



Vinson&Elkins

# REIT Series

## PIPE Transactions in the REIT Space

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## Today's Panelists



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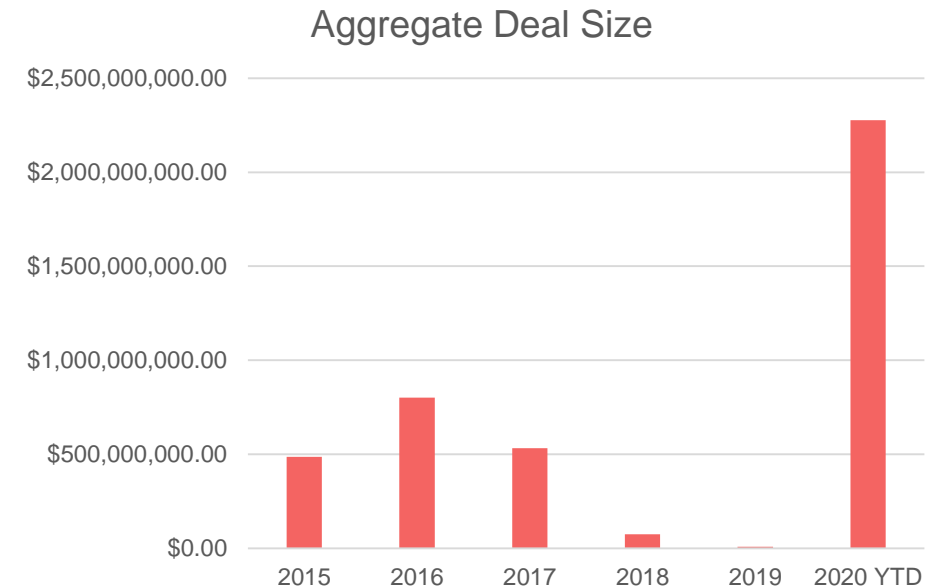


## Background

# What is a “PIPE”?

- **P**rivate **I**nvestment in **P**ublic **E**quity
  - A non-registered offering of equity or equity-linked securities
  - To selected accredited investors
  - Issuer typically agrees to file a registration statement covering the resale of the securities that are sold in the PIPE (or securities underlying the securities that are sold in the PIPE)
- PIPE deals tend to increase in frequency during periods of heightened market volatility
  - Issuers tend to have fewer capital raising alternatives
- Investors in PIPE deals most frequently include funds and other institutional buyers
- Types of securities offered:
  - Common stock
  - Non-convertible preferred stock (frequently with detachable warrants)
  - Convertible preferred stock
  - Convertible notes
  - Secured loans with warrants

