

ISTAR FINANCIAL INC
Form S-4
June 08, 2012

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As filed with the Securities and Exchange Commission on June 8, 2012

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

iSTAR FINANCIAL INC.

(Exact name of Registrant as specified in its charter)

MARYLAND
(State or other jurisdiction of
incorporation or organization)

6798
(Primary Standard Industrial
Classification Code Number)
1114 Avenue of the Americas, 39th Floor
New York, New York 10036
(212) 930-9400

95-6881527
(I.R.S. Employer
Identification Number)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Jay Sugarman
Chief Executive Officer
1114 Avenue of the Americas, 39th Floor
New York, New York 10036
(212) 930-9400

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Kathleen L. Werner, Esq.
Clifford Chance US LLP
31 West 52nd Street
New York, New York 10019
(212) 878-8000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective and all other conditions to the exchange offer pursuant to the registration rights agreement described in the enclosed prospectus have been satisfied or waived.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

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If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

CALCULATION OF REGISTRATION FEE

Title Of Each Class Of Securities To Be Registered	Amount To Be Registered	Proposed Maximum Offering Price Per Note(1)	Proposed Maximum Aggregate Offering Price(1)	Amount Of Registration Fee(2)
9.0% Series B Senior Notes due 2017	\$275,000,000	100%	\$275,000,000	\$31,515

(1) Estimated solely for purposes of calculating the registration fee under the Securities Act of 1933.

(2) Calculated pursuant to Rule 457(f)(2).

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not offer these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated June 8, 2012

PROSPECTUS

OFFER TO EXCHANGE

9.0% Series B Senior Notes due 2017 which have been registered under the Securities Act for any and all outstanding 9.0% Series A Senior Notes due 2017

(\$275,000,000 principal amount outstanding at maturity)

iSTAR FINANCIAL INC.

**This exchange offer and withdrawal rights will expire at 5:00 p.m.,
New York City time, on _____, 2012
(unless we extend this exchange offer).**

We are offering to exchange our 9.0% Series B Senior Notes due 2017, referred to herein as the "Series B Notes," for the identical principal amount of our 9.0% Series A Senior Notes due 2017, referred to herein as the "Series A Notes." The aggregate principal amount at maturity of the Series A Notes, and therefore the principal amount at maturity of Series B Notes which would be issued if all the Series A Notes were exchanged, is \$275,000,000. The terms of the Series B Notes will be identical with the terms of the Series A Notes, except that the issuance of the Series B Notes is being registered under the Securities Act of 1933, as amended, or the "Securities Act," and therefore the Series B Notes will not be subject to restrictions on transfer which apply to the Series A Notes.

The Series A Notes were issued in transactions which were exempt from the registration requirements of the Securities Act solely to qualified institutional buyers, as that term is defined in Rule 144A under the Securities Act, or outside the United States in compliance with Regulation S under the Securities Act. This exchange offer is being made in accordance with a registration rights agreement, dated May 8, 2012, among us, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Capital Inc. and J.P. Morgan Securities LLC. Based on interpretations by the staff of the Securities and Exchange Commission, or the "SEC," we believe a holder (other than a broker-dealer who acquired Series A Notes directly from us for resale or an affiliate of ours) may offer and sell Series B Notes issued in exchange for Series A Notes without registration under the Securities Act and without the need to deliver a prospectus, if the holder acquired the Series B Notes in the ordinary course of its business and the holder has no arrangement to participate, and is not otherwise engaged, in a distribution of the Series B Notes.

Prior to this exchange offer, there has been no public market for the Series B Notes. We do not currently intend to list the Series B Notes on a securities exchange or seek approval for quotation of the Series B Notes on an automated quotation system. Therefore, it is unlikely that an active trading market for the Series B Notes will develop.

The exchange agent for this exchange offer is U.S. Bank National Association.

See "Risk Factors," which begin on page 9, for a discussion of certain factors that should be considered in evaluating the exchange offer.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SEC OR ANY STATE SECURITIES COMMISSION NOR HAS THE SEC OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is _____, 2012

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FORWARD-LOOKING STATEMENTS

Certain statements in this prospectus and the documents we incorporate by reference, other than purely historical information, including estimates, projections, statements relating to our business plans, objectives and expected operating results, and the assumptions upon which those statements are based, are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, or the "Exchange Act." Forward-looking statements are included with respect to, among other things, our current business plan, business strategy, portfolio management, prospects and liquidity. These forward-looking statements generally are identified by the words "believe," "project," "expect," "anticipate," "estimate," "intend," "strategy," "plan," "may," "should," "will," "would," "will be," "will continue," "will likely result" and similar expressions. Forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results or outcomes to differ materially from those contained in the forward-looking statements. Certain important factors that we believe might cause such differences are discussed in the section entitled "Risk Factors," beginning on page 9 of this prospectus. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In assessing all forward-looking statements, readers are urged to read carefully all cautionary statements contained in this prospectus and the documents we incorporate by reference.

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PROSPECTUS SUMMARY

This summary may not contain all the information that may be important to you. You should read the entire prospectus, as well as the documents incorporated by reference in it, before making an investment decision. All references to "we," "us" or the "Company" in this prospectus refer to iStar Financial Inc. and its consolidated subsidiaries, unless the context indicates otherwise.

Overview

We are a fully-integrated finance and investment company focused on the commercial real estate industry. We provide custom-tailored investment capital to high-end private and corporate owners of real estate and invest directly across a range of real estate sectors. We are taxed as a real estate investment trust, or "REIT," for U.S. federal income tax purposes and have invested more than \$35 billion over the past two decades. Our three primary business segments are lending, net leasing and real estate investment.

Our lending portfolio is primarily comprised of senior and mezzanine real estate loans that typically range in size from \$20 million to \$150 million and have original terms generally ranging from three to ten years. These loans may be either fixed-rate (based on the U.S. Treasury rate plus a spread) or variable-rate (based on LIBOR plus a spread) and are structured to meet the specific financing needs of borrowers. Our portfolio also includes senior and subordinated loans to corporations, particularly those engaged in real estate or real estate related businesses. These financings may be either secured or unsecured, typically range in size from \$20 million to \$150 million and have initial maturities generally ranging from three to ten years. Our loan portfolio includes whole loans, loan participations and debt securities.

