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): April 7, 2011

Fifth Street Finance Corp.

(Exact name of registrant as specified in its charter)

Delaware	**1-33901**	**26-1219283**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

10 Bank Street, 12thFloor
White Plains, NY 10606
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: **(914) 286-6800**

Not Applicable
Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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))

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Item 1.01 Entry into a Material Definitive Agreement.

Purchase Agreement Relating to Convertible Senior Notes

On April 7, 2011, Fifth Street Finance Corp. ("Fifth Street") entered into a Purchase Agreement (the "Purchase Agreement") by and among Fifth Street, Fifth Street Management LLC and FSC, Inc. and J.P. Morgan Securities LLC and Morgan Stanley & Co. Incorporated, as representatives of the several initial purchasers, relating to the issuance and sale of $150.0 million in aggregate principal amount of its 5.375% Convertible Senior Notes due 2016 (the "Convertible Notes"), plus up to an additional $22.5 million principal amount of Convertible Notes if the initial purchasers exercise their 30-day option to purchase the additional Convertible Notes. The net proceeds from the sale of the Convertible Notes are expected to be approximately $146.0 million (or approximately $167.9 million if the initial purchasers exercise their option to purchase the additional Convertible Notes in full). Aggregate estimated offering expenses in connection with the transaction, including the initial purchasers' discount of $3.8 million (or $4.3 million if the initial purchasers exercise their option to purchase the additional Convertible Notes in full), are expected to be approximately $4.1 million (or $4.6 million if the initial purchasers exercise their option to purchase the additional Convertible Notes in full).

Following the issuance of the Convertible Notes and the application of the net proceeds therefrom to pay down indebtedness, as of April 12, 2011, Fifth Street's total consolidated indebtedness was $138.3 million principal amount and there were no outstanding borrowings under its two credit facilities.

Fifth Street offered and sold the Convertible Notes to the initial purchasers in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933 (the "Securities Act"), for resale by the initial purchasers to qualified institutional buyers (as defined in the Securities Act) pursuant to the exemption from registration provided by Rule 144A under the Securities Act. Fifth Street relied on these exemptions from registration based in part on representations made by the initial purchasers in the Purchase Agreement.

The Purchase Agreement contains customary representations, warranties, agreements, indemnification obligations, including for liabilities under the Securities Act, other obligations and termination provisions.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Purchase Agreement, filed as Exhibit 10.1 hereto and incorporated by reference herein.

Indenture Relating to Convertible Senior Notes

On April 12, 2011, Fifth Street completed its previously announced private offering of $150.0 million principal amount of its Convertible Notes (the "Offering").

The Convertible Notes were issued pursuant to an Indenture, dated April 12, 2011 (the "Indenture"), between Fifth Street and Deutsche Bank Trust Company Americas, as trustee (the "Trustee").

The Convertible Notes mature on April 1, 2016 (the "Maturity Date"), unless previously converted or repurchased in accordance with their terms. The Convertible Notes bear interest at a rate of 5.375% per year payable semiannually in arrears on April 1 and October 1 of each year, commencing on October 1, 2011. The Convertible Notes are Fifth Street's senior unsecured obligations and rank senior in right of payment to Fifth Street's existing and future indebtedness that is expressly subordinated in right of payment to the Convertible Notes; equal in right of payment to Fifth Street's existing and future unsecured indebtedness that is not so subordinated; effectively junior in right of payment to any of Fifth Street's secured indebtedness (including existing unsecured indebtedness that Fifth Street later secures) to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness (including trade payables) incurred by Fifth Street's subsidiaries or financing vehicles.

Prior to the close of business on the business day immediately preceding January 1, 2016, holders may convert their Convertible Notes only under certain circumstances set forth in the Indenture. On or after January 1, 2016 until the close of business on the business day immediately preceding the Maturity Date, holders may convert their Convertible Notes at any time. Upon conversion, Fifth Street will deliver shares of its common stock. The conversion rate will initially be 67.7415 shares of common stock per $1,000 principal amount of Convertible Notes (equivalent to an initial conversion price of approximately $14.76 per share of common stock). The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, if certain corporate events occur prior to the Maturity Date, the conversion rate will be increased for converting holders.

