser shall have the right to substitute any one of its affiliates, managed accounts, Related Funds or another Purchaser or any one of such other Purchaser's affiliates, managed accounts or Related Funds (a "**Substitute Purchaser**") as the purchaser of the Notes that it has agreed to purchase hereunder or as the holder of a Note that it has already purchased, by written notice to the Issuer, 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 hereof. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 14), 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 Issuer of notice of such transfer, any reference to such Substitute Purchaser as a "Purchaser" in this Agreement (other than in this Section 14), 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 15. MISCELLANEOUS.

Section 15.1. 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 hereof, the Securitization Parties may not assign or otherwise transfer any of its rights or obligations hereunder or under the Notes 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 15.2. 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 15.3. 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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) subject to Section 15.1 hereof, 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 15.4. Counterparts; Electronic Contracting**.** This Agreement may be executed in any number of counterparts (including by facsimile and other electronic means of transmission), 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 parties agree to electronic contracting and signatures with respect to this Agreement and the other Transaction Documents (other than the Notes). Delivery of an electronic signature to, or a signed copy of, this Agreement and such other Transaction Documents (other than the Notes) by facsimile, email or other electronic transmission shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the other Transaction Documents (other than the Notes) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Securitization Parties, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Notwithstanding the foregoing, if any Purchaser shall request manually signed counterpart signatures to any Transaction Document, the Securitization Parties hereby agree to use their reasonable endeavors to provide such manually signed signature pages as soon as reasonably practicable (but in any event within thirty (30) days of such request or such longer period as the requesting Purchaser and the Securitization Parties may mutually agree).

The parties agree to electronic contracting and signatures with respect to each Note delivered hereunder in registered form. Delivery of an electronic signature to, or a signed copy of, any Note in the name of a particular Purchaser by facsimile, email or other electronic transmission shall be fully binding on the Issuer to the same extent as the delivery of the signed original of any such Note and shall be admissible into evidence for all purposes, and the Issuer hereby expressly waive any defense related to a Purchaser's failure to present an original Note. The Issuer further agrees that it shall produce a manually signed Note for delivery to each Purchaser in accordance with the instructions provided by such Purchaser as soon as reasonably practicable (but in any event within five (5) Business Days of such request or such longer period as the requesting Purchaser and the Issuer may mutually agree).

Section 15.5. 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 15.6. Jurisdiction and Process; Waiver of Jury Trial**.** Each Securitization Party 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. To the fullest extent permitted by applicable law, each Securitization Party 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) Each Securitization Party 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 15.6(a) hereof 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) Each Securitization Party 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 15.6(a) hereof 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 11 hereof or at such other address of which such holder shall then have been notified pursuant to said Section. Each Securitization Party 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 15.6 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 Securitization Parties 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 OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

Section 15.7. Joint and Several. Each Securitization Party hereby acknowledges and agrees that such party's liability hereunder is joint and several and any other Person(s) who may guarantee the obligations and Indebtedness under and in respect of the Notes, this Agreement and the other Transaction Documents.

Section 15.8. Placement Agent. Each Securitization Party and each Purchaser acknowledges and agrees that (i) each representation, warranty, agreement and assurance contained in this Agreement, each other Transaction Document and any other document provided by any Purchaser to Securitization Party in connection with its purchase of any Notes, are for the benefit of, and have been and will be relied upon by, each of the Placement Agent and its affiliates, controlling persons (within the meaning of the U.S. federal securities laws), agents (collectively, the "**Placement Agent Parties**"), (ii) each Placement Agent Party shall be an express third-party beneficiary of this Agreement and shall be entitled to enforce its rights, remedies and claims hereunder directly against the other parties as though it were a signatory of this Agreement, but shall not be deemed to have, or to have assumed, any obligation or liability hereunder, and (iii) copies of this Agreement and any information contained or otherwise referenced herein may be provided to the Placement Agent Parties.

* * * * *

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 Issuer, whereupon this Agreement shall become a binding agreement between you and the other parties hereto.

Very truly yours,

HERCULES CAPITAL FUNDING TRUST 2022-1, as Issuer

By: Wilmington Trust, National Association, not in its individual capacity but solely as Owner Trustee

By: _____
Name:
Title:

HERCULES CAPITAL FUNDING 2022-1 LLC, as Depositor

By: _____
Name:
Title:

HERCULES CAPITAL, INC., as Servicer

By: _____
Name:
Title:

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

AMERICAN FAMILY LIFE ASSURANCE COMPANY OF COLUMBUS

By: Ares Alternative Credit Management LLC, as investment manager

By ____
Name:
Title:

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA

By: Ares Alternative Credit Management LLC, its investment subadvisor

By ____
Name:
Title:

COMPSOURCE MUTUAL INSURANCE COMPANY

By: Ares Alternative Credit Management, LLC, as investment manager

By ____
Name:
Title:

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY

By: Ares Capital Management III LLC, its Adviser

By ____
Name:
Title:

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY

By: Ares Alternative Credit Management LLC, its
Manager

By ____
Name:
Title:

GREAT AMERICAN LIFE INSURANCE COMPANY

By: Ares Capital Management LLC, its investment manager

By ____
Name:
Title:

FIDELITY & GUARANTY LIFE INSURANCE COMPANY

By: Aspida Life Re Ltd., its investment manager
By: Ares Insurance Solutions LLC, its sub-advisor
By: Ares Alternative Credit Management LLC, its sub-advisor

By ____
Name:
Title:

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:

"**Agreement**" means this Note Purchase Agreement, including the schedules hereto, by and among the Issuer, the Depositor, Hercules and the Purchasers, as the same may be amended, supplemented or otherwise modified in accordance with the terms hereof.

"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.

"**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).

"**Closing"** has the meaning set forth in Section 3 hereof.

"Confidential Information" has the meaning set forth in Section 13 hereof.

"Controlled Entity" means any of the Subsidiaries of the Depositor or Hercules and any of their respective controlled affiliates.

"**Depositor**" has the meaning set forth in Section 1 hereof.

"Disclosure Documents" has the meaning set forth in Section 5.3 hereof.

"**Dodd-Frank Act**" has the meaning set forth in Section 5.6(c) hereof.

"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 any Securitization Party under section 414 of the Code.

"**Funding Notice**" has the meaning set forth in Section 4.11 hereof.

"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.

"**Indemnitee**" has the meaning set forth in Section 8.3 hereof.

"**Indenture**" has the meaning set forth in Section 1 hereof.

"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.

"Issuer" has the meaning set forth in the first paragraph of this Agreement.

"Material" means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of the Securitization Parties 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 Securitization Parties taken as a whole, (b) the ability of the Securitization Parties to perform their obligations under this Agreement, the Notes and the other Transaction Documents to which they are a party or (c) the validity or enforceability of this Agreement, the Notes or any other Transaction Document.

"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.

"**Notes"** has the meaning set forth in Section 1 hereof.

"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 any Securitization Party whose responsibilities extend to the subject matter of such certificate.

"Placement Agent" means Guggenheim Securities, LLC.