Our net lease portfolio is primarily comprised of properties owned by us and leased to single creditworthy tenants, where the properties are generally mission critical headquarters or distribution facilities that are subject to long-term leases. Most of the leases provide for expenses at the facility to be paid by the tenant on a triple net lease basis. Net lease transactions have initial terms generally ranging from 15 to 20 years and typically range in size from \$20 million to \$150 million.

Our real estate investment portfolio includes real estate held for investment, or "REHI," and other real estate owned, or "OREO," properties primarily acquired through foreclosure or through deed-in-lieu of foreclosure in full or partial satisfaction of non-performing loans. Through the infusion of capital and/or intensive asset management, we generally seek to reposition and redevelop these assets with the objective of maximizing their value. We have developed significant expertise in the ownership and repositioning of multifamily, condominium, master planned and development properties.

Our primary sources of revenues are interest income, which is the interest that borrowers pay on loans, and operating lease income, which is the rent that corporate customers pay to lease our properties. We primarily generate income through the "spread" or "margin," which is the difference between the revenues generated from loans and leases and interest expense and the cost of our net lease operations. Going forward, we also expect to earn income from our other real estate investments. Income from real estate investments may include operating revenues as well as income from sales of properties either in bulk or through unit sales. This income will be reduced by holding costs while the real estate investments are redeveloped, repositioned and eventually sold.

We began our business in 1993 through private investment funds and became publicly traded in 1998. Since that time, we have grown through the origination of new lending and leasing transactions, as well as through corporate acquisitions.

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As of March 31, 2012, based on current gross carrying values, our total investment portfolio has the following characteristics:

Asset Type

Property Type

Geography

Our principal executive offices are located at 1114 Avenue of the Americas, New York, New York 10036, and our telephone number is (212) 930-9400. Our website is www.istarfinancial.com. The information on our website is not considered part of this prospectus except as expressly set forth in "Additional Information; Incorporation by Reference."

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THE EXCHANGE OFFER

The Exchange Offer	We are offering to exchange our 9.0% Series B Senior Notes due 2017 for identical principal amounts of our 9.0% Series A Senior Notes due 2017. At the date of this prospectus, \$275.0 million principal amount at maturity of Series A Senior Notes are outstanding. See "The Exchange Offer Terms of the Exchange Offer."
Expiration of Exchange Offer	5:00 p.m., New York time, on _____, 2012, unless the exchange offer is extended (the day on which the exchange offer expires being the expiration date). See "The Exchange Offer Expiration Date; Extension; Termination; Amendments."
Conditions of the Exchange Offer	The exchange offer is not conditioned upon any minimum principal amount of Series A Notes being tendered for exchange. However, the exchange offer is subject to certain customary conditions, which we may waive. See "The Exchange Offer Procedures for Tendering."
Accrued Interest on the Series A Notes	The Series B Notes will bear interest at the rate of 9.0% per annum from and including their date of issuance. When the first interest payment is made with regard to the Series B Notes, we will also pay interest on the Series A Notes which are exchanged, from the date they were issued to, but not including, the day the Series B Notes are issued. Interest on the Series A Notes which are exchanged will cease to accrue on the day prior to the day on which the Series B Notes are issued. The interest rate on the Series A Notes may increase under certain circumstances if we are not in compliance with our obligations under the registration rights agreement. See "Description of the Series B Notes."

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Procedures for Tendering Series A Notes

A holder of Series A Notes who wishes to accept the exchange offer must complete, sign and date a letter of transmittal, or a facsimile of one, in accordance with the instructions contained under "The Exchange Offer Procedures for Tendering" and in the letter of transmittal, and deliver the letter of transmittal, or facsimile, together with the Series A Notes and any other required documentation to the exchange agent at the address set forth in "The Exchange Offer Exchange Agent"; or must comply with the automated tender offer program procedures of The Depository Trust Company, or "DTC," described in "The Exchange Offer Procedures For Tendering." Series A Notes may be delivered physically or by confirmation of book-entry delivery of the Series A Notes to the exchange agent's account at DTC. By executing a letter of transmittal or by following the procedures for tendering through DTC, a holder will represent to us that, among other things, the person acquiring the Series B Notes will be doing so in the ordinary course of the person's business, whether or not the person is the holder, that neither the holder nor any other person is engaged in, or intends to engage in, or has an arrangement or understanding with any person to participate in, the distribution of the Series B Notes and that neither the holder nor any such other person is an "affiliate," as defined under Rule 405 of the Securities Act, of ours. Each broker or dealer that receives Series B Notes for its own account in exchange for Series A Notes which were acquired by the broker or dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of the Series B Notes. See "The Exchange Offer Procedures for Tendering" and "Sales of Series B Notes Received by Broker-Dealers."

Guaranteed Delivery Procedures

Eligible holders of Series A Notes who wish to tender their Series A Notes and (1) whose Series A Notes are not immediately available or (2) who cannot deliver their Series A Notes or any other documents required by the letter of transmittal to the exchange agent prior to the expiration date (or complete the procedure for book-entry transfer on a timely basis), may tender their Series A Notes according to the guaranteed delivery procedures described in the letter of transmittal. (Note: if tender is made through DTC's automated tender offer program, this process is achieved through that program.) See "The Exchange Offer Guaranteed Delivery Procedures."