Fifth Street may not redeem the Convertible Notes prior to maturity. No sinking fund is provided for the Convertible Notes. In addition, if certain corporate events occur in respect of Fifth Street, holders of the Convertible Notes may require Fifth Street to repurchase for cash all or part of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest through, but excluding, the required repurchase date.

The Indenture contains certain covenants, including covenants requiring Fifth Street to provide financial information to the holders of the Convertible Notes and the Trustee if Fifth Street ceases to be subject to the reporting requirements of the Securities Exchange Act of 1934. These covenants are subject to limitations and exceptions that are described in the Indenture.

The foregoing description of the Indenture and the Convertible Notes does not purport to be complete and is qualified in its entirety by reference to the full text of the Indenture (including the form of the Convertible Notes), filed as Exhibit 4.1 hereto and incorporated by reference herein.

Neither the Convertible Notes nor the common stock that may be issued upon conversion thereof will be registered under the Securities Act. Neither the Convertible Notes nor the common stock that may be issued upon conversion thereof may be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act.

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

The information set forth under Item 1.01 of this Form 8-K is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 of this Form 8-K is incorporated herein by reference.

In conjunction with the Offering, Fifth Street also sold $2.0 million principal amount of the Convertible Notes to its Chief Executive Officer, Leonard M. Tannenbaum. Because the Convertible Notes sold to Mr. Tannenbaum were sold to him directly by Fifth Street, no placement fees or compensation was paid to any party in connection with such sale. Fifth Street offered and sold the Convertible Notes to Mr. Tannenbaum in reliance on the exemption from registration provided by Section 4(2) of the Securities Act based on representations and warranties made by him to Fifth Street.

Item 9.01 Financial Statements and Exhibits.

(a) Not applicable.

(b) Not applicable.

(c) Exhibits.

Exhibit No.	Description
4.1	Indenture, dated April 12, 2011, between Fifth Street Finance Corp. and Deutsche Bank Trust Company Americas, as trustee.
4.2	Form of 5.375% Convertible Senior Notes due 2016 (included as part of Exhibit 4.1).
10.1	Purchase Agreement, dated April 7, 2011, by and among Fifth Street Finance Corp., Fifth Street Management LLC, FSC, Inc., J.P. Morgan Securities LLC and Morgan Stanley & Co. Incorporated.

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SIGNATURES

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

Date: April 12, 2011

FIFTH STREET FINANCE CORP.

By: /s/ Bernard D. Berman
Name: Bernard D. Berman
Title: President

Exhibit 4.1

EXECUTION COPY

FIFTH STREET FINANCE CORP.,

as Issuer,

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,

as Trustee

INDENTURE

Dated as of April 12, 2011

5.375% SENIOR CONVERTIBLE NOTES DUE 2016

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INDENTURE

5.375% Senior Convertible Notes due 2016

INDENTURE, dated as of April 12, 2011 (this "**Indenture**"), between FIFTH STREET FINANCE CORP., a corporation organized under the laws of Delaware, as issuer (the "**Company**"), and DEUTSCHE BANK TRUST COMPANY AMERICAS, a New York banking corporation, as trustee hereunder (the "**Trustee**").

RECITALS OF THE COMPANY:

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its 5.375% Senior Convertible Notes due 2016 (the "**Notes**"), initially in an aggregate principal amount not to exceed $174,500,000; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee, as provided in this Indenture, the valid and binding obligations of the Company, and to make this Indenture the valid and binding agreement of each of the Company and the Trustee in accordance with the terms hereof, have been done and performed.

NOW THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and of the covenants contained herein, the Company and the Trustee covenant and agree, for the equal and proportionate benefit of all Holders (as defined below) of the Notes issued on or after the date of this Indenture, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. For all purposes of this Indenture, except as otherwise expressly provided for or unless the context otherwise requires:

"**Additional Interest**" shall have the meaning specified in Section 5.13(a).

"**Additional Interest Period**" shall have the meaning specified in Section 5.13(a).

"**Additional Notes**" shall have the meaning specified in Section 2.15.

"**Additional Shares**" shall have the meaning specified in Section 10.01(b).

"**Administrator**" shall mean the Company's administrator, initially FSC, Inc.

"**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 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.