"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 any ERISA Affiliate or with respect to which the Depositor, Hercules or any ERISA Affiliate may have any liability.

"**Private Rating**" shall means a credit rating solicited by the Issuer with respect to the Notes from the Rating Agency which credit rating is communicated only to the Issuer and is not available for public release.

"**Private Rating Letter**" shall mean a letter issued by the Rating Agency which (a) sets forth the Private Rating for the Notes, (b) refers to the Private Placement Number issued by Standard & Poor's CUSIP Bureau Service in respect of the Notes, (c) includes such other information describing the relevant terms of the Notes as may be required from time to time by any holder of any Notes, the SVO or any other regulatory authority having jurisdiction over any holder of any Notes, and (d) shall not be subject to confidentiality provisions which would prevent it from being shared with the SVO or any other regulatory authority having jurisdiction over any holder of any Notes.

"Purchaser" or "**Purchasers"** means each of the purchasers that has executed and delivered this Agreement to the Securitization Parties and/or one or more affiliates or managed accounts that each such purchaser shall designate (and such purchaser's successors and assigns).

"**Purchaser Schedule**" has the meaning set forth in Section 2 hereof.

"**Rating Agency**" means each of KBRA and any other nationally recognized statistical rating organization reasonably acceptable to the Majority Noteholders, so long as such Persons maintain a rating on any of the Notes; and

if any of KBRA or such other organization (if any) no longer maintains a rating on any of the Notes, such other nationally recognized statistical rating organization, if any, selected by the Trust Depositor and reasonably acceptable to the Majority Noteholders.

"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 on or after the Closing, the holders of at least 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Securitization Parties or any of their Affiliates).

"Responsible Officer" means any Senior Financial Officer and any other officer of any Securitization Party (as applicable) with responsibility for the administration of the relevant portion of this Agreement.

"**Sale and Contribution Agreement**" has the meaning set forth in Section 1 hereof.

"**Sale and Servicing Agreement**" has the meaning set forth in Section 1 hereof.

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

"Senior Financial Officer" means the chief financial officer, principal accounting officer, treasurer or comptroller of any Securitization Party (as applicable).

"**Servicer**" has the meaning set forth in Section 1 hereof.

"Source" has the meaning set forth in Section 6.3 hereof.

"**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 any country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

"Substitute Purchaser" has the meaning set forth in Section 14 hereof.

"SVO" means the Securities Valuation Office of the NAIC.

"**Trustee**" has the meaning set forth in Section 1 hereof.

"**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.

"**U.S. Risk Retention Rules**" has the meaning set forth in Section 5.6(e) hereof.

SCHEDULE 5.3

DISCLOSURE MATERIALS

1. Hercules Charge-Off History 12.31.21.xlsx
2. Hercules Prepayment Analysis 12.31.21.xlsx
3. HTGC 2022 Strats_updated LTV (6.2.22) vclean.xlsx
4. Historical Loss Summary - Sungevity.pdf
5. UW Policy.pdf
6. Info contained in _ext_ Hercules _ Ares - Rating Grace Counter + 2nd Lien info.msg
7. Info contained in [ext] Ares/Herc Campaign Monitor LTV resolution.msg

SCHEDULE 5.4

OWNERSHIP OF SECURITIZATION PARTIES

(i) Securitization Parties:

NAME	JURISDICTION	OWNER	% OF SHARES	EMPLOYER IDENTIFICATION NUMBER
Hercules Capital Funding Trust 2022-1	Delaware	Hercules Capital Funding 2022-1 LLC	100%	88-6496528
Hercules Capital Funding 2022-1 LLC	Delaware	Hercules Capital, Inc.	100%	88-2776576
Hercules Capital, Inc.	Maryland	Publicly Traded BDC	--	74-3113410

(ii) Affiliates:

Name	Jurisdiction	% of Shares
Bearcub Acquisitions LLC	Delaware	100% owned by Hercules Capital, Inc.
Gibraltar Acquisition LLC	Delaware	100% owned by HercGBC LLC
HercGBC LLC	Delaware	100% owned by Hercules Capital, Inc.
Hercules Technology Management Co II, Inc.	Delaware	100% owned by Hercules Capital, Inc.
Hercules Technology SBIC Management, LLC	Delaware	100% owned by Hercules Capital, Inc.
Hercules Capital Management LLC	Delaware	100% owned by Hercules Capital, Inc.
Hercules Adviser LLC	Delaware	100% owned by Hercules Capital Management LLC

(iii) Managers and Senior Officers of Securitization Parties:

Managers/Directors

Hercules Capital Funding Trust 2022-1: n/a

Hercules Capital Funding 2022-1 LLC: Scott Bluestein, Seth Meyer and Bernard Angelo (Independent Manager)

Hercules Capital, Inc.: Robert P. Badavas, Scott Bluestein, Gayle Crowell, Thomas J. Fallon, Joseph F. Hoffman, Brad Koenig, Wade Loo, Pam Randhawa and Doreen Woo Ho

Senior Officers

Hercules Capital Funding Trust 2022-1: n/a

Hercules Capital Funding 2022-1 LLC: Scott Bluestein, Seth Meyer and Kiersten Zaza Botelho

Hercules Capital, Inc.: Scott Bluestein, Seth Meyer and Kiersten Zaza Botelho

SCHEDULE 5.5

MATERIAL LIABILITIES

None.

SCHEDULE 5.8

LITIGATION

None.

SCHEDULE 5.15

EXISTING INDEBTEDNESS OF THE ISSUER

None.

Information Relating to Purchasers

Name of Purchaser	Principal Amount
American Family Life Assurance Company of Columbus	$10,000,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

Name of Purchaser	Principal Amount
Allianz Life Insurance Company of North America	$67,500,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

PURCHASER SCHEDULE
(to Note Purchase Agreement)

Name of Purchaser Principal Amount

CompSource Mutual Insurance Company $7,500,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

PURCHASER SCHEDULE
(to Note Purchase Agreement)

Name of Purchaser	Principal Amount
The Lincoln National Life Insurance Company (LNL466)	$5,000,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

Name of Purchaser Principal Amount

The Lincoln National Life Insurance Company (SA0714) $10,000,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

PURCHASER SCHEDULE
(to Note Purchase Agreement)

Name of Purchaser Principal Amount

Massachusetts Mutual Life Insurance Company $17,500,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

PURCHASER SCHEDULE
(to Note Purchase Agreement)

Name of Purchaser	Principal Amount
Great American Life Insurance Company	$7,500,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

PURCHASER SCHEDULE
(to Note Purchase Agreement)

Name of Purchaser	Principal Amount
Fidelity & Guaranty Life Insurance Company	$25,000,000

Notice Information

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Andie Goh; Stephen Gardner; Allen Lo
E-mail: agoh@aresmgmt.com; sgardner@aresmgmt.com; alo@aresmgmt.com; structuredcreditops@aresmgmt.com

With copy to:

Address: c/o Ares Management, 245 Park Avenue, 42nd Floor, New York, NY 10167
Attention: Joshua Bloomstein; Matt Jill
Email: jbloomstein@aresmgmt.com; mjill@aresmgmt.com

