UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 15, 2007**

iStar Financial Inc.

(Exact name of registrant as specified in its charter)

Maryland	**1-15371**	**95-6881527**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

1114 Avenue of the Americas, 39th Floor **New York, New York** (Address of principal executive offices)	**10036** (Zip Code)

Registrant's telephone number, including area code: **(212) 930-9400**

N/A
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Section 2-Financial Information

ITEM 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

On October 15, 2007, iStar Financial Inc. ("iStar") issued $800,000,000 aggregate principal amount of Convertible Senior Floating Rate Notes due 2012 (the "Notes") in a public offering. The Notes were issued pursuant to a base indenture, dated as of February 5, 2001, as amended and supplemented by a supplemental indenture, relating to the Notes, dated as of October 15, 2007 (as supplemented, the "Indenture") between iStar and U.S. Bank Trust National Association (as successor to State Street Bank and Trust Company, N.A.), as Trustee. The Notes will bear interest at a rate per year equal to three-month LIBOR plus 0.50% and will mature on October 1, 2012. iStar will pay interest on each January 1, April 1, July 1 and October 1, commencing on January 1, 2008.

The Notes will be convertible prior to the close of business on the business day prior to the stated maturity date, at any time on or after August 15, 2012, and also under certain circumstances described in the Indenture. Upon conversion, iStar will satisfy its conversion obligations by delivering cash, shares of its common stock or any combination thereof, at its option; provided, however, that at any time on or prior to August 15, 2012, iStar may irrevocably elect, in its sole discretion without the consent of the holders of the Notes, to settle all of its future conversion obligations through the "net share settlement" method described in the Indenture. The Notes have an initial conversion rate of 22.2 shares of common stock per $1,000 principal amount of Notes, which is equivalent to an initial conversion price per share of $45.05.

iStar may not redeem the Notes prior to the date on which they mature except to the extent necessary to preserve its qualification as a real estate investment trust. Following the occurrence of a fundamental change, holders may require iStar to repurchase Notes in whole or in part for cash at 100% of the principal amount of the Notes to be repurchased plus accrued and unpaid interest.

A copy of the supplemental indenture, dated as of October 15, 2007, is attached hereto as Exhibit 4.1 and incorporated by reference herein. The base indenture dated February 5, 2001 has been previously filed as an exhibit to iStar's Form S-3 filed on February 12, 2001. A copy of the Underwriting

Agreement, dated as of October 10, 2007 is attached hereto as Exhibit 1.1 and incorporated by reference herein.

Section 9-Financial Statements and Exhibits

ITEM 9.01 Financial Statements and Exhibits.

(d) *Exhibits*.

1.1	Underwriting Agreement dated as of October 10, 2007.
4.1	Supplemental Indenture dated as of October 15, 2007.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

iSTAR FINANCIAL INC.

Date: October 19, 2007

By: /s/ Jay Sugarman
Jay Sugarman
Chairman and Chief Executive Officer

Date: October 19, 2007

By: /s/ Catherine D. Rice
Catherine D. Rice
Chief Financial Officer

EXHIBIT INDEX

Exhibit Number	Description
1.1	Underwriting Agreement dated as of October 10, 2007.
4.1	Supplemental Indenture dated as of October 15, 2007.

Exhibit 1.1

Dated October 10, 2007

iStar Financial Inc.

$800,000,000 Convertible Senior Floating Rate Notes due 2012

UNDERWRITING AGREEMENT

---

iStar Financial Inc.

$800,000,000 Convertible Senior Floating Rate Notes due 2012

UNDERWRITING AGREEMENT

October 10, 2007

CITIGROUP GLOBAL MARKETS INC.
J.P. MORGAN SECURITIES INC.
as Representative(s) of the several Underwriters

CITIGROUP GLOBAL MARKETS INC.
388 Greenwich Street
New York, New York 10013

J.P. MORGAN SECURITIES INC.
270 Park Avenue
New York, New York 10017

Ladies and Gentlemen:

iStar Financial Inc., a Maryland corporation (the "Company"), hereby confirms its agreement with the several underwriters listed in Schedule I hereto (collectively, the "Underwriters"), for whom Citigroup Global Markets Inc. and J.P. Morgan Securities Inc. (the "Representatives") are acting as representatives, as set forth below.

Section 1. Underwriting. Subject to the terms and conditions contained herein:

(a) The Company proposes to issue and sell to the several Underwriters the aggregate principal amount of $800,000,000 of its convertible securities having the terms identified in Schedule II hereto (the "Firm Securities"). The Company also proposes to issue and sell to the several Underwriters not more than an additional $120,000,000 of aggregate principal amount (the "Additional Securities") of its convertible securities having the terms identified in Schedule II hereto, if and to the extent that the Representatives shall have determined to exercise, on behalf of the Underwriters, the right to purchase such shares of Additional Securities granted to the Underwriters in Section 2 hereof. The Firm Securities and the Additional Securities are hereinafter collectively referred to as the "Securities." The Securities are to be issued pursuant to the terms of an indenture dated as of February 5, 2001, as amended and supplemented, including as amended and supplemented by a supplemental indenture relating to the Notes (the "Supplemental Indenture"), to be dated as of October 15, 2007 (the "Indenture"), between the Company and US Bank Trust National Association, as trustee (the "Trustee"). The Securities

---

will be convertible in accordance with their terms and the terms of the Indenture into common stock, par value $0.001 per share (the "Common Stock"), of the Company.

(b) Upon your authorization of the release of the Securities, the Underwriters propose to make a public offering (the "Offering") of the Securities upon the terms set forth in the Prospectus (as defined below) as soon as in the Underwriters' sole judgment is advisable. As used in this Agreement, the term "Effective Date" shall mean each date that the registration statement and any post-effective amendment or amendments thereto became or become effective; the term "Original Registration Statement" means the registration statement referred to in Section 5(a)(i) below, as amended at the time when it became effective, including incorporated documents, financial schedules and exhibits thereto, including any Rule 430A Information (as defined below) deemed to be included therein at the Effective Date as provided by Rule 430A, and, in the event any post-effective amendment thereto becomes effective prior to the Closing Date (as defined below), also means such registration statement as so amended; the term "Rule 430A Information" means information permitted to be omitted from the Original Registration Statement when it becomes effective pursuant to Rule 430A; the term "Registration Statement" includes the Original Registration Statement; the term "Base Prospectus" shall mean the prospectus referred to in Section 5(a)(i) below contained in the Registration Statement at the Effective Date including, in the case of a Rule 430A Offering (as defined below), any Preliminary Prospectus; the term "Preliminary Prospectus" means the preliminary prospectus supplement, dated October 9, 2007 to the Base Prospectus relating to the Securities and used prior to the filing of the Prospectus; the term "Prospectus" means the final prospectus supplement to the Base Prospectus relating to the Securities and first filed with the Commission pursuant to Rule 424(b) under the Securities Act, together with the Base Prospectus; the term "Free Writing Prospectus" means a free writing prospectus, as defined in Rule 405; the term "Issuer Free Writing Prospectus" means an issuer free writing prospectus, as defined in Rule 433; and the term "Disclosure Package" means (i) the Base Prospectus and the Preliminary Prospectus (ii) the Issuer Free Writing Prospectuses, if any, identified in Schedule III hereto and (iii) any other Free Writing Prospectuses that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package.

"Rule 158", "Rule 163", "Rule 164", "Rule 172", "Rule 405", "Rule 415", "Rule 424", "Rule 430A" and "Rule 433" refer to such rules or regulations under the Securities Act. Any reference herein to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on or before the Effective Date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary Prospectus or the Prospectus, as the case may be; and any reference herein to the terms "amend", "amendment" or "supplement" with respect to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary Prospectus or the Prospectus, as the case may be, deemed to be incorporated therein by reference. A "Rule 430A Offering" means an offering of securities which is intended to commence promptly after the effective date of a registration statement, with the result that, pursuant to Rules 415 and 430A, all information (other than Rule 430A

Information) with respect to the securities so offered must be included in such registration statement at the effective date thereof. A "Rule 415 Offering" means an offering of securities pursuant to Rule 415 which does not commence promptly after the effective date of a registration statement, with the result that only information required pursuant to Rule 415 need be included in such registration statement at the effective date thereof with respect to the securities so offered. Whether the offering of the Securities is a Rule 430A Offering or a Rule 415 Offering shall be set forth in Schedule II hereto. "Execution Time" means the date and time that this Agreement is executed and delivered by the parties hereto.

Section 2. Purchase and Closing.

(a) On the basis of the representations, warranties, agreements and covenants herein contained and subject to the terms and conditions herein set forth, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters, severally and not jointly, agrees to purchase from the Company, at the purchase price set forth in Schedule II hereto with respect to the Firm Securities (the "Purchase Price"), the principal amount of the Firm Securities set forth opposite the name of such Underwriter in Schedule I hereto.

(b) On the basis of the representations, warranties agreements and covenants herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to the Underwriters the Additional Securities, and the Underwriters shall have the right to purchase, severally and not jointly, up to $120,000,000 of aggregate principal amount of Additional Securities at the Purchase Price. You may exercise this right on behalf of the Underwriters in whole or from time to time in part by giving written notice not later than 30 days after the date of the Prospectus. Any exercise notice shall specify the number of Additional Securities to be purchased by the Underwriters and the date on which such shares are to be purchased. Each purchase date must be at least two business days after the written notice is given and may not be earlier than the closing date for the Firm Securities nor later than ten business days after the date of such notice. Additional Securities may be purchased as provided in this Section 2 solely for the purpose of covering over-allotments made in connection with the offering of the Firm Securities. On each day, if any, that Additional Securities are to be purchased (an "Option Closing Date"), each Underwriter agrees, severally and not jointly, to purchase the number of Additional Securities (subject to such adjustments to eliminate Notes in denominations other than $1,000 as you may determine) that bears the same proportion to the total number of Additional Securities to be purchased on such Option Closing Date as the number of Firm Securities set forth in Schedule I hereto opposite the name of such Underwriter bears to the total number of Firm Securities.

(c) The Firm Securities shall be registered by the Trustee in the name of the nominee of The Depository Trust Company ("DTC"), Cede & Co. ("Cede & Co."), and credited to the accounts of such of its participants as the Underwriters shall request, upon notice to the Company at least 48 hours prior to the Closing Date (as defined below), with any transfer taxes payable in connection with the transfer of the Firm Securities to the Underwriters duly paid, and deposited with the Trustee as custodian for DTC on the Closing Date (as defined below), against payment by or on behalf of the Underwriters of the aggregate Purchase Price therefor to the account of the Company by wire transfer in immediately available funds. Such time and date of

delivery against payment are herein referred to as the "Closing Date", and the implementation of all the actions described in this Section 2 in connection with the Firm Securities is herein referred to as the "Closing."

(d) The Additional Securities shall be registered by the Trustee in the name of the nominee of DTC, Cede & Co., and credited to the accounts of such of its participants as the Underwriters shall request, upon notice to the Company at least 48 hours prior to the applicable Option Closing Date, with any transfer taxes payable in connection with the transfer of the Additional Securities to the Underwriters duly paid, and deposited with the Trustee as custodian for DTC on such Option Closing Date, against payment by or on behalf of the Underwriters of the aggregate Purchase Price therefor to the account of the Company by wire transfer in immediately available funds (the implementation of all the actions described in this Section 2 in connection with the Additional Securities is herein referred to as the "Option Closing").

Section 3. Covenants and Agreements. The Company covenants and agrees with the Underwriters that:

(a) The Company will:

(i) file, if required, the Prospectus and any amendment or supplement thereto with the Commission in the manner and within the time period required by Rule 424(b) under the Securities Act. During any time when a prospectus relating to the Securities is required to be delivered under the Securities Act, the Company (x) will comply with all requirements imposed upon it by the Securities Act, the Exchange Act and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), and the respective rules and regulations of the Commission thereunder to the extent necessary to permit the continuance of sales of or dealings in the Securities in accordance with the provisions hereof and of the Prospectus, as then amended or supplemented, and (y) will not file with the Commission the Base Prospectus or any amendment or supplement to such Base Prospectus (including the Prospectus or any Preliminary Prospectus), any amendment to the Registration Statement or any Free Writing Prospectus unless the Underwriters previously have been advised of, and furnished with a copy within a reasonable period of time prior to, the proposed filing and the Underwriters shall have given their consent to such filing, which shall not be unreasonably withheld. The Company will prepare and file with the Commission, in accordance with the rules and regulations

of the Commission, promptly upon request by the Underwriters or counsel for the Underwriters, any amendments to the Registration Statement or amendments or supplements to the Prospectus that may be necessary or advisable, in the reasonable judgment of the Underwriters or their counsel, in connection with the distribution of the Securities by the Underwriters. The Company will advise the Underwriters, promptly after receiving notice thereof, of the time when the Registration Statement or any amendment thereto has been filed or become effective or the Prospectus or any amendment or supplement thereto has been filed and will provide evidence satisfactory to the Underwriters of each such filing or effectiveness.

(ii) without charge, provide (y) to the Underwriters and to their counsel, an executed and a conformed copy of the Original Registration Statement and each amendment thereto or any Rule 462(b) Registration Statement (in each case including exhibits thereto) and (z) so long as a prospectus relating to the Securities is required to be delivered under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), as many copies of each Preliminary Prospectus, the Prospectus and each Issuer Free Writing Prospectus or any amendment or supplement thereto as the Underwriters may reasonably request.

(iii) advise the Underwriters, promptly after receiving notice or obtaining knowledge thereof, of (w) the issuance by the Commission of any stop order suspending the effectiveness of the Original Registration Statement or any amendment thereto or any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or any Free Writing Prospectus or any amendment or supplement thereto, (x) the suspension of the qualification of the Securities for offering or sale in any jurisdiction, (y) the institution, threatening or contemplation of any proceeding for any purpose identified in the preceding clause (w) or (x), or (z) any request made by the Commission for amending the Original Registration Statement, for amending or supplementing the Prospectus or for additional information. The Company will use its best efforts to prevent the issuance of any such stop order and, if any such stop order is issued, to obtain the withdrawal thereof as promptly as possible.

(b) The Company will cooperate with the Underwriters in qualifying the Securities for offering and sale in each jurisdiction as the Underwriters shall designate including, but not limited to, pursuant to applicable state securities ("Blue Sky") laws of certain states of the United States of America or other U.S. jurisdictions, and the Company shall maintain such qualifications in effect for so long as may be necessary in order to complete the placement of the Securities; *provided*, *however*, that the Company shall not be obliged to file any general consent to service of process or to qualify as a foreign corporation or as a securities dealer in any jurisdiction or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(c) The Company agrees that, unless it obtains the prior written consent of each Underwriter, and each Underwriter, severally and not jointly, agrees with the Company that, unless it has obtained or will obtain, as the case may be, the prior written consent of the Company, it has not made and will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a Free Writing Prospectus required to be filed by the Company with the Commission or retained by the Company under Rule 433; *provided* that the prior written consent of the parties hereto shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule III hereto, any electronic road show and term sheets relating to the Securities containing customary transaction announcement or pricing information. Any such Free Writing Prospectus consented to by the

Representatives or the Company is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping. For the avoidance of doubt, Underwriter Free Writing Prospectuses that are not required to be filed by the Company with the Commission or retained by the Company under Rule 433 are permitted hereby.

(d) If, at any time prior to the final date when a prospectus relating to the Securities is required to be delivered under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), any event occurs as a result of which the Prospectus, as then amended or supplemented, would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if for any other reason it shall be necessary at any time to amend the Registration Statement or amend or supplement the Prospectus to comply with the Securities Act, the Exchange Act or the Trust Indenture Act or the respective rules or regulations of the Commission thereunder or applicable law, the Company will promptly notify the Underwriters thereof and will promptly, at its own expense, but subject to the second sentence of Section 3(a)(i) hereof: (x) prepare and file with the Commission an amendment to the Registration Statement or amendment or supplement to the Prospectus which will correct such statement or omission or effect such compliance; and (y) supply any amended Registration Statement or amended or supplemented Prospectus to the Underwriters in such quantities as the Underwriters may reasonably request. If there occurs an event or development as a result of which the Disclosure Package would include an untrue statement of material fact or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will notify promptly the Underwriters so that any use of the Disclosure Package may cease until it is amended or supplemented. The foregoing two sentences do not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 11 hereof.

(e) The Company will make generally available to the Company's securityholders and to the Underwriters as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act, including Rule 158 thereunder.

(f) The Company will apply the net proceeds from the sale of the Securities as set forth under "Use of Proceeds" in the Prospectus.

(g) Neither the Company nor any of its affiliates, nor any person acting on behalf of any of them will, directly or indirectly, (i) take any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or (ii) (x) sell, bid for, purchase, or pay anyone any compensation for soliciting purchases of, the Securities or (y) pay or agree to pay to any person any compensation for soliciting another to purchase any other securities of the Company.

(h) During a period of 30 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the Securities Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to in the Prospectus, (B) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to employee benefit plans or employment agreements of the Company approved by the Board of Directors of the Company, (C) any shares of Common Stock issued pursuant to any non-employee dividend reinvestment plan or (D) any shares of Common Stock issued in mergers, acquisitions or other business combination transactions. Notwithstanding the foregoing, if (1) during the last 17 days of the 30-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs; or (b) prior to the expiration of the 30 day restricted period, the Company announces that it will release earnings results during the 16 day period beginning on the last day of the 30 day period, the restrictions imposed by this agreement shall continue to apply until the expiration of the 18 day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. The Company shall promptly notify the Representatives and each person subject to the 30 day restricted period pursuant to a lock-up agreement described in Section 7(i) hereof of any earnings release, news or event that may give rise to an extension of the initial 30 day restricted period.

Section 4. Expenses. The Company shall bear and pay all costs and expenses incurred incident to the performance of its obligations under this Agreement, whether or not the transactions contemplated herein are consummated or this Agreement is terminated pursuant to Section 8 hereof, including: (i) fees and expenses of preparation, issuance and delivery of this Agreement to the Underwriters and of the Indenture; (ii) the fees and expenses of its counsel, accountants and any other experts or advisors retained by the Company; (ii) fees and expenses incurred in connection with the registration of the Securities under the Securities Act and the

preparation and filing of the Registration Statement, the Prospectus and all amendments and supplements thereto; (iii) the fees and expenses incurred in connection with the printing and distribution of the Prospectus, any Preliminary Prospectus and any Permitted Free Writing Prospectus and the printing and production of all other documents connected with the Offering (including this Agreement and any other related agreements); (iv) expenses related to the qualification of the Securities under the state securities or Blue Sky laws, including filing fees and the fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of any Blue Sky memoranda; (v) the filing fees and expenses, if any, incurred with respect to any filing with the National Association of Securities Dealers, Inc., including the fees and disbursements of counsel for the Underwriters in connection therewith; (vi) all arrangements relating to the preparation, issuance and delivery to the Underwriters of any certificates evidencing the Securities; (vii) any fees charged by investment rating agencies for the rating of the Securities; (viii) the fees and expenses of the Trustee; (ix) the costs and expenses of the "roadshow" and any other meetings with prospective investors in the Securities (other than as shall have been specifically approved by the Underwriters to be paid for by the Underwriters); and (x) the costs and expenses of advertising relating to the Offering (other than as shall have been specifically approved by the Underwriters to be paid for by the Underwriters).

Section 5. Representations and Warranties.

(a) As a condition of the obligation of the Underwriters to underwrite and pay for the Securities, the Company represents and warrants to, and agrees with, the Underwriters as follows:

Registration Statement and Prospectus

(i) If the Offering is a Rule 415 Offering (as specified in Schedule II hereto), paragraph (x) below is applicable and, if the Offering is a Rule 430A Offering (as so specified), paragraph (y) below is applicable.

(x) The Company meets the requirements for use of Form S-3 under the Securities Act and has filed with the Commission the Original Registration Statement (the file number of which is set forth in Schedule II hereto) on such Form, including a Base Prospectus, for registration under the Act of the offering and sale of the Securities, one or more amendments to such Registration Statement may have been so filed, and the Company has used a Preliminary Prospectus. Such Registration Statement, as so amended, became effective immediately upon filing thereof. The Offering is a Rule 415 Offering and, although the Base Prospectus may not include all the information with respect to the Securities and the offering thereof required by the Securities Act and the rules thereunder to be included in the Prospectus, the Base Prospectus includes all such information required by the Securities Act and the rules thereunder to be included therein as of the Effective Date. After the execution of this Agreement, the Company will file with the Commission pursuant to Rules 415 and 424(b)(2) or (5) a final supplement to the Base Prospectus included in such Registration Statement

relating to the Securities and the offering thereof, with such information as is required or permitted by the Securities Act and as has been provided to and approved by the Underwriters prior to the date hereof or, to the extent not completed at the date hereof, containing only such specific additional information and other changes (beyond that contained in the Base Prospectus and any Preliminary Prospectus) as the Company has advised you, prior to the date hereof, will be included or made therein.

(y) The Company meets the requirements for the use of Form S-3 under the Securities Act and has filed with the Commission the Original Registration Statement (the file number of which is set forth in Schedule II hereto) on such Form, including a Base Prospectus, for registration under the Securities Act of the offering and sale of the Securities, and one or more amendments to such Registration Statement, including a Preliminary Prospectus, may have been so filed. After the execution of this Agreement, the Company will file with the Commission a final prospectus supplement to the Base Prospectus in the form most recently included in an amendment to such Registration Statement (or, if no such amendment shall have been filed, in such Registration Statement), with such changes or insertions as are required by Rule 430A under the Securities Act or permitted by Rule 424(b) under the Securities Act, and as have been provided to and approved by the Underwriters prior to the execution of this Agreement.

(ii) The Commission has not issued any order preventing or suspending the use of any Preliminary Prospectus or Issuer Free Writing Prospectus. When any Preliminary Prospectus was filed with the Commission, it (x) complied as to form in all material respects with the requirements of, the Securities Act and the rules and regulations of the Commission thereunder and (y) did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. On each Effective Date, the Registration Statement or any amendment thereto (I) complied as to form or will comply in all material respects with the requirements of, the Securities Act, the Exchange Act, the Trust Indenture Act and the respective rules and regulations of the Commission thereunder and (II) did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. When the Prospectus or any amendment or supplement to the Prospectus is filed with the Commission pursuant to Rule 424(b) (or, if the Prospectus or such amendment or supplement is not required to be so filed, when the Registration Statement or the amendment thereto containing the Prospectus or such amendment or supplement to the Prospectus became effective) and on its date and on the Closing Date, the Prospectus, as amended or supplemented at any such time, (A) complied as to form or will comply in all material respects with the requirements of, the Securities Act, the Exchange Act, the Trust Indenture Act and the respective rules and regulations of the Commission thereunder and (B) did not or will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which

they were made, not misleading. When the Registration Statement or any amendment thereto was effective and on the Closing Date, the Indenture did or will comply in all material respects with the requirements of the Trust Indenture Act and the rules and regulations of the Commission thereunder. The foregoing provisions of this paragraph (ii) do not apply to (1) that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of the Trustee or (2) statements or omissions made in any Preliminary Prospectus, the Registration Statement or any amendment thereto or the Prospectus or any Issuer Free Writing Prospectus or any amendment or supplement thereto in reliance upon and in conformity with written information furnished to the Company by the Underwriters specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriters consists of the information described as such in Section 11 hereof.

(iii) The Disclosure Package as of the Execution Time does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 11 hereof.

(iv) At the earliest time that (i) the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2)) of the Securities and (ii) as of the Execution Time (with such date being used as the determination date for purposes of this clause (ii)), the Company was not and is not an Ineligible Issuer (as defined in Rule 405), without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an Ineligible Issuer.

(v) Each Issuer Free Writing Prospectus, if any, does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated therein and any prospectus supplement deemed to be a part thereof that has not been superseded or modified. If there occurs an event or development as a result of which the Disclosure Package would include an untrue statement of material fact or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will notify promptly the Underwriters so that any use of the Disclosure Package may cease until it is amended or supplemented. The foregoing two sentences do not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 11 hereof.

(vi) Reserved.

(vii) The Company has not distributed and, prior to the later of (x) the Closing Date and (y) the completion of the distribution of the Securities, will not distribute any offering material in connection with the Offering other than the Registration Statement or any amendment thereto, any Preliminary Prospectus or the Prospectus, any Permitted Free Writing Prospectus or any amendment or supplement thereto.