## Market Data and Trends – 2020

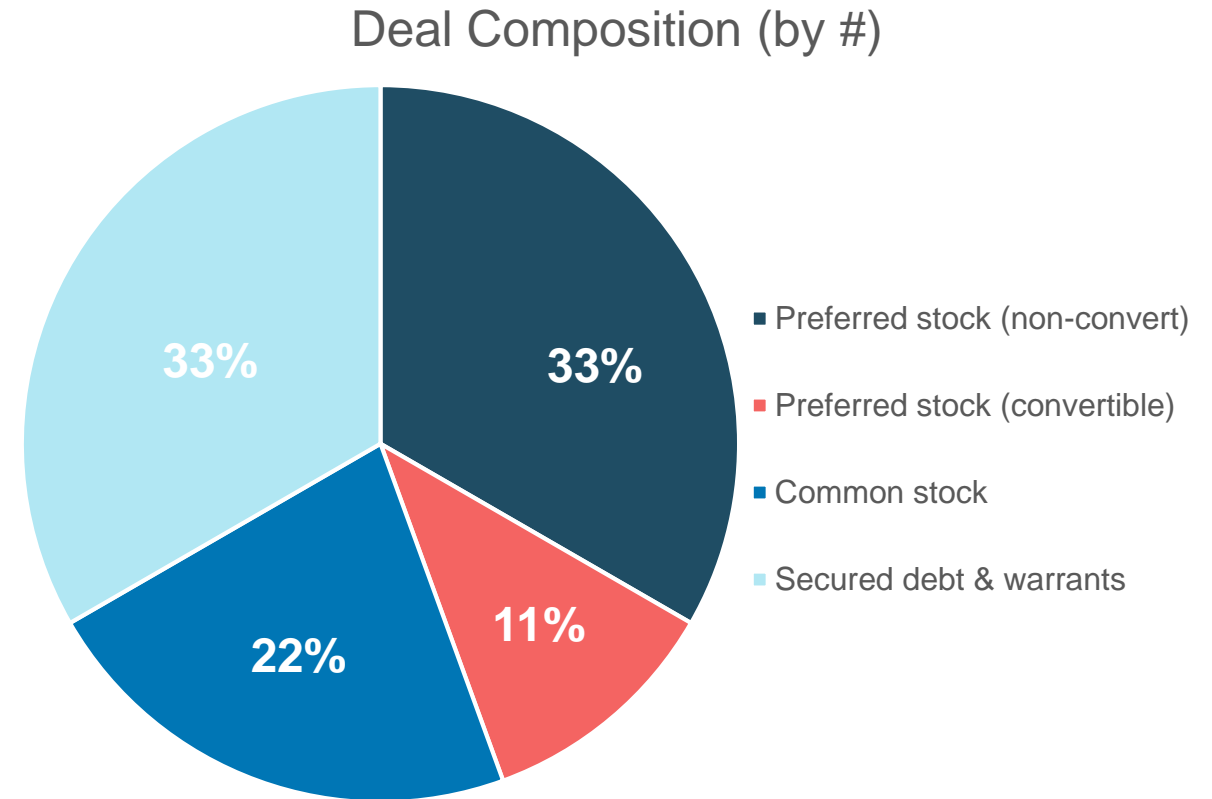


- 8 of 9 PIPEs in the REIT space for 2020 YTD (representing 99.7% of aggregate deal size) have been announced or closed since April 6, 2020
- Sizeable uptick in PIPE activity in 2020 but perhaps less than expected in March/April.

Source: PrivateRaise.com; SEC filings (2020 YTD = 1/1/2020 – 7/31/2020)

## Market Data and Trends – 2020

- Contrast 2020 compositions in REIT space against composition data for PIPEs across all industries from 2008 to 2019
  - Common stock deals generally represent 60% to 75% of total deals, with convertible debt the next most prominent by #.



Source: PrivateRaise.com; SEC filings (2020 YTD = 1/1/2020 – 7/31/2020)

## Market Data and Trends – For Comparison Purposes – 2007 to 2009

- # of Deals
  - From 2007 to 2009, averaged fewer than 6 PIPE deals per year, compared to 9 YTD in 2020
- Aggregate Value
  - From 2007 to 2009, averaged \$830 million of aggregate value per year, compared to \$2.3 billion YTD in 2020
- Deal Composition
  - From 2007 to 2009, common stock PIPEs represented 52% of total, followed by convertible preferred and non-convertible preferred at 18% each, compared to 2020 YTD where non-convertible structures (secured debt or preferred stock) with warrants represent vast majority of offered securities
- Which REITs are using PIPEs?
  - From 2007-2009, equity REITs represented approximately 75% of completed PIPE deals
  - For 2020, mREITs make up approximately 75% of completed PIPE deals

Source: PrivateRaise.com; SEC filings



# Issuers

## Pros:

- Issuer can obtain commitments in advance of pricing/closing without underwriter (but maybe a placement agent)
  - Advantageous in times of market volatility (or when other capital raising alternatives reduced)
- Potential to attract new institutional investors
- Typically requires less offering/transaction documentation than a registered offering, resulting in lower transaction costs

## Cons:

- PIPE common equity is typically issued at a discount to market price (i.e., illiquidity discount)
- More onerous deal terms (e.g., steep coupons/interest rates, warrant coverage, board seats)
- Transaction is not registered under the Securities Act = limited to accredited investors; administrative costs associated with registering resale of PIPE equity or underlying securities
- Stockholder approval may be required pursuant to stock exchange rules, which can effectively cap the amount of equity that can be raised
- Limits on the number of “blackout periods” under the resale shelf

# Investors

## Pros:

- Ability to make a large investment at a discount to market price
- More favorable terms/deal protections than registered deals (e.g., board seat, warrant coverage)

## Cons

- Ability to freely resell PIPE equity or underlying securities is subject to Issuer's ability to get a resale registration statement filed and declared effective by the SEC



## Nuts and Bolts

## Negotiating the Deal

- Potential PIPE investors are solicited on an anonymous or confidential basis
- Issuer/placement agent will typically seek to obtain a confidentiality/no-trade agreement from potential PIPE investors
  - The possibility of the PIPE deal itself could be material non-public information (potential Reg FD/insider trading issues)
- During the course of the negotiations, the issuer may confidentially present material non-public information to potential PIPE investors