Exhibit 10.6

ADMINISTRATION AGREEMENT

among

HERCULES CAPITAL FUNDING TRUST 2022-1,
as Issuer,

HERCULES CAPITAL, INC.,
as Administrator

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Owner Trustee

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

Dated as of June 22, 2022

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THIS ADMINISTRATION AGREEMENT (as amended, supplemented or otherwise modified and in effect from time to time, this "Agreement") dated as of June 22, 2022, is among HERCULES CAPITAL FUNDING TRUST 2022-1, a Delaware statutory trust (the "Issuer"), HERCULES CAPITAL, INC., a Maryland corporation, as administrator ("Hercules" or the "Administrator"), U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as trustee (the "Trustee") and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as owner trustee (the "Owner Trustee"). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned such terms in the Sale and Servicing Agreement dated as of June 22, 2022 (the "Sale and Servicing Agreement") by and among the Issuer, Hercules, as seller and as servicer, Hercules Capital Funding 2022-1 LLC, as trust depositor (the "Trust Depositor") and U.S. Bank Trust Company, National Association, as the trustee and paying agent, and U.S. Bank National Association, as backup servicer and custodian.

W I T N E S S E T H :

WHEREAS, Trust Depositor and the Owner Trustee have entered into the Amended and Restated Trust Agreement dated as of June 22, 2022 (the "Trust Agreement").

WHEREAS, the Issuer has issued the Notes pursuant to the Indenture and has entered into certain agreements in connection therewith, including, (i) the Sale and Servicing Agreement and (ii) the Indenture (the Trust Agreement, the Sale and Servicing Agreement and the Indenture are referred to herein collectively as the "Issuer Documents");

WHEREAS, to secure payment of the Notes, the Issuer has pledged the Collateral to the Trustee pursuant to the Indenture;

WHEREAS, pursuant to the Issuer Documents, the Issuer and the Owner Trustee are required to perform certain duties;

WHEREAS, the Issuer and the Owner Trustee desire to have the Administrator perform certain of the duties of the Issuer and the Owner Trustee (in its capacity as owner trustee under the Trust Agreement), and to provide such additional services consistent with this Agreement and the Issuer Documents as the Issuer may from time to time request;

WHEREAS, the Administrator has the capacity to provide the services required hereby and is willing to perform such services for the Issuer and the Owner Trustee on the terms set forth herein;

NOW, THEREFORE, in consideration of the mutual terms and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Duties of the Administrator.

(a) Duties with Respect to the Issuer Documents. The Administrator shall perform all of its duties specifically enumerated herein as Administrator under this Agreement and the Issuer Documents and the duties and obligations of the Issuer and the Owner Trustee (in its capacity as owner trustee under the Trust Agreement) under the Issuer Documents and no additional duties shall be read to be included herein; *provided*, *however*, except as otherwise provided in the Issuer Documents, that the Administrator shall have no obligation to make any payment required to be made by the Issuer under any Issuer Document. In addition, the Administrator shall consult with the Issuer and the Owner Trustee regarding its duties and obligations under the Issuer Documents. The Administrator shall monitor the performance of the Issuer and the Owner Trustee and shall advise the Issuer and the Owner Trustee when action is necessary to comply with the Issuer's and the Owner Trustee's duties and obligations under the Issuer Documents. The Administrator shall perform such calculations, and shall prepare for execution by the Issuer or shall cause the preparation by other appropriate persons of all such documents, reports, filings, instruments, certificates, notices and opinions as it shall be the duty of the Issuer and the Owner Trustee (in its capacity as owner trustee) to prepare, file or deliver pursuant to the Issuer Documents. In furtherance of the foregoing, the Administrator shall take all appropriate action that is the duty of the Issuer and the Owner Trustee (in its capacity as owner

trustee) to take pursuant to the Issuer Documents, and shall prepare, execute, file and deliver on behalf of the Issuer (but not, for the avoidance of doubt, the Owner Trustee in its individual capacity) all such documents, reports, filings, instruments, certificates, notices and opinions as it shall be the duty of the Issuer to prepare, file or deliver pursuant to the Issuer Documents or otherwise by law.

(b) Notices to Rating Agencies. The Administrator shall give notice to the Rating Agency of (i) any merger or consolidation of the Owner Trustee pursuant to Section 10.04 of the Trust Agreement; (ii) any merger or consolidation of the Trustee pursuant to Section 6.09 of the Indenture; (iii) any resignation or removal of the Trustee pursuant to Section 6.08 of the Indenture; (iv) any Event of Default of which it has been provided notice pursuant to Section 5.01 of the Indenture; (v) the termination of, and/or appointment of a successor to, the Servicer pursuant to Section 8.02 of the Sale and Servicing Agreement; and (vi) any supplemental indenture pursuant to Sections 9.01 or 9.02 of the Indenture; which notice shall be given, in the case of each of (i) through (vi), promptly upon the Administrator being notified thereof by the Owner Trustee, the Trustee or the Servicer, as applicable.

(c) No Action by Administrator. Notwithstanding anything to the contrary in this Agreement, the Administrator shall not be obligated to, and shall not, take any action that the Issuer directs the Administrator not to take or which would result in a violation or breach of the Issuer's covenants, agreements or obligations under any of the Issuer Documents.

(d) Non-Ministerial Matters; Exceptions to Administrator Duties.

(i) Notwithstanding anything to the contrary in this Agreement, with respect to matters that in the reasonable judgment of the Administrator are non-ministerial, the Administrator shall not take any action unless, within a reasonable time before the taking of such action, the Administrator shall have notified the Issuer of the proposed action and the Issuer shall not have withheld consent or provided an alternative direction. For the purpose of the preceding sentence, "non-ministerial matters" shall include, without limitation:

(A) the initiation of any claim or lawsuit by the Issuer and the compromise of any action, claim or lawsuit brought by or against the Issuer;

(B) the appointment of successor Note Registrars (as defined in the Indenture), successor paying agents, successor Trustees, a successor Administrator or Successor Servicers, or the consent to the assignment by the Note Registrar, any paying agent or Trustee of its obligations under the Indenture; and

(C) the removal of the Trustee.

(ii) Notwithstanding anything to the contrary in this Agreement, the Administrator shall not be obligated to, and shall not, (w) make any payments to the Noteholders under the Transaction Documents, (x) except as provided in the Transaction Documents, sell the Trust Estate, (y) provide any consent or approval specifically required to be given by the Issuer or the Owner Trustee under the Transaction Documents or (z) take any other action that the Issuer directs the Administrator not to take on its behalf.

2. Records. The Administrator shall maintain appropriate books of account and records relating to services performed hereunder, which books of account and records shall be accessible for inspection by the Issuer, the Owner Trustee and the Trustee at any time during normal business hours.

3. Compensation; Payment of Fees and Expenses. As compensation for the performance of the Administrator's obligations under this Agreement, the Administrator shall be entitled to receive an annual fee, which shall be solely an obligation of the Servicer; provided, however, notwithstanding the foregoing such compensation

shall in no event exceed the Servicing Fee for the related annual period. The Administrator shall pay all expenses incurred by it in connection with its activities hereunder.