"**Applicable Procedures**" means, with respect to any conversion, repurchase, transfer or exchange of beneficial ownership interests in a Global Note, the rules and procedures of the Depositary, to the extent applicable to such conversion, transfer or exchange.

"**Authenticating Agent**" shall have the meaning specified in Section 2.11.

"**Averaging Period**" shall have the meaning specified in Section 10.04(e).

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

"**Board of Directors**" means the Board of Directors of the Company, the executive committee or any other committee or director of that board duly authorized to act for it in respect hereof.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or a committee thereof, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means any day, other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means, with respect to any Person, any capital stock (including preferred stock), shares, interest, participations or other ownership interests (however designated) of such Person and any rights, warrants or options (other than debt securities convertible into or exchangeable for corporate stock) to purchase any of the foregoing.

"**Close of Business**" means 5:00 p.m. (New York City time).

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Stock**" means, subject to Section 10.06, shares of common stock of the Company, par value $0.01 per share, at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and that 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 Company and that are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable 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.

"**Company**" means only the Person named as the "Company" in the first paragraph of this Indenture until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor corporation.

"**Company Order**" means a written request or order signed in the name of the Company by the President, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

"**Conversion Agent**" shall mean the Trustee or any successor office or agency where the Notes may be surrendered for conversion.

"**Conversion Date**" shall have the meaning specified in Section 10.02(b).

"**Conversion Notice**" shall have the meaning specified in Section 10.02(b)(i).

"**Conversion Obligation**" shall have the meaning specified in Section 10.01(a).

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

"**Conversion Rate**" shall have the meaning specified in Section 10.01(a).

"**Corporate Trust Office**" means the office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 60 Wall Street, MS NYC 60-2710, New York, New York, 10005, Attention: Corporates Team Deal Manager — Fifth Street Finance, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"**Custodian**" means the Trustee, as custodian for The Depository Insurance Company, with respect to the Global Notes, or any successor entity thereto.

"**Default**" means an event that is, or after notice or passage of time, or both, would be, an Event of Default with respect to the Notes.

"**Defaulted Interest**" shall have the meaning specified in Section 2.10.

"**Depositary**" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in the Notes as the Depositary with respect to such Notes, until a successor shall have been appointed, and thereafter, "**Depositary**" shall mean or include such successor.

"**Distributed Property**" shall have the meaning specified in Section 10.04(c)(i).

"**Dollar**" or "**$**" means a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for payment of public and private debts.

"**DTA**" shall have the meaning specified in Section 10.04(d).

"**Effective Date**" shall have the meaning specified in Section 10.01(d).

"**Event of Default**" means, with respect to the Notes, any event specified in Section 5.01.

"**Ex-Dividend Date**" means, for any issuance, dividend or distribution, the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Filing Additional Interest**" shall have the meaning specified in Section 5.01.

"**Filing Failure**" shall have the meaning specified in Section 5.01.

"**Fundamental Change**" will be deemed to have occurred when any of the following has occurred:

(a) the consummation of any transaction (including, without limitation, any merger or consolidation other than those excluded under clause (c) below) the result of which is that any "person" becomes the "beneficial owner" (as these terms are defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the Capital Stock of the Company that is at that time entitled to vote by the holder thereof in the election of the Board of Directors (or comparable body) other than any transaction between the Company and the Administrator and/or the Investment Manager or any of their successor entities;

(b) the adoption of a plan relating to the liquidation or dissolution of the Company;

(c) the consolidation or merger of the Company with or into any other Person, or the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company and those of its Subsidiaries taken as a whole to any "person" (as this term is used in Section 13(d)(3) of the Exchange Act); other than:

(i) any transaction that does not result in any reclassification, conversion, exchange or cancellation of all or substantially all of the outstanding shares of Capital Stock of the Company;

(ii) any changes resulting from a subdivision or combination or change solely in par value;

(iii) any transaction pursuant to which the holders of 50% or more of the total voting power of all shares of Capital Stock of the Company entitled to vote generally in elections of directors immediately prior to such transaction have the right to exercise, directly or indirectly, 50% or more of the total voting power of all shares of Capital Stock of the continuing or surviving Person entitled to vote generally in elections of directors immediately after giving effect to such transaction;

(iv) any merger primarily for the purpose of changing the jurisdiction of incorporation of the Company and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the surviving entity; or

(v) any consolidation or merger with or into the Investment Manager and/or the Administrator or their successor entities.