## Key Transaction Documents

- Placement Agent Engagement Letter
- Disclosure Materials (if not relying on SEC filings)
- Securities Purchase/Investment Agreement
- Registration Rights Agreement
- Articles Supplementary/Certificate of Designations (if preferred securities are being issued)
- Warrant Agreement (if warrants are being issued)
- Legal Opinions/Closing Documents
- Form 8-K/Press Release
- SEC Registration Statement (to register resale of PIPE equity or underlying securities)





## Placement Agent Engagement Letter

- Unlike a registered offering (where there is an underwriting agreement) or other types of private placements (where there is a placement agency agreement), in a PIPE deal, the engagement letter is typically the only written agreement between the Issuer and the Placement Agent
- Sets forth the Placement Agent's compensation
- Typically includes indemnification provisions obligating the Issuer to indemnify the Placement Agent for losses/claims arising out of the engagement
- May set forth certain closing deliverables that will be required (e.g., legal opinion (no registration), comfort letters)

## Disclosure Materials

- Issuer is a public company with Exchange Act reporting obligations
- A PPM may still be prepared, but will typically contain (or incorporate by reference) information contained in the Issuer's Exchange Act filings
- In some cases, potential PIPE investors may not receive a PPM or other disclosure materials (particularly if the investors are familiar with the Issuer and/or the Issuer's industry)
- Potential ramifications associated with disclosure of material non-public information to PIPE investors

## Securities Purchase/Investment Agreement – Reps & Warranties

- Issuer typically gives reps and warranties similar to reps and warranties given in a registered offering
  - If Issuer is externally managed, manager may be a party and give reps and warranties (similar to market practice for registered offerings)
  - Typically, the agreement does not include an indemnification provision (meaning that the Investor's recourse would be limited to a breach of contract claim) – but, there is precedent for including an indemnification provision, including indemnification for breaches of reps and warranties (which is not typically done in registered offerings)
- Investor
  - Organization/Good Standing
  - Authority/Noncontravention
  - No Consents/Approvals Required
  - Sufficient Financing/Available Funds
  - No Broker/Finder Fees
  - “Big Boy” Reps (since transaction is not registered under the Securities Act)

## Securities Purchase/Investment Agreement – Covenants

- Public Disclosure
  - Agreement to consult with each other before issuing press releases/making other public announcements about the deal; may include a consent right over certain types of announcements
- Amendments to Issuer's Organizational Documents
  - Consent of PIPE investor(s) may be required if amendments adversely affect those investors
- Expense Reimbursement
  - Issuer may agree to reimburse PIPE investors for their out-of-pocket expenses, subject to a cap

## Securities Purchase/Investment Agreement – Voting Agreement

- PIPE investors often agree to:
  - Vote in favor of director nominees recommended by the Issuer’s board
  - Vote against director nominees put forth by stockholders that are not recommended by the Issuer’s board
  - Vote against director nominees put forth by stockholders that are not recommended by the Issuer’s board
  - Otherwise, to vote in accordance with the board’s recommendation on routine proposals (e.g., auditor ratification, say-on-pay)
- Covenant typically “falls away” when the diluted ownership of the PIPE investor(s) falls below a specified percentage



## Securities Purchase/Investment Agreement – Standstill Provisions

- Investor may agree to refrain from:
  - Shorting the Issuer's securities
  - Acquiring, offering or seeking to acquire any equity securities of the Issuer
  - Participating in a proxy solicitation seeking to appoint a director or remove a director
  - Making public announcements with respect to significant transactions involving the Issuer
  - Otherwise acting to seek to control or influence management, board or policies of the Issuer
  - Making books and records requests under state law
- Standstill provisions are often subject to a time limitation (one to two years)

## Securities Purchase/Investment Agreement – Director Designation Rights

- Issuer may agree to cause a designee of a PIPE investor to be appointed to the Issuer's board
  - For so long as PIPE investor owns a specified percentage of the Issuer's securities, the Issuer agrees to:
    - Nominate the investor's designee for election at each annual meeting of stockholders
    - Recommend that the stockholders vote in favor of the investor's designee
    - Use reasonable efforts to cause the designee's election to the board
- Covenant typically “falls away” when the diluted ownership of the PIPE investor(s) falls below a specified percentage

## Securities Purchase/Investment Agreement – Preemptive Rights

- Issuer may agree to notify PIPE investor(s) of proposed issuances of certain equity securities prior to the proposed date of issuance
- PIPE investor(s) may elect to purchase up to their pro rata share of the securities that the Issuer proposes to issue
- Covenant typically “falls away” when the diluted ownership of the PIPE investor(s) falls below a specified percentage