(viii) Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus (x) the Company and its subsidiaries, taken as a whole, have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction not in the ordinary course of business; (y) the Company has not purchased any of its outstanding capital stock; and (z) there has

not been any material change in the capital stock of the Company, or in the short-term or long-term debt of the Company and its subsidiaries, taken as a whole, except in each case as described in or contemplated by the Prospectus.

(ix) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in either the Preliminary Prospectus or the Prospectus (or any amendment or supplement thereto) complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations thereunder.

(x) At the date hereof the Company is a "well-known seasoned issuer" as defined in Rule 405, including not having been and not being an "ineligible issuer" as defined in Rule 405. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the use of the automatic shelf registration statement form.

The Securities

(xi) The Company has an authorized, issued and outstanding capitalization as set forth in the Prospectus. All of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and nonassessable.

(xii) The execution and delivery of the Securities have been duly authorized by all necessary corporate action of the Company and, on and as of the Closing Date, the Securities will have been duly executed and delivered by the Company and, assuming due authentication by the Trustee, will be the legal, valid and binding obligations of the Company, enforceable in accordance with their terms and entitled to the benefits of the Indenture. No holder of securities of the Company has any right which has not been fully exercised or waived to require the Company to register the offer or sale of any securities owned by such holder under the Securities Act in the Offering contemplated by this Agreement.

(xiii) Except for the shares of capital stock of each of the subsidiaries owned by the Company and such subsidiaries, neither the Company nor any such subsidiary owns any shares of stock or any other equity securities of any corporation or has any equity

interest in any firm, partnership, association or other entity, except in entities used in connection with an investment in its ordinary course of business, or as otherwise described in or contemplated by the Prospectus.

(xiv) The Common Stock initially issuable upon conversion for the Securities have been duly authorized and reserved for issuance, and, if and when issued and delivered in accordance with the provisions of the Securities and the Indenture, will be duly and validly issued and fully paid and nonassessable; the Common Stock conforms, in all material respects, to the description thereof contained in the Base Prospectus under the caption "Description of Common Stock and Preferred Stock."

Market manipulation

(xv) Neither the Company nor any of its affiliates, nor any person acting on behalf of any of them has, directly or indirectly, (x) taken any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities, or (y) since the filing of the Original Registration Statement (I) sold, bid for, purchased, or paid anyone any compensation for soliciting purchases of, the Securities other than as contemplated by this Agreement or (II) paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Company.

Corporate power and authority

(xvi) The Company has been duly incorporated and is validly existing as a corporation in good standing under the law of its jurisdiction of incorporation with full power and authority to own, lease and operate its properties and assets and conduct its business as described in the Prospectus, is duly qualified to transact business and is in good standing in each jurisdiction in which its ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where the failure to be so qualified does not amount to a material liability or disability to the Company and its subsidiaries, taken as a whole, and has full power and authority to execute and perform its obligations under this Agreement, the Indenture and the Securities; each subsidiary of the Company is duly organized and validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to transact business and is in good standing in each jurisdiction in which its ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where the failure to be so qualified does not amount to a material liability or disability to the Company and its subsidiaries, taken as a whole, and each has full power and authority to own, lease and operate its properties and assets and conduct its business as described in the Registration Statement and the Prospectus; all of the issued and outstanding shares of capital stock of each of the Company's subsidiaries have been duly authorized and are fully paid and nonassessable and, except as otherwise set forth in the Prospectus, are owned beneficially by the Company free and clear of any security interests, liens, encumbrances, equities or claims.

(xvii) The execution and delivery of this Agreement and the issuance and sale of the Securities have been duly authorized by all necessary corporate action of the Company, and this Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery, by the other parties hereto will be the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

(xviii) The execution and delivery of the Indenture (including the Supplemental Indenture) have been duly authorized by the Company, and, on and as of the Closing Date, the Indenture (including the Supplemental Indenture) will have been duly executed and delivered by the Company and duly qualified under the Trust Indenture Act and, assuming due authorization, execution and delivery by the Trustee, will be a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

(xix) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indenture, the Securities, the issuance, offering and sale of the Securities to the Underwriters by the Company pursuant to this Agreement, the reservation of the Common Stock for issuance upon conversion of the Securities, the compliance by the Company with the other provisions of this Agreement and the consummation of the other transactions herein contemplated do not (x) require the consent, approval, authorization, registration or qualification of or with any governmental authority, except such as have been obtained or made or such as may be required by the state securities or Blue Sky laws of the various states of the United States of America or other U.S. jurisdictions in connection with the offer and sale of the Securities by the Underwriters, or (y) conflict with or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries or any of their respective properties are bound, or the charter documents or by-laws of the Company or any of its subsidiaries, or any statute or any judgment, decree, order, rule or regulation of any court or other governmental authority or any arbitrator applicable to the Company or any of its subsidiaries.

(xx) Neither the Company nor any of its subsidiaries is in violation of any term or provision of its charter documents or by-laws, or in breach of or in default under any statute or any judgment, decree, order, rule or regulation of any court or other governmental authority or any arbitrator applicable to the Company or any of its subsidiaries, the consequence of which violation, breach or default would have a materially adverse effect on or constitute a materially adverse change in, or constitute a development involving a prospective materially adverse effect on or change in, the condition (financial or otherwise), earnings, properties, business affairs or business prospects, stockholders' equity, net worth or results of operations of the Company and its subsidiaries, taken as a whole (a "Material Adverse Effect").

(xxi) The Company is not an "investment company" and, after giving effect to the Offering and the application of the proceeds therefrom, will not be an "investment company", as such term is defined in the Investment Company Act of 1940, as amended (the "1940 Act").

Title, licenses and consents

(xxii) The Company and each of its subsidiaries have good and marketable title in fee simple to all items of real property and marketable title to all personal property owned by each of them, in each case free and clear of any security interests, liens, encumbrances, equities, claims and other defects, except such as do not materially and adversely affect the value of such property and do not interfere with the use made or proposed to be made of such property by the Company or such subsidiary, and any real property and buildings held under lease by the Company or any such subsidiary are held under valid, subsisting and enforceable leases, with such exceptions as are not material and do not interfere with the use made or proposed to be made of such property and buildings by the Company or such subsidiary, in each case except as described in or contemplated by the Prospectus.

(xxiii) The Company and its subsidiaries own or possess, or can acquire on reasonable terms, all material patents, patent applications, trademarks, service marks, trade names, licenses, know-how, copyrights, trade secrets and proprietary or other confidential information necessary to operate the business now operated by them, and neither the Company nor any such subsidiary has received any notice of infringement of or conflict with asserted rights of any third party with respect to any of the foregoing which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, except as described in or contemplated by the Prospectus.

(xxiv) The Company and its subsidiaries possess all consents, licenses, certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, and neither the Company nor any such subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a materially adverse effect on or constitute a materially adverse change in, or constitute a development involving a prospective Material Adverse Effect, except as described in or contemplated by the Prospectus.

Financial statements

(xxv) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company and its consolidated subsidiaries and delivered their report with respect to the audited consolidated financial statements and schedules included or incorporated in the Registration Statement and the Prospectus, are independent public

accountants as required by the Securities Act and the applicable rules and regulations thereunder.

(xxvi) The consolidated financial statements and schedules of the Company and its consolidated subsidiaries included or incorporated in the Registration Statement, the Disclosure Package and the Prospectus were prepared in accordance with generally accepted accounting principles ("GAAP") consistently applied throughout the periods involved (except as otherwise noted therein or in the Prospectus) and they present fairly, in all material respects, the financial condition of the Company as at the dates at which they were prepared and the results of operations of the Company in respect of the periods for which they were prepared. Any pro forma financial statements and other pro forma financial information included in the Registration Statement, the Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of Rule 11-02 of Regulation S-X of the Commission and present fairly the information shown therein; the pro forma adjustments, if any, have been properly applied to the historical amounts in the compilation of such statements, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein.

(xxvii) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (w) transactions are executed in accordance with management's general or specific authorizations; (x) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (y) access to assets is permitted only in accordance with management's general or specific authorization; and (z) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xxviii) The Company has established and maintains disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) that are adequate and effective and designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to its chief executive officer and chief financial officer by others within those entities.

(xxix) Since the date of the filing of the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, the Company has not advised its auditors, and the audit committee of the board of directors of the Company have not been advised, of (i) any significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data nor any material weaknesses in internal controls; or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls.

(xxx) Since the date of the filing of the Company's Quarterly Report on Form 10-Q for the year ended June 30, 2007, there have been no significant changes in internal

controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

Litigation

(xxxi) No legal or governmental proceedings are pending or threatened to which the Company or any of its subsidiaries is a party or to which the property of the Company or any of its subsidiaries is subject that are required to be described in the Registration Statement or the Prospectus and are not described therein; and no statutes, regulations, contracts or other documents that are required to be described or incorporated in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or incorporated therein or filed as required.

Dividends and Distributions

(xxxii) No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, making any other distribution on such subsidiary's capital stock, repaying to the Company any loans or advances to such subsidiary from the Company or transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, and the Company is not currently prohibited, directly or indirectly, from paying any dividends or making any other distribution on its capital stock, in each case except for restrictions upon the occurrence of a default or failure to meet financial covenants or conditions under existing agreements or restrictions that require a subsidiary to service its debt obligations before making dividends, distributions or advancements in respect of its capital stock.

Taxes

(xxxiii) The Company is organized in conformity with the requirements for qualification as a real estate investment trust under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"), and its proposed method of operation as described in the Prospectus will enable it to continue to meet the requirements for taxation as a real estate investment trust under the Code.

(xxxiv) The Company has filed all foreign, federal, state and local tax returns that are required to be filed or has requested extensions thereof (except in any case in which the failure so to file would not have a materially adverse effect on the Company and its subsidiaries, taken as a whole) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it (except in any case in which the failure to so pay would not have a Material Adverse Effect), to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith or as described in or contemplated by the Prospectus.

Insurance

(xxxv) The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; neither the Company nor any such subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except as described in or contemplated by the Prospectus.

Pension and Labor

(xxxvi) The Company and each of its subsidiaries are in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"); no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company would reasonably be expected to have any liability; the Company has not incurred and does not expect to incur liability under (x) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (y) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"); and each "pension plan" for which the Company would have any liability that is intended to be qualified under Section 401(a) of the Code has received a determination letter from the Internal Revenue Service to the effect that it is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the plan to not be adversely affected by such determination.

(xxxvii) No labor dispute with the employees of the Company or any of its subsidiaries exists or is threatened or imminent that could have a Material Adverse Effect, except as described in or contemplated by the Prospectus.

Environmental

(xxxviii) Except as described in or contemplated by the Prospectus, and except as would not otherwise reasonably be expected to have a Material Adverse Effect, (A) the Company and each of its subsidiaries is in compliance with and not subject to any known liability under applicable Environmental Laws (as defined below), (B) the Company and each of its subsidiaries has made all filings and provided all notices required under any applicable Environmental Law, (C) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter or request for information pending or, to the best knowledge of the Company, threatened against the Company or any of its subsidiaries under any Environmental Law, (D) no lien, charge, encumbrance or restriction has been recorded

under any Environmental Law with respect to any assets, facility or property owned, operated or leased by the Company or any of its subsidiaries, (E) neither the Company nor any of its subsidiaries has received notice that it has been identified as a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any comparable law, (F) no property owned or operated by the Company or any of its subsidiaries is (i) listed or, to the best knowledge of the Company, proposed for listing on the National Priorities List under CERCLA or (ii) listed in the Comprehensive Environmental Response, Compensation and Liability Information System List promulgated pursuant to CERCLA, or on any comparable list maintained by any governmental authority, (G) neither the Company nor any of its subsidiaries is subject to any order, decree or agreement requiring, or otherwise obligated or required to perform any response or corrective action under any Environmental Law, (H) there are no past or present actions, occurrences or operations which could reasonable be expected to prevent or interfere with compliance by the Company with any applicable Environmental Law or to result in liability under any applicable Environmental Law. For purposes of this Agreement, "Environmental Laws" means the common law and all applicable foreign, federal, provincial, state and local laws or regulations, codes, orders, decrees, judgments or injunctions issued, promulgated, approved or entered thereunder, relating to pollution or protection of public or employee health and safety or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to (i) emissions, discharges, releases or threatened releases of Hazardous Materials into the environment, (ii) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials and (iii) underground and aboveground storage tanks and related piping, and emissions, discharges, releases or threatened releases therefrom. "Hazardous Material" means any pollutant, contaminant, waste, chemical, substance or constituent, including, without limitation, petroleum or petroleum products subject to regulation or which can give rise to liability under any Environmental Laws.

Other Agreements

(xxxix) No default exists, and no event has occurred which, with notice or lapse of time or both, would constitute a default in the due performance and observance of any term, covenant or condition of any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries or any of their respective properties is bound, except any default that would not have a Material Adverse Effect.

Absence of Materially Adverse Change

(xl) Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, neither the Company nor any of its subsidiaries has sustained any material loss or interference with their respective businesses or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or any legal or governmental

proceeding, and there has been no materially adverse change (including, without limitation, a change in management or control), or development involving a prospective materially adverse change, in the condition (financial or otherwise), management, earnings, property, business affairs or business prospects, stockholders' equity, net worth or results of operations of the Company or any of its subsidiaries, taken as a whole, other than as described in or contemplated by the Prospectus (exclusive of any amendments or supplements thereto).

(xli) No receiver or liquidator (or similar person) has been appointed in respect of the Company or any subsidiary of the Company or in respect of any part of the assets of the Company or any subsidiary of the Company; no resolution, order of any court, regulatory body, governmental body or otherwise, or petition or application for an order, has been passed, made or presented for the winding up of the Company or any subsidiary of the Company or for the protection of the Company or any such subsidiary from its creditors; and the Company has not, and no subsidiary of the Company has, stopped or suspended payments of its debts, become unable to pay its debts or otherwise become insolvent.

No Event of Default

(xlii) On and as of the date hereof, no event has occurred or is continuing which constitutes, or with notice or lapse of time would constitute, an Event of Default (as defined in the Securities).

Additional Representations

(xliii) Except as disclosed in the Registration and the Prospectus, there are no outstanding guarantees or other contingent obligations of the Company or any Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(xliv) No event or circumstance has occurred or arisen that is reasonably likely to give rise to a requirement that the Company make additional disclosure on Form 8-K and has not been so disclosed.

(b) The above representations and warranties shall be deemed to be repeated at the Closing Date.

Section 6. Indemnity.

(a) The Company agrees to indemnify and hold harmless the Underwriters and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all losses, claims, damages or liabilities, joint or several, to which any Underwriter or such controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon:

(i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or any amendment thereto, the Base Prospectus, any Preliminary Prospectus, the Prospectus or any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act or any amendment or supplement thereto, or

(ii) the omission or alleged omission to state in the Registration Statement or any amendment thereto, the Base Prospectus, any Preliminary Prospectus, the Prospectus or any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act or any amendment or supplement thereto a material fact required to be stated therein or necessary to make the statements therein not misleading,

and will reimburse, as incurred, the Underwriters and each such controlling person for any legal or other costs or expenses reasonably incurred by the Underwriters or such controlling person in connection with investigating, defending against or appearing as a third-party witness in connection with any such loss, claim, damage, liability or action; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement or any amendment thereto, the Base Prospectus, any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement thereto in reliance upon and in conformity with written information furnished to the Company by the Underwriters through the Representatives specifically for use therein. The indemnity provided for in this Section 6 shall be in addition to any liability that the Company may otherwise have. The Company will not, without the prior written consent of the Underwriters, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not the Underwriters or any person who controls the Underwriters is a party to such claim, action, suit or proceeding), unless such settlement, compromise or consent (A) includes an unconditional release of the Underwriters and such controlling persons from all liability arising out of such claim, action, suit or proceeding and (B) does not include any statement as to an admission of fault, culpability or failure to act by or on behalf of the Underwriters or such controlling persons.

(b) Each Underwriter, severally and not jointly, will indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any losses, claims, damages or liabilities to which the Company or any such director, officer or controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or any amendment thereto, the Base Prospectus, any Preliminary Prospectus, the Prospectus or any Issuer Free Writing Prospectus or any amendment or supplement thereto or (ii) the omission or the alleged omission to state in the Registration Statement or any amendment thereto, the Base Prospectus any Preliminary Prospectus, the Prospectus or any Issuer Free Writing Prospectus or

any amendment or supplement thereto a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by the Underwriters through the Representatives specifically for use therein, and, subject to the limitation set forth immediately preceding this clause, will reimburse, as incurred, any legal or other expenses reasonably incurred by the Company or any such director, officer or controlling person in connection with investigating, defending against or appearing as a third-party witness in connection with any such loss, claim, damage, liability or any action in respect thereof.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to paragraph (a) or (b) of this Section 6, such person (for purposes of this Section 6, the "indemnified party") shall, promptly after receipt by such party of notice of the commencement of such action, notify the person against whom such indemnity may be sought (for purposes of this Section 6, the "indemnifying party"), but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise under paragraph (a) or (b) of this Section 6. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party; *provided*, *however*, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be one or more legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnifying party shall not have the right to direct the defense of such action on behalf of such indemnified party or parties and such indemnified party or parties shall have the right to select separate counsel to defend such action on behalf of such indemnified party or parties. After notice from the indemnifying party to such indemnified party of its election so to assume the defense of any such action and approval by such indemnified party of counsel appointed to defend such action, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof, unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that in connection with such action the indemnifying party shall not be liable for the expenses of more than one separate counsel (in addition to local counsel) in any one action or separate but substantially similar actions in the same jurisdiction arising out of the same general allegations or circumstances, designated in writing by the Underwriters in the case of paragraph (a) of this Section 6, representing the indemnified parties under such paragraph (a) who are parties to such action or actions), or (ii) the indemnifying party does not promptly retain counsel satisfactory to the indemnified party, or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party. All fees and expenses reimbursed pursuant to this paragraph (c) shall be reimbursed as they are incurred. After such notice from the indemnifying party to such indemnified party, the indemnifying party will not be

liable for the costs and expenses of any settlement of such action effected by such indemnified party without the consent of the indemnifying party.

(d) In circumstances in which the indemnity agreement provided for in the preceding paragraphs of this Section 6 is unavailable or insufficient, for any reason, to hold harmless an indemnified party in respect of any losses, claims, damages or liabilities (or actions in respect thereof), each indemnifying party, in order to provide for just and equitable contribution, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect (i) the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party on the other from the Offering or (ii) if the allocation provided by the foregoing clause (i) is not permitted by applicable law, not only such relative benefits but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions or alleged statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and any Underwriter on the other shall be deemed to be in the same proportion as the total proceeds from the Offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by such Underwriter. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or such Underwriter, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission, and any other equitable considerations appropriate in the circumstances. The Company and the Underwriters agree that it would not be equitable if the amount of such contribution were determined by *pro rata* or *per capita* allocation or by any other method of allocation that does not take into account the equitable considerations referred to above in this paragraph (d). Notwithstanding any other provision of this paragraph (d), no Underwriter shall be obligated to make contributions hereunder that in the aggregate exceed the total public offering price of the Securities purchased by such Underwriter under this Agreement, less the aggregate amount of any damages that such Underwriter has otherwise been required to pay in respect of the same or any substantially similar claim, and no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this paragraph (d) are several and not joint. For purposes of this paragraph (d), each person, if any, who controls an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Underwriters, and each director of the Company, each officer of the Company who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, shall have the same rights to contribution as the Company.

(e) The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

Section 7. Conditions Precedent. The obligations of the Underwriters to purchase and pay for the Securities shall be subject, in the Underwriters' sole discretion, to the accuracy of the representations and warranties of the Company contained herein as of the date hereof and as of each Closing Date, as if made on and as of each Closing Date, to the accuracy of the statements of the Company's officers made pursuant to the provisions hereof, to the performance by the Company of its covenants and agreements hereunder and to the following additional conditions:

(a) If required, the Prospectus and any amendment or supplement thereto shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) under the Securities Act and any Issuer Free Writing Prospectus shall have been filed under Rule 433; no stop order suspending the effectiveness of the Registration Statement or any amendment thereto shall have been issued, and no proceedings for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the Offering shall have been instituted or threatened or, to the knowledge of the Company or the Underwriters, shall be contemplated by the Commission; and the Company shall have complied with any request of the Commission for additional information (to be included in the Registration Statement or the Prospectus or otherwise).

(b) The Underwriters shall have received a legal opinion from Clifford Chance US LLP, counsel for the Company, dated the Closing Date, to the effect that:

(i) the Registration Statement is effective under the Securities Act; any required filing of the Prospectus pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b) and any Issuer Free Writing Prospectus required to have been filed under Rule 433 shall have been filed; and no stop order suspending the effectiveness of the Registration Statement or any amendment thereto has been issued and, to the best knowledge of such counsel, no proceedings for that purpose or pursuant to Section 8A of the Securities Act against the Company or in connection with the Offering are pending or threatened by the Commission;

(ii) the Original Registration Statement and each amendment thereto, the Prospectus and each Permitted Free Writing Prospectus (in each case, including the documents incorporated by reference therein but not including the financial statements and other financial information contained therein, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, the Trust Indenture Act and the respective rules and regulations of the Commission thereunder;

(iii) such counsel has no reason to believe that (in each case, other than the financial statements and other financial information contained therein, as to which such counsel need express no opinion) (x) the Registration Statement, as of its Effective Date, contained any untrue statement of a material fact or omitted to

state a material fact required to be stated therein or necessary to make the statements therein not misleading, (y) the Prospectus, as of its date and the date of such opinion, included or includes any untrue statement of a material fact or omitted or omits to state any material fact

necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading or (z) that the documents specified in a schedule to such counsel's letter as of the Execution Time and the date of such opinion, when considered together with the pricing related information specified in a schedule to such counsel's letter, contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(iv) the Company and each of its "significant subsidiaries" (as defined in Rule 1.02(w) of Regulation S-X under the Exchange Act) have been duly organized and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation and are duly qualified to transact business as foreign corporations and are in good standing under the laws of all other jurisdictions where such counsel has been advised that the failure to be so qualified would amount to a material liability or disability to the Company and its subsidiaries, taken as a whole; the Company and each of its significant subsidiaries have full power and authority to own, lease and operate their respective properties and assets and conduct their respective businesses as described in the Registration Statement and the Prospectus, and the Company has corporate power to enter into this Agreement and the Indenture and to carry out all the terms and provisions hereof and thereof and of the Securities to be carried out by it; all of the issued and outstanding shares of capital stock of each of the Company's significant subsidiaries, except as otherwise set forth in the Prospectus, are owned beneficially by the Company free and clear of any perfected security interests or, to the best knowledge of such counsel, any other security interests, liens, encumbrances, equities or claims, except for pledges of subsidiary stock under debt instruments;

(v) the statements set forth under the heading "Description of Debt Securities" in the Base Prospectus and "Description of Notes" in the Prospectus, insofar as such statements purport to summarize certain provisions of the Securities and the Indenture, provide a fair summary of such provisions as required by the Securities Act and the Exchange Act and the respective rules and regulations thereunder;

(vi) although the discussion set forth under the heading "Certain U.S. Federal Income Tax Consequences" in the Prospectus does not purport to discuss all possible U.S. federal income tax consequences of the ownership and disposition of the Securities, such discussion, though general in nature, constitutes, in all material respects, a fair and accurate summary under current law of the material U.S. federal income tax consequences of the ownership and disposition of the Securities, subject to the qualifications set forth therein;

(vii) the execution and delivery of this Agreement have been duly authorized by all necessary corporate action of the Company and this Agreement has been duly executed and delivered by the Company;

(viii) the execution and delivery of the Indenture (including the Supplemental Indenture) have been duly authorized by the Company, and, on and as of the Closing Date, the Indenture will have been duly executed and delivered by the Company and duly qualified under the Trust Indenture Act and, assuming due authorization, execution and delivery by the Trustee, will be a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect);

(ix) the Securities have been duly authorized by all necessary corporate action of the Company and, on and as of the Closing Date, the Securities will have been duly executed and delivered by the Company and, assuming due authentication by the Trustee, will be the legal, valid and binding obligations of the Company, enforceable in accordance with their terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect) and entitled to the benefits of the Indenture; no holder of securities of the Company has any right which has not been fully exercised or waived to require the Company to register the offer or sale of any securities owned by such holder under the Securities Act in the Offering contemplated by this Agreement;

(x) the execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indenture and the Securities, the issuance, offering and sale of the Securities to the Underwriters by the Company pursuant to this Agreement, the compliance by the Company with the other provisions of this Agreement and the consummation of the other transactions herein contemplated do not (x) require the consent, approval, authorization, registration or qualification of or with any governmental authority, except such as have been obtained or made (and specified in such opinion) or such as may be required by the securities or Blue Sky laws of the various states of the United States of America and other U.S. jurisdictions in connection with the offer and sale of the Securities by the Underwriters, or (y) conflict with or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other material agreement or instrument, known to such counsel, to which the Company or any of its significant subsidiaries is a party or by which the Company or any of its significant subsidiaries or any of their respective properties are bound, or the charter documents or by-laws of the Company or any of its significant subsidiaries, or any statute or any judgment, decree, order, rule or regulation of any court or other governmental authority or any arbitrator known to such counsel and applicable to the Company or its significant subsidiaries;

(xi) the Company is not an "investment company" and, after giving effect to the Offering and the application of the proceeds therefrom, will not be an "investment company", as such term is defined in the 1940 Act;

(xii) such counsel does not know of any legal or governmental proceedings pending or threatened to which the Company or any of its subsidiaries is a party or to which the property of the Company or any of its subsidiaries is subject that are required to be described or incorporated in the Registration Statement or the Prospectus and are not described or incorporated therein or any statutes, regulations, contracts or other documents that are required to be described or incorporated in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or incorporated therein or filed as required; and

(xiii) commencing with its taxable year ended December 31, 1998, the Company has been organized and operated in conformity with the requirements for qualification as a real estate investment trust ("REIT") under the Code, and the Company's method of operation, as represented by the Company will permit it to continue to so qualify.