4. Independence of the Administrator. For all purposes of this Agreement, the Administrator shall be an independent contractor and shall not be subject to the supervision of the Issuer with respect to the manner in which it accomplishes the performance of its obligations hereunder. Unless expressly authorized by the Issuer, the Administrator shall have no authority to act for or to represent the Issuer in any way (other than as permitted hereunder) and shall not otherwise be deemed an agent of the Issuer.

5. No Joint Venture. Nothing contained in this Agreement (i) shall constitute the Administrator and the Issuer as members of any partnership, joint venture, association, syndicate, unincorporated business or other separate entity, (ii) shall be construed to impose any liability as such on any of them or (iii) shall be deemed to confer on any of them any express, implied or apparent authority to incur any obligation or liability on behalf of the others.

6. Other Activities of the Administrator. Nothing herein shall prevent the Administrator or its Affiliates from engaging in other businesses or, in their sole discretion, from acting in a similar capacity as an Administrator for any other Person even though such Person may engage in business activities similar to those of the Issuer, the Owner Trustee or the Trustee.

7. Representations and Warranties of the Administrator. The Administrator represents and warrants to the Issuer, the Owner Trustee and the Trustee as follows:

(a) Existence and Power. The Administrator is a corporation validly existing and in good standing under the laws of its state of incorporation and has, in all material respects, full power and authority to own its assets and operate its business as presently owned or operated, and to execute, deliver and to perform its obligations under the Transaction Documents to which it is a party. The Administrator has obtained all necessary licenses and approvals in each jurisdiction where the failure to do so would reasonably be expected to materially and adversely affect the ability of the Administrator to perform its obligations under the Transaction Documents or affect the enforceability or collectibility of the Loans or any other part of the Collateral.

(b) Authorization and No Contravention. The execution, delivery and performance by the Administrator of the Transaction Documents to which it is a party have been duly authorized by all necessary action on the part of the Administrator and do not contravene or constitute a default under (i) any applicable law, rule or regulation, (ii) its organizational documents or (iii) any material agreement or instrument to which the Administrator is a party by which its properties are bound (other than violations of such laws, rules, regulations or agreements which do not affect the legality, validity or enforceability of any of such agreements and which, individually or in the aggregate, would not reasonably be expected to materially and adversely affect the transactions contemplated by, or the Administrator's ability to perform its obligations under, the Transaction Documents).

(c) No Consent Required. No approval or authorization by, or filing with, any Governmental Authority is required in connection with the execution, delivery and performance by the Administrator of any Transaction Document other than (i) UCC filings, (ii) approvals and authorizations that have previously been obtained and filings that have previously been made and (iii) approvals, authorizations or filings which, if not obtained or made, would not reasonably be expected to have a material adverse effect on the enforceability or collectibility of the Loans or any other part of the Collateral or would not materially and adversely affect the ability of the Administrator to perform its obligations under the Transaction Documents.

(d) Binding Effect. Each Transaction Document to which the Administrator is a party constitutes the legal, valid and binding obligation of the Administrator enforceable against the Administrator in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship or other similar laws affecting the enforcement of

creditors' rights generally and, if applicable, the rights of creditors of corporations from time to time in effect or by general principles of equity.

8. Administrator Termination Events; Termination of the Administrator.

(a) Subject to clause (d) below, the Administrator may resign its duties hereunder by providing the Issuer with at least thirty (30) days' prior written notice.

(b) Subject to clauses (c) and (d) below, the Issuer may remove the Administrator without cause by providing the Administrator with at least thirty (30) days' prior written notice.

(c) The occurrence of any one of the following events (each, an "Administrator Termination Event") shall also entitle the Issuer, subject to Section 19 hereof, to terminate and replace the Administrator:

(i) any failure by the Administrator to deliver or cause to be delivered any required payment to the Trustee for distribution to the Noteholders, which failure continues unremedied for two (2) Business Days after discovery thereof by a Responsible Officer of the Administrator or receipt by the Administrator of written notice thereof from the Trustee or Noteholders evidencing at least 25% of the Aggregate Outstanding Principal Balance of the Notes;

(ii) any failure by the Administrator to duly observe or perform in any respect any other of its covenants or agreements in this Agreement, which failure materially and adversely affects the rights of the Issuer or the Noteholders, and which continues unremedied for 60 days after discovery thereof by a Responsible Officer of the Administrator or receipt by the Administrator of written notice thereof from the Trustee or Majority Noteholders; or

(iii) the Administrator suffers an Insolvency Event;

provided, *however*, that (A) if any delay or failure of performance referred to under clause (c)(i) above shall have been caused by force majeure or other similar occurrence, the two (2) Business Day grace period referred to in such clause (c)(i) shall be extended for an additional 60 calendar days and (b) if any delay or failure of performance referred to under clause (c)(ii) above shall have been caused by force majeure or other similar occurrence, the 60-day grace period referred to in such clause (c)(ii) shall be extended for an additional 60 calendar days.

(d) If the Administrator resigns or if an Administrator Termination Event shall have occurred, the Issuer may, subject to Section 19 hereof, by notice given to the Administrator and the Owner Trustee, terminate all or a portion of the rights and powers of the Administrator under this Agreement, including the rights of the Administrator to receive the annual fee for services hereunder for all periods following such termination; provided, however that such termination shall not become effective until such time as the Issuer, subject to Section 19 hereof, shall have appointed a successor Administrator in the manner set forth below. Upon any such termination, all rights, powers, duties and responsibilities of the Administrator under this Agreement shall vest in and be assumed by any successor Administrator appointed by the Issuer, subject to Section 19 hereof, pursuant to a management agreement between the Issuer and such successor Administrator, containing substantially the same provisions as this Agreement (including with respect to the compensation of such successor Administrator), and the successor Administrator is hereby irrevocably authorized and empowered to execute and deliver, on behalf of the Administrator, as attorney-in-fact or otherwise, all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect such vesting and assumption. Further, in such event, the Administrator shall use its commercially reasonable efforts to effect the orderly and efficient transfer of the administration of the Issuer to the new Administrator.

(e) The Issuer, subject to Section 19 hereof, may waive in writing any Administrator Termination Event by the Administrator in the performance of its obligations hereunder and its consequences. Upon any

such waiver of a past Administrator Termination Event, such Administrator Termination Event shall cease to exist, and any Administrator Termination Event arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other Administrator Termination Event or impair any right consequent thereon.

9. Action upon Termination or Removal. Promptly upon the effective date of termination of this Agreement pursuant to Section 8, or the removal of the Administrator pursuant to Section 8, the Administrator shall be entitled to be paid by the Servicer all fees accruing to it to the date of such termination or removal.

10. Liens. The Administrator will not directly or indirectly create, allow or suffer to exist any Lien on the Collateral other than Permitted Liens.