## Registration Rights Agreement

- Some variations, but common for Issuer to agree to file a resale registration statement covering the securities issued in the PIPE (and/or the securities underlying the PIPE securities) within a fixed number of days after the closing of the PIPE
  - Issuer typically agrees to use “commercially reasonable efforts” or “reasonable best efforts” to have registration statement declared effective as soon as practicable after it is filed
  - Issuer may agree to pay liquidated damages to PIPE investor(s) if registration statement is not declared effective by a certain date
- Issuer may be obligated to effect underwritten offerings on behalf of the PIPE investor(s) at their request (subject to limits on the number of requests that can be made in a given time period)
- Piggyback rights may be included, but are often subject to customary cutback provisions

## Resale Registration Statement

- Ideally, the Issuer will be eligible to file a Form S-3 to satisfy its obligation to register the resale of the PIPE securities (or underlying securities)
  - Form S-3 is a short-form registration statement, so it is less time-consuming and less expensive to prepare
  - Form S-3 also permits “forward incorporation by reference,” meaning that the disclosure in an effective Form S-3 is automatically updated each time that the Issuer files its Exchange Act reports
- If the Issuer is not S-3 eligible, it may satisfy its obligation to register the resale of the PIPE securities (or underlying securities) on a long-form registration statement (for a REIT, this would typically be a Form S-11)
  - More time-consuming and more expensive to prepare
  - Does not permit “forward incorporation by reference,” so post-effective amendments to the Form S-11 will need to be filed periodically in order to keep the registration statement up to date
- As a result, PIPE investors will typically want to diligence whether or not the Issuer is S-3 eligible (and may request a rep from the Issuer that it is S-3 eligible)



## Resale Registration Statement (Cont'd)

- What if the Issuer already had an effective registration statement on file? Can the Issuer use that to satisfy its obligation to register the resale of the PIPE securities (or underlying securities)?
  - If the Issuer is not a WKSI, the answer is “no” – the existing registration statement is either a “primary” registration statement (registering sales of securities by the Issuer itself) and/or a “secondary” registration statement that does not cover the PIPE securities
    - In this case, the Issuer will need to file a new registration statement covering the resale of the PIPE securities (or underlying securities)
  - If the Issuer is a WKSI, the PIPE securities can be added to the existing registration statement by filing a prospectus supplement that identifies the PIPE investors
- WKSI = generally speaking, an Issuer qualifies as a WKSI if the Issuer:
  - Has been an SEC-reporting company for at least 12 calendar months and has timely filed all material required to be filed during the preceding 12 calendar months
  - Hasn't had any material defaults on debt or long-term leases
  - Has a public float of at least \$700 million
  - For new registration statements, WKSI status is determined at the time of filing; for existing registration statements, WKSI status is, in most cases, determined each year when the Issuer files its Form 10-K



## Recent Transactions

## Overview

- As noted above, 8 PIPEs in the REIT space have been announced or closed since April 6, 2020:

April 6, 2020  
Great Ajax—Magnetar

April 20, 2020  
OUTFRONT Media—  
Providence / Ares

May 7, 2020  
Great Ajax—Flexpoint  
Ford / Magnetar /  
Wellington

May 19, 2020  
New Residential—  
Fortress

May 19, 2020  
Front Yard  
Residential—Amherst

May 28, 2020  
TPG RE Finance  
Trust—Starwood

June 8, 2020  
Chimera Investment  
Corp—Ares

June 26, 2020  
MFA Financial Inc.—  
Apollo/Athene

# Financial Terms

- \$80 million of preferred stock and warrants
  - 820,000 shares of 7.25% Series A Fixed-to-Floating Rate Preferred Stock at \$25 per share
    - Rate on Series A is 7.25% until April 6, 2025 (i.e., 5 years from issuance). On April 6, 2025, rate changes to 5-year U.S. Treasury rate plus a spread of 6.00%, with the spread increasing by 0.5% for each year thereafter but capped at 10.50%.
  - 2,380,000 shares of 5.00% Series B Fixed-to-Floating Rate Preferred Stock at \$25 per share
    - Rate on Series B is 5.00% until April 6, 2025. On April 6, 2025, rate changes to the same floating rate as described above for the Series A.
  - 1,025,000 Series A and 2,975,000 Series B 5-year warrants to purchase an aggregate of 4,000,000 shares of common stock at \$10 per share, with a put option to Great Ajax on or after July 6, 2023
  - Options to purchase an additional 800,000 shares of Series A, 1,000,000 shares of Series B, and warrants for 1,000,000 shares of common stock on the same terms as the above within 60 days of the original purchases
  - Other notable terms:
    - If dividends on either series of preferred stock become in arrears for more than 2 consecutive dividend periods, the dividend rate increases by 1.5%
    - Both series of preferred stock may be redeemed on and after July 6, 2023 (\$25 per share plus accumulated and unpaid dividends)
    - Neither series of preferred stock is convertible