In rendering any such opinion, such counsel may rely, as to matters of fact, to the extent such counsel deems proper, on certificates of responsible officers of the Company and public officials and, as to matters involving the application of laws of any jurisdiction other than the State of New York or the United States or the General Corporation Law of the State of Delaware, to the extent satisfactory in form and scope to counsel for the Underwriters, upon the opinion of Venable LLP. An opinion of Venable LLP shall be delivered to the Underwriters and counsel for the Underwriters covering matters reasonably requested by the Underwriters.

References to the Registration Statement and the Prospectus in this paragraph (b) shall include any amendment or supplement thereto at the date of such opinion. The opinions of issuer's counsel described herein shall be rendered to the Underwriters at the request of the Company and shall so state therein.

(c) The Underwriters shall have received a legal opinion from Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Underwriters, dated the Closing Date, covering the issuance and sale of the Securities, the Registration Statement and the Prospectus, the Indenture and such other related matters as the Underwriters may reasonably require, and the Company shall have furnished to such counsel such documents as they may reasonably request for the purpose of enabling them to pass upon such matters.

(d) The Underwriters shall have received from PricewaterhouseCoopers LLP a letter or letters dated, respectively, the date hereof and the Closing Date, in form and substance satisfactory to the Underwriters.

(e) The Company shall have furnished or caused to be furnished to the Underwriters at the Closing a certificate of its Chairman of the Board, its President or its Chief Executive Officer and its Chief Financial Officer satisfactory to the Underwriters to the effect that:

(i) the representations and warranties of the Company in this Agreement are true and correct as if made on and as of the Closing Date; and the Company has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(ii) subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus (exclusive of any amendment or supplement thereto), neither the Company nor any of its subsidiaries has sustained any material loss or interference with their respective businesses or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding, and there has not been any materially adverse change (including, without limitation, a change in management or control), or development involving a prospective materially adverse change, in the condition (financial or otherwise), management, earnings, properties, business affairs or business prospects, stockholders' equity, net worth or results of operations of the Company or any of its subsidiaries, taken as a whole, except in each case as described in or contemplated by the Prospectus (exclusive of any amendment or supplement thereto).

(f) The Company shall have furnished or caused to be furnished to the Underwriters at the Closing a certificate of its Chief Financial Officer in such form as shall be agreed upon by the parties.

(g) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act.

(h) The Indenture (including the Supplemental Indenture)shall have been executed and delivered by all the parties thereto.

(i) The Underwriters shall have received "lock up" agreements, each substantially in the form of Exhibit A hereto, between the Underwriters and certain executive officers and directors of the Company relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to the Underwriters on or before the date hereof, shall be in full force and effect on the Closing Date.

(j) On or before the Closing Date, the Underwriters shall have received a certificate, dated as of such Closing Date, substantially in the form of Exhibit B hereto, of Catherine D. Rice, Chief Financial Officer of, and Nicholas Radescu, Chief Accounting Officer of, the Company.

(k) On or before the Closing Date, the Underwriters and counsel for the Underwriters shall have received such further certificates, documents or other information as they may have reasonably requested from the Company.

All opinions, certificates, letters and documents delivered pursuant to this Agreement will comply with the provisions hereof only if they are satisfactory in all material respects to the Underwriters and counsel for the Underwriters. The Company shall furnish to the Underwriters such conformed copies of such opinions, certificates, letters and documents in such quantities as the Underwriters and counsel for the Underwriters shall reasonably request.

The several obligations of the Underwriters to purchase Additional Securities hereunder are subject to the delivery to you on the applicable Option Closing Date of such documents as you may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Securities to be sold on such Option Closing Date and other matters related to the issuance of such Additional Securities.

Section 8. Termination. This Agreement may be terminated in the sole discretion of the Representatives by notice to the Company given prior to the Closing Date in the event that the Company shall have failed, refused or been unable to perform all obligations and satisfy all conditions on

its part to be performed or satisfied hereunder at or prior thereto or, if at or prior to the Closing Date, (a) trading in securities generally on the New York Stock Exchange or the Nasdaq National Market shall have been suspended or materially limited or minimum or maximum prices shall have been established by or on, as the case may be, the Commission or the New York Stock Exchange or the Nasdaq National Market; (b) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market; (c) a general moratorium on commercial banking activities shall have been declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States shall have occurred; (d) there shall have occurred (i) an outbreak or escalation of hostilities between the United States and any foreign power, (ii) an outbreak or escalation of any other insurrection or armed conflict involving the United States, or (iii) any other national or international calamity, crisis or emergency or materially adverse change in general economic, political or financial conditions having an effect on the U.S. financial markets that, in the judgment of the Representatives, makes it impractical or inadvisable to proceed with the public offering or the delivery of the Securities as contemplated by the Registration Statement, as amended as of the date hereof; or (e) the Company or any of its subsidiaries shall have, in the sole judgment of the Representatives, sustained any material loss or interference with their respective businesses or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding, or there shall have been any materially adverse change (including, without limitation, a change in management or control), or constitute a development involving a prospective materially adverse change, in the condition

(financial or otherwise), management, earnings, properties, business affairs or business prospects, stockholders' equity, net worth or results of operations of the Company or any of its subsidiaries, except in each case as described in or contemplated by the Prospectus (exclusive of any amendment or supplement thereto). Termination of this Agreement pursuant to this Section 8 or pursuant to Section 9 shall be without liability of any party to any other party except for the liability of the Company in relation to expenses as provided in Sections 4 and 10 hereof, the indemnity and contribution provisions provided in Section 6 hereof and any liability arising before or in relation to such termination.

Section 9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Firm Securities set forth opposite their names in Schedule I hereto bears to the aggregate amount of Firm Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the total aggregate amount of Securities set forth in Schedule I hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date or Option Closing Date, as applicable, shall be postponed for such period, not exceeding five business days, as the nondefaulting Underwriters shall determine in order that the required changes in the Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company or any nondefaulting Underwriter for damages occasioned by its default hereunder.

Section 10. Reimbursement of Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 7 hereof is not satisfied or because of any termination pursuant to Section 8 hereof (other than by reason of a default by the Underwriters), the Company shall reimburse the Underwriters, upon demand, for all out-of-pocket expenses (including fees and disbursements of counsel) that shall have been incurred by it in connection with the proposed purchase and sale of the Securities.

Section 11. Information Supplied by Underwriters. The statements set forth in the last paragraph on the front cover page and in the fifth, eighth and tenth paragraphs under the heading "Underwriting" in any Preliminary Prospectus or the Prospectus (to the extent such statements relate to the Underwriters) constitute the only information furnished by the Underwriters to the Company for the purposes of Section 5(a)(ii) and Section 6 hereof. The Underwriters confirm that such statements (to such extent) are correct.

Section 12. Notices. Any notice or notification in any form to be given under this Agreement may be delivered in person or sent by telex, facsimile or telephone (subject in the case of a communication by telephone to confirmation by telex or facsimile) addressed to:

in the case of the Company*:*

iStar Financial Inc.
1114 Avenue of the Americas, 27th Floor
New York, NY 10036
Facsimile: (212) 930-9494
Attention: Chief Executive Officer
with a copy to: General Counsel

in the case of the Underwriters:

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013
Facsimile: (212) 816-7912
Attention: General Counsel

J.P. Morgan Securities Inc.
270 Park Avenue
New York, New York 10017

Facsimile: (212) 834-6081
Attention: High Grade Syndicate Desk – 8th floor

Any notice under this Section 12 shall take effect, in the case of delivery, at the time of delivery and, in the case of telex or facsimile, at the time of dispatch.

Section 13. No Fiduciary Duty. The Company hereby acknowledges that (a) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between the Company, on the one hand, and the Underwriters and any affiliate through which it may be acting, on the other, (b) the Underwriters are acting as principal and not as an agent or fiduciary of the Company and (c) the Company's engagement of the Underwriters in connection with the offering and the process leading up to the offering is as independent contractors and not in any other capacity. Furthermore, the Company agrees that it is solely responsible for making its own judgments in connection with the offering (irrespective of whether any of the Underwriters has advised or is currently advising the Company on related or other matters). The Company agrees that it will not claim that the Underwriters have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

Section 14. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

Section 15. Miscellaneous.

(a) Time shall be of the essence of this Agreement.

(b) The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect, the meaning or interpretation of this Agreement.

(c) For purposes of this Agreement, (a) "business day" means any day on which the New York Stock Exchange is open for trading, and (b) "subsidiary" has the meaning set forth in Rule 405 under the Securities Act.

(d) This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same Agreement and any party may enter into this Agreement by executing a counterpart.

(e) This Agreement shall inure to the benefit of and shall be binding upon the Underwriters, the Company and their respective successors and legal representatives, and nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement, or any provisions herein contained, this Agreement and all conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person, except that (i) the indemnities of the Company contained in Section 6 hereof shall also be for the benefit of any person or persons who control the Underwriters within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and (ii) the indemnities of the Underwriters contained in Section 6 hereof shall also be for the benefit of the directors of the Company, the officers of the Company who have signed the Registration Statement and any person or persons who control the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act. No purchaser of Securities from the Underwriters shall be deemed a successor because of such purchase.

(f) The respective representations, warranties, agreements, covenants, indemnities and other statements of the Company, its officers and the Underwriters set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement shall remain in full force and effect, regardless of (i) any investigation made by or on behalf of the Company, any of its officers, directors, employees or agents, the Underwriters or any controlling person referred to in Section 6 hereof and (ii) delivery of and payment for the Securities. The respective agreements, covenants, indemnities and other statements set forth in Sections 4, 6 and 10 hereof shall remain in full force and effect, regardless of any termination or cancellation of this Agreement.

Section 16. Severability. It is the desire and intent of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the law and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, in the event that any provision of this Agreement would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 17. Governing Law. The validity and interpretation of this Agreement, and the terms and conditions set forth herein, shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any provisions relating to conflicts of laws.

If the foregoing is in accordance with your understanding, please sign and return to us seven counterparts hereof, and upon the acceptance hereof by you, this letter and such acceptance hereof shall constitute a binding agreement between the Underwriters and the Company.

Very truly yours,

iSTAR FINANCIAL INC.

By: /s/ James D. Burns
Name: James D. Burns
Title: Executive Vice President & Treasurer

The foregoing Agreement is hereby
confirmed and accepted as of the
date specified in Schedule II hereto.

CITIGROUP GLOBAL MARKETS INC.
J.P. MORGAN SECURITIES INC.

By: CITIGROUP GLOBAL MARKETS INC.

By: /s/ Jim Voorheis
Name: Jim Voorheis
Title: Managing Director

By: J.P. MORGAN SECURITIES INC.

By: /s/ Santosh Sreenivasan
Name: Santosh Sreenivasan
Title: Executive Director

By:
Name:
Title:

SCHEDULE I

Underwriters	Principal Amount of Firm Securities
Citigroup Global Markets Inc.	$ 320,000,000
J.P. Morgan Securities Inc.	320,000,000
Banc of America Securities LLC	80,000,000
Wachovia Capital Markets, LLC	80,000,000
Total	$ 800,000,000

SCHEDULE II

Convertible Senior Floating Rate Notes due 2012

Underwriting Agreement dated: October 10, 2007

Underwriters: The entities set forth under the caption “Underwriters” in the table on Schedule I

Type of Offering: Rule 415 Offering

Title, Purchase Price and Description of Securities:

Title: Convertible Senior Floating Rate Notes due 2012

Principal Amount of Firm Securities: $800,000,000

Principal Amount of Additional Securities: $120,000,000

Purchase price (include accrued interest or amortization, if any): 98%

Closing Date and Location:

October 15, 2007 at the offices of Skadden, Arps, Slate, Meagher & Flom LLP located at Four Times Square, New York, NY 10036.

SCHEDULE III

Free Writing Prospectuses Included in the Disclosure Package

[The Issuer Free Writing Prospectus attached hereto.]

EXHIBIT A

Form of Lock-Up Agreement

October 10, 2007

CITIGROUP GLOBAL MARKETS INC.
388 Greenwich Street
New York, New York 10013

J.P. MORGAN SECURITIES INC.
270 Park Avenue
New York, New York 10017

Ladies and Gentlemen:

The undersigned understands that Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the several Underwriters (as defined below) (collectively, the "**Representatives**"), propose to enter into an Underwriting Agreement (the "**Underwriting Agreement**") with iStar Financial Inc., a Maryland corporation (the "**Company**"), providing for the public offering (the "**Public Offering**") by the several underwriters listed therein (the "**Underwriters**"), of notes convertible into shares (the "**Shares**") of its Common Stock, par value $0.001 per share (the "**Common Stock**").

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, the undersigned will not, during the period commencing on the date hereof and ending 30 days after the date of the final prospectus relating to the Public Offering (the "**Prospectus**"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to transactions relating to (a) shares of Common Stock or other securities acquired in open market transactions after the date of the final Prospectus related to the Public Offering, or (b) (i) transfers of shares of Common Stock or any security convertible into Common Stock by gift, will or intestacy, (ii) transfers of shares of Common Stock or any security convertible into Common Stock made by distribution to partners, members, shareholders, family members or a trust of the undersigned; *provided*, *however*, that in the case of a transfer pursuant to clause (b) above, it shall be a condition to the transfer that the transferee shall sign and deliver a lock-up letter substantially in the form of this letter. In addition,

notwithstanding the foregoing, the undersigned may offer, sell, pledge, contract to sell, (including any short sale), grant any option to purchase or otherwise dispose of any shares of Common Stock pursuant to any existing plans under Rule 10b5-1 of the Securities Exchange Act of 1934. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

Notwithstanding the foregoing, if (a) during the last 17 days of the 30-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs; or (b) prior to the expiration of the 30-day restricted period, the Company announces that it will release earnings results during the 16 day period beginning on the last day of the 30 day period, the restrictions referred to above shall continue to apply until the expiration of the 18 day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

The undersigned hereby acknowledges that the Company will agree in the Underwriting Agreement to provide written notice of any event that would result in an extension of the 30-day restricted period pursuant to the previous paragraph to the undersigned and agrees that any such notice properly delivered will be deemed to have been given to, and received by, the undersigned. The undersigned hereby further agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this letter during the period from the date of this letter to and including the 34th day following the expiration of the 30-day restricted period, it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has received written confirmation from the Company that the 30-day restricted period (as such may have been extended pursuant to the previous paragraph) has expired.

The undersigned understands that the Company and the Underwriters are relying upon this agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Public Offering actually occur depends on a number of factors, including market conditions. The Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

Very truly yours,

_____

(Name)

_____

(Address)

EXHIBIT B

Form of Officers' Certificate

October 15, 2007

I, Catherine D. Rice, do hereby certify that I am the Chief Financial Officer of, and I, Nicholas Radescu, do hereby certify that I am the Chief Accounting Officer of, iStar Financial Inc., organized under the laws of the State of Maryland (the "Company"), and, in my capacity as such, do hereby certify that:

1. I am providing this certificate in connection with the offering (the "Offering") by the Company of $800,000,000 aggregate principal amount of its Convertible Senior Floating Rate Notes due 2012 (the "Notes") pursuant to an underwriting agreement, dated October 10, 2007, by and among the Company and Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the several underwriters named therein, as described in the Prospectus Supplement, dated October 10, 2007 relating to the Notes (the "Prospectus Supplement").

2. I have reviewed the unaudited statements of income, of cash flows and of owner's investment for the six-month periods ended June 30, 2007 and 2006, in each case, of the Commercial Real Estate Lending Business (a carve-out business of Fremont Investment & Loan) and filed on the Amended Current Report on Form 8-K dated September 18, 2007 (collectively, the "Fremont Financial Statements").

3. Nothing has come to my attention that caused me to believe that any material modifications should be made to the Fremont Financial Statements.

This certificate is being furnished to Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the several underwriters solely to assist them in conducting their investigation of the Company and its subsidiaries in connection with the Offering. This certificate shall not be used, quoted or otherwise referred to without the prior written consent of the Company.

IN WITNESS WHEREOF, the undersigned has executed and delivered this chief financial officer's certificate on behalf of the Company as of the date first written above.

By: _____

Name: Catherine D. Rice
Title: Chief Financial Officer

By: _____

Name: Nicholas Radescu
Title: Chief Accounting Officer

---

iSTAR FINANCIAL INC., as Issuer,

-and-

US BANK TRUST NATIONAL ASSOCIATION, as Trustee

NINETEENTH SUPPLEMENTAL INDENTURE

Dated as of

October 15, 2007

Convertible Senior Floating Rate Notes due 2012

TABLE OF CONTENTS

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.09
(a)(2)	7.09
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	7.08
(c)	N.A.
311(a)	7.13
(b)	7.13
(c)	N.A.
312(a)	5.01
(b)	5.02
(c)	5.02
313(a)	5.03
(b)	5.03
(c)	N.A.
(d)	5.03
314(a)	4.08, 5.04
(b)	N.A.
(c)(1)	N.A.
(c)(2)	N.A.
(c)(3)	N.A.
(d)	N.A.
(e)	N.A.
(f)	N.A.
315(a)	7.01
(b)	6.08
(c)	6.05
(d)	7.01
(e)	6.09
316(a)(1)(A)	6.07
(a)(1)(B)	6.07
(a)(2)	N.A.
(b)	N.A.
(c)	N.A.
317(a)(1)	N.A.
(a)(2)	N.A.
(b)	N.A.
318(a)	N.A.

N.A. means not applicable.

* This Cross-Reference Table is not part of the Indenture.

INDENTURE

SUPPLEMENTAL INDENTURE, dated as of October 15, 2007, between iStar Financial Inc., a corporation organized under the laws of Maryland (hereinafter called the "**Issuer**"), and US Bank Trust National Association, as trustee hereunder (hereinafter called the "**Trustee**").

The Issuer has heretofore delivered to the Trustee an indenture dated as of February 5, 2001 (the "Original Indenture"), a form of which has been filed with the Securities and Exchange Commission under the Securities Act and is incorporated by reference as an exhibit to the Issuer's Registration Statement on Form S-3 (Registration No. 333-142539), providing for the issuance from time to time of debt securities of the Issuer.

The Board of Directors of the Issuer has duly adopted resolutions authorizing the Issuer to execute and deliver this Supplemental Indenture (the "Indenture").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the holders of the Issuer's Convertible Senior Floating Rate Notes due 2012 (hereinafter called the "**Notes**") on the date hereof.

ARTICLE 1

DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All

other terms used in this Indenture that are defined in the Trust Indenture Act (as defined below) or which are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the respective meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this Indenture. The words "**herein**," "**hereof**," "**hereunder**" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

"**Special Interest Notice**" has the meaning specified in Section 4.09.

"**Additional Notes**" has the meaning specified in Section 2.01.

"**Additional Shares**" has the meaning specified in Section 13.13.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "**control**," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or

otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning specified in Section 2.05(b).

"**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal, state, or foreign law for the relief of debtors.

"**Board of Directors**" means the Board of Directors of the Issuer or a committee of such Board duly authorized to act for it hereunder.

"**Business Day**" means, with respect to any Note, any day, other than a Saturday, Sunday or any other day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

"**Calculation Agent**" has the meaning specified in Section 2.03.

"**Change in Control**" means the occurrence at any time any of the following events: (1) consummation of any transaction or event (whether by means of a share exchange or tender offer applicable to the Common Stock, a liquidation, consolidation, recapitalization, reclassification, combination or merger of the Issuer or a sale, lease or other transfer of all or substantially all of the consolidated assets of the Issuer) or a series of related transactions or events pursuant to which all of the outstanding shares of Common Stock are exchanged for, converted into or constitute solely the right to receive, cash, securities or other property; (2) any "person" or "group" (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act, whether or not applicable), other than the Issuer or any majority-owned subsidiary of the Issuer or any employee benefit plan of the Issuer or such subsidiary, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power in the aggregate of all classes of stock or other equity interests of the Issuer then outstanding entitled to vote generally in elections of the Issuer's directors; or (3) during any period of 12 consecutive months after the date of original issuance of the Notes, persons who at the beginning of such 12-month period constituted the Board of Directors of the Issuer, together with any new persons whose election, appointment, designation, or nomination was approved by a vote of a majority of the persons then still comprising the Board of Directors of the Issuer who were either members of the Board of Directors of the Issuer at the beginning of such period or whose election, appointment, designation or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board of Directors of the Issuer. Notwithstanding the foregoing but solely for purposes of the provisions of the Fundamental Change repurchase right set forth in Section 3.05, even if any of the events specified in the preceding clauses (1) through (3) have occurred, a Change in Control will not be deemed to have occurred if at least 90% of the consideration (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in a merger, consolidation or other transaction otherwise constituting a Change in Control consists of shares of common equity interests traded on a U.S. national securities exchange (or will be so traded immediately following such merger, consolidation or other transaction) and as a result of the merger, consolidation or other transaction the Notes become convertible into such shares of

equity interests. For the purposes of this definition, "person" includes any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

"**Charter**" means the Charter of the Issuer, as the same may be amended, supplemented or restated from time to time, and including any successor thereto or, if the Issuer shall at any time be an entity other than a corporation, the organizational or governing documents of such other entity.

"**Closing Sale Price**," with respect to shares of Common Stock or other equity securities or similar equity interests or other publicly traded securities on any date means the closing sale price per share of Common Stock, equity security, equity interest or other security, as the case may be (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices), on such date as reported on the principal United States securities exchange on which the shares of Common Stock or such other equity securities or similar equity interests or other securities are traded or, if the shares of Common Stock or such other equity securities or similar equity interests or other securities are not listed on a United States national or regional securities exchange, as reported by the National Quotation Bureau Incorporated or another established over-the-counter trading market in the United States. The Closing Sale Price shall be determined without regard to after-hours trading or extended market making. In the absence of the foregoing, the Issuer shall determine the Closing Sale Price on such basis as it considers appropriate.

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

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Common Stock**" means the shares of common stock, par value $0.001 per share, of the Issuer as such common stock exist on the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Issuer and which are not subject to redemption by the Issuer; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"**Conversion Agent**" means the conversion agent appointed by the Issuer to act as set forth in Article 13, which, initially, shall be the Trustee.

"**Conversion Date**" has the meaning specified in Section 13.02.

"**Conversion Notice**" has the meaning specified in Section 13.02.

"**Conversion Price**" on any date of determination means $1,000 divided by the Conversion Rate as of such date.

"**Conversion Rate**" has the meaning specified in Section 13.04.

"**Corporate Trust Office**" or other similar term, means the designated office or agency of the Trustee at which at any particular time its corporate trust business as it relates to this Indenture shall be administered, which office is, at the date as of which this Indenture is dated, located at 100 Wall Street, 16th Floor, Suite 1600, New York, New York 10005, Attention: Corporate Trust Department, or at any other time at such other address as the Trustee may designate from time to time by notice to the Issuer.

"**CUSIP**" means the Committee on Uniform Securities Identification Procedures.

"**Custodian**" means US Bank Trust National Association, as custodian with respect to the Notes in global form, or any successor entity thereto.

"**Daily Conversion Value**" has the meaning provided in Section 13.12(b).

"**Daily Measurement Value**" has the meaning specified in Section 13.12(b)(iii)(B).