(d) the termination of trading of Common Stock (or other common stock issuable upon conversion of the Notes), which will be deemed to have occurred if the Common Stock (or other common stock issuable upon conversion of the Notes) is not listed for trading on the New York Stock Exchange, NYSE Amex, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors).

Notwithstanding the foregoing, any transaction or event described above will also not constitute a Fundamental Change if, in connection with such transaction or event, or as a result therefrom, a transaction described in clauses (a) or (c) above occurs (without regard to any exclusion contained in clause (c)), and at least 90% of the consideration paid for Common Stock (excluding cash payments for fractional shares, cash payments made pursuant to dissenters' appraisal rights and cash dividends) consists of shares of common stock (or depositary receipts in respect thereof) traded on any of the New York Stock Exchange, NYSE Amex, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors) (or will be so traded or quoted immediately following the completion of the merger or consolidation or such other transaction) and, as a result of such transaction, the Notes become convertible into the Reference Property.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 11.01(b).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 11.01(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 11.01(a)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 11.01(a).

"**GAAP**" means generally accepted accounting principles as used in the United States applied on a consistent basis as in effect from time to time.

"**Global Note**" shall have the meaning specified in Section 2.07(f).

"**Indenture**" means this Indenture, as amended or supplemented from time to time.

"**Interest**" means, when used with reference to the Notes, any interest payable under the terms of the Notes, including Additional Interest and Filing Additional Interest, if any.

"**Interest Payment Date**" means April 1 and October 1 of each year, beginning on October 1, 2011.

"**Investment Manager**" shall mean the Company's external investment adviser, initially Fifth Street Management LLC.

"**Last Reported Sale Price**" means, with respect to Common Stock or any other security for which a Last Reported Sale Price must be determined, on any date, the closing sale price per share of Common Stock or unit of such other security (or, if no closing sale price is reported, the average of the last bid price and the last ask price or, if more than one in either case, the average of the average last bid prices and the average last ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange, if any, on which Common Stock or such other security is listed. If Common Stock or such other security is not listed on a U.S. national or regional securities exchange on the relevant date, the Last Reported Sale Price shall be the last quoted bid price for Common Stock or such other security in the over-the-counter market on the relevant date as reported by Pink OTC Markets Inc. or a similar organization. If Common Stock or such other security is not so quoted, the Last Reported Sale Price shall be the average of the mid-point of the last bid price and the last ask price for Common Stock or such other security on the relevant date from each of at least three nationally recognized independent investment banking firms selected from time to time by the Board of Directors of the Company for this purpose.

"**Lien**" means any security interest, pledge, lien or other encumbrance.

"**Limitation**" shall have the meaning specified in Section 10.03(d).

"**Maturity Date**" means April 1, 2016.

"**Merger Event**" shall have the meaning specified in Section 10.06(a).

"**Non-Stock Change of Control**" shall have the meaning specified in Section 10.01(b).

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Indenture.

"**Note Register**" shall have the meaning specified in Section 2.04.

"**Noteholder**" or "**Holder**" 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 Register.

"**Officers' Certificate**" means a certificate signed by the Chief Executive Officer, President or a Vice President and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 12.03, if and to the extent required by the provisions of Section 12.02.

"**Opening of Business**" means 9:00 a.m. (New York City time).

"**Opinion of Counsel**" means a written opinion from legal counsel, who may be an employee of or counsel to the Company; *provided*, *however*, that counsel that is an employee of, or counsel to, the Company shall be acceptable to the Trustee. Each such opinion shall include the statements provided for in Section 12.03, if and to the extent required by the provisions of Section 12.02.

"**Outstanding**", when used with respect to Notes, means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) Notes theretofore cancelled by the Trustee or delivered in accordance with this Indenture to the Trustee for cancellation (including Notes converted and cancelled pursuant to this Indenture);

(b) Notes for whose payment money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Notes; and

(c) Notes which have been paid pursuant to Section 2.08 or in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a bona fide purchaser in whose hands such Notes are valid obligations of the Company;

provided, *however*, that in determining whether the Holders of the requisite principal amount of the Outstanding Notes have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor shall be disregarded (from both the numerator and the denominator) and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor.