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Acceptance of Series A Notes and Delivery of Series B Notes	Upon satisfaction or waiver of all conditions to the exchange offer, we will accept any and all Series A Notes that are properly tendered in response to the exchange offer prior to 5:00 p.m., New York City time, on the expiration date. The Series B Notes issued pursuant to the exchange offer will be delivered promptly after acceptance of the Series A Notes. See "The Exchange Offer Procedures for Tendering."
Withdrawal Rights	Tenders of Series A Notes may be withdrawn at any time prior to 5:00 p.m., New York City time, on the expiration date. See "The Exchange Offer Withdrawal of Tenders."
The Exchange Agent	U.S. Bank National Association is the exchange agent. The address and telephone number of the exchange agent are set forth in "The Exchange Offer Exchange Agent."
Fees and Expenses	We will bear all expenses incidental to our consummation of the exchange offer and compliance with the registration rights agreement. We will also pay any transfer taxes which are applicable to the exchange offer (but not transfer taxes due to transfers of Series A Notes or Series B Notes by the holder). See "The Exchange Offer Fees and Expenses."
Resales of the Series B Notes	Based on interpretations by the staff of the SEC set forth in no-action letters issued to third parties, we believe Series B Notes issued pursuant to this exchange offer in exchange for Series A Notes may be offered for resale, resold and otherwise transferred by the holder (other than (1) a broker-dealer who purchased the Series A Notes directly from us for resale pursuant to Rule 144A under the Securities Act or another exemption under the Securities Act or (2) a person that is an affiliate of ours, as that term is defined in Rule 405 under the Securities Act), without registration or the need to deliver a prospectus under the Securities Act, provided that the holder is acquiring the Series B Notes in the ordinary course of business and is not participating, and has no arrangement or understanding with any person to participate, in a distribution of the Series B Notes. Each broker-dealer that receives Series B Notes for its own account in exchange for Series A Notes that were acquired by the broker as a result of market-making or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of the Series B Notes. See "The Exchange Offer Purpose and Effects" and "Sales of Series B Notes Received By Broker-Dealers."

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THE SERIES B NOTES

The exchange offer applies to \$275.0 million aggregate principal amount at maturity of Series A Notes. The terms of the Series B Notes are identical in all material respects with those of the Series A Notes, except for certain transfer restrictions and rights relating to the exchange of the Series A Notes for Series B Notes. The Series B Notes will evidence the same debt as the Series A Notes and will be entitled to the benefits of the indenture under which both the Series A Notes were, and the Series B Notes will be, issued. See "Description of the Series B Notes."

Issuer	iStar Financial Inc.
Securities Offered	\$275,000,000 principal amount of 9.0% Series B Senior Notes due 2017.
Maturity	Unless redeemed earlier, the Series B Notes will mature on June 1, 2017.
Interest Rate	The Series B Notes will bear interest at 9.0% per year (calculated using a 360-day year comprised of twelve 30-day months).
Interest Payment Dates	Interest on the Series B Notes will be paid on each June 1 and December 1, commencing December 1, 2012. Interest will accrue from the date of issue.
Ranking	The Series B Notes are our unsecured senior obligations and rank equally with our existing and future unsecured senior indebtedness and, to the extent we incur subordinated indebtedness in the future, senior to such indebtedness. The Series B Notes will be effectively subordinated to all of our secured indebtedness to the extent of the value of the assets securing such indebtedness and all indebtedness of our subsidiaries (including indebtedness of iStar Financial Inc. guaranteed by its subsidiaries). As of March 31, 2012, the aggregate principal amount of our outstanding consolidated indebtedness was \$6.0 billion, of which \$3.6 billion was debt of our subsidiaries (including indebtedness of iStar Financial Inc. guaranteed by its subsidiaries) and \$3.5 billion was secured indebtedness.
Optional Redemption	We may redeem the Series B Notes in whole or in part prior to their maturity at any time at a price equal to 100% of their principal amount plus a "make-whole" premium and accrued and unpaid interest, if any, to the redemption date, as described in "Description of the Series B Notes Redemption."
Change of Control Offer	If a Change of Control Triggering Event, as defined in "Description of the Series B Notes," occurs, we must give holders of the Series B Notes the opportunity to sell us their Series B Notes at 101% of their face amount, plus accrued and unpaid interest to, but not including, the date of repurchase.

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Certain Indenture Provisions

The indenture, dated May 8, 2012, or the "Indenture," between us and U.S. Bank National Association, as trustee, or the "Trustee," governing the Series B Notes contains covenants limiting our and our subsidiaries' ability to:

incur indebtedness;

maintain unencumbered assets; or

merge or consolidate with another person.

These covenants are subject to a number of important limitations and exceptions. See "Description of the Series B Notes Certain Covenants."

Risk Factors

Investing in the Series B Notes involves substantial risks. See "Risk Factors" in this prospectus for a description of certain of the risks you should consider before investing in the Series B Notes.

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RISK FACTORS

This section describes some, but not all, of the risks of purchasing the Series B Notes in this exchange offer. You should carefully consider these risks, in addition to the other information contained or incorporated by reference in this prospectus, before purchasing the Series B Notes. You should carefully review the factors discussed below and the cautionary statements referred to in "Forward-Looking Statements."

If you fail to exchange your Series A Notes, they will continue to be restricted securities and you may experience difficulty selling them following this exchange offer.

The Series A Notes which you do not tender in this exchange offer will continue to be restricted securities. After the completion of this exchange offer, we will not have any further obligation to issue Series B Notes to you in exchange for your Series A Notes. You may not offer or sell Series A Notes except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws. Because we anticipate that most holders of Series A Notes will elect to exchange those notes for Series B Notes, and that most potential investors in the notes will prefer to purchase registered Series B Notes rather than purchase unregistered Series A Notes, you may experience difficulty selling your Series A Notes following the exchange offer.

There is no public market for the Series B Notes.

If the Series B Notes are traded after their initial issuance, they may trade at a discount from their initial offering price, depending upon prevailing interest rates, the market for similar securities, our performance and certain other factors. Historically, there has been substantial volatility in the prices of corporate debt securities, and the price of the Series B Notes is likely to be affected by factors which affect the price of corporate debt securities generally. We do not intend to apply for listing of the Series B Notes on any securities exchange or for inclusion of the Series B Notes on any automated quotation system.

Changes in general economic conditions have and may continue to adversely affect our business.

Our success is generally dependent upon economic conditions in the U.S. and, in particular, the geographic areas in which a substantial number of our investments are located. Substantially all businesses, including ours, were negatively affected by the recent economic recession and illiquidity and volatility in the credit and commercial real estate markets. Although there were early signs of improvement in the commercial real estate and credit markets beginning in 2010 and in 2011, such markets remain volatile and it is not possible for us to predict whether these trends will continue in the future or quantify the impact of these or other trends on our financial results. Deterioration in economic trends could have a material adverse effect on our financial performance and our ability to meet our debt obligations.

We have significant indebtedness and limitations on our liquidity and ability to raise capital may adversely affect us.