"**Daily Settlement Amount**" has the meaning provided in Section 13.12(b)(iii).

"**Daily Share Amount**" has the meaning provided in Section 13.12(b)(iii)(B).

"**Daily VWAP**" has the meaning provided in Section 13.12(b).

"**default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Defaulted Interest**" has the meaning specified in Section 2.03.

"**Depositary**" means the clearing agency registered under the Exchange Act that is designated to act as the Depositary for the Global Notes. DTC shall be the initial Depositary, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**DTC**" means The Depository Trust Company.

"**Effective Date**" has the meaning specified in Section 13.13(b).

"**Event of Default**" means any event specified in Section 6.01 as an Event of Default.

"**ex-dividend date**" has the meaning specified in Section 13.01(a)(iv).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"**Expiration Time**" has the meaning specified in Section 13.05(e).

"**Fundamental Change**" means the occurrence of a Change in Control or a Termination of Trading.

"**Fundamental Change Purchase Price**" has the meaning provided in Section 3.05(a) hereof.

"**Fundamental Change Purchase Date**" has the meaning provided in Section 3.05(a) hereof.

"**Global Note**" has the meaning specified in Section 2.02.

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Initial Notes**" has the meaning specified in Section 2.01.

"**interest**" means, when used with reference to the Notes, any interest payable under the terms of the Notes, including Special Interest, if any, payable pursuant to Section 6.01.

"**Interest Payment Date**" means January 1, April 1, July 1 and October 1 of each year, beginning January 1, 2008.

"**Issuer**" means the party named as the "Issuer" in the first paragraph of this Indenture, and, subject to the provisions of Article 10, shall include its successors and assigns.

"**Issuer Repurchase Notice**" has the meaning specified in Section 3.06(a).

"**Issuer Repurchase Notice Date**" means the date on which the Issuer provides the Issuer Repurchase Notice to holders in accordance with the provisions of Section 3.05(b).

"**Legal Holiday**" means any day other than a Business Day.

"**Market Disruption Event**" has the meaning specified in Section 13.12(b).

"**Net Share Settlement**" has the meaning specified in Section 13.12(b).

"**Note**" or "**Notes**" means any Note or Notes, as the case may be, authenticated and delivered under this Indenture, including the Initial Notes, any Additional Notes and any Global Note.

"**Non-Recourse Indebtedness**" means any of the Issuer's or any of its Subsidiaries' indebtedness that is:

(1) specifically advanced to finance the acquisition of investment assets and secured only by the assets to which such indebtedness relates without recourse to the Issuer or any of its Subsidiaries (other than subject to such customary carve-out matters for which the Issuer or its Subsidiaries acts as a guarantor in connection with such indebtedness, such as fraud, misappropriation and misapplication, unless, until and for so long as a claim for payment or performance has been made thereunder (which has not been satisfied) at which time the obligations with respect to any such customary carve-out shall not be considered Non-Recourse Indebtedness, to the extent that such

claim is a liability of the Issuer for purposes of generally accepted accounting principles in the United States ("GAAP");

(2) advanced to any of the Issuer's Subsidiaries or group of its Subsidiaries formed for the sole purpose of acquiring or holding investment assets against which a loan is obtained that is made without recourse to, and with no cross-collateralization against, the Issuer or any of the Issuer's Subsidiaries' other assets (other than subject to such customary carve-out matters for which the Issuer or its Subsidiaries acts as a guarantor in connection with such indebtedness, such as fraud, misappropriation and misapplication, unless, until and for so long as a claim for payment or performance has been made thereunder (which has not been satisfied) at which time the obligations with respect to any such customary carve-out shall not be considered Non-Recourse Indebtedness, to the extent that such claim is a liability of the Issuer for GAAP purposes) and upon complete or partial liquidation of which the loan must be correspondingly completely or partially repaid, as the case may be; or

(3) specifically advanced to finance the acquisitions of real property and secured by only the real property to which such Indebtedness relates without recourse to the Issuer or any of its Subsidiaries (other than subject to such customary carve-out matters for which the Issuer or its Subsidiaries acts as a guarantor in connection with such Indebtedness, such as fraud, misappropriation and misapplication, unless, until and for so long as a claim for payment or performance has been made thereunder (which has not been satisfied) at which time the obligations with respect to any such customary carve-out shall not be considered Non-Recourse Indebtedness , to the extent that such claim is a liability of the Issuer for GAAP purposes).

"**Note Register**" has the meaning specified in Section 2.05(a).

"**Note Registrar**" has the meaning specified in Section 2.05(a).

"**Noteholder**" or "**holder**" as applied to any Note, or other similar terms (but excluding the term "**beneficial holder**"), means any Person in whose name at the time a particular Note is registered on the Note Registrar's books.

"**Observation Period**" has the meaning specified in Section 13.12(b).

"**Officer**" means, with respect to any Person, the President, Chief Executive Officer, any Vice President, Chief Operating Officer, Treasurer, Secretary or the Chief Financial Officer of such Person.

"**Officers' Certificate**", when used with respect to the Issuer, means a certificate signed by any two Officers.

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Issuer, or other counsel reasonably acceptable to the Trustee.

"**outstanding**", when used with reference to Notes and subject to the provisions of Section 8.04, means, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Notes, or portions thereof, (i) for the redemption or repurchase of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Issuer) or (ii) which shall have been otherwise discharged in accordance with Article 11;

(c) Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06; and

(d) Notes converted pursuant to Article 13.

"**Paying Agent**" has the meaning specified in Section 2.08.

"**Person**" means a corporation, an association, a partnership, a limited liability company, an individual, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note, and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the lost, destroyed or stolen Note that it replaces.

"**Prospectus Supplement**" means the Issuer's Prospectus Supplement, dated October 10, 2007 to the Issuer's Prospectus, dated October 9, 2007, relating to the Notes.

"**Underwriting Agreement**" means the Underwriting Agreement, dated October 10, 2007, among the Issuer and the Underwriter relating to the Notes.

"**Record Date**" has the meaning specified in Section 2.03.

"**Redemption Date**" means the date fixed by the Issuer for redemption of all or any portion of the Notes in accordance with the provisions of Section 3.02 hereof.

"**Reference Dividend**" has the meaning specified in Section 13.05(d).

"**REIT**" means a real estate investment trust within the meaning of Section 856(a) of the Code.

"**Repurchase Notice**" has the meaning specified in Section 3.05(c).

"**Responsible Officer**" shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such person's knowledge of or familiarity with the particular subject.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"**Settlement Amount**" has the meaning specified in Section 13.12(a).

"**Settlement Method**" means, with respect to a conversion of Notes, the relative proportions of cash and/or shares of Common Stock with which such conversion is settled.

"**Settlement Notice**" has the meaning specified in Section 13.12(a).

"**Share Price**" has the meaning specified in Section 13.13(b).

"**Significant Subsidiary**" means, as of any date of determination, a Subsidiary of the Issuer that would constitute a "**significant subsidiary**" as such term is defined under Rule 1-02(w) of Regulation S-X of the Commission as in effect on the date of this Indenture.

"**Special Interest**" has the meaning set forth in Section 6.01.

"**Spin-Off**" has the meaning specified in Section 13.05(c).

"**Stated Maturity**" means October 1, 2012.

"**Subsidiary**" means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock or other equity interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or managing general partner of which is such Person or a subsidiary of such Person or (b) the only general partners of which are such Person or of one or more subsidiaries of such Person (or any combination thereof).

"**Termination of Trading**" will be deemed to have occurred if the Issuer's Common Stock (or other common equity interests into which the Notes are then convertible) are not listed on a United States national securities exchange or cease to be traded in contemplation of a delisting, other than as a result of a transaction described in clause (1) of the definition of Change in Control.

"**Trading Day**" means a day during which trading in securities generally occurs on the New York Stock Exchange or, if the Common Stock or other equity securities or similar equity interests are not then listed on the New York Stock Exchange, on the principal other United States national or regional securities exchange on which the Common Stock or other equity

securities or similar equity interests are then listed or, if the Common Stock or other equity securities or similar equity interests are not then listed on a United States national or regional securities exchange, on the principal other market on which the Common Stock or other equity securities or similar equity interests are then traded or if the Common Stock or other equity securities or similar equity interests are not traded on any such other principal market, any Business Day; *provided* that, for purposes of Section 13.12, the term Trading Day shall have the meaning set forth in Section 13.12(b).

"**Trading Price**" has the meaning specified in Section 13.01(a)(ii).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of this Indenture; *provided* that if the Trust Indenture Act of 1939 is amended after the date hereof, the term "**Trust Indenture Act**" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939 as so amended.

"**Trustee**" means US Bank Trust National Association and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

"**Underwriters**" means the Underwriters named in the Prospectus Supplement.

ARTICLE 2

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation Amount and Issue of Notes*. The Notes shall be designated as the "**Convertible Senior Floating Rate Notes due 2012**." Upon the execution of this Indenture, and from time to time thereafter, Notes may be executed by the Issuer and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver Notes upon a written order of the Issuer, such order signed by two Officers, without any further action by the Issuer hereunder.

The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is initially $800,000,000 (or $920,000,000 if the Underwriter's over-allotment option set forth in the Underwriting Agreement is exercised in full). The Issuer may, without the consent of the holders of Notes, issue additional debt securities (the "**Additional Notes**") from time to time in the future with the same terms, except for any difference in the issue price and interest accrued prior to the issue date of the Additional Notes, and with the same CUSIP number as the Notes originally issued under this Indenture (the "**Initial Notes**") in an unlimited principal amount, provided that such Additional Notes must be part of the same issue as the Initial Notes for United States federal income tax purposes. The Initial Notes and any such Additional Notes will constitute a single series of debt securities, and in circumstances in which this Indenture provides for the holders of Notes to vote or take any action, the holders of Initial Notes and the holders of any such Additional Notes will vote or take that action as a single class.

Section 2.02 *Form of Notes*. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A hereto. The terms

and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Issuer and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends, endorsements or changes as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required by the Custodian, the Depositary or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Notes are subject.

So long as the Notes are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, or otherwise contemplated by Section 2.05(b), all of the Notes will be represented by one or more Notes in global form registered in the name of the Depositary or the nominee of the Depositary (a "**Global Note**"). The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depositary in accordance with this Indenture and the applicable procedures of the Depositary. Except as provided in Section 2.05(b), beneficial owners of a Global Note shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered holders of such Global Note.

Any Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, conversions, exchanges or transfers permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal of, and interest on, any Global Note shall be made to the holder of such Note.

Section 2.03 *Date and Denomination of Notes; Payments of Interest*. The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples of $1,000 in excess thereof. Each Note shall be dated the date of its authentication and shall

bear interest from the date specified on the face of the form of Note attached as Exhibit A hereto. Interest will be computed on the basis of a 360-day year using the actual number of days elapsed from and including an Interest Payment Date to but excluding the next succeeding Interest Payment Date.

The Issuer shall appoint a calculation agent (the "Calculation Agent") to determine the interest rate on the Notes. The Issuer initially appoints the Trustee to act as the Calculation Agent with respect to the Notes. The Issuer may change any Calculation Agent without notice to any Holder. The Issuer shall notify the Trustee in writing of the name and address of any Agent

not a party to this Supplemental Indenture. If the Issuer fails to appoint or maintain another entity as Calculation Agent, the Trustee shall act as such.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business, New York City time, on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date; *provided* that interest payable on the Stated Maturity shall be payable to the Person to whom principal is payable; and *provided*, *further* that if an Interest Payment Date falls on or prior to a Redemption Date or a Fundamental Change Purchase Date, as the case may be, the quarterly payment of interest becoming due on such Interest Payment Date shall be payable to the holder of such Note registered as such on the related Record Date. Interest shall be payable at an office of the Issuer maintained by the Issuer for such purposes, which shall initially be an office or agency of the Trustee. The Issuer shall pay interest (i) on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register; *provided*, *however*, that a holder of any Notes in certificated form in the aggregate principal amount of more than $5.0 million may specify by written notice to the Issuer that it pay interest by wire transfer of immediately available funds to the account specified by the Noteholder in such notice, or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee. If a payment date is not a Business Day, payment shall be made on the next succeeding Business Day. The term "**Record Date**" with respect to any Interest Payment Date shall mean the December 15, March 15, June 15 and September 15, in each case whether or not such day is a Business Day, next preceding the applicable Interest Payment Date. Interest payable on each Interest Payment Date or any other date on which interest shall be payable shall equal the amount of interest accrued for the period from and including the immediately preceding Interest Payment Date in respect of which interest has been paid (or from and including October 15, 2007 if no interest shall have been payable) to but excluding such Interest Payment Date or other date on which such interest should be payable.

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Noteholder registered as such on the relevant Record Date, and such Defaulted Interest shall be paid by the Issuer, at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business, New York City time, on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty five (25) calendar days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than fifteen (15) calendar days and not less than

ten (10) calendar days prior to the date of the proposed payment, and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment (unless, the Trustee shall consent to an earlier date). The Trustee shall promptly notify the Issuer of such special record date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first-class postage prepaid, to each holder at its address as it appears in the Note Register, not less than ten (10) calendar days prior to such special record date (unless, the Trustee shall consent to an earlier date). Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business, New York City time, on such special record date and shall no longer be payable pursuant to the following clause (2) of this Section 2.03.

(2) The Issuer may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Issuer to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution of Notes*. The Notes shall be signed in the name and on behalf of the Issuer by the manual or facsimile signature of an Officer. Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed by the manual or facsimile signature of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 15.11), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Issuer shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any Officer who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Issuer, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer, and any Note may be signed on behalf of the Issuer by such persons as, at the actual date of the execution of such Note, shall be the proper Officers, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes*. Section 2.06 The Issuer shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Issuer designated pursuant to Section 4.02 being herein sometimes collectively referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or in any form capable of being exchanged into written form within a reasonably prompt period of time. The Trustee is hereby appointed "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as

herein provided. The Issuer may appoint one or more co-registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Issuer pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Notes which the Noteholder making the exchange is entitled to receive bearing registration numbers not contemporaneously outstanding.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

All Notes presented or surrendered for registration of transfer or exchange, repurchase or conversion shall (if so required by the Issuer or the Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Issuer, and the Notes shall be duly executed by the Noteholder thereof or its attorney duly authorized in writing.

No service charge shall be made to any holder for any registration of transfer or exchange of Notes, but the Issuer may require payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes.

In connection with the redemption of the Notes in part, neither the Trustee nor any Note Registrar shall be required to issue or register the transfer or exchange of (a) any Notes during a period beginning at the opening of business fifteen (15) days before any selection of Notes to be redeemed and ending at the close of business on the day of mailing of the relevant notice of redemption, or (b) any Notes or portions thereof called for redemption pursuant to Section 3.02, except the unredeemed portion of any Note redeemed in part.

(a) The following provisions shall apply only to Global Notes:

(i) Each Global Note authenticated under this Indenture shall be registered in the name of the Depositary or a nominee thereof and delivered to such Depositary or a nominee thereof or Custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture.

(ii) Notwithstanding any other provision in this Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no

transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depositary or a nominee thereof unless (1) the Depositary (x) has notified the Issuer that it is unwilling or unable to continue as Depositary for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act, and a successor depositary has not been appointed by the Issuer within ninety (90) calendar days, (2) an Event of Default has occurred and is continuing or (3) the Issuer, in its sole discretion, notifies the Trustee in writing that it no longer wishes to have all the Notes represented by Global Notes. Any Global Note exchanged pursuant to clause (1) or (2) above shall be so exchanged in whole and not in part and any Global Note exchanged pursuant to clause (3) above may be exchanged in whole or from time to time in part as directed by the Issuer. Any Note issued in exchange for a Global Note or any portion thereof shall be a Global Note; *provided* that any such Note so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Note.

(iii) Notes issued in exchange for a Global Note or any portion thereof pursuant to clause (ii) above shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Note or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear any legends required hereunder. Any Global Note to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Note Registrar. With regard to any Global Note to be exchanged in part, either such Global Note shall be so surrendered for exchange or, if the Trustee is acting as Custodian for the Depositary or its nominee with respect to such Global Note, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and make available for delivery the Note issuable on such exchange to or upon the written order of the Depositary or an authorized representative thereof.

(iv) In the event of the occurrence of any of the events specified in clause (ii) above, the Issuer will promptly make available to the Trustee a reasonable supply of certificated Notes in definitive, fully registered form, without interest coupons.

(v) Neither any members of, or participants in, the Depositary ("**Agent Members**") nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, and the Depositary or such nominee, as the case may be, may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner and holder of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other

authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Note.

(vi) At such time as all interests in a Global Note have been redeemed, repurchased, converted or exchanged for Notes in certificated form, such Global Note shall, upon receipt thereof, be canceled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is redeemed, repurchased, converted or exchanged for Notes in certificated form, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction.

(b) Reserved.

(c) The Trustee shall have no responsibility or obligation to any Agent Members or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Agent Member or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Noteholders and all payments to be made to Noteholders under the Notes shall be given or made only to or upon the order of the registered Noteholders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the customary procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Agent Members.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members in any Global Indenture) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Issuer in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and make available for delivery, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case, the applicant for a substituted Note shall furnish to the Issuer, to the Trustee and, if applicable, to such

authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Issuer, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Following receipt by the Trustee or such authenticating agent, as the case may be, of satisfactory security or indemnity and evidence, as described in the preceding paragraph, the Trustee or such authenticating agent may authenticate any such substituted Note and make available for delivery such Note. Upon the issuance of any substituted Note, the Issuer may require the payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note which has matured or is about to mature or has been called for redemption or has been properly tendered for repurchase on a Fundamental Change Purchase Date (and not withdrawn), as the case may be, or is to be converted pursuant to this Indenture, shall become mutilated or be destroyed, lost or stolen, the Issuer may, instead of issuing a substitute Note, pay or authorize the payment of or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Issuer, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or in connection with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Issuer, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or exchange or redemption or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or exchange or redemption or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes*. Pending the preparation of Notes in certificated form, the Issuer may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the written request of the Issuer, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form, but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Issuer. Every such temporary Note shall be executed by the Issuer and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay, the Issuer will execute and deliver to the Trustee or such authenticating agent Notes in certificated form

and thereupon any or all temporary Notes may be surrendered in exchange therefor, at each office or agency maintained by the Issuer pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Issuer at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes*. All Notes surrendered for the purpose of payment, redemption, repurchase, conversion, exchange or registration of transfer shall, if surrendered to the Issuer or any paying agent to whom Notes may be presented for payment (the "**Paying Agent**") or Conversion Agent, which shall initially be the Trustee, or any Note Registrar, be surrendered to the Trustee and promptly canceled by it or, if surrendered to the Trustee, shall be promptly canceled by it and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of such canceled Notes in accordance with its customary procedures. If the Issuer shall acquire any of the Notes, such acquisition shall not operate as a redemption, repurchase or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.09 *CUSIP Numbers*. The Issuer in issuing the Notes may use "**CUSIP**" numbers (if then generally in use), and, if so, the Trustee shall use "**CUSIP**" numbers in notices of redemption as a convenience to Noteholders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee of any change in the "**CUSIP**" numbers.

ARTICLE 3

REDEMPTION AND REPURCHASE OF NOTES

Section 3.01 *Optional Redemption of Notes*. The Issuer shall have the right to redeem the Notes on the terms set forth in this Section 3.01 in order to preserve Issuer's qualification as a REIT. If the Issuer determines it is necessary to redeem the Notes in order to preserve Issuer's qualification as a REIT, the Issuer may, upon the notice set forth in Section 3.02, redeem the Notes for cash, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed plus unpaid interest, if any, accrued thereon to the Redemption Date; *provided* that, in connection with any such redemption, the Issuer shall provide the Trustee with an Officers' Certificate evidencing that the Board of Directors has, in good faith, made the determination that it is necessary to redeem the Notes in order to preserve Issuer's qualification as a REIT.

The foregoing redemption right shall terminate if the restrictions on ownership and transfer of the shares of Common Stock set forth in the Charter shall terminate or if the Board of

Directors of the Issuer shall revoke or otherwise terminate the election by the Issuer to qualify as a REIT pursuant to 856(a) (or any successor thereto) of the Code.

Other than as set forth in this Section 3.01, the Notes shall not be subject to redemption at the option of the Issuer prior the Stated Maturity thereof.

Section 3.02 *Notice of Optional Redemption; Selection of Notes*. In case the Issuer shall desire to exercise the right to redeem all or, as the case may be, any part of the Notes pursuant to Section 3.01, it shall fix a date for redemption and it or, at its written request received by the Trustee not fewer than five (5) Business Days prior (or such shorter period of time as may be acceptable to the Trustee) to the date the notice of redemption is to be mailed, the Trustee in the name of and at the expense of the Issuer, shall mail or cause to be mailed a notice of such redemption not fewer than thirty-five (35) calendar days nor more than sixty-five (65) calendar days prior to the Redemption Date to each holder of Notes so to be redeemed in whole or in part at its last address as the same appears on the Note Register; *provided* that if the Issuer makes such request of the Trustee, the text of the notice shall be prepared by the Issuer. Such mailing shall be by first class mail. The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Concurrently with the mailing of any such notice of redemption, the Issuer shall issue a press release announcing such redemption, the form and content of which press release shall be determined by the Issuer in its sole discretion. The failure to issue any such press release or any defect therein shall not affect the validity of the redemption notice or any of the proceedings for the redemption of any Note called for redemption.

Each such notice of redemption shall specify: (i) the aggregate principal amount of Notes to be redeemed, (ii) the CUSIP number or numbers of the Notes being redeemed, (iii) the date fixed for redemption (which shall be a Business Day), (iv) the redemption price at which Notes are to be redeemed, (v) the place or places of payment and that payment will be made upon presentation and surrender of such Notes, (iv) that interest accrued and unpaid to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon or on the portion thereof to be redeemed will cease to accrue, (vii) that the holder has a right to convert the Notes called for redemption, (viii) the Conversion Rate on the date of such notice and (ix) the time and date on which the right to convert such Notes or portions thereof pursuant to this Indenture will expire. If fewer than all the Notes are to be redeemed, the notice of redemption shall identify the Notes to be redeemed (including CUSIP numbers, if any). In case any Note is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, on and after the Redemption Date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion thereof will be issued.

Whenever any Notes are to be redeemed, the Issuer shall give the Trustee written notice of the Redemption Date, together with an Officers' Certificate as to the aggregate principal amount of Notes to be redeemed, not fewer than forty (40) calendar days (or such shorter period of time as may be acceptable to the Trustee) prior to the Redemption Date.

On or prior to the Redemption Date specified in the notice of redemption given as provided in this Section 3.02, the Issuer shall deposit with the Paying Agent (or, if the Issuer is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) an amount of money in immediately available funds sufficient to redeem on the Redemption Date all the Notes (or portions thereof) so called for redemption (other than those theretofore surrendered for exchange) at the appropriate redemption price, together with accrued interest to the Redemption Date; *provided* that if such payment is made on the Redemption Date, it must be received by the Paying Agent, by 11:00 a.m., New York City time, on such date. The Issuer shall be entitled to retain any interest, yield or gain on amounts deposited with the Paying Agent pursuant to this Section 3.02 in excess of amounts required hereunder to pay the redemption price and accrued interest to the Redemption Date. If any Note called for redemption is converted pursuant hereto prior to such Redemption Date, any money deposited with the Paying Agent or so segregated and held in trust for the redemption of such Note shall be paid to the Issuer or, if then held by the Issuer, shall be discharged from such trust.

If less than all of the outstanding Notes are to be redeemed, the Trustee shall select the Notes or portions thereof of the Global Note or the Notes in certificated form to be redeemed (in principal amounts of $1,000 or multiples thereof) on a pro rata basis or by another method the Trustee deems fair and appropriate. If any Note selected for redemption in part is submitted for conversion in part after such selection, the portion of such Note submitted for conversion shall be deemed (so far as may be possible) to be the portion to be selected for redemption. The Notes (or portions thereof) so selected for redemption shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Note is submitted for conversion in part before the mailing of the notice of redemption.

Upon any redemption of less than all of the outstanding Notes, the Issuer and the Trustee may (but need not), solely for purposes of determining the pro rata allocation among such Notes that are outstanding at the time of redemption, treat as outstanding any Notes surrendered for conversion during the period in which Notes are selected for redemption.