# Financial Terms

- \$400 million of convertible preferred stock (400,000 shares at \$1,000 per share)
  - Dividend rate of 7.0% per annum – payable in cash, in-kind (through issuance of additional shares of preferred stock) or a combination of cash and in-kind, until 8th anniversary of closing date, after which dividends are payable solely in cash
    - Rate increases by an additional 0.75% per annum effective on each anniversary of the closing date beginning on and following the 8th anniversary of the closing date
    - Rate may also increase by up to 2.0% per annum during periods in which Issuer fails to make certain dividend payments
  - Convertible into shares of common stock at an initial conversion price of \$16.00 per share and an initial conversion rate of 62.50 shares of common stock per share of Series A Preferred Stock, subject to certain anti-dilution adjustments
  - Issuer can force conversion if VWAP of common stock exceeds 150% of conversion price for at least 20 of 30 trading days (subject to having an effective resale registration statement on file or the shares of common stock being issued on mandatory conversion being eligible to be transferred by the holder pursuant to Rule 144)
  - Company may redeem preferred stock for cash at any time after the 7th anniversary of the closing date (\$1,000 per share plus any accrued and unpaid dividends)



# Financial Terms

- \$30 million of preferred stock and warrants
  - 1,112,400 shares of 7.25% Series A Fixed-to-Floating Rate Preferred Stock at \$25 per share
    - Rate on Series A is 7.25% until April 6, 2025 (i.e., 5 years from issuance). On April 6, 2025, rate changes to 5-year U.S. Treasury rate plus a spread of 6.00%, with the spread increasing by 0.5% for each year thereafter, but capped at 10.50%.
  - 87,600 shares of 5.00% Series B Fixed-to-Floating Rate Preferred Stock at \$25 per share
    - Rate on Series B is 5.00% until April 6, 2025. On April 6, 2025, rate changes to the same floating rate as described above for the Series A.
  - 1,390,500 Series A and 109,500 Series B 5-year warrants to purchase an aggregate of 1,500,000 shares of common stock at \$10 per share, with a put option to Great Ajax on or after August 7, 2023
  - Other notable terms:
    - If dividends on either series of preferred stock become in arrears for more than 2 consecutive dividend periods, the dividend rate increases by 1.5%
    - Both series of preferred stock may be redeemed on and after July 6, 2023 (\$25 per share plus accumulated and unpaid dividends)
    - Neither series of preferred stock is convertible

# Financial Terms

- \$600 million Term Loan Facility Agreement and warrants to purchase up to 43.4 million shares of common stock
  - Certain lenders and recipients of the warrants are affiliates of Fortress; Issuer’s manager is an affiliate of Fortress
  - Term Loan Facility
    - Interest accrues at an annual rate of 11%; loans issued with an original issue discount of 1%
  - Warrants
    - Series 1 Warrants to purchase up to 24.5 million shares of common stock; Series 2 Warrants to purchase up to 18.9 million shares of common stock
    - Exercisable at holder’s option at any time after September 19, 2020, in whole or in part, until May 19, 2023, at an exercise price of \$6.11 per share of common stock in the case of the Series 1 Warrants and at an exercise price of \$7.94 per share of common stock in the case of the Series 2 Warrants
    - Registration Rights – Issuer is required to prepare and file a resale registration statement as promptly as reasonably practicable with respect to the shares of common stock for which the warrants may be exercised but no later than September 19, 2020, and, if the registration statement is not automatically effective, to have the registration statement declared effective as soon as practical thereafter, subject to extension under the terms of the Registration Rights Agreement. The lenders and their transferees are entitled to customary underwritten offering, piggyback and additional demand registration rights with respect to the shares of common stock for which the warrants may be exercised.