Sufficient liquidity is critical to the management of our balance sheet and our ability to meet our scheduled debt payments. However, liquidity in the capital markets has been constrained since the beginning of the credit crisis and our cost of funds has increased. During this time, we have primarily relied on secured borrowings, repayments from our loan assets and proceeds from asset sales to fund our operations and meet our debt maturities, and we expect to continue to rely primarily on these sources of liquidity for the foreseeable future. Our ability to access these and other sources of capital will be subject to a number of factors, many of which are outside of our control, such as conditions prevailing in the credit and real estate markets. There can be no assurance that we will have access to

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liquidity when needed on terms that are acceptable to us, or at all. In addition, we may decide to pursue transactions, such as sales of assets, on terms that would not otherwise be attractive to us in order to generate sufficient liquidity. We may also encounter difficulty in finding buyers of assets or executing capital raising strategies on acceptable terms in a timely manner, which could impact our ability to make scheduled repayments on our outstanding debt.

As of March 31, 2012, we had approximately \$913.8 million of debt maturing and minimum required amortization payments due on or before December 31, 2012. Of this amount, \$162.8 million represents the minimum aggregate required amortization due on the 2011 Secured Credit Agreement (as defined herein) and the 2012 Secured Credit Agreement (as defined herein), which is collateralized by assets with an aggregate carrying value of \$4.19 billion. Subsequent to March 31, 2012, we made repayments under the 2011 Secured Credit Agreement exceeding the \$121.8 million of minimum amortization due through year-end, leaving no further amortization requirements prior to the payment of any remaining balance due at maturity in June 2013. In addition, subsequent to March 31, 2012, we made repayments exceeding the \$41.0 million of minimum amortization due through the end of 2012 related to the 2012 Secured Credit Agreement, meeting all minimum amortization requirements through December 31, 2012. As of March 31, 2012, our other debt maturities for the remainder of 2012 include \$90.3 million of senior unsecured notes due in June and \$660.7 million of convertible notes due in October. As of March 31, 2012, we had approximately \$2.05 billion of debt maturing and minimum required amortization payments due during the year ending December 31, 2013.

As of March 31, 2012, we had \$609.7 million of cash and cash reserved for repayment of indebtedness, including \$482.9 million of refinancing proceeds included in restricted cash reserved for the repayment of indebtedness, and unencumbered assets with a carrying value of \$3.20 billion. In addition, on May 8, 2012, we sold \$275.0 million aggregate principal amount of the Series A Notes at 98.012% of their principal amount. The proceeds from this transaction, along with cash reserved for repayment of indebtedness as of March 31, 2012, will be sufficient to repay substantially all of our unsecured debt maturing in 2012. Failure to repay or refinance our borrowings as they come due would be an event of default under the relevant debt instruments, which could result in a cross default and acceleration of our other outstanding debt obligations, all of which would have a material adverse effect on our business and stock price.

The Series B Notes will be structurally subordinated to subsidiary debt.

The Series B Notes are not guaranteed by any of our subsidiaries. As a result, the Series B Notes will be structurally subordinated to all indebtedness and other obligations for our subsidiaries. As of March 31, 2012, our subsidiaries had \$3.6 billion of indebtedness outstanding (including indebtedness of iStar Financial Inc. guaranteed by its subsidiaries).

Creditors of a subsidiary are entitled to be paid what is due to them before assets of the subsidiary become available for creditors of its parent. Accordingly, claims of holders of the Series B Notes will be structurally subordinated to any claims of creditors of our subsidiaries.

We have suffered adverse consequences as a result of our credit ratings.

Our borrowing costs and our access to the debt capital markets depend significantly on our credit ratings. Our unsecured corporate credit ratings from major national credit rating agencies are currently below investment grade. Having below investment grade credit ratings has increased our borrowing costs and caused restrictive covenants in our public debt instruments to become operative. These restrictive covenants are described below in "Covenants in our indebtedness could limit our flexibility and adversely affect our financial condition." These factors have adversely impacted our financial performance and will continue to do so unless our credit ratings improve.

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Covenants in our indebtedness could limit our flexibility and adversely affect our financial condition.

Our outstanding unsecured debt securities contain corporate level covenants that include a covenant to maintain a ratio of unencumbered assets to unsecured indebtedness of at least 1.2x and a restriction on debt incurrence based upon the effect of the debt incurrence on our fixed charge coverage. If any of our covenants are breached and not cured within applicable cure periods, the breach could result in acceleration of our debt securities unless a waiver or modification is agreed upon with the requisite percentage of the bondholders. While we expect that our ability to incur new indebtedness under the fixed charge coverage ratio will be limited for the foreseeable future, we will continue to be permitted to incur indebtedness for the purpose of refinancing existing indebtedness and for other permitted purposes under the indentures.

The 2011 Secured Credit Agreement and the 2012 Secured Credit Agreement contain certain covenants, including covenants relating to collateral coverage, dividend payments, restrictions on fundamental changes, transactions with affiliates, matters relating to the liens granted to the lenders and the delivery of information to the lenders. In particular, we are required to maintain collateral coverage of 1.25x outstanding borrowings. In addition, for so long as we maintain our qualification as a REIT, the 2011 Secured Credit Agreement and the 2012 Secured Credit Agreement permit us to distribute 100% of our REIT taxable income on an annual basis. We may not pay common dividends if we cease to qualify as a REIT.

The 2011 Secured Credit Agreement and the 2012 Secured Credit Agreement contain cross default provisions that would allow the lenders to declare an event of default and accelerate our indebtedness to them if we fail to pay amounts due in respect of our other recourse indebtedness in excess of specified thresholds or if the lenders under such other indebtedness are otherwise permitted to accelerate such indebtedness for any reason. The indentures governing our unsecured public debt securities permit the bondholders to declare an event of default and accelerate our indebtedness to them if our other recourse indebtedness in excess of specified thresholds is not paid at final maturity or if such indebtedness is accelerated.

The covenants described above could limit our flexibility and make it more difficult and/or expensive to refinance our existing indebtedness and make new investments. In addition, a default by us on our indebtedness would have a material adverse effect on our business and the market price of our common stock.

Our reserves for loan losses may prove inadequate, which could have a material adverse effect on our financial results.