Section 3.03 *Payment of Notes Called for Redemption by the Issuer*. If notice of redemption has been given as provided in Section 3.02, the Notes or portion of Notes with respect to which such notice has been given shall, unless converted pursuant to the terms hereof, become due and payable on the date fixed for redemption at the place or places stated in such notice at the redemption price, plus interest accrued to the Redemption Date, and unless the Issuer shall default in the payment of the amounts owing on the Notes upon such redemption, interest on the Notes or portion of Notes so called for redemption shall cease to accrue on and after such date and, except as provided in Section 7.05 and Section 11.02, the Notes shall cease to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the redemption price thereof plus accrued and unpaid interest to the Redemption Date. On presentation and surrender of such Notes at a place of payment in said notice specified, the said Notes or the specified portions thereof shall be paid and redeemed by the Issuer at the redemption price, together with interest accrued thereon to the Redemption Date.

Upon presentation of any Note redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of

the Issuer, a new Note or Notes, of authorized denominations, in principal amount equal to the unredeemed portion of the Notes so presented.

Notes and portions of Notes that are to be redeemed pursuant to this Article 3 shall be convertible by the holder thereof until 5:00 p.m., New York City time, on the Business Day immediately preceding the Redemption Date, unless the Issuer shall fail to pay the redemption price.

Section 3.04 *Sinking Fund*. There shall be no sinking fund provided for the Notes.

Section 3.05 *Repurchase at Option of Holders Upon a Fundamental Change*.

(a) If there shall occur a Fundamental Change at any time prior to the Stated Maturity of the Notes, then each Noteholder shall have the right to require the Issuer to repurchase its Notes for cash, in whole or in part (in principal amounts of $1,000 and integral multiples thereof), on a date (the "**Fundamental Change Purchase Date**") specified by the Issuer (which date shall be not earlier than fifteen (15) days and not more than thirty (30) days after the Issuer Repurchase Notice Date related to such Fundamental Change) at a purchase price equal to 100% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest to the Fundamental Change Purchase Date (such amount, the "**Fundamental Change Purchase Price**").

(b) Within 20 days after the occurrence of a Fundamental Change, the Issuer shall mail or cause to be mailed to all holders of record on the date of the Fundamental Change (and to beneficial owners as required by applicable law) an Issuer Repurchase Notice as set forth in Section 3.06 with respect to such Fundamental Change. The Issuer shall also deliver a copy of the Issuer Repurchase Notice to the Trustee and the Paying Agent at such time as it is mailed to Noteholders. In addition to the mailing of such Issuer Repurchase Notice, the Issuer shall disseminate a press release through Dow Jones & Company, Inc., Bloomberg Business News, PR Newswire or a substantially similar financial news organization announcing the occurrence of such Fundamental Change and publish such information in a newspaper of general circulation in The City of New York or on the Issuer's web site, or through such other public medium as the Issuer shall deem appropriate at such time. The failure to issue any such press release or any defect therein shall not affect the validity of the Issuer Repurchase Notice or any proceedings for the repurchase of any Note which any Noteholder may elect to have the Issuer redeem as provided in this Section 3.05.

No failure of the Issuer to give the foregoing notices and no defect therein shall limit the Noteholders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 3.05.

(c) In order to exercise its repurchase right, the holder must deliver to the Paying Agent, prior to the close of business on the third Business Day prior to the Fundamental Change Purchase Date, a written notice of repurchase (the "**Repurchase Notice**"). Such Repurchase Notice shall state: (A) the certificate number (if the Note is in certificated form) of the Note which the holder will deliver to be repurchased, (B) the portion of the principal amount of the Note which the holder will deliver to be repurchased, in multiples of $1,000, provided that

the remaining principal amount of Notes is in an authorized denomination and (C) that such Note shall be repurchased pursuant to the terms and conditions specified in the Note and in this Indenture. Any Repurchase Notice provided in respect of a beneficial interest in a Global Note shall be required to comply with the applicable procedures of the Depositary.

(d) The Issuer, if so requested, shall repurchase from the holder thereof, pursuant to this Section 3.05, a portion of a Note, if the principal amount of such portion is $1,000 or a whole multiple of $1,000. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the repurchase of such portion of such Note.

(e) Notwithstanding the foregoing, no Notes may be repurchased by the Issuer pursuant to this Section 3.05 if there has occurred and is continuing an Event of Default with respect to the Notes (other than a default in the payment of the Fundamental Change Purchase Price for the Notes to be repurchased).

(f) The Paying Agent shall promptly notify the Issuer of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Note for repurchase shall be determined by the Issuer, whose determination shall be final and binding absent manifest error.

(g) Payment of the Fundamental Change Purchase Price for a Note for which a Repurchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the Notes, together with necessary endorsements, to the Paying Agent. Such Fundamental Change Purchase Price shall be paid to such holder, subject to receipt of funds and/or Notes by the Paying Agent, within two (2) Business Days following the later of (x) the Fundamental Change Purchase Date with respect to such Note (provided the holder has satisfied the conditions in this Section 3.05) and (y) the time of book-entry transfer or delivery of such Note or beneficial interest therein to the Paying Agent by the holder thereof.

Section 3.06 *Issuer Repurchase Notice*.

(a) In connection with any repurchase of Notes, the Issuer shall, on the applicable Issuer Repurchase Notice Date, give written notice to holders (with a copy to the Trustee) setting forth the information specified in this Section 3.06 (in either case, the "**Issuer Repurchase Notice**").

Each Issuer Repurchase Notice shall:

(1) state the Fundamental Change Purchase Price and the amount of interest accrued and unpaid per $1,000 principal amount of Notes to the Fundamental Change Purchase Date;

(2) the Fundamental Change Purchase Date;

(3) the circumstances constituting the Fundamental Change;

(4) state that holders must exercise their right to elect to repurchase prior to the close of business on the third Business Day prior to the Fundamental Change Purchase Date;

(5) include a form of Repurchase Notice;

(6) state the name and address of the Trustee and the Paying Agent and, if the Notes are then convertible (including in connection with a Fundamental Change), state the name and address of the Conversion Agent;

(7) state that Notes must be surrendered to the Paying Agent to collect the Fundamental Change Purchase Price and accrued and unpaid interest;

(8) state that a holder may withdraw its Repurchase Notice at any time prior to the close of business on the third Business Day prior to the Fundamental Change Purchase Date by delivering a valid written notice of withdrawal in accordance with Section 3.07;

(9) if the Notes are then convertible (including in connection with a Fundamental Change), state that Notes as to which a Repurchase Notice has been given may be converted from and including the Effective Date of such Fundamental Change up to and including the earlier of the 30th Business Day following such Effective Date and the Business Day prior the Stated Maturity of the Notes provided the Repurchase Notice is withdrawn by the holder in accordance with the terms of this Indenture;

(10) state that, unless the Issuer defaults in making payment of the Fundamental Change Purchase Price, interest on Notes in respect of which a Repurchase Notice shall have been submitted and not withdrawn will cease to accrue on and after the Fundamental Change Purchase Date; and

(11) state the CUSIP number of the Notes, if CUSIP numbers are then in use.

An Issuer Repurchase Notice may be given by the Issuer or, at the Issuer's request, the Trustee shall give such Issuer Repurchase Notice in the Issuer's name and at the Issuer's expense; *provided* that the text of the Issuer Repurchase Notice shall be prepared by the Issuer.

If any of the Notes is represented by a Global Note, then the Issuer will modify such notice to the extent necessary to accord with the applicable procedures of the Depositary that apply to the repurchase of Global Notes.

(b) The Issuer will, to the extent applicable, comply with the provisions of Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act that may be applicable at the time of the repurchase of the Notes, file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act and comply with all other applicable federal and state securities laws in connection with the repurchase of the Notes.

Section 3.07 *Withdrawal of Repurchase Notice*. A Repurchase Notice may be withdrawn, in whole or in part, by means of a written notice of withdrawal delivered to the office of the Paying Agent at any time prior to the close of business on the third Business Day prior to a Fundamental Change

Purchase Date. Such notice of withdrawal must specify:

(a) the name of the holder;

(b) the certificate number(s) of all withdrawn Notes in certificated form;

(c) the principal amount of Notes with respect to which such notice of withdrawal is being submitted, which must be an integral multiple of $1,000; and

(d) the principal amount of Notes, if any, which remains subject to the original Repurchase Notice, which must be an integral multiple of $1,000.

Any withdrawal notice provided in respect of a beneficial interest in a Global Note shall be required to comply with the applicable procedures of the Depositary.

Section 3.08 *Deposit of Repurchase Price*.

(a) Prior to 11:00 a.m., New York City time, on the Fundamental Change Purchase Date, the Issuer shall deposit with the Paying Agent or, if the Issuer is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 4.04 an amount of cash (in immediately available funds if deposited on the Fundamental Change Purchase Date), sufficient to pay the aggregate Fundamental Change Purchase Price of all the Notes or portions thereof that are to be repurchased as of the Fundamental Change Purchase Date.

(b) If on the Fundamental Change Purchase Date the Paying Agent holds money sufficient to pay the Fundamental Change Purchase Price of the Notes that holders have elected to require the Issuer to repurchase in accordance with Section 3.05 then, on and after the Fundamental Change Purchase Date such Notes will cease to be outstanding, interest will cease to accrue with respect to such Notes and all other rights of the holders of such Notes will terminate, other than the right to receive the Fundamental Change Purchase Price. Such will be the case whether or not book-entry transfer of the Note to the Paying Agent is made or whether or not Notes in certificated form, together with necessary endorsements, are delivered to the Paying Agent.

Section 3.09 *Notes Repurchased in Part*. Upon presentation of any Note repurchased only in part, the Issuer shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Issuer, a new Note or Notes, of any authorized denomination, in aggregate principal amount equal to the unrepurchased portion of the Notes presented.

Section 3.10 *Third Party Purchase*. The Issuer may arrange for a third party to purchase Notes for which the Issuer has received a valid Repurchase Notice that has not been properly withdrawn, in the manner and otherwise in compliance with the requirements set forth herein and in the Notes. If a third party purchases any Notes under such circumstances, then interest will continue to accrue on the Notes and such Notes will continue to be outstanding after the Fundamental Change Purchase Date for all purposes of the Indenture and will be fungible with all other Notes then outstanding.

Section 3.11 *Repayment to the Issuer*. Subject to Section 11.04, the Paying Agent shall return to the Issuer any cash that remains unclaimed, together with interest, if any, thereon, held by them for the payment of the Fundamental Change Purchase Price; *provided* that to the extent that the aggregate amount of cash deposited by the Issuer pursuant to Section 3.08 exceeds the

aggregate Fundamental Change Purchase Price of the Notes or portions thereof which the Issuer is obligated to repurchase as of the Fundamental Change Purchase Date, then, unless otherwise agreed in writing with the Issuer, promptly after the second Business Day following the Fundamental Change Purchase Date, the Paying Agent shall return any such excess to the Issuer, together with interest, if any, thereon.

ARTICLE 4

PARTICULAR COVENANTS OF THE ISSUER

Section 4.01 *Payment of Principal, Premium and Interest*. The Issuer covenants and agrees that it will duly and punctually pay or cause to be paid when due the principal of (including the redemption price upon redemption or the Fundamental Change Purchase Price upon repurchase, in each case pursuant to Article 3), and interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02 *Maintenance of Office or Agency*. The Issuer will maintain an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion, redemption or repurchase and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. As of the date of this Indenture, such office shall be the offices of US Bank Trust National Association, 100 Wall Street, 16th floor, Suite 1600, New York, New York 10005, Attention: Corporate Trust Department, and, at any other time, at such other address as the Trustee may designate from time to time by notice to the Issuer. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

The Issuer may also from time to time designate co-registrars and one or more offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby initially designates the Trustee as Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office shall be considered as one such office or agency of the Issuer for each of the aforesaid purposes.

So long as the Trustee is the Note Registrar, the Trustee agrees to mail, or cause to be mailed, the notices set forth in Section 7.10(a) and the third paragraph of Section 7.11. If co-registrars have been appointed in accordance with this Section, the Trustee shall mail such notices only to the Issuer and the holders of Notes it can identify from its records.

Section 4.03 *Appointments to Fill Vacancies in Trustee's Office*. The Issuer, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, upon the terms and

conditions and otherwise as provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 *Provisions as to Paying Agent*.

(a) If the Issuer shall appoint a Paying Agent other than the Trustee, or if the Trustee shall appoint such a Paying Agent, the Issuer will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(1) that it will hold all sums held by it as such agent for the payment of the principal of, or interest on, the Notes (whether such sums have been paid to it by the Issuer or by any other obligor on the Notes) in trust for the benefit of the holders of the Notes;

(2) that it will give the Trustee notice of any failure by the Issuer (or by any other obligor on the Notes) to make any payment of the principal of, or interest on, the Notes when the same shall be due and payable; and

(3) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Issuer shall, on or before each due date of the principal of, or interest on, the Notes, deposit with the Paying Agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such principal, or interest and (unless such Paying Agent is the Trustee) the Issuer will promptly notify the Trustee of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit shall be received by the Paying Agent by 11:00 a.m. New York City time, on such date.

(b) If the Issuer shall act as its own Paying Agent, it will, on or before each due date of the principal of, or interest on, the Notes, set aside, segregate and hold in trust for the benefit of the holders of the Notes a sum sufficient to pay such principal and interest so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Issuer (or any other obligor under the Notes) to make any payment of the principal of, or interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Issuer may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Issuer or any Paying Agent hereunder as required by this Section 4.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Issuer or any Paying Agent to the Trustee, the Issuer or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 4.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.04 is subject to Section 11.02 and Section 11.03.

The Trustee shall not be responsible for the actions of any other Paying Agents (including the Issuer if acting as its own Paying Agent) and shall have no control of any funds held by such other Paying Agents.

Section 4.05 *Existence*. Subject to Article 10, the Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided* that the Issuer shall not be required to preserve any such right if the Issuer shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Noteholders.

Section 4.06 *Reserved*.

Section 4.07 *Stay, Extension and Usury Laws*. The Issuer covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Issuer from paying all or any portion of the principal, premium, if any, or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture and the Issuer (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08 *Compliance Certificate*. The Issuer shall deliver to the Trustee, within one hundred twenty (120) calendar days after the end of each fiscal year of the Issuer, a certificate signed by any of the principal executive officer, principal financial officer or principal accounting officer of the Issuer, stating whether or not to the knowledge of the signer thereof the Issuer is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Issuer shall be in default, specifying all such defaults and the nature and the status thereof of which the signer may have knowledge.

The Issuer will deliver to the Trustee, promptly upon becoming aware of (i) any default in the performance or observance of any covenant, agreement or condition contained in this Indenture, or (ii) any Event of Default, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Issuer has taken, is taking or proposes to take with respect thereto.

Any notice required to be given under this Section 4.08 shall be delivered to a Responsible Officer of the Trustee at its Corporate Trust Office.

Section 4.09 *Special Interest Notice*. In the event that the Issuer has elected to pay Special Interest to holders of Notes pursuant to Section 6.01 of this Indenture, the Issuer will provide written notice ("**Special Interest Notice**") to the Trustee of its election to pay Special

Interest, no later than fifteen (15) calendar days prior to the proposed payment date for Special Interest, and the Special Interest Notice shall set forth the amount of Special Interest to be paid by the Issuer on such payment date. The Trustee shall not at any time be under any duty or responsibility to any holder of Notes to determine the Special Interest, or with respect to the nature, extent or calculation of the amount of Special Interest when made, or with respect to the method employed in such calculation of the Special Interest.

ARTICLE 5

NOTEHOLDERS' LISTS AND REPORTS BY THE ISSUER AND THE TRUSTEE

Section 5.01 *Noteholders' Lists*. The Issuer covenants and agrees that it will furnish or cause to be furnished to the Trustee, quarterly, not more than fifteen (15) calendar days after each December 15, March 15, June 15 and September 15 in each year beginning with December 15, 2007, and at such other times as the Trustee may reasonably request in writing, within thirty (30) calendar days after receipt by the Issuer of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the holders of Notes as of a date not more than fifteen (15) calendar days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished by the Issuer to the Trustee so long as the Trustee is acting as the sole Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists*.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Notes contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar or co-registrar in respect of the Notes, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other holders of Notes with respect to their rights under this Indenture or under the Notes, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Noteholder agrees with the Issuer and the Trustee that neither the Issuer nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of holders of Notes made pursuant to the Trust Indenture Act.

Section 5.03 *Reports by Trustee*. Section 5.04 Within sixty (60) calendar days after October 15 of each year commencing with the year 2008, the Trustee shall transmit to holders of Notes such reports dated as of October 15 of the year in which such reports are made concerning the Trustee and its actions under this Indenture as may be required pursuant to Section 313(a) of the Trust Indenture Act at the times and in the manner provided pursuant thereto. In the event that no events have occurred under the applicable sections of the Trust Indenture Act the Trustee shall be under no duty or obligation to provide such reports.

(a) A copy of such report shall, at the time of such transmission to holders of Notes, be filed by the Trustee with each stock exchange and automated quotation system, if any, upon which the Notes are listed and with the Issuer. The Issuer will promptly notify the Trustee in writing if the Notes are listed on any stock exchange or automated quotation system or delisted therefrom.

Section 5.04 *Reports by Issuer*. The Issuer will file with the Trustee within 15 days after the Issuer files the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may prescribe) which the Issuer is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. If the Issuer is not required to file information, documents or reports pursuant to either of those sections, then it will file with the Trustee and the Commission such reports as may be prescribed by the Commission at such time. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officers' Certificate).

ARTICLE 6

REMEDIES OF THE TRUSTEE AND NOTEHOLDERS ON AN EVENT OF DEFAULT

Section 6.01 *Events of Default*. "**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any principal amount or any redemption price or Fundamental Change Purchase Price due with respect to the Notes when the same shall be due and payable, whether at maturity, upon redemption or repurchase, by acceleration or otherwise; or

(b) default in the payment of interest under the Notes as and when the same shall be due and payable, and continuance of such default for a period of thirty (30) calendar days; or

(c) default in the delivery when due of the amounts owing upon conversion, whether due in cash or shares of Common Stock, on the terms set forth herein and in the Notes, upon exercise of a holder's conversion right in accordance with Article 13; or

(d) failure by the Issuer to provide any required notice of the occurrence of Fundamental Change within the time period required by this Indenture, which default continues for 5 days; or

(e) failure on the part of the Issuer to comply with any other term, covenant or agreement in the Notes or in this Indenture (other than a covenant or agreement a default in

whose performance or whose breach is elsewhere in this Section 6.01 specifically dealt with) and such failure continues for a period of sixty (60) calendar days after the date on which written notice of such failure, requiring the Issuer to remedy the same, shall have been given to the Issuer by the Trustee, or to the Issuer and a Responsible Officer of the Trustee by the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Notes at the time outstanding; or

(f) the failure to pay at final maturity (giving effect to any applicable grace periods and any extensions thereof) the principal amount of any indebtedness (other than Non-Recourse Indebtedness) of the Issuer or any Subsidiary of the Issuer, or the acceleration of the final stated maturity of any such indebtedness (which acceleration is not rescinded, annulled or otherwise cured within 20 days of receipt by Issuer or such Subsidiary of notice of any such acceleration) if the aggregate principal amount of such indebtedness, together with the principal amount of any other such indebtedness in default for failure to pay principal at final maturity or which has been accelerated, aggregates $50.0 million or more at any time; or

(g) Reserved;

(h) Reserved;

(i) the Issuer or any Significant Subsidiary of the Issuer pursuant to or under or within meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding seeking liquidation, reorganization or other relief with respect to it or its debts or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property; or

(ii) consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it; or

(iii) consents to the appointment of a custodian of it or for all or substantially of its property; or

(iv) makes a general assignment for the benefit of creditors; or

(j) an involuntary case or other proceeding shall be commenced against the Issuer or any Significant Subsidiary of the Issuer seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) consecutive calendar days; or

(k) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any Significant Subsidiary of the Issuer in an involuntary case or proceeding; or

(ii) appoints a trustee, receiver, liquidator, custodian or other similar official of the Issuer or any Significant Subsidiary of the Issuer or any substantial part of their respective properties; or

(iii) orders the liquidation of the Issuer or any Significant Subsidiary of the Issuer;

and, in each case in this clause (j), the order or decree remains unstayed and in effect for sixty (60) calendar days.

If an Event of Default (other than an Event of Default specified in Section 6.01(i), 6.01(j) and 6.01(k)) with respect to the Issuer) shall occur and be continuing, unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of at least twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding, by notice in writing to the Issuer (and to the Trustee if given by Noteholders), may declare the principal of, and interest accrued and unpaid on, all the Notes to be immediately due and payable, and upon any such declaration the same shall be immediately due and payable.

If an Event of Default specified in Section 6.01(i), 6.01(j) or 6.01(k) occurs with respect to the Issuer, the principal of, and interest accrued and unpaid on, all the Notes shall be immediately and automatically due and payable without necessity of further action.

If, at any time after the principal of and interest on the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, holders of a majority in aggregate principal amount of the Notes then outstanding on behalf of the holders of all of the Notes then outstanding, by written notice to the Issuer and to the Trustee, may waive all defaults or Events of

Default and rescind and annul such declaration and its consequences subject to Section 6.07 if: (a) such rescission would not conflict with any final judgment or decree of a court of competent jurisdiction; (b) interest on overdue installments of interest (to the extent that payment of such interest is lawful) and on overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; (c) the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances pursuant to Section 7.06; and (d) all Events of Default, other than the nonpayment of the principal amount and any accrued and unpaid interest that has become due solely because of such acceleration, have been cured or waived. No such rescission and annulment shall extend to or shall affect any subsequent default or Event of Default, or shall impair any right consequent thereon. The Issuer shall notify in writing a Responsible Officer of the Trustee, promptly upon becoming aware thereof, of any Event of Default, as provided in Section 4.08.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Issuer, the holders of Notes, and the Trustee shall be

restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Issuer, the holders of Notes, and the Trustee shall continue as though no such proceeding had been taken.

Notwithstanding the foregoing, to the extent elected by the Issuer, the sole remedy for an Event of Default relating to the failure by the Issuer to comply with the provisions of Section 5.04 of this Indenture shall, for the first 365 days after the occurrence of such an Event of Default, consist exclusively of the right to receive special interest ("**Special Interest**") on the Notes at an annual rate equal to 1% of the principal amount of the Notes. Such Special Interest shall be paid quarterly in arrears, with the first quarterly payment due on the first Interest Payment Date following the date on which such Special Interest began to accrue on the Notes. Special Interest shall accrue on all outstanding Notes from and including the date on which an Event of Default relating to a failure to comply with the provisions of Section 5.04 shall first occur to but not including the 365th day thereafter (or such earlier date on which such Event of Default shall have been cured or waived). On such 365th day (or earlier, if the Event of Default relating to the failure to comply with Section 5.04 is cured or waived prior to such 365th day), such Special Interest shall cease to accrue and, if the Event of Default relating to the failure to comply with Section 5.04 shall not have been cured or waived prior to such 365th day, the Notes shall be subject to acceleration as provided in this Section 6.01. The provisions of this paragraph shall not affect the rights of holders in the event of the occurrence of any other Event of Default. In the event the Issuer shall not elect to pay Special Interest upon an Event of Default resulting from the failure of the Issuer to comply with the provisions of Section 5.04, the Notes shall be subject to acceleration as provided above in this Section 6.01.

If the Issuer shall elect to pay Special Interest in connection with an Event of Default relating to its failure to comply with the requirements of Section 5.04, the Issuer shall notify all holders and the Trustee and Paying Agent of such election on or before the close of business on the date on which such Event of Default shall first occur in accordance with the provisions of Section 4.09.

Section 6.02 *Payments of Notes on Default; Suit Therefor*. The Issuer covenants that in the case of an Event of Default pursuant to Section 6.01(a) or 6.01(b), upon demand of the Trustee, the Issuer will pay to the Trustee, for the benefit of the holders of the Notes, (i) the whole amount that then shall be due and payable on all such Notes for principal or interest, as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of accrued and unpaid interest at the rate borne by the Notes from the required payment date and, (ii) in addition thereto, any amounts due the Trustee under Section 7.06. Until such demand by the Trustee, the Issuer may pay the principal of and interest on the Notes to the registered holders, whether or not the Notes are overdue.