## Financial Terms

- \$55 million purchase of shares of common stock (4.4 million shares at \$12.50 per share)
  - Announced in connection with announcement of termination of merger agreement pursuant to which Amherst would have acquired Front Yard
  - In addition to PIPE investment, Amherst agreed to pay a \$25 million fee to Front Yard and provide a \$20 million committed two-year unsecured loan facility to Front Yard
    - Loan bears interest at LIBOR plus 5.00% per annum
  - Amherst not permitted to transfer any PIPE shares until first anniversary of closing date (except for transfers to affiliates that agree to be bound by the terms of the investment agreement)
    - Beginning on first anniversary of closing date, Amherst may transfer up to 25% of the shares sold in the PIPE per calendar quarter on a cumulative basis
  - For a one year period following the closing date:
    - If Front Yard determines to pursue a sale of assets representing 5% or more of Front Yard's assets, Front Yard will inform Amherst of its intent to pursue the transaction and provide Amherst with the opportunity to participate in the process related to the transaction
    - If Front Yard determines to pursue a debt or equity financing transaction for an amount representing 5% or more of Front Yard's market cap, Front Yard will inform Amherst of its intent to pursue the transaction and provide Amherst with the opportunity to participate in the process related to the transaction



# Financial Terms

- Up to \$325 million in Preferred Stock and Warrants (may close in three tranches)
  - At initial closing, Starwood purchased 9 million shares of preferred stock and warrants to purchase up to 12 million shares of common stock for \$225 million
    - TRTX may, at its option on or prior to December 31, 2020, sell 2 million shares of preferred stock and warrants to purchase up to 1.5 million shares of common stock in two separate tranches for \$50 million per tranche
  - Dividend rate on preferred stock is 11.0% per annum
    - Up to 2.0% may be paid, at TRTX's option, in the form of additional shares of preferred stock
    - If TRTX fails to declare and pay in full dividends on preferred stock on two consecutive dividend payment dates, the dividend rate will be increased by 2.0% per annum (such additional 2.0% per annum payable in the form of additional shares of preferred stock)
  - TRTX may redeem preferred stock at its option for cash at a price equal to:
    - Prior to second anniversary of original issuance date, the greater of 105.0% of liquidation preference, plus accrued dividends, plus a make-whole
    - After second anniversary but prior to third anniversary, 105.0% of liquidation preference, plus accrued dividends
    - After third anniversary but prior to fourth anniversary, 102.5% of liquidation preference, plus accrued dividends
    - After fourth anniversary, 100.0% of liquidation preference, plus accrued dividends
  - Holders of preferred stock may require TRTX to redeem their shares for cash at a price equal to 100.0% of the liquidation preference, plus accrued dividends, commencing on fourth anniversary
  - Warrants issuable upon exercise at an initial exercise price of \$7.50 per share







# Financial Terms

- \$400 million senior secured credit facility (non-mark-to-market) and warrants to purchase up to 7.7% of the common stock
  - Non MTM Credit Facility
    - Secured by \$550 million of assets, interest accrues at annual rate of 7% and has a term of 3 years
  - Warrants
    - Warrants to purchase up to 20.3 million shares at exercise price of \$0.1 → warrants are exercisable, subject to certain conditions, in 3 years
    - 90% of warrant value may be settled in cash
    - Registration Rights—Issuer is required to prepare and file a resale shelf registration statement with respect to the shares of common stock upon request of the warrant holders. Lenders are entitled to customary demand and piggyback registration rights






# Financial Terms

- \$500 million senior secured term loan facility and warrants to purchase up to 37 million shares of common stock (representing 7.6% of total shares outstanding assuming exercise of all warrants)
  - Term Loan Facility
    - Term loans issued with 1% OID, with interest accruing at annual rate of 11% through 3rd anniversary (interest rate escalates after 3 years)
    - Make-whole premium upon change of control
    - Issuer may prepay loans at any time without premium or penalty
    - Forward sale commitment: Athene agreed to purchase RMBS issued by MFA securitization
  - Warrants
    - Warrants to purchase up to 7.6% of outstanding common stock
    - Investors agreed to the lesser of \$50 million or 4.9% of the outstanding common stock in open market within 1 year of closing (subject to certain adjustments and conditions)
    - Investor may receive board designee appointment rights until later of investor owning less than 2.5% of then outstanding stock or term loan facility is repaid in full
    - Investor agrees to certain standstill restrictions
    - Registration Rights—Issuer is required to have registration statement declared effective within 90 days from closing. Investors are entitled to customer demand and piggyback registration rights with respect to the common shares underlying the warrants