11. Notices. All demands, notices and communications hereunder shall be in writing and shall be delivered or mailed by registered or certified first class United States mail, postage prepaid, hand delivery, prepaid courier service, email or by facsimile, and addressed at such address as shall be designated by any of the specified addressees in a written notice to the other parties hereto. Delivery shall occur only upon receipt or reported tender of such communication by an officer of the recipient entitled to receive such notices located at the address of such recipient for notices hereunder.

12. Amendments.

(a) Any term or provision of this Agreement may be amended by the Administrator without the consent of the Trustee, any Noteholder, the Issuer, the Owner Trustee or any other Person subject to the delivery of an Officer's Certificate of the Servicer to the Trustee by the Administrator to the effect that such amendment will not materially and adversely affect the interests of the Noteholders; provided, that no amendment shall be effective which affects the rights, protections or duties of the Trustee or the Owner Trustee without the prior written consent of such Person.

(b) This Agreement may also be amended from time to time by the Issuer, the Administrator and the Trustee, with the consent of the Majority Noteholders and with notice to the Owner Trustee, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Noteholders. It will not be necessary for the consent of Noteholders to approve the particular form of any proposed amendment or consent, but it will be sufficient if such consent approves the substance thereof. The manner of obtaining such consents (and any other consents of Noteholders provided for in this Agreement) and of evidencing the authorization of the execution thereof by Noteholders will be subject to such reasonable requirements as the Trustee may prescribe, including the establishment of record dates.

(c) Any term or provision of this Agreement may also be amended from time to time by the Administrator to correct a material misstatement or omission of the terms of this Agreement in the Offering Memorandum without the consent of the Trustee, any Noteholder, the Issuer, the Owner Trustee or any other Person, provided, however, the Administrator shall provide written notification of the substance of such amendment to the Issuer, the Owner Trustee and the Trustee and promptly after the execution of any such amendment, the Administrator shall furnish a copy of such amendment to the Issuer, Owner Trustee and the Trustee.

(d) Prior to the execution of any amendment pursuant to this Section 12, the Administrator shall provide written notification of the substance of such amendment to any Rating Agency and the Owner Trustee; and promptly after the execution of any such amendment, the Administrator shall furnish a copy of such amendment to the Rating Agency, the Owner Trustee and the Trustee.

(e) Prior to the execution of any amendment to this Agreement, the Owner Trustee and the Trustee shall be entitled to receive and conclusively rely upon an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Agreement and that all conditions precedent

to the execution and delivery of such amendment have been satisfied. No amendment of this Agreement which affects the rights, duties, liabilities, indemnities or immunities of the Owner Trustee, shall be effective without, in each specific instance, the prior written approval of the Owner Trustee. The Owner Trustee and the Trustee may, but shall not be obligated to, enter into any such amendment which adversely affects the Owner Trustee's or the Trustee's, as applicable, own rights, duties or immunities under this Agreement.

13. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL, SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.**

(b) Each of the parties hereto hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement or any documents executed and delivered in connection herewith, or for recognition and enforcement of any judgment in respect thereof, to the nonexclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York and appellate courts from any thereof;

(ii) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Person at its address determined in accordance with Section 11 of this Agreement;

(iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(v) to the extent permitted by applicable law, each party hereto irrevocably waives all right of trial by jury in any action, proceeding or counterclaim based on, or arising out of, under or in connection with this Agreement, any other Transaction Document, or any matter arising hereunder or thereunder.

14. Headings. The section headings hereof have been inserted for convenience of reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument. This Agreement shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any

faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument.

16. Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

17. Not Applicable to Hercules in Other Capacities; Merger of Administrator.

(a) Nothing in this Agreement shall affect any obligation Hercules may have in any other capacity.

(b) Any entity (i) into which the Administrator may be merged or converted or with which it may be consolidated, to which it may sell or transfer its business and assets as a whole or substantially as a whole or any entity resulting from any merger, sale, transfer, conversion or consolidation to which the Administrator shall be a party, or any entity succeeding to the business of the Administrator or (ii) of which more than 50% of the voting stock or voting power and 50% or more of the economic equity is owned directly or indirectly by Hercules and which executes an agreement of assumption to perform every obligation of the Administrator under this Agreement, shall be the successor to the Administrator under this Agreement, in each case, without the execution or filing of any paper of any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

18. Benefits of the Administration Agreement. Nothing in this Agreement, expressed or implied, shall give to any Person other than the parties hereto and their successors hereunder, any separate trustee or co-trustee appointed under Section 6.10 of the Indenture and the Noteholders, any benefit or any legal or equitable right, remedy or claim under this Agreement.

19. Assignment; Rights of Trustee. Each party hereto hereby acknowledges and consents to the mortgage, pledge, assignment and grant of a security interest by the Issuer to the Trustee pursuant to the Indenture for the benefit of the Noteholders of all of the Issuer's rights under this Agreement. In addition, the Administrator hereby acknowledges and agrees that for so long as any Notes are outstanding, the Trustee will have the right to exercise all waivers and consents, rights, remedies, powers, privileges and claims of the Issuer under this Agreement.

20. Nonpetition Covenant. Each party hereto agrees that, prior to the date which is one (1) year and one (1) day after payment in full of all obligations of the Issuer in respect of all securities issued by the Issuer (i) such party shall not authorize the Issuer to commence a voluntary winding-up or other voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to such bankruptcy remote party or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect in any jurisdiction or seeking the appointment of an administrator, a trustee, receiver, liquidator, custodian or other similar official with respect to such bankruptcy remote party or any substantial part of its property or to consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against such bankruptcy remote party, or to make a general assignment for the benefit of, its creditors generally, any party hereto or any other creditor of such bankruptcy remote party, and (ii) such party shall not commence, join with any other Person in commencing or institute with any other Person, any proceeding against the Issuer under any bankruptcy, reorganization, liquidation or insolvency law or statute now or hereafter in effect in any jurisdiction.

21. Limitation of Liability. It is expressly understood and agreed by the parties hereto that (i) this Agreement is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Owner Trustee on behalf of the Issuer under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of the Issuer is made and intended not as personal representations, undertakings and agreements by Wilmington Trust,

National Association but is made and intended for the purpose of binding only the Issuer, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties to this Agreement and by any person claiming by, through or under them, (iv) Wilmington Trust, National Association has made no investigation as to the accuracy or completeness of any representations and warranties made by the Owner Trustee or the Trust in this Agreement and (v) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Issuer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaking by the Issuer under this Agreement or any related documents. For the purposes of this Agreement, in the performance of its duties or obligations hereunder, the Owner Trustee shall be subject to, and entitled to the benefits of, the terms and provisions of Articles VI, VII and VIII of the Trust Agreement.

[SIGNATURES ON NEXT PAGE]

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

HERCULES CAPITAL FUNDING TRUST 2022-1

By: Wilmington Trust, National Association, not in its individual capacity but solely as Owner Trustee

By: _____
Name:
Title:

HERCULES CAPITAL, INC.,
as Administrator

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee

By: _____
Name:
Title:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

Joinder of Servicer:

Hercules Capital, Inc., as Servicer, joins in this Agreement solely for purposes of Section 3.