We maintain loan loss reserves to protect against potential losses and conduct a review of the adequacy of these reserves on a quarterly basis. Our general loan loss reserve reflects management's then-current estimation of the probability and severity of losses within our portfolio, based on this quarterly review. In addition, our determination of asset-specific loan loss reserves relies on material estimates regarding the fair value of loan collateral. Estimation of ultimate loan losses, provision expenses and loss reserves is a complex and subjective process. As such, there can be no assurance that management's judgment will prove to be correct and that reserves will be adequate over time to protect against potential future losses. Such losses could be caused by factors including, but not limited to, unanticipated adverse changes in the economy or events adversely affecting specific assets, borrowers, industries in which our borrowers operate or markets in which our borrowers or their properties are located. In particular, our non-performing loans increased significantly during the financial crisis, driven by the weak economy and the disruption of the credit markets which adversely impacted the ability and willingness of many of our borrowers to service their debt and refinance our loans to them at maturity. If our reserves for credit losses prove inadequate we may suffer additional losses, which would have a material adverse effect on our financial performance and results of operations.

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We are required to make a number of judgments in applying accounting policies, and different estimates and assumptions could result in changes to our financial condition and results of operations.

Material estimates that are particularly susceptible to significant change relate to our determination of the reserve for loan losses, which is based primarily on the estimated fair value of loan collateral, as well as the valuation of net lease, OREO and REHI assets, intangible assets and deferred tax assets. While we have identified those accounting policies that are considered critical and have procedures in place to facilitate the associated judgments, different assumptions in the application of these policies could have a material adverse effect on our financial performance and results of operations and actual results may differ materially from our estimates.

We have suffered losses when a borrower defaults on a loan and the underlying collateral is not sufficient, and we may suffer additional losses in the future.

We have suffered significant losses arising from borrower defaults on our loan assets and we may suffer additional losses in the future. In the event of a default by a borrower on a non-recourse loan, we will only have recourse to the real estate-related assets collateralizing the loan. If the underlying collateral value is less than the loan amount, we will suffer a loss. Conversely, we sometimes make loans that are unsecured or are secured only by equity interests in the borrowing entities. These loans are subject to the risk that other lenders may be directly secured by the real estate assets of the borrower. In the event of a default, those collateralized lenders would have priority over us with respect to the proceeds of a sale of the underlying real estate. In cases described above, we may lack control over the underlying asset collateralizing our loan or the underlying assets of the borrower prior to a default, and as a result the value of the collateral may be reduced by acts or omissions by owners or managers of the assets.

We sometimes obtain individual or corporate guarantees from borrowers or their affiliates. In cases where guarantees are not fully or partially secured, we typically rely on financial covenants from borrowers and guarantors which are designed to require the borrower or guarantor to maintain certain levels of creditworthiness. Where we do not have recourse to specific collateral pledged to satisfy such guarantees or recourse loans, we will only have recourse as an unsecured creditor to the general assets of the borrower or guarantor, some or all of which may be pledged to satisfy other lenders. There can be no assurance that a borrower or guarantor will comply with its financial covenants, or that sufficient assets will be available to pay amounts owed to us under our loans and guarantees. As a result of these factors, we may suffer additional losses which could have a material adverse effect on our financial performance.

In the event of a borrower bankruptcy, we may not have full recourse to the assets of the borrower in order to satisfy our loan. In addition, certain of our loans are subordinate to other debts of the borrower. If a borrower defaults on our loan or on debt senior to our loan, or in the event of a borrower bankruptcy, our loan will be satisfied only after the senior debt receives payment. Where debt senior to our loan exists, the presence of intercreditor arrangements may limit our ability to amend our loan documents, assign our loans, accept prepayments, exercise our remedies (through "standstill" periods) and control decisions made in bankruptcy proceedings relating to borrowers. Bankruptcy and borrower litigation can significantly increase collection costs and losses and the time necessary to acquire title to the underlying collateral, during which time the collateral may decline in value, causing us to suffer additional losses.

If the value of collateral underlying our loan declines or interest rates increase during the term of our loan, a borrower may not be able to obtain the necessary funds to repay our loan at maturity through refinancing. Decreasing collateral value and/or increasing interest rates may hinder a borrower's ability to refinance our loan because the underlying property cannot satisfy the debt service

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coverage requirements necessary to obtain new financing. If a borrower is unable to repay our loan at maturity, we could suffer additional loss which may adversely impact our financial performance.

We are subject to additional risks associated with loan participations.

Some of our loans are participation interests or co-lender arrangements in which we share the rights, obligations and benefits of the loan with other lenders. We may need the consent of these parties to exercise our rights under such loans, including rights with respect to amendment of loan documentation, enforcement proceedings in the event of default and the institution of, and control over, foreclosure proceedings. Similarly, a majority of the participants may be able to take actions to which we object but to which we will be bound if our participation interest represents a minority interest. We may be adversely affected by this lack of full control.

We are subject to additional risk associated with foreclosed assets.

We have obtained title to a number of assets that have served as collateral on defaulted loans. These assets are classified as REHI or OREO, based on our intention to either hold the properties over a longer period or to market them for sale in the near term. The assets are predominantly land and substantially completed condominium/multi-family projects. We must incur costs to carry these assets and in some cases make improvements to or complete the assets. These activities require additional liquidity and also result in additional expenses that impact our operating results. In addition, to the extent we need to raise liquidity through asset sales, we may be limited in our ability to sell these assets in a short time frame. We currently have several loans that are in default and to the extent the borrowers cannot cure the default, we could take title to these assets, which would require additional liquidity and further increase our expenses.

We may experience losses if the creditworthiness of our net lease asset tenants deteriorates and they are unable to meet their lease obligations.

We own the properties leased to the tenants of our net lease assets and receive rents from the tenants during the contracted term of such leases. A tenant's ability to pay rent is determined by its creditworthiness, among other factors. If a tenant's credit deteriorates, the tenant may default on its obligations under our lease and may also become bankrupt. The bankruptcy or insolvency of our tenants or other failure to pay is likely to adversely affect the income produced by our net lease assets. If a tenant defaults, we may experience delays and incur substantial costs in enforcing our rights as landlord. If a tenant files for bankruptcy, we may not be able to evict the tenant solely because of such bankruptcy or failure to pay. A court, however, may authorize a tenant to reject and terminate its lease with us. In such a case, our claim against the tenant for unpaid, future rent would be subject to a statutory cap that might be substantially less than the remaining rent owed under the lease. In addition, certain amounts paid to us within 90 days prior to the tenant's bankruptcy filing could be required to be returned to the tenant's bankruptcy estate. In any event, it is highly unlikely that a bankrupt or insolvent tenant would pay in full amounts it owes us under a lease. In other circumstances, where a tenant's financial condition has become impaired, we may agree to partially or wholly terminate the lease in advance of the termination date in consideration for a lease termination fee that is likely less than the total contractual rental amount. Without regard to the manner in which the lease termination occurs, we are likely to incur additional costs in the form of tenant improvements and leasing commissions in our efforts to lease the space to a new tenant. In any of the foregoing circumstances, our financial performance could be materially adversely affected.