"**Paying Agent**" means the office or agency designated by the Company where Notes may be presented for payment, initially the Trustee.

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

"**Physical Notes**" means permanent certificated Notes in registered form issued in denominations of $1,000 principal amount and multiples thereof.

"**Predecessor Security**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; for the purposes of this definition, any Note authenticated and delivered under Section 2.08 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

"**Receiver**" means any receiver, trustee, assignee, liquidator or other similar official under any Bankruptcy Law.

"**Record Date**," with respect to the payment of interest on any Interest Payment Date, shall have the meaning specified in Section 2.03.

"**Reference Property**" shall have the meaning specified in Section 10.06(a).

"**Regulation D Note**" means a Note required to carry a Regulation D Note Legend as directed by Company Order to the Trustee.

"**Regulation D Note Legend**" means the restricted legend set forth in Exhibit A hereto under the caption entitled "Regulation D Note Legend."

"**Resale Restriction Termination Date**" shall have the meaning specified in Section 2.07(b).

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee (or any successor of the Trustee), including any managing director, director, vice president, assistant vice president, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"**Restricted Common Stock Legend**" means the legend set forth in Exhibit E hereto.

"**Restricted Note Legend**" means the restricted legend set forth in Exhibit A hereto under the caption entitled "Restricted Note Legend."

"**Restricted Securities**" shall have the meaning specified in Section 2.07(a).

"**Rule 144**" means Rule 144 under the Securities Act, or any similar successor rule or regulation, as amended from time to time.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the primary United States national or regional securities exchange or market on which Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, Scheduled Trading Day means a Business Day.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Security Registrar**" means the office or agency maintained by the Company where Notes may be presented for registration of transfer or exchange, initially the Trustee.

"**Significant Subsidiary**" means any Subsidiary which is a "significant subsidiary" (within the meaning specified in Rule 1-02(w) of Regulation S-X, promulgated under the Securities Act) of the Company, excluding any Subsidiary of the Company which is (a) a non-recourse or limited recourse subsidiary, (b) a bankruptcy remote special purpose vehicle, or (c) that is not consolidated with the Company for purposes of GAAP.

"**Special Record Date**" shall have the meaning specified in Section 2.10(1).

"**Spin-Off**" shall have the meaning specified in Section 10.04(c)(ii).

"**Stock Price**" means the price paid per share of Common Stock in connection with a Non-Stock Change of Control pursuant to which Additional Shares shall be added to the Conversion Rate as set forth in Section 10.01(b) hereof. If holders of Common Stock receive only cash in such Non-Stock Change of Control transaction, then the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be equal to the average of the Last Reported Sale Prices of the Common Stock over the 5 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Non-Stock Change of Control.

"**Subsidiary**" means, with respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests of which are owned, directly or indirectly, by such Person. For the purposes of this definition, "**voting equity securities**" means equity securities having voting power for the election of directors, whether at all times or only so long as no senior class of security has such voting power by reason of any contingency.

"**Trading Day**" means a day on which (1) trading in Common Stock (or other security for which a closing price must be determined) generally occurs on the New York Stock Exchange or, if Common Stock (or such other security) is not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange, if any, on which Common Stock (or such other security) is then listed or, if Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market, if any, on which Common Stock (or such other security) is then admitted for trading, and (2) a closing price for Common Stock (or such other security) is available on such

securities exchange or market. If Common Stock (or other security for which a closing price must be determined) is not so listed or admitted for trading, Trading Day means a Business Day.

"**Trading Price**" of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Trustee or other Person appointed by the Company for such purpose (which appointment may be made without prior notice to the Holders) for $2,000,000 principal amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Trustee but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. Any such determination will be conclusive absent manifest error. If the Trustee cannot reasonably obtain at least one bid for $2,000,000 million principal amount of the Notes from a nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of the Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of Common Stock and the Conversion Rate.

"**Trading Price Condition**" shall have the meaning specified in Section 10.01(a)(ii).

"**Trigger Event**" shall have the meaning specified in Section 10.04(c)(ii).

"**Trust Indenture Act**" or "**TIA**" means the U.S. Trust Indenture Act of 1939, as amended.