HERCULES CAPITAL, INC.,
as Servicer

By:
Name:
Title:

Exhibit 10.7
EXECUTION VERSION

HERCULES CAPITAL, INC.

SECOND SUPPLEMENT TO NOTE PURCHASE AGREEMENT

Dated as of June 23, 2022

Re: $50,000,000 6.00% Series 2022A Senior Notes
Due June 23, 2025

Dated as of
June 23, 2022

To the Additional Purchaser(s) named in
Schedule A hereto

Ladies and Gentlemen:

This Second Supplement to Note Purchase Agreement (the or this **"Supplement"**) is between Hercules Capital, Inc., a Maryland corporation (the **"Company"**), and the institutional investors named on Schedule A attached hereto (the **"Additional Purchasers"**).

Reference is hereby made to that certain Note Purchase Agreement dated February 5, 2020 (the **"Note Purchase Agreement"**) among the Company and the Purchasers listed on the Purchaser Schedule thereto. All capitalized terms not otherwise defined herein shall have the same meaning as specified in the Note Purchase Agreement. Reference is further made to Section 4.14 of the Note Purchase Agreement which requires that, prior to the delivery of any Additional Notes, the Company and each Additional Purchaser shall execute and deliver a Supplement.

The Company hereby agrees with the Additional Purchaser(s) as follows:

1. The Company has authorized the issue and sale of $50,000,000 aggregate principal amount of its 6.00% Series 2022A Senior Notes due June 23, 2025 (as amended, restated or otherwise modified from time to time pursuant to Section 17 of the Note Purchase Agreement and including any such notes issued in substitution therefor pursuant to Section 13 of the Note Purchase Agreement, the **"Series 2022A Notes"**). The Series 2022A Notes, together with the Series 2020B Notes issued pursuant to the First Supplement to Note Purchase Agreement dated as of November 2, 2020 and the Series 2020 Notes issued pursuant to the Note Purchase Agreement and each series of Additional Notes which may from time to time hereafter be issued pursuant to the provisions of Section 2.2 of the Note Purchase Agreement, are collectively referred to as the "**Notes***"* (such term shall also include any such notes issued in substitution therefor pursuant to Section 13 of the Note Purchase Agreement). The Series 2022A Notes shall be substantially in the form set out in Exhibit 1 hereto, with such changes therefrom, if any, as may be approved by the Additional Purchaser(s) and the Company.

2. Subject to the terms and conditions hereof and as set forth in the Note Purchase Agreement and on the basis of the representations and warranties hereinafter set forth, the Company agrees to issue and sell to each Additional Purchaser, and each Additional Purchaser agrees to purchase from the Company, Series 2022A Notes in the principal amount set forth opposite such Additional Purchaser's name on Schedule A hereto at a price of 100% of the principal amount thereof on the closing date hereinafter mentioned.

3. The execution and delivery of this Supplement shall occur at the offices of Chapman and Cutler LLP, 320 South Canal Street, Chicago, IL 60606, on June 23, 2022 (the *"***Execution Date***"*). The sale and purchase of the Series 2022A Notes to be purchased by each Additional Purchaser shall occur at the offices of Chapman and Cutler

LLP, 320 South Canal Street, Chicago, IL 60606, at 8:00 a.m. Chicago time, at a closing (the *"***Series 2022A Closing***"*) on June 23, 2022. At the Series 2022A Closing, the Company will deliver to each Additional Purchaser the Series 2022A Notes to be purchased by such Additional Purchaser in the form of a single Series 2022A Note (or such greater number of Series 2022A Notes in denominations of at least $100,000 as such Additional Purchaser may request) dated the date of the Series 2022A Closing and registered in such Additional Purchaser's name (or in the name of such Additional Purchaser's nominee), against delivery by such Additional Purchaser to the Company or its order of immediately available funds for the account of the Company pursuant to the applicable funding instructions delivered in accordance with Section 4.10 of the Note Purchase Agreement. If, at the Series 2022A Closing, the Company shall fail to tender such Series 2022A Notes to any Additional Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to any Additional Purchaser's satisfaction, such Additional Purchaser shall, at such Additional Purchaser's election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Additional Purchaser may have by reason of such failure by the Company to tender such Series 2022A Notes or any of the conditions specified in Section 4 not having been fulfilled to such Additional Purchaser's satisfaction.

4. The obligation of each Additional Purchaser to purchase and pay for the Series 2022A Notes to be sold to such Additional Purchaser at the Series 2022A Closing is subject to the fulfillment to such Additional Purchaser's satisfaction, prior to the Series 2022A Closing, of the conditions set forth in Section 4 of the Note Purchase Agreement with respect to the Series 2022A Notes to be purchased at the Series 2022A Closing as if each reference to "Notes," "Closing" and "Purchaser" set forth therein was modified to refer the "Series 2022A Notes," the "Series 2022A Closing" and the "Additional Purchaser" (each as defined in this Supplement) and to the following additional conditions:

(a) Except as supplemented, amended or superceded by the representations and warranties set forth in Exhibit A hereto, each of the representations and warranties of the Company set forth in Section 5 of the Note Purchase Agreement shall be correct as of the date of the Series 2022A Closing (except for representations and warranties which apply to a specific earlier date which shall be true as of such earlier date or as of the date specified in Exhibit A to the extent such provision is superceded in Exhibit A) and the Company shall have delivered to each Additional Purchaser an Officer's Certificate, dated the date of the Series 2022A Closing certifying that such condition has been fulfilled.

(b) Contemporaneously with the Series 2022A Closing, the Company shall sell to each Additional Purchaser, and each Additional Purchaser shall purchase, the Series 2022A Notes to be purchased by such Additional Purchaser at the Series 2022A Closing as specified in Schedule A.

5. The terms of Section 8 of the Note Purchase Agreement shall apply to the Series 2022A Notes except that

"Prepayment Settlement Amount" shall mean,

(a) with respect to any Series 2022A Note, an amount equal to the "Prepayment Settlement Amount", as follows:

Prepaid or accelerated during the period	Prepayment Settlement Amount
On or before March 23, 2025	Make-Whole Amount
After March 23, 2025	$0

For the avoidance of doubt, the definition of *"***Make-Whole Amount***"* set forth in Section 8.6 of the Note Purchase Agreement shall be applicable to any Series 2022A Note.

6. In addition to the covenants and agreements set forth in the Note Purchase Agreement, the Company covenants and agrees, which covenants and agreements shall have the benefit of Section 11(c)(ii) of the Note Purchase Agreement, for the benefit of the Additional Purchasers and each other holder of a Note that the following is hereby added to the Note Purchase Agreement as Section 22.8:

Section 22.8. Externalization. (a) *Notice of Externalization*. The Company will, within fifteen Business Days after the occurrence of an Externalization, give written notice of such Externalization to each holder of Notes. Such notice shall contain and constitute an offer to prepay Notes as described in subparagraph (b) of this Section 22.8 and shall be accompanied by the certificate described in subparagraph (e) of this Section 22.8.