Lease expirations, lease defaults and lease terminations may adversely affect our revenue.

Lease expirations and lease terminations may result in reduced revenues if the lease payments received from replacement tenants are less than the lease payments received from the expiring or

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terminating corporate tenants. In addition, lease defaults or lease terminations by one or more significant tenants or the failure of tenants under expiring leases to elect to renew their leases could cause us to experience long periods of vacancy with no revenue from a facility and to incur substantial capital expenditures and/or lease concessions in order to obtain replacement tenants.

We are subject to risks relating to our asset concentration.

Our portfolio consists primarily of large balance commercial real estate loans and net lease, OREO and REHI assets. Our asset base is generally diversified by asset type, obligor, property type and geographic location. However, as of March 31, 2012, approximately 20.4% of the carrying value of our assets related to land, 16.4% related to apartment/residential assets, 11.7% related to retail properties and 10.3% related to office properties. All of these types of collateral have been adversely affected by the financial crisis. In addition, as of March 31, 2012, approximately 23.9% of the carrying value of our assets related to properties located in the western U.S., 17.9% related to properties located in the northeastern U.S., 15.0% related to properties located in the southeast U.S and 12.4% related to properties located in the southwestern U.S. These regions include areas such as Florida, California and Nevada that were particularly hard hit by the downturn in the residential real estate markets. We may suffer additional losses on our assets based on these concentrations.

We underwrite the credit of prospective borrowers and customers and often require them to provide some form of credit support such as corporate guarantees, letters of credit and/or cash security deposits. Although our loans and other lending investments and net lease assets are geographically diverse and the borrowers and customers operate in a variety of industries, to the extent we have a significant concentration of interest or operating lease revenues from any single borrower or customer, the inability of that borrower or customer to make its payment could have an adverse effect on us. As of March 31, 2012, our five largest borrowers or tenants of net lease assets collectively accounted for approximately 22.9% of our aggregate annualized interest and operating lease revenue, of which no single customer accounts for more than 8.0%.

We compete with a variety of financing and leasing sources for our customers.

The financial services industry and commercial real estate markets are highly competitive. Our competitors include finance companies, other REITs, commercial banks and thrift institutions, investment banks and hedge funds. Our competitors seek to compete aggressively on the basis of a number of factors including transaction pricing, terms and structure. We may have difficulty competing to the extent we are unwilling to match our competitors' deal terms in order to maintain our interest margins and/or credit standards. To the extent that we match competitors' pricing, terms or structure, we may experience decreased interest margins and/or increased risk of credit losses, which could have an adverse effect on our financial performance.

We face significant competition within our net leasing business from other owners, operators and developers of properties, many of which own properties similar to ours in markets where we operate. Such competition may affect our ability to attract and retain tenants and reduce the rents we are able to charge. These competing properties may have vacancy rates higher than our properties, which may result in their owners being willing to rent space at lower rental rates than we would or providing greater tenant improvement allowances or other leasing concessions. This combination of circumstances could adversely affect our revenues and financial performance.

We are subject to certain risks associated with investing in real estate, including potential liabilities under environmental laws and risks of loss from earthquakes and terrorism.

Under various U.S. federal, state and local environmental laws, ordinances and regulations, a current or previous owner of real estate (including, in certain circumstances, a secured lender that

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succeeds to ownership or control of a property) may become liable for the costs of removal or remediation of certain hazardous or toxic substances at, on, under or in its property. Those laws typically impose cleanup responsibility and liability without regard to whether the owner or control party knew of or was responsible for the release or presence of such hazardous or toxic substances. The costs of investigation, remediation or removal of those substances may be substantial. The owner or control party of a site may be subject to common law claims by third parties based on damages and costs resulting from environmental contamination emanating from a site. Certain environmental laws also impose liability in connection with the handling of or exposure to asbestos-containing materials, pursuant to which third parties may seek recovery from owners of real properties for personal injuries associated with asbestos-containing materials. While a secured lender is not likely to be subject to these forms of environmental liability, when we foreclose on real property, we become an owner and are subject to the risks of environmental liability. Additionally, under our net lease assets we require our tenants to undertake the obligation for environmental compliance and indemnify us from liability with respect thereto. There can be no assurance that our tenants will have sufficient resources to satisfy their obligations to us.

As of March 31, 2012, approximately 27.3% of the carrying value of our assets was located in the western and northwestern United States, geographic areas at higher risk for earthquakes. In addition, a significant number of our properties are located in New York City and other major urban areas which, in recent years, have been high risk geographical areas for terrorism and threats of terrorism. Future earthquakes or acts of terrorism could adversely impact the demand for, and value of, our assets and could also directly impact the value of our assets through damage, destruction or loss, and could thereafter materially impact the availability or cost of insurance to protect against these events. Although we believe our owned real estate and the properties collateralizing our loan assets are adequately covered by insurance, we cannot predict at this time if we or our borrowers will be able to obtain appropriate coverage at a reasonable cost in the future, or if we will be able to continue to pass along all of the costs of insurance to our tenants. Any earthquake or terrorist attack, whether or not insured, could have a material adverse effect on our financial performance, the market price of our common stock and our ability to pay dividends. In addition, there is a risk that one or more of our property insurers may not be able to fulfill its obligations with respect to claims payments due to a deterioration in its financial condition.

From time to time we make investments in companies over which we do not have sole control. Some of these companies operate in industries that differ from our current operations, with different risks than investing in real estate.

From time to time we make debt or equity investments in other companies that we may not control or over which we may not have sole control. These investments include but are not limited to: LNR Property Corporation, or "LNR," Madison Funds and other equity and mezzanine investments. Although these businesses generally have a significant real estate component, some of them operate in businesses that are different from our primary business segments including, without limitation, special servicing of securitized debt. Consequently, investments in these businesses, among other risks, subject us to the operating and financial risks of industries other than real estate and to the risk that we do not have sole control over the operations of these businesses.