"**Trustee**" means the Person named as the "Trustee" in the first paragraph of this indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"**United States**" means the United States of America (including the states and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

"**Valuation Period**" shall have the meaning specified in Section 10.04(c)(ii).

All other terms used in this Indenture, which are defined in the Trust indenture Act 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 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.

ARTICLE II

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. Designation and Amount. The Notes shall be designated as the

"5.375% Senior Convertible Notes due 2016." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to $174,500,000, except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.07, Section 10.02(d), Section 11.01 and Section 2.08 hereof, and except for Additional Notes issued pursuant to Section 2.15.

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.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and that are not inconsistent with the provisions of this Indenture, or as may be required by the Depositary, as may be required to comply with any 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 designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

A Global Note shall represent such principal amount of the Outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of Outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of Outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, conversions, transfers or exchanges 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 Security Registrar, 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 and accrued and unpaid interest on a Global Note shall be made to the Holder of such Note on the date of payment, unless a Record Date or other means of determining Holders eligible to receive payment is provided for herein.

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

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 thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the Note which shall be in the form of Note attached as Exhibit A hereto. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months. If an Interest Payment Date, a Fundamental Change Repurchase Date or Maturity Date is not a Business Day, payment will be made on the next succeeding Business Day, and no additional Interest will accrue thereon as a result thereof.

The Person in whose name any Note (or its Predecessor Security) is registered on the Note Register at the Close of Business on any Record Date with respect to any Interest

Payment Date shall be entitled to receive the accrued and unpaid interest payable on such Interest Payment Date, subject to Section 4.01(c) hereof. Interest shall be payable at the office of the Company maintained by the Company for such purposes in the Borough of Manhattan, City of New York, which shall initially be an office or agency of the Trustee. The Company shall pay interest (i) on any Physical Notes by check mailed to the address of the Person entitled thereto as it appears in the Note Register (or upon written application by such Person to the Security Registrar at least five Business Days prior to the relevant Interest Payment Date, by wire transfer in immediately available funds to such Person's account within the United States, if such Person is entitled to interest on an aggregate principal of $5,000,000 or more) or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee. The term "**Record Date**" with respect to any Interest Payment Date shall mean the March 15 or September 15 preceding the applicable April 1 or October 1 Interest Payment Date, respectively.

Section 2.04. Security Registrar, Conversion Agent and Paying Agent. The Trustee shall initially serve as the Security Registrar, Conversion Agent and Paying Agent for the Notes. The Security Registrar, the Conversion Agent and the Paying Agent shall each maintain an office or agency in the Borough of Manhattan, New York City. The Security Registrar shall keep a register of the Notes and of their transfer and exchange (the "**Note Register**"). The Company may have one or more co-registrars and one or more additional conversion agents and paying agents. The term Paying Agent includes any additional paying agents, the term Conversion Agent includes any additional conversion agents and the term Security Registrar includes any co-registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Security Registrar without prior notice to any Holder.

The Company shall enter into an appropriate agency agreement with any Security Registrar, Conversion Agent or Paying Agent that is not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of each such agent. If the Company fails to maintain a Security Registrar, Conversion Agent or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 6.07. The Company or any of its domestically incorporated wholly-owned Subsidiaries may act as Paying Agent, Conversion Agent or Security Registrar.

The Company may remove any Security Registrar, Conversion Agent or Paying Agent upon 30 days prior written notice to such Security Registrar, Conversion Agent or Paying Agent and to the Trustee; *provided, however*, that no such removal shall become effective until (i) acceptance of any appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Security Registrar, Conversion Agent or Paying Agent, as the case may be, and such agreement is delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Security Registrar, Conversion Agent or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Security Registrar, Conversion Agent or Paying Agent may resign upon 30 days prior written notice to the Company and the Trustee.