(b) *Offer to Prepay Notes*. The offer to prepay Notes contemplated by subparagraph (a) of this Section 22.8 shall be an offer to prepay, in accordance with and subject to this Section 22.8, all, but not less than all, the Notes held by each holder (in this case only, "holder" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the **"Section 22.8 Proposed Prepayment Date**"). Such date shall be not less than 30 days and not more than 60 days after the date of such offer (if the Section 22.8 Proposed Prepayment Date shall not be specified in such offer, the Section 22.8 Proposed Prepayment Date shall be the first Business Day after 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 22.8 by causing a notice of such acceptance to be delivered to the Company not later than 15 Business Days after receipt by such holder of the most recent offer of prepayment. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 22.8 shall be deemed to constitute rejection of such offer by such holder.

(d) *Prepayment*. Prepayment of the Notes to be prepaid pursuant to this Section 22.8 shall be at 100% of the principal amount of such Notes, together with interest on such Notes accrued to, but excluding, the date of prepayment, but without Make-Whole Amount, Prepayment Settlement Amount or other premium.

(e) *Officer's Certificate*. Each offer to prepay the Notes pursuant to this Section 22.8 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 Section 22.8 Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 22.8; (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, but excluding, the Section 22.8 Proposed Prepayment Date; (v) that the conditions of this Section 22.8 have been fulfilled; and (vi) the date of the Externalization.

For the purposes of this Section 22.8, an **"Externalization"** means the date on which the shareholders of the Company duly and validly approve a change in the management structure of the Company from an internally managed business development company to an externally managed business development company by approving the Company entering into an investment advisory agreement with a third-party external adviser.

For the avoidance of doubt, the provisions of this Section 22.8 are applicable to the Series 2020 Notes, the Series 2022A Notes and any Additional Notes sold by the Company.

7. In addition to the covenants and agreements set forth in the Note Purchase Agreement, the Company covenants and agrees for the benefit of the Additional Purchasers and each other holder of a Note, that the definition of "Unencumbered Assets" shall be amended to read as follows:

"**Unencumbered Assets**" means (a) the value of total assets of the Company that are not secured by a Lien (other than Liens not prohibited by Section 10.5 (except for Liens securing Indebtedness for borrowed money incurred directly by the Company as the borrower or guarantor (other than a customary bad-boy or limited guaranty of Indebtedness of a Financing Subsidiary) and permitted by Section 10.5(dd)) and, notwithstanding the foregoing, in the event a Lien exists, in connection with Indebtedness incurred by such Finance Subsidiary, on the Equity Interest of such Financing Subsidiary (as a result of a guaranty, accommodation pledge or otherwise), such Equity Interest shall be deemed an asset for purposes of this clause (a) with the value of such Equity Interest being equal to the value of the assets owned by such Subsidiary less the principal amount of Indebtedness for borrowed money of such Subsidiary), including, without duplication, the value of any Equity Interests owned by the Company, directly or indirectly, in a consolidated subsidiary, less (b) all unsecured liabilities and unsecured indebtedness not represented by Senior Securities of the Company

8. In addition to the covenants and agreements set forth in the Note Purchase Agreement, the Company covenants and agrees, for the benefit of the Additional Purchasers and each other holder of a Note, that Section 17.1(a)(2)(iii) of the Note Purchase Agreement shall be amended to read as follows:

(iii) amend any of Sections 8 (except as set forth in the second sentence of Section 8.2 (or such corresponding provision of any Supplement) and Section 17.1(a)(3)), 11(a), 11(b), 12, 17, 20 or 22.8; and

9. In addition to the covenants and agreements set forth in the Note Purchase Agreement, the Company covenants and agrees, for the benefit of the Additional Purchasers and each other holder of a Note, that the following definitions are hereby added to the Schedule A of Note Purchase Agreement:

"**NRSRO**" means a Nationally Recognized Statistical Rating Organization so designated by the SEC whose ratings for senior unsecured indebtedness of business development companies are authorized for use with, and recognized by, the SVO, other than Egan Jones.

"**Egan Jones**" means Egan Jones Rating Company or if applicable, its successor.

10. Each Additional Purchaser represents and warrants that the representations and warranties set forth in Section 6 of the Note Purchase Agreement are true and correct on the date of the Series 2022A Closing with respect

to the purchase of the Series 2022A Notes by such Additional Purchaser as if each reference to "Notes," "Closing" and "Purchaser" set forth therein was modified to refer the "Series 2022A Notes," the "Series 2022A Closing" and the "Additional Purchaser" and each reference to "this Agreement" therein was modified to refer to the Note Purchase Agreement as supplemented by this Supplement.

11. The Company and each Additional Purchaser agree to be bound by and comply with the terms and provisions of the Note Purchase Agreement as fully and completely as if such Additional Purchaser were an original signatory to the Note Purchase Agreement.

The execution hereof shall constitute a contract between the Company and the Additional Purchaser(s) for the uses and purposes hereinabove set forth, and this agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

HERCULES CAPITAL, INC.

By: /s/ Seth H. Meyer
Name: Seth H. Meyer
Title: Chief Financial Officer

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

SLC MANAGEMENT U.S. INTERMEDIATE
INVESTMENT GRADE PRIVATE CREDIT FUND, L.P.

By: Sun Life Capital Management (U.S.) LLC, its Investment Adviser

By: /s/ David Belanger
Name: David Belanger
Title: Managing Director

By: /s/ Art Baril
Name: Art Baril
Title: Senior Director

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

MEDICA INSURANCE COMPANY

By: Sun Life Capital Management (U.S.) LLC, its Investment Adviser

By: /s/ David Belanger
Name: David Belanger
Title: Managing Director

By: /s/ Art Baril
Name: Art Baril
Title: Senior Director

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

ARCH INSURANCE COMPANY

By: /s/ James Peniston
Name: James Peniston
Title: Director, Head of Corporate Credit
Arch Investment Management Ltd., on behalf of Arch Insurance Company, solely as investment manager and not in its individual capacity

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

ARCH REINSURANCE COMPANY

By: /s/ James Peniston
Name: James Peniston
Title: Director, Head of Corporate Credit
Arch Investment Management Ltd., on behalf of Arch reinsurance Company, solely as investment manager and not in its individual capacity

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

CHUBB LIFE INSURANCE COMPANY LTD.