From time to time we may make additional investments in or acquire other entities that may subject us to similar risks. Investments in entities over which we do not have sole control, including joint ventures, present additional risks such as having differing objectives than our partners or the entities in which we invest, or becoming involved in disputes, or competing with those persons. In addition, we rely on the internal controls and financial reporting controls of these entities and their failure to maintain effectiveness or comply with applicable standards may adversely affect us.

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Declines in the market values of our equity investments may adversely affect periodic reported results.

Most of our equity investments are in funds or companies that are not publicly traded and their fair value may not be readily determinable. We may periodically estimate the fair value of these investments, based upon available information and management's judgment. Because such valuations are inherently uncertain, they may fluctuate over short periods of time. In addition, our determinations regarding the fair value of these investments may be materially higher than the values that we ultimately realize upon their disposal, which could result in losses that have a material adverse effect on our financial performance, the market price of our common stock and our ability to pay dividends.

We may utilize derivative instruments to hedge risk, which may adversely affect our borrowing cost and expose us to other risks.

The derivative instruments we may use are typically in the form of interest rate swaps and foreign currency swaps. Interest rate swaps effectively change variable-rate debt obligations to fixed-rate debt obligations or fixed-rate debt obligations to variable-rate debt obligations. Foreign currency swaps limit our exposure to changes in currency rates in respect of certain investments denominated in foreign currencies.

Our use of derivative instruments also involves the risk that a counterparty to a hedging arrangement could default on its obligation and the risk that we may have to pay certain costs, such as transaction fees or breakage costs, if a hedging arrangement is terminated by us. As a matter of policy, we enter into hedging arrangements with counterparties that are large, creditworthy financial institutions typically rated at least "A/A2" by S&P and Moody's, respectively.

Developing an effective strategy for dealing with movements in interest rates and foreign currencies is complex and no strategy can completely insulate us from risks associated with such fluctuations. There can be no assurance that any hedging activities will have the desired beneficial impact on our results of operations or financial condition.

Significant increases in interest rates could have an adverse effect on our operating results.

Our operating results depend in part on the difference between the interest and related income earned on our assets and the interest expense incurred in connection with our interest bearing liabilities. Changes in the general level of interest rates prevailing in the financial markets will affect the spread between our interest earning assets and interest bearing liabilities subject to the impact of interest rate floors and caps, as well as the amounts of floating rate assets and liabilities. Any significant compression of the spreads between interest earning assets and interest bearing liabilities could have a material adverse effect on us. In the event of a significant rising interest rate environment, rates could exceed the interest rate floors that exist on certain of our floating rate debt and create a mismatch between our floating rate loans and our floating rate debt that could have a significant adverse effect on our operating results. In addition, an increase in interest rates could, among other things, reduce the value of our fixed-rate interest bearing assets and our ability to realize gains from the sale of such assets. Interest rates are highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political conditions, and other factors beyond our control.

Quarterly results may fluctuate and may not be indicative of future quarterly performance.

Our quarterly operating results could fluctuate; therefore, reliance should not be placed on past quarterly results as indicative of our performance in future quarters. Factors that could cause quarterly operating results to fluctuate include, among others, variations in loan and net lease portfolio performance, levels of non-performing assets and related provisions, market values of investments, costs

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associated with debt, general economic conditions, the state of the real estate and financial markets and the degree to which we encounter competition in our markets.

Our ability to retain and attract key personnel is critical to our success.

Our success depends on our ability to retain our senior management and the other key members of our management team and recruit additional qualified personnel. We rely in part on equity compensation to retain and incentivize our personnel. In addition, if members of our management join competitors or form competing companies, the competition could have a material adverse effect on our business. Efforts to retain or attract professionals may result in additional compensation expense, which could affect our financial performance.

We are highly dependent on information systems, and systems failures could significantly disrupt our business.

Our business is highly dependent on communications, information, financial and operational systems. Any failure or interruption of our systems could cause delays or other problems in our business activities, which could have a material adverse effect on our operations and financial performance.

We may change certain of our policies without stockholder approval.

Our charter does not set forth specific percentages of the types of investments we may make. We can amend, revise or eliminate our investment financing and conflict of interest policies at any time at our discretion without a vote of our stockholders. A change in these policies could adversely affect our financial condition or results of operations or the market price of our common stock.

Certain provisions in our charter may inhibit a change in control.

Generally, to maintain our qualification as a REIT under the Code, not more than 50% in value of our outstanding shares of stock may be owned, directly or indirectly, by five or fewer individuals at any time during the last half of our taxable year. The Code defines "individuals" for purposes of the requirement described in the preceding sentence to include some types of entities. Under our charter, no person may own more than 9.8% of our outstanding shares of our capital stock, with some exceptions. The restrictions on transferability and ownership may delay, deter or prevent a change in control or other transaction that might involve a premium price or otherwise be in the best interest of the security holders.

We would be subject to adverse consequences if we fail to qualify as a REIT.

We believe that we have been organized and operated in a manner so as to qualify for taxation as a REIT for U.S. federal income tax purposes commencing with our taxable year ended December 31, 1998. However, our qualification as a REIT has depended and will continue to depend on our ability to meet various requirements concerning, among other things, the ownership of our outstanding stock, the nature of our assets, the sources of our income and the amount of our distributions to our stockholders. As a result of the current credit crisis, it may be difficult for us to meet one or more of the requirements for qualification as a REIT including, but not limited to, our distribution requirement.

If we were to fail to qualify as a REIT for any taxable year, we would not be allowed a deduction for distributions to our stockholders in computing our net taxable income and would be subject to U.S. federal income tax, including any applicable alternative minimum tax, or "AMT," on our net taxable income at regular corporate rates, as well as applicable state and local taxes. Unless entitled to relief under certain Code provisions, we would also be disqualified from treatment as a REIT for the four subsequent taxable years following the year during which our REIT qualification was lost. As a result, cash available for distribution would be reduced for each of the years involved. Furthermore, it is

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possible that future economic, market, legal, tax or other considerations may cause our REIT qualification to be revoked.