# Voting Agreement and Standstill Provisions

	Voting Agreement	Standstill
	None	None
	Until “fall-away” (i.e., beneficial ownership on diluted basis falls below 25% as of original issuance date), PIPE investors agreed to vote (i) in favor of director nominees recommended by Outfront’s board, (ii) against stockholder nominees not recommended by Outfront’s board, (iii) in favor of say-on-pay and (iv) in favor of auditor ratification	<ul style="list-style-type: none"> <li>• Agreed not to short sell until one year anniversary of closing date</li> <li>• Other provisions (acquisitions of securities, participation in proxy solicitations, etc.) until two year anniversary of closing date</li> </ul>
	Until two year anniversary of closing date and for as long as Amherst owns any shares, Amherst agreed to vote (i) in favor of each director nominated and recommended by Front Yard’s board, (ii) against any stockholder nominations for directors which are not approved and recommended by Front Yard’s board and (iii) otherwise in accordance with the recommendation of Front Yard’s board on all proposals properly brought before any meeting	Yes – for two years following closing date
	Until “fall-away” (i.e., beneficial ownership on diluted basis falls below 25% as of original issuance date), (i) in favor of director nominees recommended by TRTX’s board, (ii) against stockholder nominees not recommended by TRTX’s board, (iii) in favor of say-on-pay and (iv) in favor of auditor ratification	Yes – for at least two years after closing date
	None	None
	None	Yes – for at least two years after closing date



# Director Appointment Rights, Preemptive Rights and Expense Reimbursement

	Director Appointment Rights	Preemptive Rights	Expense Reimbursement
	None	None	None
	Yes – until fall-away, Providence has the right to designate a nominee for election as a director during each annual meeting for a term that lasts to the next annual meeting	Yes – until fall-away	Yes – up to \$2.5 million
	None	No, but, for one year period following closing date, Amherst has “opportunity to participate” in process related to asset sales representing 5% or more of Front Yard’s assets and debt or equity financings representing 5% or more of Front Yard’s market cap	None
	Yes – until fall-away  Right to appoint additional director if “failure event” (e.g., failure to pay dividends) occurs	Yes – until fall-away	Yes – up to \$1.5 million
	None	Yes, as long as any warrants remain unexercised	None
	Yes – until “fall-away” (i.e. until later of investor owning less than 2.5% of then outstanding stock or term loan facility is repaid in full)	None	Yes – up to \$1.5 million

# Registration Rights

	Registration Rights
	<ul style="list-style-type: none"> <li>• Agreed to file resale registration statement within 90 calendar days of closing date and to use commercially reasonable efforts to have the registration statement declared effective within 180 calendar days after the closing date               <ul style="list-style-type: none"> <li>– Liquidated damages payable if registration statement not declared effective prior to 180-day deadline</li> </ul> </li> <li>• Piggyback rights (subject to customary cutback rights)</li> </ul>
	<ul style="list-style-type: none"> <li>• Reasonable best efforts to file a registration statement no later than 90 days after closing date; reasonable best efforts to cause registration statement to be declared effective as promptly as reasonably practicable after filing (covers shares of common stock into which the preferred stock is convertible)</li> <li>• Issuer obligated to effect underwritten offerings at request of PIPE investors (limitations on number and size of such offerings)</li> <li>• Piggyback rights (subject to customary cutback rights)</li> </ul>
	<ul style="list-style-type: none"> <li>• Following one year anniversary of closing date, upon Amherst's written request, Front Yard must use commercially reasonable efforts to cooperate in good faith with Amherst to facilitate Amherst's transfer of the PIPE shares by including the shares in any registration statement and offering made by Front Yard or otherwise assisting in the registration of such shares</li> </ul>
	<ul style="list-style-type: none"> <li>• <u>Demand</u>: Starwood may make up to three requests that TRTX register the resale of all or any part of shares of common stock underlying the warrants issued in the PIPE</li> <li>• <u>Shelf</u>: At any time, Starwood may request that TRTX file a shelf registration statement in accordance with the methods of distribution elected by Starwood; also has right to request that TRTX effect shelf takedowns</li> <li>• <u>Piggyback</u>: Piggyback rights (subject to customary cutback rights)</li> </ul>

# Registration Rights (Cont'd)

	Registration Rights
	<ul style="list-style-type: none"> <li>• <u>Demand</u>: Each of Ares and Fortress may make up to one request that Chimera register the resale of all or any part of shares of common stock underlying the warrants issued in the PIPE</li> <li>• <u>Shelf</u>: At any time, investors may request that Chimera file a shelf registration statement; also have the right to request that Chimera effect shelf takedowns</li> <li>• <u>Piggyback</u>: Piggyback rights (subject to customary cutback rights)</li> </ul>
	<ul style="list-style-type: none"> <li>• <u>Demand</u>: After one year, Investors may make up to three requests that MFA register the resale of all or any part of shares of common stock underlying the warrants issued in the PIPE</li> <li>• <u>Shelf</u>: Commercially reasonable efforts to file and have declared effective a registration statement no later than 90 days after closing date; also have the right to request that MFA effect shelf takedowns</li> <li>• <u>Piggyback</u>: Piggyback rights (subject to customary cutback rights)</li> </ul>