By: /s/ Chen Lin
Name: Chen Lin
Title: Portfolio Manager, Chubb Life

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

FIDELITY & GUARANTY LIFE INSURANCE COMPANY

By: Aspida Life Re Ltd., its investment manager
By: Ares Insurance Solutions LLC, its sub-advisor
By: Ares Alternative Credit Management LLC, its sub-advisor

By: /s/ Kevin Alexander
Name: Kevin Alexander
Title: Partner

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

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY

By: Nuveen Alternatives Advisors LLC, a Delaware limited liability company, its investment manager

By: /s/ Greg Miller
Name: Greg Miller
Title: Director

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

CSAA INSURANCE EXCHANGE

By: Nuveen Alternatives Advisors LLC, a Delaware limited liability company, its investment manager

By: /s/ Greg Miller
Name: Greg Miller
Title: Director

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

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

By: /s/ Trinh Nguyen
Name: Trinh Nguyen
Title: Managing Director

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

FEDERATED MUTUAL INSURANCE COMPANY

By: /s/ Donna Ennis
Name: Donna Ennis
Title: Vice President & Senior Portfolio Manager

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

FEDERATED LIFE INSURANCE COMPANY

By: /s/ Donna Ennis
Name: Donna Ennis
Title: Vice President & Senior Portfolio Manager

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

THE OHIO NATIONAL LIFE INSURANCE COMPANY

By: /s/ Brenda Kalb
Name: Brenda Kalb
Title: Vice President

Supplemental Representations

The Company represents and warrants to each Additional Purchaser that except as hereinafter set forth in this Exhibit A, each of the representations and warranties set forth in Section 5 of the Note Purchase Agreement (other than representations and warranties that apply solely to a specific earlier date which shall be true as of such earlier date and other than the Section references hereinafter set forth) is true and correct in all material respects as of the date of the applicable Series 2020 Closing with respect to the Series 2022A Notes with the same force and effect as if each reference to "the Notes" set forth therein was modified to refer to the "Series 2022A Notes" and each reference to "this Agreement" therein was modified to refer to the Note Purchase Agreement as supplemented by the Second Supplement. The Section references hereinafter set forth correspond to the similar sections of the Note Purchase Agreement which are supplemented hereby:

Section 5.3. Disclosure. (a) The Company, through its agent, Goldman Sachs, has delivered to each Additional Purchaser a copy of an Investor Presentation, dated May 2022 (the **"Memorandum"**), relating to the transactions contemplated hereby in connection with the Series 2022A Notes. The Memorandum fairly describes, in all material respects, the general nature of the business and principal properties of the Company and its Subsidiaries. This Agreement, the Memorandum, the financial statements listed in Schedule 5.5 and the documents, certificates or other writings delivered to the Additional Purchasers by or on behalf of the Company (other than financial projections, pro forma financial information and other forward-looking information referenced in Section 5.3(b), information relating to third parties and general economic information) prior to June 9, 2022 in connection with the transactions contemplated hereby and identified in Schedule 5.3 (this Agreement, the Memorandum and such documents, certificates or other writings and such financial statements delivered to each Additional Purchaser being referred to, collectively, as 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, 2021, 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. There is no fact known to the Company that would reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents.

(b) All financial projections, pro forma financial information and other forward-looking information which has been delivered to each Additional Purchaser by or on behalf of the Company in connection with the transactions contemplated by this Agreement are based upon good faith 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, it being recognized that (i) such financial information as it relates to future events is subject to significant uncertainty and contingencies (many of which are beyond the control of the Company) and are therefore not to be viewed as fact, and (ii) actual results during the period or periods covered by such financial information may materially differ from the results set forth therein.

Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates. (a) Schedule 5.4 contains (except as noted therein) complete and correct lists as of the date of the applicable Series 2022A Closing 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.

Section 5.5. Financial Statements; Material Liabilities. The Company has delivered to each Additional 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, but excluding all financial projections, pro forma financial information and other forward-looking information) 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).

Section 5.13. Private Offering by the Company. Neither the Company nor anyone acting on its behalf has offered the Notes or any substantially similar debt Securities for sale to, or solicited any offer to buy the Notes or any substantially similar debt Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Additional Purchasers and not more than 15 other Institutional Investors , each of which has been offered the Notes at a private sale for investment. Neither the Company 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 hereunder for the general corporate purposes of the Company and its Subsidiaries and as otherwise set forth in the section of the Transaction Overview of the Executive Summary in the Memorandum. 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; Future Liens. (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 as of the applicable Series 2022A Closing, 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. As of the applicable Series 2022A Closing, 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, to the knowledge of the Company, no event or condition exists with respect to any Indebtedness of the Company or any Subsidiary 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.

Schedules 5.3, 5.4, 5.5, 5.15, 10.1, 10.5 and 10.7 of the Note Purchase Agreement are hereby supplemented by the attached Schedules 5.3, 5.4, 5.5, 5.15, 10.1, 10.5 and 10.7

[Form of Series 2022A Note]

Hercules Capital, Inc.

6.00% Series 2022A Senior Note due June 23, 2025

No. [_____] **[Date]**
$[_____] PPN 427096 B#8

For Value Received, the undersigned, **Hercules Capital, Inc.** (herein called the **"Company"**), a corporation organized and existing under the laws of the State of Maryland, hereby promises to pay to [_____], or registered assigns, the principal sum of [_____] Dollars (or so much thereof as shall not have been prepaid) on June 23, 2025 (the **"Maturity Date"**), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of (a) 6.00% per annum from the date hereof, payable semiannually, on the 23rd day of June and December in each year, commencing with the June or December next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, (x) on any overdue payment of interest and (y) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Prepayment Settlement Amount (if any), at a rate per annum from time to time equal to the Default Rate (as defined in the hereinafter defined Note Purchase Agreement), payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Prepayment Settlement Amount with respect to this Note are to be made in lawful money of the United States of America at the Company in New York, New York or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Notes (the **"Notes"**) issued pursuant to a Supplement dated June 23, 2022 to the Note Purchase Agreement, dated February 5, 2020 (as from time to time amended, supplemented or modified, the **"Note Purchase Agreement"**), among the Company, the Additional Purchasers named therein and Additional Purchasers of Notes from time to time issued pursuant to any Supplement to the Note Purchase Agreement. This Note and the holder hereof are entitled with the holders of all other Notes of all series from time to time outstanding under the Note Purchase Agreement to all the benefits provided for thereby or referred to therein. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) to have made the representation set forth in Section 6 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note with the Company and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note of the same series for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is not subject to regularly scheduled prepayments of principal. This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Prepayment Settlement Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note 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.

HERCULES CAPITAL, INC.

By

Name:
Title:

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULE 13a-14(a) and 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS AMENDED, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Scott Bluestein, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Hercules Capital, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 28, 2022

By: /S/ SCOTT BLUESTEIN

Scott Bluestein
President, Chief Executive Officer, and
Chief Investment Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULE 13a-14(a) and 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS AMENDED, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Seth H. Meyer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Hercules Capital, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 28, 2022

By: /S/ SETH H. MEYER

Seth H. Meyer
Chief Financial Officer, and
Chief Accounting Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 (the "Report") of Hercules Capital, Inc. (the "Registrant"), as filed with the Securities and Exchange Commission on the date hereof, I, Scott Bluestein, the Chief Executive Officer of the Registrant, certify, to the best of my knowledge, that:

1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: July 28, 2022

By: /S/ SCOTT BLUESTEIN

Scott Bluestein
President, Chief Executive Officer, and
Chief Investment Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 (the "Report") of Hercules Capital, Inc. (the "Registrant"), as filed with the Securities and Exchange Commission on the date hereof, I, Seth H. Meyer, the Chief Financial Officer of the Registrant, certify, to the best of my knowledge, that:

1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: July 28, 2022

By: /S/ SETH H. MEYER

Seth H. Meyer
Chief Financial Officer, and
Chief Accounting Officer