We may be required to report taxable income for certain investments in excess of the economic income we ultimately realize from them and, as a result, we may be forced to borrow funds, sell assets or take other actions during unfavorable market conditions.

To qualify as a REIT, we generally must distribute annually to our stockholders at least 90% of our net taxable income, excluding net capital gains, and we will be subject to U.S. federal income tax, as well as applicable state and local taxes, to the extent that we distribute less than 100% of our net taxable income each year. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which distributions paid by us in any calendar year are less than the sum of 85% of our ordinary income, 95% of our capital gain net income and 100% of our undistributed income from prior years.

In the event that principal, premium or interest payments with respect to a particular debt instrument that we hold are not made when due, we may nonetheless be required to continue to recognize the unpaid amounts as taxable income. Due to these and other potential timing differences between income recognition or expense deduction and cash receipts or disbursements, there is a significant risk that we may have substantial taxable income in excess of cash available for distribution.

In that event, in order to qualify as a REIT and avoid the payment of income and excise taxes, we may need to borrow funds or take other action to satisfy the REIT distribution requirements for the taxable year in which this "phantom income" is recognized.

Certain of our activities, including our use of taxable REIT subsidiaries, are subject to taxes that could reduce our cash flows.

Even if we qualify as a REIT for U.S. federal income tax purposes, we will be required to pay some U.S. federal, state, local and non-U.S. taxes on our income and property, including taxes on any undistributed income, taxes on income from certain activities conducted as a result of foreclosures, and property and transfer taxes, such as mortgage recording taxes. We would be required to pay taxes on net taxable income that we fail to distribute to our stockholders. In addition, we hold a significant amount of assets in one or more taxable REIT subsidiaries, including assets that we have acquired through foreclosure, assets that may be treated as dealer property, and other assets that could adversely affect our ability to qualify as a REIT if held directly by us. As a result, we may be required to pay income taxes related to these assets. Furthermore, we will be subject to a 100% penalty tax to the extent our economic arrangements with our taxable REIT subsidiaries were held to be not comparable to similar arrangements among unrelated parties. There are also limitations on the ability of taxable REIT subsidiaries to make interest payments to affiliated REITs. We will also be subject to a 100% tax to the extent we derive income from the sale of assets to customers in the ordinary course of business. To the extent we or our taxable REIT subsidiaries are required to pay U.S. federal, state, local or non-U.S. taxes, we will have less cash available for distribution to our stockholders.

A failure to comply with the limits on our ownership of and relationship with our taxable REIT subsidiaries would jeopardize our REIT qualification and may result in the application of a 100% excise tax.

No more than 25% of the value of a REIT's total assets may consist of stock or securities of one or more taxable REIT subsidiaries. This requirement limits the extent to which we can conduct activities through taxable REIT subsidiaries or expand the activities that we conduct through taxable REIT subsidiaries. The values of some of our assets, including assets that we hold through taxable REIT subsidiaries may not be subject to precise determination, and values are subject to change in the future. In addition, we hold certain loans to one or more of our taxable REIT subsidiaries that are

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secured by real property. We treat these mortgage loans as qualifying assets for purposes of the REIT assets tests to the extent that they are secured by real property. As a result, we do not treat such loans as subject to the limitation that securities from taxable REIT subsidiaries must constitute less than 25% of our total assets. While we believe that loans to a taxable REIT subsidiary are treated as qualifying real estate assets for purposes of the REIT asset tests to the extent they are secured by real property, the U.S. federal income tax treatment of such loans is not entirely clear. If the Internal Revenue Service, or the "IRS," were to successfully challenge our treatment of these mortgage loans as qualifying real estate assets, our ability to meet the REIT asset tests and other REIT requirements could be adversely affected. Accordingly, there can be no assurance that we have met or will be able to continue to comply with the taxable REIT subsidiary 25% limitation.

In addition, we may from time to time need to make distributions from a taxable REIT subsidiary in order to keep the value of our taxable REIT subsidiaries below 25% of our total assets. However, taxable REIT subsidiary dividends will generally not constitute qualifying income for purposes of the 75% REIT gross income test. While we will monitor our compliance with both this income test and the limitation on the percentage of our total assets represented by taxable REIT subsidiary securities, and intend to conduct our affairs so as to comply with both, the two may at times be in conflict with one another. For example, it is possible that we may wish to distribute a dividend from a taxable REIT subsidiary in order to reduce the value of our taxable REIT subsidiaries below 25% of our assets, but we may be unable to do so without violating the 75% REIT gross income test.

Although there are other measures we can take in such circumstances in order to remain in compliance with the requirements for REIT qualification, there can be no assurance that we will be able to comply with both of these tests in all market conditions.

Our Investment Company Act of 1940, as amended, or the "Investment Company Act," exemption limits our investment discretion and loss of the exemption would adversely affect us.

We believe that we currently are not, and we intend to operate our company so that we will not be, regulated as an investment company under the Investment Company Act because we are "primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interest in real estate." Specifically, we are required to invest at least 55% of our assets in "qualifying real estate assets" (that is, real estate, mortgage loans and other qualifying interests in real estate), and at least an additional 25% of our assets in other "real estate-related assets," such as mezzanine loans and unsecured investments in real estate entities, or additional qualifying real estate assets.

We will need to monitor our assets to ensure that we continue to satisfy the percentage tests. Maintaining our exemption from regulation as an investment company under the Investment Company Act limits our ability to invest in assets that otherwise would meet our investment strategies. If we fail to qualify for this exemption, we could not operate our business efficiently under the regulatory scheme imposed on investment companies under the Investment Company Act, and we could be required to restructure our activities. This would have a material adverse effect on our financial performance and the market price of our securities.

Ability to repurchase notes upon change of control may be limited.

Upon the occurrence of a Change of Control Triggering Event, each holder of Series B Notes will have the right to require us to repurchase the holder's Series B Notes. Additionally, under the 2011 Secured Credit Agreement and the 2012 Secured Credit Agreement, a change of control (as defined therein) constitutes an event of default that permits the lenders to accelerate the maturity of borrowings under the 2011 Secured Credit Agreement and the 2012 Secured Credit Agreement and the commitments to lend would terminate, subject to our right under the 2012 Secured Credit Agreement to first prepay outstanding borrowings thereunder at par without payment of any prepayment fee or