## Legal Considerations



## Insider Trading / Regulation FD

- Securities laws provide for significant civil and criminal penalties for trading on the basis of material nonpublic information (“MNPI”)
- Regulation FD prohibits selective disclosure of MNPI to institutional investors prior to disclosure to the general public
- The fact that an Issuer is even considering a PIPE deal may itself constitute MNPI
  - Wall-crossing procedures similar to those used in connection with testing the waters and confidentially marketed registered offerings are often used
  - Before a placement agent reveals the Issuer’s identity to a potential PIPE investor, the placement agent should obtain an oral agreement from the Investor to keep the information confidential; a subsequent email confirmation of the agreement is a best practice (creates an audit trail)
- Special care must be taken when an Issuer considers disclosing MNPI to a potential PIPE investor
  - Investor may not want to receive MNPI because it would limit the investor’s ability to transact in the Issuer’s securities; if the investor does receive MNPI in connection with its evaluation of the PIPE, the Investor may seek to include a provision in the transaction documents obligating the Issuer to disclose that information to the public after the PIPE is announced publicly (or “cleansing disclosure” if the transaction does not move forward)
  - Issuer will generally want to avoid disclosing MNPI to the investor absent a confidentiality and no-trade agreement (Regulation FD expressly excepts disclosures to persons who expressly agree to maintain the disclosed information in confidence)

# Stockholder Approval Requirements

- Stock exchange rules generally require listed companies to obtain stockholder approval prior to issuing 20% or more of their outstanding common stock in a private placement
  - Includes securities convertible into or exercisable for common stock
- Stock exchange rules also require stockholder approval prior to an issuance that will result in a “change of control” of the issuer
  - The stock exchanges generally do not define “change of control” and instead apply a subjective test on a case-by-case basis. Purchases of more than 30% of a listed company’s outstanding voting stock are presumed to constitute a change of control, and purchases of even less than that can be deemed a “change of control” in certain circumstances
- Stock exchange rules may also require stockholder approval if the PIPE investor is a “related party” (i.e., directors, officers and 5% holders)

# REIT Ownership Limitations

- A REIT may not be “closely held” (i.e., 5 or fewer individuals cannot own more than 50% (by value) of a REIT’s outstanding stock at any time during the last half of its taxable year applying ownership attribution rules). This test does not apply to the first year for which a REIT election is made.
  - Many REITs have restrictions (“excess share provisions”) in their governing documents prohibiting ownership of 9.8% or more of the REIT’s stock unless an exception is approved by the board of directors.
- If a significant number of shares are issued in the PIPE, this “5/50” test (and/or the related provisions in the REIT’s governing documents) may come into play
- If warrants, preferred stock or other forms of equity-linked securities are being issued in the PIPE, the analysis under this test and governing document provisions may become more complicated

## SECTION 16 / Beneficial Ownership Filing Requirements

- PIPE investor may be subject to Section 16(a) of the Exchange Act if the investor ends up beneficially owning more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act
  - Form 3 must be filed within ten calendar days after the 10% beneficial ownership hurdle is exceeded
  - Except in certain limited instances, subsequent changes in beneficial ownership of the Issuer's securities must be reported on Form 4. Generally, all Forms 4 are due on the second business day after the transaction is executed
- Such a holder would also be subject to the short-swing profits provisions of Section 16(b) of the Exchange Act. Specifically, Section 16(b) provides that any profit realized from the purchase and subsequent sale, or sale and subsequent purchase, of the Issuer's securities within any six-month period (a "short-swing" profit) is recoverable by the Issuer. Such recovery can occur through the Issuer's action or through a derivative action brought by stockholders on behalf of the Issuer. An active group of plaintiff's lawyers monitor insider transactions in order to assert these derivative claims
- PIPE investor may also be subject to Section 13(d) under the Exchange Act if the investor becomes the direct or indirect beneficial owner of 5% or more of any equity security registered pursuant to Section 12 of the Exchange Act
  - Requirement to file Schedule 13D or 13G within ten calendar days

# THANK YOU

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