In case the Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Issuer or any other obligor on the Notes and collect

in the manner provided by law out of the property of the Issuer or any other obligor on the Notes wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Issuer or any other obligor on the Notes under any Bankruptcy Law, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or such other obligor, the property of the Issuer or such other obligor, or in the case of any other judicial proceedings relative to the Issuer or such other obligor upon the Notes, or to the creditors or property of the Issuer or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in such judicial proceedings relative to the Issuer or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 7.06, and to take any other action with respect to such claims, including participating as a member of any official committee of creditors, as it reasonably deems necessary or advisable, unless prohibited by law or applicable regulations, and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including counsel fees and expenses incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

Section 6.03 *Application of Monies Collected by Trustee*. Any monies collected by the Trustee pursuant to this Article 6, shall be applied, in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 7.06;

SECOND: In case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of accrued and unpaid interest, if any, on the Notes in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) as provided in Section 6.02 upon the overdue installments of interest at the annual rate borne by the Notes, such payments to be made ratably to the Persons entitled thereto;

THIRD: In case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount then owing and unpaid upon the Notes for principal and interest, with interest on the overdue principal and (to the extent that such interest has been collected by the Trustee) upon overdue installments of accrued and unpaid interest, as provided in Section 6.02, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and accrued and unpaid interest; and

FOURTH: To the payment of the remainder, if any, to the Issuer or any other Person lawfully entitled thereto.

Section 6.04 *Proceedings by Noteholder*. No holder of any Note shall have any right by virtue of or by reference to any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, except in the case of a default in the payment of principal of, or interest on, the Notes, unless (a) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, (b) the holders of at least twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such security or indemnity satisfactory to it as it may require against the costs, liabilities or expenses to be incurred therein or thereby, (c) the Trustee for sixty (60) calendar days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and (d) no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.07; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee, that no one or more holders of Notes shall have any right in any manner whatever by virtue of or by reference to any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Notes, or to obtain or seek to obtain priority over or preference to any other such holder,

or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Notes (except as otherwise provided herein). For the protection and enforcement of this Section 6.04, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any holder of any Note to receive payment of the principal of (including the redemption price or Fundamental Change Purchase Price upon redemption or repurchase pursuant to Article 3) and accrued interest on such Note, on or after the respective due dates expressed in such Note or in the event of redemption or repurchase, or to institute suit for the enforcement of any such payment on or after such respective dates against the Issuer shall not be impaired or affected without the consent of such holder.

Anything contained in this Indenture or the Notes to the contrary notwithstanding, the holder of any Note, without the consent of either the Trustee or the holder of any other Note, in its own behalf and for its own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, its rights of conversion as provided herein.

Section 6.05 *Proceedings by Trustee*. In case of an Event of Default, the Trustee may, in its discretion, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.06 *Remedies Cumulative and Continuing*. All powers and remedies given by this Article 6 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any default or Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and, subject to the provisions of Section 6.04, every power and remedy given by this Article 6 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

Section 6.07 *Direction of Proceedings and Waiver of Defaults by Majority of Noteholders*. The holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided that (a) such direction shall not be in conflict with any rule of law or with this Indenture, (b) the Trustee may take any other action which is not inconsistent with such direction, (c) the Trustee may decline to take any action that would benefit some

Noteholder to the detriment of other Noteholders and (d) the Trustee may decline to take any action that would involve the Trustee in personal liability.

The holders of a majority in aggregate principal amount of the Notes at the time outstanding may, on behalf of the holders of all of the Notes, waive any past default or Event of Default hereunder and its consequences except (i) a default in the payment of the principal of, or interest on, the Notes, (ii) a failure by the Issuer to convert any Notes as required by this Indenture, (iii) a default in the payment of the redemption price on the Redemption Date pursuant to Article 3, (iv) a default in the payment of the Fundamental Change Purchase Price on the Fundamental Change Purchase Date pursuant to Article 3 or (v) a default in respect of a covenant or provisions hereof which under Article 9 cannot be modified or amended without the consent of the holders of all Notes then outstanding or each Note affected thereby.

Upon any such waiver, the Issuer, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 6.07, said default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 6.08 *Notice of Defaults*. The Trustee shall, within ninety (90) calendar days after a Responsible Officer of the Trustee has knowledge of the occurrence of a default, mail to all Noteholders, as the names and addresses of such holders appear upon the Note Register, notice of all defaults known to a Responsible Officer, unless such defaults shall have been cured or waived before the giving of such notice; *provided* that except in the case of default in the payment of the principal of, or interest on, any of the Notes, the Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Noteholders.

Section 6.09 *Undertaking to Pay Costs*. All parties to this Indenture agree, and each holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than ten percent in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of, or interest on, any Note on or after the due date expressed in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 13.

ARTICLE 7

THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee*. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 8.04

relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Issuer or any Paying Agent (other than the Trustee) or any records maintained by any co-registrar (other than the Trustee) with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred unless a Responsible Officer of the Trustee has actual knowledge thereof or unless the Trustee has otherwise received written notice thereof; and

(g) the Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless a Responsible Officer of the Trustee has actual knowledge thereof or unless the Trustee shall have been notified in writing of such Event of Default by the Issuer or a holder of Notes.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 7.02 *Reliance on Documents, Opinions, etc*. Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Issuer;

(c) the Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance on and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders

pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(g) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(h) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(i) the Trustee may request that the Issuer deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(j) any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

Section 7.03 *No Responsibility for Recitals, etc*. The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Issuer of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 7.04 *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes*. The Trustee, any Paying Agent, the Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 7.05 *Monies to be Held in Trust*. Subject to the provisions of Section 11.02, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. Except as otherwise provided herein, the Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Issuer and the Trustee.

Section 7.06 *Compensation and Expenses of Trustee*. The Issuer covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Issuer and the Trustee, and the Issuer will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, willful misconduct, recklessness or bad faith. The Issuer also covenants to indemnify the Trustee and any predecessor Trustee (or any officer, director or employee of the Trustee), in any capacity under this Indenture and any authenticating agent for, and to hold them harmless against, any and all loss, liability, damage, claim or reasonable expense including taxes (other than taxes based on the income of the Trustee) incurred without negligence, willful misconduct, recklessness or bad faith on the part of the Trustee or such officers, directors, employees or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the reasonable costs and expenses of defending themselves against any claim (whether asserted by the Issuer, any holder or any other Person) of liability in the premises. The obligations of the Issuer under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for reasonable expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Notes. The obligation of the Issuer under this Section shall survive the satisfaction and discharge of this Indenture.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(i), 6.01(j) or 6.01(k) with respect to the Issuer occurs, the expenses and the compensation for the services are intended to constitute reasonable expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07 *Officers' Certificate as Evidence*. Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence, bad faith, recklessness or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee.

Section 7.08 *Conflicting Interests of Trustee*. If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 7.09 *Eligibility of Trustee*. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50.0 million (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50.0 million). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.10 *Resignation or Removal of Trustee*.

(a) Subject to Section 7.10(c), the Trustee may at any time resign by giving written notice of such resignation to the Issuer and to the holders of Notes. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment sixty (60) calendar days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, upon ten Business Days' notice to the Issuer and the Noteholders, petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 7.08 after written request therefor by the Issuer or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Issuer or by any such Noteholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Issuer may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which

instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.09, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

(d) Notwithstanding the replacement of the Trustee pursuant to this Section, the Issuer's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

Section 7.11 *Acceptance by Successor Trustee*. Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Issuer and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Issuer or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Issuer shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.11 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 7.08 and be eligible under the provisions of Section 7.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.11, the Issuer (or the former trustee, at the written direction of the Issuer) shall mail or cause to be mailed notice of the succession of such trustee hereunder to the holders of Notes at their addresses as they shall appear on the Note Register. If the Issuer fails to mail such notice within ten (10) calendar days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Issuer.

Section 7.12 *Succession by Merger*. Any corporation into which the Trustee may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any merger, exchange or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto,

provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; provided that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, exchange or consolidation.

Section 7.13 *Preferential Collection of Claims*. If and when the Trustee shall be or become a creditor of the Issuer (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Issuer (or any such other obligor).

ARTICLE 8

THE NOTEHOLDERS

Section 8.01 *Action by Noteholders*. Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Notes voting in favor thereof at any meeting of Noteholders, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Issuer or the Trustee solicits the taking of any action by the holders of the Notes, the Issuer or the Trustee may fix in advance of such solicitation a date as the record date for determining holders entitled to take such action. The record date, if any, shall be not more than fifteen (15) calendar days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Noteholders*. Subject to the provisions of Sections 7.01 and 7.02, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee

or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the registry of such Notes or by a certificate of the Note Registrar.

Section 8.03 *Absolute Owners*. The Issuer, the Trustee, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name such Note shall

be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Issuer or any Note Registrar) for the purpose of receiving payment of or on account of the principal of, and interest on, such Note, for conversion of such Note and for all other purposes; and neither the Issuer nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note.

Section 8.04 *Issuer-Owned Notes Disregarded*. In determining whether the holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes which are owned by the Issuer or any other obligor on the Notes or any Affiliate of the Issuer or any other obligor on the Notes shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action, only Notes which a Responsible Officer knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not the Issuer, any other obligor on the Notes or any Affiliate of the Issuer or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Issuer shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Issuer to be owned or held by or for the account of any of the above described Persons, and, subject to Section 7.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound*. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any holder of a Note which is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor.

ARTICLE 9

SUPPLEMENTAL INDENTURES

Section 9.01 *Supplemental Indentures Without Consent of Noteholders*. The Issuer, when authorized by the resolutions of the Board of Directors and the Trustee may, from time to

time, and at any time enter into an indenture or indentures supplemental without the consent of the holders of the Notes hereto for one or more of the following purposes:

(a) to evidence a successor to the Issuer and the assumption by that successor of the obligations of the Issuer under this Indenture and the Notes;

(b) to provide for conversion right of holders of the Notes in accordance with the terms hereof if any reclassification or change of Common Stock or any consolidation, merger or sale of all or substantially all of the property or assets of the Issuer occurs;

(c) to add to the covenants of the Issuer for the benefit of the holders of the Notes or to surrender any right or power conferred upon the Issuer;

(d) to secure the obligations of the Issuer in respect of the Notes;

(e) to evidence a Settlement Notice irrevocably electing to settle future conversion obligations by Net Share Settlement;

(f) to evidence and provide the acceptance of the appointment of a successor Trustee under this Indenture;

(g) to comply with the requirements of the Commission in order to effect or maintain qualification of this Indenture under the Trust Indenture Act, as contemplated by this Indenture or otherwise;

(h) to cure any ambiguity, omission, defect or inconsistency in this Indenture or make any other provision with respect to matters or questions arising under this Indenture which the Issuer may deem necessary or desirable and which shall not be inconsistent with provisions of this Indenture; provided that such modification or amendment does not, in the good faith opinion of the Board of Directors, adversely affect the interests of the holders of the Notes in any material respect;

(i) to add or modify any provision with respect to matters or questions arising under this Indenture which the Issuer and the Trustee may deem necessary or desirable and which will not adversely affect the interests of the holders of the Notes in any material respect; or

(j) to modify any provision of this Indenture to conform that provision to the description thereof set forth in the Prospectus Supplement.

Upon the written request of the Issuer, accompanied by a copy of the resolutions of the Board of Directors certified by the Issuer's Secretary or Assistant Secretary authorizing the execution of any supplemental indenture, the Trustee is hereby authorized to join with the Issuer in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Issuer and the Trustee without the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 9.02.

Section 9.02 *Supplemental Indenture With Consent of Noteholders*. With the consent (evidenced as provided in Article 8) of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, the Issuer, when authorized by the resolutions of the Board of Directors and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or modifying in any manner the rights of the holders of the Notes; provided that no such supplemental indenture shall, without the consent of the holder of each Note so affected:

(a) impair or adversely affect the manner of calculation or rate of accrual of interest on the Notes or change the time of payment thereof;

(b) make the Notes payable in money or securities other than that stated in the Notes;

(c) change the Stated Maturity of the Notes;

(d) reduce the principal amount of, or the redemption price or Fundamental Change Purchase Price specified in Article 3 hereof with respect to, the Notes;

(e) make any change that impairs or adversely affects the conversion rights of the holders of the Notes;

(f) make any change that impairs or adversely affects the right to require the Issuer to repurchase the Notes;

(g) impair the right to institute suit for the enforcement of any payment with respect to the Notes or with respect to conversion of the Notes;

(h) change the obligation of the Issuer to redeem any Notes called for redemption on a Redemption Date in a manner adverse to the holders;

(i) change the obligation of the Issuer to maintain an office or agency pursuant to Section 4.02;

(j) make the Notes subordinate in right of payment to any other indebtedness;

(k) Reserved;

(l) reduce the percentage in aggregate principal amount of outstanding Notes required to modify or amend this Indenture or to waive compliance by the Issuer with the provisions of the Indenture; or

(m) modify Section 6.07 or this Section 9.02.

Upon the written request of the Issuer, accompanied by a copy of the resolutions of the Board of Directors certified by the Issuer's Secretary or Assistant Secretary authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid, the Trustee shall join with the Issuer in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 9.03 *Effect of Supplemental Indenture*. Any supplemental indenture executed pursuant to the provisions of this Article 9 shall comply with the Trust Indenture Act, as then in effect, provided that this Section 9.03 shall not require such supplemental indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time, if ever, such qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time, if ever, such qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 9, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Issuer and the holders of Notes shall thereafter be determined, exercised and enforced hereunder, subject in all respects

to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04 *Notation on Notes*. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 9 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Issuer's expense, be prepared and executed by the Issuer, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 15.11) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 9.05 *Evidence of Compliance of Supplemental Indenture to be Furnished to Trustee*. Prior to entering into any supplemental indenture pursuant to this Article 9, the Trustee shall be provided with an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 9 and is otherwise authorized or permitted by this Indenture.

ARTICLE 10

CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 10.01 *Issuer May Consolidate on Certain Terms*. Subject to the provisions of Section 10.02, the Issuer shall not, in a single transaction or a series of related transactions, consolidate with, or sell, lease or convey all or substantially all of its property and assets to, or merge with or into, any other Person (whether or not affiliated with the Issuer), unless: (i) the Issuer is the continuing entity, or the successor (if other than the Issuer) formed by or resulting from any consolidation or merger or which shall have received the transfer of assets shall be an entity organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and shall expressly assume the due and punctual payment of the principal of, and interest on, all of the Notes, and the due and punctual performance and observance of all of the covenants and conditions in the Notes and this Indenture to be performed or satisfied by the Issuer (including, without limitations, the obligation to convert Notes in accordance with the provisions of Article 13 hereof) by a supplemental indenture reasonably satisfactory in form to the Trustee executed and delivered to the Trustee by such successor; (ii) if as a result of any such consolidation, sale, lease, conveyance or merger, the Notes become convertible into common stock or other securities issued by a Person that is other than the Issuer or such successor Person, such Person shall fully and unconditionally guarantee all obligations under the Notes and this Indenture; (iii) immediately after giving effect to the transaction described above, no Event of Default or event which, after notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing; and (iv) the Issuer has delivered to the Trustee the Officers' Certificate and Opinion of Counsel, if any, requested pursuant to Section 15.03.

Section 10.02 *Issuer Successor to be Substituted*. In case of any such consolidation, sale, lease, conveyance or merger in which the Issuer is not the continuing entity and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of the due and punctual payment of the principal of, and interest on, all of the Notes, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or satisfied by the Issuer, such successor Person shall succeed to and be substituted for the Issuer, with the same effect as if it had been named herein as the party of this first part, and the Issuer shall be discharged from its obligations under the Notes and this Indenture. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of the Issuer any or all of the Notes, issuable hereunder that theretofore shall not have been signed by the Issuer and delivered to the Trustee; and, upon the order of such successor Person instead of the Issuer and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the officers of the Issuer to the Trustee for authentication, and any Notes that such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance, transfer or lease, upon compliance with this Article 10 the Person named as the "Issuer" in the

first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 10 may be dissolved, wound up and liquidated at any time thereafter and such Person shall be discharged from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, sale, lease, conveyance or merger, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

ARTICLE 11

SATISFACTION AND DISCHARGE OF INDENTURE

Section 11.01 *Discharge of Indenture*. This Indenture shall cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Notes herein expressly provided for and except as further provided below), and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) either: (1) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 11.04 and (ii) Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer as provided in Section 11.04) have been delivered to the Trustee for cancellation; or (2) all such Notes not theretofore delivered to the Trustee for cancellation have become due and payable, whether upon the Stated Maturity of the Notes, a Redemption Date or a Fundamental Change Purchase Date or otherwise, or have all been converted in accordance with the provisions of Article 13 hereof, and the Issuer has irrevocably deposited or caused to be irrevocably deposited with the Trustee a Paying Agent or the Conversion Agent (other than the Issuer or any of its Affiliates), as applicable, as trust funds in trust cash and, if applicable, shares of Common Stock in an amount sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Notes which have become due and payable) or for amounts owing upon conversion; *provided*, *however*, that

there shall not exist, on the date of such deposit, a default or Event of Default; *provided, further*, that such deposit shall not result in a breach or violation of, or constitute a default under, this Indenture; (b) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer; and (c) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee under Section 7.06 shall survive and, if money shall have been deposited with the Trustee pursuant to subclause (2) of clause (a) of this Section, the provisions of Sections 2.05, 2.06, 2.07, 3.05, 5.01, Article 13 and this Article 11, shall survive until the Notes have been paid in full.

Section 11.02 *Deposited Monies to be Held in Trust by Trustee*. Subject to Section 11.04, all monies deposited with the Trustee pursuant to Section 7.05, shall be held in trust for the sole benefit of the Noteholders, and such monies shall be applied by the Trustee to the

payment, either directly or through any Paying Agent (including the Issuer if acting as its own Paying Agent), to the holders of the particular Notes for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest. All moneys deposited with the Trustee pursuant to Section 7.05 (and held by it or any Paying Agent) for the payment of Notes subsequently converted shall be returned to the Issuer upon request. The Trustee is not responsible to anyone for interest on any deposited funds except as agreed in writing.

Section 11.03 *Paying Agent to Repay Monies Held*. Subject to the provisions of Section 11.04, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Noteholders, all money deposited with it pursuant to Section 11.01 and shall apply the deposited money in accordance with this Indenture and the Notes to the payment of the principal of and interest on the Notes.

Section 11.04 *Return of Unclaimed Monies*. The Trustee and each Paying Agent shall pay to the Issuer upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years after a right to such money has matured; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment, may, at the expense of the Issuer, either publish in a newspaper of general circulation in The City of New York, or cause to be mailed to each holder entitled to such money, notice that such money remains unclaimed and that after a date specified therein, which shall be at least thirty (30) calendar days from the date of such mailing or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer. After payment to the Issuer, holders entitled to money must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another person, and the Trustee and each Paying Agent shall be relieved of all liability with respect to such money.

Section 11.05 *Reinstatement*. If the Trustee or the Paying Agent is unable to apply any money in accordance with Section 11.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with Section 11.02; *provided* that if the Issuer makes any payment of principal of or premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 12

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations*. No recourse for the payment of the principal of, or interest on, any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer in this Indenture or in any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator,

stockholder, partner, member, manager, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Issuer or any of the Issuer's Subsidiaries or of any successor thereto, either directly or through the Issuer or any of the Issuer's Subsidiaries or any successor thereto, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13

CONVERSION OF NOTES

Section 13.01 *Right to Convert*.

(a) Subject to the restrictions on ownership of shares of Common Stock as set forth in Section 13.14 and upon compliance with the provisions of this Indenture, the holder of any Notes may convert its Notes, or any portion thereof which is a multiple of $1,000, into cash and, if applicable, shares of Common Stock by surrender of such Notes so to be converted in whole or in part, together with any required funds, under the circumstances and in the manner described in this Article 13. Holders may surrender any Notes for conversion not previously redeemed or repurchased at the applicable Conversion Rate prior to the close of business on the Business Day immediately preceding the Stated Maturity of the Notes at any time on or after September 1, 2012 and also upon the occurrence of one of the events set forth in clauses (i) through (v) below.

(i) Conversion Upon Satisfaction of Market Price Condition. A holder may surrender any of its Notes for conversion during any calendar quarter beginning after December 31, 2007 (and only during such calendar quarter) if, and only if, the Closing Sale Price of the Common Stock for at least twenty (20) Trading Days (whether or not consecutive) in the period of thirty (30) consecutive Trading Days ending on the last Trading Day of the preceding calendar quarter is more than 130% of the Conversion Price per share of Common Stock in effect on the

applicable Trading Day. The Board of Directors will make appropriate adjustments, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the ex-dividend date of the event occurs, during that thirty (30) consecutive Trading Day period.

(ii) Conversion Upon Satisfaction of Trading Price Condition. A holder may surrender any of its Notes for conversion during the five (5) consecutive Trading Day period following any five (5) consecutive Trading Day period in which the Trading Price per $1,000 principal amount of Notes (as determined following a reasonable request by a holder of the Notes) was less than 98% of the product of the Closing Sale Price of the Common Stock multiplied by the Conversion Rate.

"**Trading Price**" means, with respect to the Notes on any date of determination, the average of the secondary market bid quotations per $1,000 principal amount of Notes obtained by the Trustee for a $5.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from two independent nationally recognized securities dealers selected by the Issuer, which may include any of the Underwriters or any successor to such entity. If at least two such bids cannot reasonably be obtained by the Trustee, but one such bid can reasonably be obtained by the Trustee, then one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for a $5,000,000 principal amount of Notes from a nationally recognized securities dealer or, in the reasonable judgment of the Issuer, the bid quotations are not indicative of the secondary market value of the Notes, then the Trading Price per $1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on such determination date.

The Trustee shall have no obligation to determine the Trading Price of the Notes unless the Issuer shall have requested such determination, and the Issuer shall have no obligation to make such request unless a holder provides the Issuer with written reasonable evidence that the Trading Price per $1,000 principal amount of the Notes would be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate, whereupon the Issuer shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price is greater than or equal to 98% of the product of the Closing Sale Price of the Common Stock and the applicable Conversion Rate.

(iii) Conversion Upon Notice of Redemption. A holder may surrender for conversion any of the Notes called for redemption at any time prior to the close of business on the Business Day prior to the Redemption Date, even if the Notes are not otherwise convertible at such time. The right to convert Notes pursuant to this clause (iii) will expire after the close of business on the Business Day prior to the Redemption Date unless the Issuer defaults in making the payment due upon redemption.

Holders surrendering for conversion Notes which have been called for redemption shall be entitled to receive a make-whole premium in the form of an increase in the applicable Conversion Rate. Such increase in the Conversion Rate shall be determined in the manner set forth in Section 13.13. In any such case, the number of Additional Shares shall be calculated as if the Redemption Date were the Effective Date of the Change of Control and the Share Price for such purposes shall be deemed to be the average of the Closing Sale Prices of the Common Stock on the 10 consecutive Trading Days up to but excluding the date on which any Notes are surrendered for conversion.

(iv) Conversion Upon Specified Transactions. If the Issuer elects to: (1) distribute to all holders of shares of Common Stock rights entitling them to purchase, for a period expiring within forty five (45) days after the date fixed for determination of stockholders entitled to receive such rights, shares of Common Stock at less than the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the declaration date of such distribution; or (ii)

distribute to all holders of shares of Common Stock assets, debt securities or certain rights to purchase securities of the Issuer, which distribution has a per share value exceeding 10% of the Closing Sale Price of Common Stock on the Trading Day immediately preceding the declaration date of such distribution, the Issuer shall notify holders of the Notes at least forty five (45) calendar days prior to the ex-dividend date for such distribution. Following the issuance of such notice, holders may surrender their Notes for conversion at any time until the earlier of the close of business on the Business Day prior to the ex-dividend date or an announcement by the Issuer that such distribution will not take place; *provided*, *however*, that a holder may not convert its Notes pursuant to this Section 13.01(a)(iv) if such holder may participate, on an as-converted basis (assuming for this purpose that the Notes were convertible solely into shares of Common Stock at the then applicable Conversion Rate), in the distribution without any conversion of Notes. The "ex-dividend date" means, with respect to any distribution on Common Stock, the first date upon which a sale of shares of Common Stock does not automatically transfer the right to receive the relevant distribution from the seller of shares of Common Stock to the buyer.

In addition, if the Issuer is party to a consolidation, merger or binding share exchange pursuant to which all of the Common Stock would be exchanged for cash, securities or other property that is not otherwise a Change in Control, a holder may surrender Notes for conversion at any time from and including the date that is twenty five (25) Business Days prior to the anticipated effective time of the transaction up to and including five (5) Business Days after the actual date of such transaction. The Issuer shall notify holders of Notes as promptly as practicable following the date it publicly announces such transaction (but in no event less than twenty five (25) Business Days prior to the anticipated effective time of such transaction).

If a transaction described in clauses (1) or (2) of the definition of "Change in Control" occurs prior the Stated Maturity, a holder will have the right to convert its Notes at any time from and including the Effective Date of such transaction up to and including the earlier of the 30th Business Day following the Effective Date of the transaction and the Business Day prior to the Stated Maturity, provided that, if a holder has already delivered a Repurchase Notice with respect to a Note, such holder may not surrender such Note for conversion until it has withdrawn such notice in accordance with the applicable provisions of Section 3.07 hereof. The Issuer will notify holders as promptly as practicable following the date that it publicly announces such Change in Control (but in no event later than five (5) Business Days prior to the Effective Date of such Change in Control).

(b) A Note in respect of which a holder has delivered a Repurchase Notice exercising such holder's right to require the Issuer to repurchase such Note pursuant to Section 3.05 may be converted only if such Repurchase Notice is withdrawn in accordance with Section 3.07 prior to the close of business on the third Business Day prior to the Fundamental Change Purchase Date.

(c) A holder of Notes is not entitled to any rights of a holder of shares of Common Stock until such holder has converted its Notes and received upon conversion thereof shares of Common Stock. The person in whose name any certificate or certificates for shares of

Common Stock shall be issuable upon such conversion, if any, shall become on the date any such certificate or certificates are delivered to such holder in accordance with the provisions of this Article 13, the holder of record of the shares represented thereby.

Section 13.02 *Exercise of Conversion Right; No Adjustment for Interest or Dividends*. In order to exercise the conversion right with respect to any Note in certificated form, the Issuer must receive at the office or agency of the Issuer maintained for that purpose or, at the option of such holder, the Corporate Trust Office, such Note with the original or facsimile of the form entitled "**Conversion Notice**" on the reverse thereof, duly completed and manually signed, together with such Notes duly endorsed for transfer, accompanied by the funds, if any, required by this Section 13.02. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock, if any, which shall be issuable on such conversion shall be issued (if other than in the name of the holder tendering such Note for conversion), and shall be accompanied by transfer or similar taxes, if required pursuant to Section 13.07.

In order to exercise the conversion right with respect to any interest in a Global Note, the beneficial holder must complete, or cause to be completed, the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program; deliver, or cause to be delivered, by book-entry delivery such interest in such Global Note; furnish appropriate endorsements and transfer documents if required by the Issuer or the Trustee or the Conversion Agent; and pay the funds, if any, required by this Section 13.02 and any transfer taxes if required pursuant to Section 13.07.

Each conversion shall be deemed to have been effected as to any such Note (or portion thereof) on the date on which the requirements set forth above in this Section 13.02 have been satisfied as to such Note (or portion thereof) (the "**Conversion Date**").

Except as set forth in the next succeeding paragraph, upon conversion of a Note, a holder shall not be entitled to receive any cash payment in respect of interest, and the Issuer shall not be required to adjust the Conversion Rate to account for any accrued and unpaid interest. The delivery by the Issuer to the holder of cash and shares of Common Stock, if any, upon conversion shall be deemed to satisfy the Issuer's obligation with respect to Notes tendered for conversion. Accordingly, upon conversion of Notes, any accrued but unpaid interest shall be deemed to be paid in full, rather than cancelled, extinguished or forfeited.

Holders of Notes at the close of business on a Record Date for an interest payment shall receive payment of the interest payable on the corresponding Interest Payment Date notwithstanding the conversion of such Notes at any time after the close of business on the applicable Record Date and on or prior to the corresponding Interest Payment Date. Accordingly, any Note or portion thereof surrendered for conversion after the close of business on the Record Date for any Interest Payment Date and on or prior to the corresponding Interest Payment Date shall be accompanied by payment, in immediately available funds or other funds acceptable to the Issuer, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; *provided* that no such payment need be made (1) if the Issuer has specified a Redemption Date that is after a Record Date and on or prior to the corresponding Interest Payment Date, (2) to the extent of any Special Interest or overdue interest,

if any overdue interest exists at the time of conversion with respect to such Notes, or (3) in respect of any conversion that occurs after the Record Date for the interest payment due on October 1, 2012. Except as otherwise provided above in this Article 13, no payment or other adjustment shall be made for interest accrued on any Note converted or for dividends on any shares issued upon the conversion of such Note as provided in this Article 13.

In case any Note of a denomination greater than $1,000 shall be surrendered for partial conversion, and subject to Section 2.04, the Issuer shall execute and the Trustee shall authenticate and deliver to the holder of the Note so surrendered, without charge to the holder, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

Upon surrender of a Note for conversion, the holder shall deliver to the Issuer an amount in cash equal to the amount that the Issuer is required to deduct and withhold under applicable law in connection with such conversion; *provided*, *however*, that if the holder does not deliver such cash, the Issuer may deduct and withhold from the consideration otherwise deliverable to such holder the amount required to be deducted and withheld under applicable law.

Upon the conversion of an interest in a Global Note, the Trustee (or other Conversion Agent appointed by the Issuer), or the Custodian at the direction of the Trustee (or other Conversion Agent appointed by the Issuer), shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Issuer shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

Section 13.03 *Cash Payments in Lieu of Fractional Shares*. No fractional shares of Common Stock or scrip certificates representing fractional shares shall be issued upon conversion of Notes. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered. The Issuer shall deliver cash in lieu of any fractional shares of Common Stock issuable in connection with payment of the settlement amount determined in accordance with the provisions of Section 13.12 based on the Closing Sale Price of the Common Stock on the last day of the applicable Observation Period.

Section 13.04 *Conversion Rate*. The Conversion Rate for the Notes is 22.2000 shares of Common Stock per each $1,000 principal amount of the Notes (herein called the "**Conversion Rate**"), subject to adjustment as provided in Sections 13.05 and 13.13.

Section 13.05 *Adjustment of Conversion Rate*. The Conversion Rate shall be adjusted by the Issuer from time to time as follows:

(a) If the Issuer issues shares of Common Stock as a distribution on Common Stock to all holders of shares of Common Stock, or if the Issuer effects a share split or share combination, the Conversion Rate will be adjusted based on the following formula:

$CR_1 = CR_0 \times OS_1/OS_0$

where

CR_0 = the Conversion Rate in effect immediately prior to the adjustment relating to such event

CR_1 = the new Conversion Rate in effect taking such event into account

OS_0 = the number of shares of Common Stock outstanding immediately prior to such event

OS_1 = the number of shares of Common Stock outstanding immediately after such event.

Any adjustment made pursuant to this clause (a) shall become effective on the date that is immediately after (x) the date fixed for the determination of stockholders entitled to receive such dividend or other distribution or (y) the date on which such split or combination becomes effective, as applicable. If any dividend or distribution described in this clause (a) is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Issuer issues to all holders of shares of Common Stock any rights, warrants, options or other securities entitling such holders for a period of not more than 45 days after the date of issuance thereof to subscribe for or purchase shares of Common Stock, or if the Issuer issues to all holders of shares of Common Stock securities convertible into Common Stock for a period of not more than 45 days after the date of issuance thereof, in either case at an exercise price per share of Common Stock or a conversion price per share of Common Stock less than the Closing Sale Price of the Common Stock on the Business Day immediately preceding the time of announcement of such issuance, the Conversion Rate will be adjusted based on the following formula:

$CR_1 = CR_0 \times (OS_0+X)/(OS_0+Y)$

where

CR_0 = the Conversion Rate in effect immediately prior to the adjustment relating to such event

CR_1 = the new Conversion Rate taking such event into account

OS_0 = the number of shares of Common Stock outstanding immediately prior to such event

X = the total number of shares of Common Stock issuable pursuant to such rights, warrants, options, other securities or convertible securities

Y = the number of shares of Common Stock equal to the quotient of (A) the aggregate price payable to exercise such rights, warrants, options, other securities or convertible securities and (B) the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days prior to the Business Day immediately preceding the date of announcement for the issuance of such rights, warrants, options, other securities or convertible securities.

For purposes of this clause (b), in determining whether any rights, warrants, options, other securities or convertible securities entitle the holders to subscribe for or purchase, or exercise a conversion right for, shares of Common Stock at less than the applicable Closing Sale Price of the Common Stock, and in determining the aggregate exercise or conversion price payable for such shares of Common Stock, there shall be taken into account any consideration received by

the Issuer for such rights, warrants, options, other securities or convertible securities and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined by the Board of Directors of the Issuer. If any right, warrant, option, other security or convertible security described in this clause (b) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such right, warrant, option, other security or convertible security had not been so issued.

(c) If the Issuer distributes equity interests in itself, evidences of indebtedness or other assets or property of the Issuer to all holders of shares of Common Stock, excluding:

(i) distributions, rights, warrants, options, other securities or convertible securities referred to in clause (a) or (b) above,

(ii) distributions paid exclusively in cash, and

(iii) Spin-Offs described below in this clause (c),

then the Conversion Rate will be adjusted based on the following formula:

$CR_1 = CR_0 \times SP_0/(SP_0-FMV)$

where

CR_0 = the Conversion Rate in effect immediately prior to the adjustment relating to such event

CR_1 = the new Conversion Rate taking such event into account

SP_0 = the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days prior to the Business Day immediately preceding the ex-dividend date for such distribution or, if there is no ex-dividend date, the record date for such distribution

FMV= the fair market value (as determined in good faith by the Board of Directors of the Issuer) of the equity interests, evidences of indebtedness, assets or property distributed with respect to each outstanding share of Common Stock on the earlier of the record date or the ex-dividend date for such distribution.

An adjustment to the Conversion Rate made pursuant to the immediately preceding clause shall be made successively whenever any such distribution is made and shall become effective on the ex-dividend date, or if none, the record date, for such distribution.

If the Issuer distributes to all holders of shares of Common Stock capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit of the Issuer (a "**Spin-Off**"), the Conversion Rate in effect immediately before the close of business on the date fixed for determination of holders of shares of Common Stock entitled to receive such distribution will be adjusted based on the following formula:

$CR_1 = CR_0 \times (FMV_0+MP_0)/MP_0$

where

CR_0 = the Conversion Rate in effect immediately prior to the adjustment relating to such event

CR_1 = the new Conversion Rate taking such event into account

FMV_0 = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of shares of Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Days after the effective date of the Spin-Off

MP_0 = the average of the Closing Sale Prices of the Common Stock over the first 10 consecutive Trading Days after the effective date of the Spin-Off.

An adjustment to the Conversion Rate made pursuant to the immediately preceding clause will occur on the 10^{th} Trading Day from and including the effective date of the Spin-Off.

If any such distribution described in this clause (c) is declared but not paid or made, the new Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(d) If the Issuer pays or makes any cash distribution in respect of any of its quarterly fiscal periods (without regard to when paid) to all holders of shares of Common Stock in an aggregate amount that, together with other cash distributions paid or made in respect of such quarterly fiscal period, exceeds the product of $0.825 (the "**Reference Dividend**") multiplied by the number of shares of Common Stock outstanding on the record date for such distribution, the Conversion Rate will be adjusted based on the following formula:

$CR_1 = CR_0 \times SP_0/(SP_0-C)$

where

CR_0 = the Conversion Rate in effect immediately prior to the adjustment relating to such event

CR_1 = the new Conversion Rate taking such event into account

SP_0 = the average of Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days prior to the Business Day immediately preceding the ex-dividend date for such distribution or if there is no ex-dividend date, the record date for such distribution

C = the amount in cash per share of Common Stock that the Issuer distributes to holders of shares of Common Stock in respect of such quarterly fiscal period that exceeds the Reference Dividend.

An adjustment to the Conversion Rate made pursuant to this clause (d) shall become effective on the ex-dividend date, or if none, the record date for such dividend or distribution. If any dividend or distribution described in this clause (d) is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

The Reference Dividend shall be subject to adjustment on account of any of the events set forth in clauses (a), (b) and (c) above and clause (e) below. Any such adjustment will be effected by multiplying the Reference Dividend by a fraction, the numerator of which will equal

the Conversion Rate in effect immediately prior to the adjustment on account of such event and the denominator of which will equal the Conversion Rate as adjusted.

(e) If the Issuer or any of its subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Closing Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Expiration Time**"), the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times (AC + (SP_1 \times OS_1))/(SP_1 \times OS_0)$$

where

CR_0 = the Conversion Rate in effect immediately prior to the adjustment relating to such event

CR_1 = the new Conversion Rate taking such event into account

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Issuer) paid or payable for shares of Common Stock purchased in such tender or exchange offer

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires

OS_1 = the number of shares of Common Stock outstanding immediately after such tender or exchange offer expires (after giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer)

SP_1 = the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days commencing on the Trading Day next succeeding the date such tender or exchange offer expires.

If the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made.

Any adjustment to the Conversion Rate made pursuant to this clause (e) shall become effective on the date immediately following the determination of the average of the Closing Sale Prices of the Common Stock for purposes of SP_1 above. If the Issuer or one of its subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer but is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded or otherwise not consummated, the new Conversion Rate shall be readjusted to be the Conversion Rate that would be in effect if such tender or exchange offer had not been made.

(f) In addition to the adjustments pursuant to clauses (a) through (e) above, the Issuer may increase the Conversion Rate in order to avoid or diminish any income tax to holders of shares of Common Stock resulting from any distribution of equity interests (or rights to acquire shares of Common Stock) or from any event treated as such for income tax purposes. The Issuer may also, from time to time, to the extent permitted by applicable law, increase the Conversion Rate by any amount for any period if the Issuer has determined that such increase

would be in the best interests of the Issuer. If the Issuer makes such determination, it will be conclusive and the Issuer will mail to holders of the Notes a notice of the increased Conversion Rate and the period during which it will be in effect at least fifteen (15) days prior to the date the increased Conversion Rate takes effect in accordance with applicable law.

(g) If, in connection with any adjustment to the Conversion Rate as set forth in this Section 13.05 a holder shall be deemed for U.S. federal tax purposes to have received a distribution, the Issuer may set off any withholding tax it reasonably believes it is required to collect with respect to any such deemed distribution against cash payments of interest in accordance with the provisions of Section 4.01 hereof or from cash and shares of Common Stock, if any, otherwise deliverable to a holder upon a conversion of Notes in accordance with the provisions of Section 13.12 hereof or a redemption or repurchase of a Note in accordance with the provisions of Article 3 hereof.

(h) The Issuer will not make any adjustment to the Conversion Rate if holders of the Notes are permitted to participate, on an as-converted basis, in the transactions described above.

(i) Notwithstanding anything to the contrary contained herein, in addition to the other events set forth herein on account of which no adjustment to the Conversion Rate shall be made, the applicable Conversion Rate shall not be adjusted for: (i) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of distributions or interest payable on securities of the Issuer and the investment of additional optional amounts in shares of Common Stock under any plan; (ii) the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan, employee agreement or arrangement or program of the Issuer; (iii) the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security outstanding as of the date the Notes were first issued; (iv) accumulated and unpaid dividends or distributions; (v) if applicable, a change in the par value of the Common Stock; (vi) the issuance of shares of Common Stock pursuant to an underwritten offering (whether pursuant to a registration statement which has become effective under the Securities Act or pursuant to an applicable exemption therefrom); and (vii) as a result of a tender offer solely to holders of fewer than 100 shares of Common Stock.

(j) No adjustment in the Conversion Rate will be required unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate. If the adjustment is not made because the adjustment does not change the Conversion Rate by at least 1%, then the adjustment that is not made will be carried forward and taken into account in any future adjustment. All required calculations will be made to the nearest cent or $1/1{,}000^{th}$ of a share, as the case may be. Notwithstanding the foregoing, all adjustments not previously made will have effect with respect to any conversion of Notes on or after August 15, 2012 or under the circumstances permitted by Section 13.01(a)(iii) or (iv).

(k) Whenever the Conversion Rate is adjusted as herein provided, the Issuer shall promptly file with the Trustee and any Conversion Agent other than the Trustee, an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of

the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Issuer shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holders of the Notes within 20 Business Days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 13.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Issuer but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(m) Notwithstanding anything in this Section 13.05 to the contrary, in no event shall the Conversion Rate be adjusted so that the Conversion Price would be less than $0.01.

Section 13.06 *Change in Conversion Right Upon Certain Reclassifications, Business Combinations and Asset Sales*.

(a) If the Issuer is a party to a consolidation, merger or binding share exchange (including, without limitation, by way of a recapitalization, reclassification or change of Common Stock (other than changes resulting from a subdivision or combination) or a sale, lease or transfer to a third party of the Issuer's and all of the Issuer's subsidiaries' consolidated assets substantially as an entirety) pursuant to which all of the shares of Common Stock are converted into cash, securities or other property, then the Issuer, or such successor or purchasing corporation, as the case may be, shall, as a condition precedent to such consolidation, merger or binding share exchange or sale, lease or transfer, execute and deliver to the Trustee a supplemental indenture providing that from and after the effective time of the transaction any conversion of Notes and the determination of the sum of the Daily Settlement Amounts will be based on, and determined by reference to, the kind and amount of cash, securities or other property that holders of the shares of Common Stock receive in the transaction in respect of each share of Common Stock.

(b) In the event the Issuer shall execute a supplemental indenture pursuant to this Section 13.06, the Issuer shall promptly file with the Trustee an Opinion of Counsel stating that such supplemental indenture is authorized or permitted by this Indenture and an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or other property receivable by holders of the Notes upon the conversion of their Notes after any such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease or conveyance, any adjustment to be made with respect thereto and that all conditions precedent have been complied with.

(c) For purposes of this Section 13.06, where a consolidation, merger or binding share exchange involves a transaction that causes Common Stock to be converted into the right to receive more than a single type of consideration based upon any form of shareholder election, such consideration will be deemed to be the weighted average of the types and amounts

of consideration received by the holders of shares of Common Stock that affirmatively make such an election.

(d) If this Section 13.06 applies to any event or occurrence, Section 13.05 shall not apply. The provisions of this Section 13.06 shall similarly apply to successive reclassifications, changes, consolidations, mergers, sales, transfers, leases, conveyances or other dispositions.

Section 13.07 *Taxes on Shares Issued*. The issue of stock certificates, if any, on conversion of Notes shall be made without charge to the converting Noteholder for any documentary, stamp or similar issue or transfer tax in respect of the issue thereof. The Issuer shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Note converted, and the Issuer shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Issuer the amount of such tax or shall have established to the satisfaction of the Issuer that such tax has been paid.

Section 13.08 *Reservation of Shares, Shares to be Fully Paid; Compliance with Governmental Requirements*. The Issuer shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes as required by this Indenture from time to time as such Notes are presented for conversion.

Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the Common Stock issuable, if any, upon conversion of the Notes, the Issuer will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Issuer may validly and legally issue shares of Common Stock at such adjusted Conversion Rate.

The Issuer covenants that all shares of Common Stock, if any, which may be issued upon conversion of Notes will upon issue be fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof.

Section 13.09 *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any holder of Notes to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any capital stock, other securities or other assets or property, which may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Issuer to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or

covenants of the Issuer contained in this Article 13. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.06 relating either to the kind or amount of shares of capital stock or other securities or other assets or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 13.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Issuer shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. The Trustee shall not at any time be under any duty or responsibility to any holder of Notes to determine the accuracy of the method employed in calculating the Trading Price or whether any facts exist which may require any adjustment of the Trading Price.

Section 13.10 *Notice to Holders Prior to Certain Actions*. In case:

(a) the Issuer shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 13.05; or

(b) the Issuer shall authorize the granting to the holders of all or substantially all of its shares of Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification or reorganization of the Common Stock (other than a subdivision or combination of its outstanding shares of Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation, combination, merger or share exchange to which the Issuer is a party and for which approval of any stockholders of the Issuer is required, or of the sale or transfer of all or substantially all of the assets of the Issuer; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Issuer;

the Issuer shall cause to be filed with the Trustee and to be mailed to each holder of Notes at its address appearing on the Note Register provided for in Section 2.05 of this Indenture, as promptly as possible but in any event at least ten (10) calendar days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of shares of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein,

shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 13.11 *Stockholder Rights Plans*. If the Issuer has in effect a rights plan while any Notes remain outstanding, holders of Notes will receive, upon a conversion of Notes in respect of which the Issuer is required to deliver shares of Common Stock, in addition to such shares of Common Stock, rights under the Issuer's stockholder rights agreement unless, prior to conversion, the rights have expired, terminated or been redeemed or unless the rights have separated from the Common Stock. If the rights provided for in the rights plan adopted by the Issuer have separated from the Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that holders of Notes would not be entitled to receive any rights in respect of Common Stock, if any, that the Issuer is required to deliver upon conversion of Notes, the Conversion Rate will be adjusted at the time of separation as if the Issuer had distributed to all holders of shares of Common Stock capital shares, evidences of indebtedness or other assets or property pursuant to Section 13.05(c) above, subject to readjustment upon the subsequent expiration, termination or redemption of the rights.

Section 13.12 *Settlement Upon Conversion*.

(a) Upon a conversion of Notes, the Issuer shall deliver to converting holders of Notes, in respect of each $1,000 principal amount of Notes being converted, either solely cash, solely shares of Common Stock or a combination of cash and shares of Common Stock (the "**Settlement Amount**"), provided, however, that at any time on or prior to August 15, 2012, the Issuer may irrevocably elect, in its sole discretion without the consent of the holders of the Notes, to settle all of its future conversion obligations through the Net Share Settlement.

(i) All conversions after August 15, 2012 will be settled using the same Settlement Method. If the Issuer has not delivered a notice of its election of a Settlement Method (the "**Settlement Notice**") prior to August 15, 2012, the Settlement Method for conversions after August 15, 2012 shall be Net Share Settlement.

(ii) Prior to August 15, 2012, the Issuer will use the same Settlement Method for all conversions occurring on any given Trading Day. Except for any conversions that occur either (1) during the period between a notice of redemption and the related Redemption Date, (2) on or after August 15, 2012 or (3) following delivery by the Issuer of a Settlement Notice electing Net Share Settlement, the Issuer need not use the same Settlement Method with respect to conversions that occur on different Trading Days.

(iii) If the Issuer elects to deliver a Settlement Notice, the Issuer, through the Trustee, shall deliver to the Settlement Notice to Holders that are converting no later than the second Trading Day immediately following the related Conversion Date.

(b) The Settlement Amount shall be computed as follows:

(i) If the Issuer elects to satisfy its conversion obligation solely in shares of Common Stock, the Issuer will deliver a number of shares of Common Stock equal to (1) the aggregate principal amount of Notes to be converted divided by $1,000, multiplied by (2) the applicable Conversion Rate;

(ii) If the Issuer elects to satisfy its conversion obligation solely in cash, the Issuer shall deliver cash in an amount equal to the sum of the Daily Conversion Values for each of the 20 Trading Days during the related Observation Period; and

(iii) If the Issuer elects to satisfy its conversion obligation through delivery of a combination of cash and shares of Common Stock, the Issuer shall deliver in respect of each $1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 20 Trading Days during the Observation Period for such Note. The "**Daily Settlement Amount**" for each of the 20 Trading Days during the Observation Period shall consist of:

(A) cash equal to the lesser of (x) the dollar amount per Note specified in the Settlement Notice, if any (the "**Specified Dollar Amount**"), divided by 20 (such quotient being referred to as the "**Daily Measurement Value**") and (y) the Daily Conversion Value; and

(B) to the extent the Daily Conversion Value exceeds the Daily Measurement Value, a number of shares of Common Stock ("**Daily Share Amount**") equal to (x) the difference between the Daily Conversion Value and the Daily Measurement Value, divided by (y) the Daily VWAP;

"**Net Share Settlement**" means the Settlement Method in which the Specified Dollar Amount is $1,000.

"**Daily Conversion Value**" means, for each of the 20 consecutive Trading Days during the Observation Period, one-twentieth of the product of (i) the applicable Conversion Rate and (ii) the Daily VWAP of the Common Stock on such day.

"**Daily VWAP**" means, for each of the 20 consecutive Trading Days during the Observation Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "SFI <equity> AQR" (or any successor thereto) in respect of the period from the scheduled open of the primary exchange or market on which the Common Stock is listed or traded to the scheduled close of such exchange or market on such Trading Day (or if such volume-weighted average price is unavailable, the market value per share of Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Issuer).

"**Observation period**" with respect to any note means the 20 consecutive Trading Day period beginning on and including the fourth Trading Day after the related Conversion Date, except that (i) with respect to any Conversion Date occurring after the date of issuance of a notice of redemption pursuant to Section 3.02, the "Observation Period" means the 20 consecutive Trading Days beginning on and including the 22nd Trading Day prior to the applicable Redemption Date and (ii) with respect to any Conversion Date occurring during the period beginning on August 15, 2012, and ending at 5:00 p.m., New York City time, on the Trading Day immediately prior to the Stated Maturity, "Observation Period" means the first 20 Trading Days beginning on and including the 22nd Trading Day prior to the Stated Maturity.

For the purposes of determining payment upon conversion in accordance with the provisions of this Section 13.12 only, "**Trading Day**" means a day on which (i) there is no Market Disruption Event and (ii) trading in securities generally occurs on the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, in the principal other market on which the Common Stock is then traded. If the Common Stock (or other security for which a Daily VWAP must be determined) is not so listed or quoted, "Trading Day" means a "Business Day."

"**Market Disruption Event**" means the occurrence or existence for more than one half-hour period in the aggregate on any Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the New York Stock Exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

(c) The Issuer shall deliver the sum of the Daily Settlement Amounts for each of the 20 Trading Days during the Observation Period to converting holders on the third Business Day immediately following the last day of the Observation Period.

Section 13.13 *Conversion Rate Adjustment After Certain Fundamental Change Transactions*

(a) If the Effective Date of a transaction described in clauses (1) or (2) of the definition of Change in Control occurs prior to the Stated Maturity and a holder elects to convert its Notes in connection with such Change in Control pursuant to Section 13.01(a)(iv) hereof, the Issuer shall increase the applicable Conversion Rate for such Notes surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**") as specified below. A conversion of Notes will be deemed for these purposes to be "in connection with" such a Change in Control if the Conversion Notice is received by the Conversion Agent on any date from and including the date that is the Effective Date of such Change in Control up to and including the earlier of the 30th Business Day following the Effective Date of such Change in Control and the Business Day preceding the Stated Maturity.

(b) The number of Additional Shares will be determined by reference to the table in Section 13.13(e) and is based on the date on which the Change in Control becomes

effective (the "**Effective Date**") and the price paid per share of Common Stock in the Change in Control transaction (the "**Share Price**"). If holders of shares of Common Stock receive only cash in the Change in Control transaction, the Share Price shall equal the cash amount paid per share of Common Stock in such transaction. In all other cases, the Share Price shall equal the average of the Closing Sale Prices of the Common Stock on the ten (10) consecutive Trading Days up to but excluding the Effective Date.

(c) The Share Prices set forth in the first row of the table set forth in Section 13.13(e) (i.e., the column headers) shall be adjusted as of any date on which the Conversion Rate of the Notes is adjusted pursuant to Section 13.05. The adjusted Share Prices shall equal the Share Prices applicable immediately prior to such adjustment multiplied by a fraction, (i) the numerator of which shall be the Conversion Rate immediately prior to the adjustment giving rise to the Share Price adjustment and (ii) the denominator of which shall be the Conversion Rate as so adjusted.

(d) The number of Additional Shares shall be adjusted in the same manner and for the same events as the Conversion Rate is adjusted pursuant to Section 13.05.

(e) The following table sets forth the Share Price and number of Additional Shares to be received per $1,000 principal amount of Notes:

	Stock Price											
Effective Date	**$34.65**	**$38.00**	**$41.00**	**$44.00**	**$47.00**	**$50.00**	**$55.00**	**$60.00**	**$70.00**	**$80.00**	**$90.00**	**$100.00**
October 15, 2007	6.6600	5.0852	3.9904	3.1403	2.4771	1.9579	1.3285	0.9075	0.4415	0.2453	0.1692	0.1391
October 1, 2008	6.6600	5.0943	3.9394	3.0429	2.3449	1.8004	1.1448	0.7114	0.2436	0.0586	0.0063	0.0022
October 1, 2009	6.6600	5.2228	4.0147	3.0782	2.3515	1.7875	1.1147	0.6765	0.2164	0.0444	0.0039	0.0017
October 1, 2010	6.6600	5.1935	3.9264	2.9517	2.2039	1.6323	0.9669	0.5504	0.1434	0.0172	0.0015	0.0012
October 1, 2011	6.6600	4.8731	3.5141	2.4927	1.7364	1.1851	0.5926	0.2672	0.0234	0.0000	0.0000	0.0000
October 1, 2012	6.6600	4.1158	2.1902	0.5273	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(f) If the exact Share Price and Effective Date are not set forth in the table above, then:

(i) If the Share Price is between two Share Price amounts in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Price amounts and the two dates, as applicable, based on a 365-day year;

(ii) If the Share Price is equal to or in excess of $100.00 per share of Common Stock (subject to adjustment as specified in Section 13.13(c)), no Additional Shares will be issued upon a conversion of Notes; and

(iii) If the Share Price is less than $34.65 per share of Common Stock (subject to adjustment as specified in Section 13.13(c)), no Additional Shares will be issued upon a conversion of Notes.

(g) Notwithstanding the provisions of this Section 13.13, in no event shall the total number of shares of Common Stock issuable upon conversion of the Notes exceed 28.8600

shares per $1,000 principal amount of Notes, subject to adjustment in the same manner as the Conversion Rate is subject to adjustment as set forth in Section 13.05.

Section 13.14 *Ownership Limit; Withholding Tax*

(a) Notwithstanding any other provision of this Indenture or the Notes, no holder of Notes shall be entitled to convert such Notes for shares of Common Stock to the extent that the receipt of such shares of Common Stock would violate any of the limitations on ownership of shares of Common Stock contained in the Charter, unless such Person had been exempted from such limits in the Board of Director's sole discretion in accordance with the Charter. Any attempted conversion of Notes that would result in the issuance of shares of Common Stock in excess of such ownership limit in the absence of such an exemption shall be void to the extent of the number of shares of Common Stock that would cause such violation and the related Note or portion thereof shall be returned to the holder as promptly as practicable. The Issuer shall have no further obligation to the holder with respect to such voided conversion and such Notes shall be treated as if they not been submitted for conversion. A holder of returned Notes may resubmit such Notes for conversion at a later date subject to compliance with the terms hereof and the ownership limits set forth in the Charter. The Issuer may however (but will not be required to), in a case where a holder of Notes attempts to convert Notes but is prevented from doing so as a result of the ownership limit, pay cash to such holder upon such conversion as provided in Section 13.12(d). The foregoing limitation on the right of holders of Notes to receive shares of Common Stock upon conversion of Notes shall terminate if the restrictions on ownership and transfer of the shares of Common Stock set forth in the Charter shall terminate or if the Board of Directors of the Issuer shall revoke or otherwise terminate the election by the Issuer to qualify as a REIT pursuant to 856(a) (or any successor thereto) of the Code.

(b) At the Stated Maturity or upon earlier redemption or repurchase of the Notes or otherwise, and as otherwise required by law, the Issuer may deduct and withhold from the amount of consideration otherwise deliverable to the holder the amount required to be deducted and withheld under applicable law.

Section 13.15 *Calculation In Respect of Notes*. Except as otherwise specifically stated herein or in the Notes, all calculations to be made in respect of the Notes shall be the obligation of the Issuer. All calculations made by the Issuer or its agent as contemplated pursuant to the terms hereof and of the Notes shall be made in good faith and be final and binding on the Notes and the holders of the Notes absent manifest error. The Issuer shall provide a schedule of calculations to the Trustee, and the Trustee shall be entitled to rely upon the accuracy of the calculations by the Issuer without independent verification. The Trustee shall forward calculations made by the Issuer to any holder of Notes upon request.

ARTICLE 14

RESERVED

ARTICLE 15

MISCELLANEOUS PROVISIONS

Section 15.01 *Provisions Binding on Issuer's Successors*. All the covenants, stipulations, promises and agreements by the Issuer contained in this Indenture shall bind their respective successors and assigns whether so expressed or not.

Section 15.02 *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Issuer shall and may be done and performed with like force and effect by the like board, committee or officer of any Person that shall at the time be the lawful sole successor of the Issuer.

Section 15.03 *Addresses for Notices, etc*. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Notes on the Issuer shall be in writing and shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box, or sent by overnight courier, or sent by telecopier transmission addressed as follows:

iStar Financial Inc.
1114 Avenue of the Americas, 27th Floor
New York, NY 10036
Facsimile: (212) 930-9494
Attention: Chief Executive Officer

With a copy to:

Clifford Chance US LLP
31 West 52nd Street
New York, NY 10019
Facsimile: (212) 878-8375

Attention: Kathleen L. Werner, Esq.

Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited, postage prepaid, by registered or certified mail in a post office letter box, or sent by overnight courier, or sent by telecopier transmission addressed as follows: US Bank Trust National

Association, 100 Wall Street, 16th floor, Suite 1600, New York, New York 10005, Attention: Corporate Trust Department.

The Trustee, by notice to the Issuer, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed by first class mail, postage prepaid, at such Noteholder's address as it appears on the Note Register and shall be sufficiently given to such Noteholder if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 15.04 *Governing Law*. This Indenture and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 15.05 *Evidence of Compliance with Conditions Precedent, Certificates to Trustee*. Upon any application or demand by the Issuer to the Trustee to take any action under any of the provisions of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include: (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based; (3) a statement that, in the opinion of such person, such person has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; *provided*, *however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

Section 15.06 *Legal Holidays*. If any specified date (including a date for giving notice) on which action is to be taken under this Indenture is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday and, if the action to be taken on such date is a payment in respect of the Notes, no interest shall accrue for the intervening period.

Section 15.07 *Trust Indenture Act*. This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act; *provided* that this Section 15.07 shall not require this Indenture or the

Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to the Indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of

the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 15.08 *No Security Interest Created*. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction in which property of the Issuer or its subsidiaries is located.

Section 15.09 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any authenticating agent, any Note Registrar and their successors hereunder and the holders of Notes any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 15.10 *Table of Contents, Headings, etc*. The table of contents and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 15.11 *Authenticating Agent*. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf, and subject to its direction, in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Sections 2.04, 2.05, 2.06, 2.07, 3.03 and 3.05, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.09.

Any corporation into which any authenticating agent may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any merger, consolidation or exchange to which any authenticating agent shall be a party, or any corporation succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section 15.11, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Issuer. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Issuer. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee shall either promptly appoint a successor authenticating agent or itself assume the duties and obligations of the former authenticating agent under this Indenture and, upon such appointment

of a successor authenticating agent, if made, shall give written notice of such appointment of a successor authenticating agent to the Issuer and shall mail notice of such appointment of a successor authenticating agent to all holders of Notes as the names and addresses of such holders appear on the Note Register.

The Issuer agrees to pay to the authenticating agent from time to time such reasonable compensation for its services as shall be agreed upon in writing between the Issuer and the authenticating agent.

The provisions of Sections 7.02, 7.03, 7.04 and 8.03 and this Section 15.11 shall be applicable to any authenticating agent.

Section 15.12 *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 15.13 *Severability*. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 15.14 *Conflicts with Original Indenture*. If any provision of this Indenture is inconsistent with any provision of the Original Indenture, the provision of this Indenture will control with regard to the Notes.

US Bank Trust National Association hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein above set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed.

ISTAR FINANCIAL INC., as Issuer

By: /s/ Jay S. Sugarman
Name: Jay S. Sugarman
Title: Chairman & CEO

US BANK TRUST NATIONAL ASSOCIATION, as Trustee

By: /s/ Gagendra Hiralal
Name: Gagendra Hiralal
Title: Trust Officer

Exhibit A

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (THE "DEPOSITARY," WHICH TERM INCLUDES ANY SUCCESSOR DEPOSITARY FOR THE CERTIFICATES) TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREIN IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

iSTAR FINANCIAL INC.
CONVERTIBLE SENIOR FLOATING RATE NOTES DUE 2012

CUSIP: 45031UBF7

No. $800,000,000

iStar Financial Inc., a corporation organized under the laws of Maryland (herein called the "Issuer," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to or its registered assigns, the principal sum of EIGHT HUNDRED MILLION DOLLARS [or such other principal amount as shall be set forth on Schedule I hereto][(1)] on October 1, 2012 at the office or agency of the Issuer maintained for that purpose in accordance with the terms of the Indenture, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest, quarterly in arrears, on January 1, April 1, July 1 and October 1 of each year (each, an "Interest Payment Date"), commencing January 1, 2008, on said principal sum at said office or agency, in like coin or currency, at the rate per annum, reset quarterly, of equal to three-month LIBOR (as defined herein), plus 0.5%, to be determined by the Calculation Agent, from and including the most recent Interest Payment Date in respect of which interest has been paid (or commencing October 15, 2007 if no interest has been paid hereon). Interest will be computed on the basis of a 360-day year using the actual number of days elapsed from and including an Interest Payment Date to but excluding the next succeeding Interest Payment Date.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the holder of this Note the right to convert this Note in the manner specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

(1) For Global Notes only.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed.

Dated: _____

iSTAR FINANCIAL INC.

By: _____
Name:
Title:

ATTEST:

By _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes described in the within-named Indenture.

US BANK TRUST NATIONAL ASSOCIATION, as Trustee

By _____
Name:
Title:

Dated: _____

FORM OF REVERSE OF NOTE

iSTAR FINANCIAL INC.
CONVERTIBLE SENIOR FLOATING RATE NOTES DUE 2012

This note is one of a duly authorized issue of notes of the Issuer, designated as its "Convertible Senior Floating Rate Notes due 2012" (herein called the "Notes"), issued under and pursuant to an Indenture dated as of February 5, 2001, as amended and supplemented, including as supplemented by a Supplemental Indenture dated as of October 15, 2007 (collectively, the "Indenture"), between the Issuer and US Bank Trust National Association, as trustee (herein called the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Issuer and the holders of the Notes. Capitalized terms used but not otherwise defined in this Note shall have the respective meanings ascribed thereto in the Indenture.

Interest on the Notes shall accrue at the rate per year, reset quarterly (the "interest period" and the first date in such period, the "interest reset date"), equal to three-month LIBOR plus 0.50%, to be determined by the Calculation Agent. The interest rate on the Notes applicable to each interest period commencing on the related interest reset date, or the original issue date in the case of the initial interest period, will be the rate determined as of the applicable interest determination date. The "interest determination date" will be the second London business day immediately preceding the original issue date, in the case of the initial interest period, or thereafter the applicable interest reset date. US Bank Trust National Association, or its successor appointed by the Issuer, will act as Calculation Agent with respect to the Notes. Three-month LIBOR will be determined by the Calculation Agent as of the applicable interest determination date in accordance with the following provisions:

(i) LIBOR is the rate for deposits in U.S. dollars for the three-month period which appears on Reuters on page LIBOR 01 at approximately 11:00 a.m., London time, on the applicable interest determination date. If no rate appears on Reuters on page LIBOR 01, LIBOR for such interest determination date will be determined in accordance with the provisions of paragraph (ii) below.

(ii) With respect to an interest determination date on which no rate appears on Reuters on page LIBOR 01 at approximately 11:00 a.m., London time, on such interest determination date, the Calculation Agent shall request the principal London offices of each of four major reference banks (which may include affiliates of the Underwriters) in the London interbank market selected by the Calculation Agent (after consultation with the Issuer) to provide the Calculation Agent with a quotation of the rate at which deposits of U.S. dollars having a three-month maturity, commencing on the second London business day immediately following such interest determination date, are offered by it to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such interest determination date in a principal amount equal to an amount of not less than U.S. $1,000,000 that is representative for a single transaction in such market at such time. If at least two such quotations are provided, LIBOR for such interest determination date will be the arithmetic mean of such quotations as calculated by the calculation agent. If fewer than two quotations are provided, LIBOR for such interest

determination date will be the arithmetic mean of the rates quoted at approximately 11:00 a.m., New York City time, on such interest determination date by three major banks (which may include affiliates of the Underwriters) selected by the Calculation Agent (after consultation with the Issuer) for loans in U.S. dollars to leading European banks having a three-month maturity commencing on the second London business day immediately following such interest determination date and in a principal amount equal to an amount of not less than U.S. $2,000,000 that is representative for a single transaction in such market at such time; provided, however, that if the banks selected as aforesaid by the Calculation Agent are not quoting such rates as mentioned in this sentence, LIBOR for such interest determination date will be LIBOR determined with respect to the immediately preceding interest determination date.

The percentages resulting from any calculation of any interest rate for the Notes will be rounded, if necessary, to the nearest one hundred thousandth of a percentage point, with five one-millionths of a percentage point rounded upward and all dollar amounts will be rounded to the nearest cent, with one-half cent being rounded upward.

Promptly upon such determination, the Calculation Agent will notify the Issuer and the Trustee (if the Calculation Agent is not the Trustee) of the interest rate for the new interest period. Upon request of a holder of the Notes, the Calculation Agent will provide to such holder the interest rate in effect on the date of such request and, if determined, the interest rate for the next interest period.

All calculations made by the Calculation Agent for the purposes of calculating interest on the Notes shall be conclusive and binding on the holders and the Issuer, absent manifest error.

The Issuer shall have the right to redeem the Notes at its option in accordance with the provisions of Article 3 of the Indenture in order to preserve Issuer's qualification, as a REIT. If the Issuer determines it is necessary to redeem the Notes in order to preserve the qualification of Issuer's as a REIT, the Issuer may redeem the Notes for cash, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed plus unpaid interest, if any, accrued thereon to the Redemption Date. In accordance with the provisions of the Indenture, the Issuer may not otherwise redeem the Notes at its option prior to the Stated Maturity thereof.

Subject to the terms and conditions set forth in the Indenture, following the occurrence of a Fundamental Change at any time prior to the Stated Maturity of the Notes, the Notes shall be subject to repurchase by the Issuer, at the option of the holder, on the Fundamental Change Purchase Date, at a Fundamental Change Purchase Price equal to 100% of the principal amount of the Notes to be repurchased together with accrued and unpaid interest accrued thereon to the Fundamental Change Purchase Date. To exercise such right, the holder shall be required to satisfy the conditions to such repurchase set forth in the Indenture and to deliver to the Paying Agent the Repurchase Notice set forth on the reverse hereof prior to the close of business on the third Business Day prior to the Fundamental Change Purchase Date.

The Issuer may not repurchase any Notes if there has occurred and is continuing an Event of Default with respect to the Notes (other than a default in the payment of the Fundamental Change Purchase Price for such Notes).

Holders have the right to withdraw any Repurchase Notice by delivering to the Paying Agent a written notice of withdrawal at any time prior to the close of business on the third Business Day prior to the Fundamental Change Purchase Date, all as provided in the Indenture.

Subject to and in compliance with the provisions of the Indenture, holders of Notes shall have the right to convert each $1,000 principal amount of Notes at the applicable Conversion Rate into the consideration specified in the Indenture, upon surrender of the Note to be converted with the form entitled "Conversion Notice" on the reverse hereof duly completed and manually signed, to the Issuer at the office or agency of the Issuer maintained for that purpose in accordance with the terms of the Indenture, together with any funds required pursuant to the terms of the Indenture. The Conversion Rate shall initially be 22.2000 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment in the manner set forth in the Indenture.

Notes surrendered for conversion at any time after the close of business on any applicable Record Date for the payment of interest and on or prior to the corresponding Interest Payment Date must be accompanied by payment, in immediately available funds or other funds acceptable to the Issuer, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; *provided* that no such payment shall be required (1) if the Issuer has specified a Redemption Date that is after a Record Date and on or prior to the corresponding Interest Payment Date, (2) to the extent of any Special Interest or overdue interest, if any overdue interest exists at the time of conversion with respect to such Notes, or (3) in respect of any conversion that occurs after the Record Date for the interest payment due on October 1, 2012.

In the event the holder surrenders this Note for conversion in connection with a Change in Control resulting from a transaction described in clause (1) or (2) of the definition of such term, the Issuer shall increase the applicable Conversion Rate in accordance with the provisions of Section 13.13 of the Indenture.

In the event that shares of Common Stock are issued upon conversion of Notes, no fractional shares shall be issued upon such conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon such conversion.

A Note in respect of which a holder has submitted a Repurchase Notice may be converted only if such holder validly withdraws such Repurchase Notice in accordance with the terms of the Indenture.

If an Event of Default (other than an Event of Default specified in Section 6.01(i), 6.01(j) and 6.01(k) of the Indenture) with respect to the Issuer) shall occur and be continuing, the principal of, and accrued and unpaid interest on, the Notes may be declared to be due and payable in the manner specified in the Indenture. If an Event of Default specified in Section 6.01(i), 6.01(j) or 6.01(k) of the Indenture shall occur with respect to the Issuer, the principal of, and interest accrued and unpaid on, the Notes shall be immediately and automatically due and payable without necessity of further action. Subject to the provisions of the Indenture, the holders of not less than a majority in aggregate principal amount of the Notes at the time

outstanding may, on behalf of the holders of all of the Notes, waive any past default or Event of Default, subject to exceptions set forth in the Indenture. Upon any such waiver, said default shall for all purposes of this Note and the Indenture be deemed to have been cured and to be not continuing, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

The Indenture contains provisions permitting the Issuer and the Trustee, with the consent of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, to execute supplemental indentures to modify provisions of the Indenture, subject to exceptions permitting the modification of the Indenture without the consent of any holder of Notes or requiring the consent of each holder of a Note affected by such modification all as set forth in Article 9 of the Indenture.

The Notes are issuable in fully registered form, without coupons, in denominations of $1,000 principal amount and any multiple of $1,000 in excess thereof. At the office or agency of the Issuer referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in

connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate principal amount of Notes of any other authorized denominations. Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in the Indenture, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by the Indenture. No service charge shall be made to any holder for any registration of transfer or exchange of Notes, but the Issuer may require payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes.

The Issuer, the Trustee, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name this Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Issuer or any Note Registrar) for the purpose of receiving payment of or on account of the principal of, and interest on this Note, for conversion of this Note and for all other purposes; and neither the Issuer or the Trustee nor any Paying Agent, Conversion Agent or any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any this Note.

No recourse for the payment of the principal of or interest on this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer in the Indenture or any supplemental indenture or in any Note, or because of the creation of any indebtedness represented hereby, shall be had against any incorporator, stockholder, partner, member, manager, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Issuer or any of the Issuer's Subsidiaries or of

any successor thereto, either directly or through the Issuer or any of the Issuer's Subsidiaries or of any successor thereto, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as consideration for, the execution of the Indenture and the issue of this Note.

Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and obligations thereunder of the Trustee and the Holders.

In the case of any conflict between the provisions of this Note and the Indenture, the provisions of the Indenture shall control. The Indenture and this Note shall be governed by, and construed in accordance with, the laws of the state of New York.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN-COM -	as tenants in common	UNIF GIFT MIN ACT - Custodian
TEN-ENT -	as tenant by the entireties	(Cust)(Minor)
JT-TEN -	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act (State)

Additional abbreviations may also be used though not in the above list.

CONVERSION NOTICE

TO: iSTAR FINANCIAL INC.
US BANK TRUST NATIONAL ASSOCIATION, as Trustee

The undersigned registered owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion thereof (which is $1,000 or a multiple thereof) below designated, into cash and, if applicable, shares of Common Stock of iStar Financial Inc., as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that the shares, if any, issuable and deliverable upon such conversion, together with any check in payment for cash, if any, payable upon conversion or for fractional shares and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If shares or any portion of this Note not converted are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Dated: _____ _____

_____
Signature(s)

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

Fill in the registration of shares of Common Stock, if any, if to be issued, and Notes if to be delivered, and the person to whom cash and payment for fractional shares is to be made, if to be made, other than to and in the name of the registered holder:

Please print name and address

(Name)

(Street Address)

(City, State and Zip Code)

Principal amount to be converted
(if less than all):

$

Social Security or Other Taxpayer
Identification Number:

NOTICE: The signature on this Conversion Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

REPURCHASE NOTICE

TO: iSTAR FINANCIAL INC.
US BANK TRUST NATIONAL ASSOCIATION

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from iStar Financial Inc. (the "Issuer") regarding the right of holders to elect to require the Issuer to repurchase the Notes and requests and instructs the Issuer to repay the entire principal amount of this Note, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in cash, in accordance with the terms of the Indenture at the price of 100% of such entire principal amount or portion thereof specified below, together with accrued and unpaid interest to the Repurchase Date to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Issuer as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Note Certificate Number:

Principal amount to be repurchased (if less than all, must be $1,000 or whole multiples thereof):

Social Security or Other Taxpayer Identification Number:

Dated:

Signature(s)

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____

(Insert assignee's legal name)

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

_____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Schedule I

iSTAR FINANCIAL INC.
CONVERTIBLE SENIOR FLOATING RATE NOTES DUE 2012

Date	Principal Amount	Notation Explaining Principal Amount Recorded	Authorized Signature of Trustee or Custodian