Section 2.05. Conversion Agent and Paying Agent to Hold Money and Property in Trust. Except as otherwise provided herein, on or prior to 10:00 a.m. (New York City time) on each due date of payment or settlement date of conversion in respect of any Note, the

Company shall deposit with the Paying Agent or Conversion Agent, as applicable, a sum of money (in immediately available funds) and any property due upon conversion sufficient to make such payments or conversion when due. The Company shall require each Paying Agent or Conversion Agent (other than the Trustee) to agree in writing that such Paying Agent or Conversion Agent shall hold in trust for the benefit of Holders or the Trustee all money or property or shares of Common Stock held by such Paying Agent or Conversion Agent for the payment of principal of, interest on, and other payments and conversion in respect of the Notes, and shall notify the Trustee in writing of any Default by the Company in making any such payment or conversion. If the Company or a Subsidiary acts as Paying Agent or Conversion Agent, it shall segregate the money or property or shares of Common Stock held by it as Paying Agent or Conversion Agent and hold it as a separate trust fund for the benefit of the Holders of the Notes. The Company at any time may require a Paying Agent or Conversion Agent (other than the Trustee) to pay all money or property or shares of Common Stock held by it to the Trustee and to account for any funds disbursed by such Paying Agent or Conversion Agent. Upon complying with this Section 2.05, the Paying Agent or Conversion Agent (if other than the Company or a Subsidiary) shall have no further liability for the money or property or shares of Common Stock delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to the Company, the Trustee shall serve as Paying Agent and Conversion Agent for the Notes.

Section 2.06. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Security Registrar, the Company, on its own behalf, shall furnish to the Trustee, in writing, at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may reasonably request in writing upon at least 15 days' prior written request, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.07. Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary. (a) Every Note (and all securities issued in exchange therefor or in substitution thereof) that bears, or is required under this Section 2.07 to bear, the Restricted Note Legend or the Regulation D Note Legend (together with any Common Stock issued upon conversion of the Notes that bears, or is required under this Section 2.07 to bear, the Restricted Common Stock Legend, collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.07 (including those set forth in the Restricted Note Legend, the Restricted Common Stock Legend and the Regulation D Note Legend, as applicable), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company following receipt of legal advice satisfactory to the Company in its sole discretion, supporting the permissibility of the waiver of such transfer restrictions, and the Holder of each such Note or shareholder of such Common Stock, as applicable, by such Holder's or shareholder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.07, the term "transfer" means any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

(b) Until the date that is one year after the last date of the original issuance of the Notes or such later date, if any, as may be required by applicable laws (such applicable date, the "**Resale Restriction Termination Date**"): (i) each certificate evidencing a Note (other than a

Regulation D Note) shall bear the Restricted Note Legend, (ii) each certificate evidencing a Regulation D Note shall bear the Regulation D Note Legend and (iii) each certificate evidencing shares of Common Stock issued upon conversion of any such Notes shall bear the Restricted Common Stock Legend, in each case, unless such Restricted Security has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and continues to be effective at the time of such transfer) or sold pursuant to Rule 144, or unless otherwise agreed by the Company in writing as set forth above, with written notice thereof to the Trustee.

(c) In connection with any transfer of Notes prior to the Resale Restriction Termination Date, the holder must complete and deliver the Form of Assignment and Transfer attached hereto as Exhibit D, with the appropriate box checked, to the Trustee (or any successor Trustee, as applicable).

(d) Any Notes that are Outstanding following their applicable Resale Restriction Termination Date and any Notes as to which the conditions for the removal of the Restricted Note Legend or the Regulation D Note Legend, as applicable, set forth thereon have been satisfied may, upon surrender of such Notes to the Security Registrar for exchange in accordance with the provisions of this Section 2.07, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restricted Note Legend or the Regulation D Note Legend, as applicable. The Company will cause the removal of the legends required by Section 2.07(b) from any Global Note promptly following the Resale Restriction Termination Date by: (i) instructing the Trustee in writing to remove such legends from such Global Note; (ii) providing to the Trustee and the Depositary written notice to change the CUSIP number for the Notes to the applicable unrestricted CUSIP number; and (iii) complying with any Applicable Procedures for delegending or otherwise exchanging such Global Note for a Global Note not bearing the restrictive legend (including DTC's mandatory exchange process, if applicable); whereupon any legends otherwise required by Section 2.07(b) shall be deemed removed from any Global Notes without any further action on the part of the Holders.

(e) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this instrument or under applicable law with respect to any transfer of any interest in any Note 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 instrument, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(f) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary, and bearing the legend set forth in Exhibit A hereto under the caption entitled "Global Note Legend." The transfer and exchange of beneficial interests in a Global Note, which does not involve the issuance of a Physical Note, shall be effected through the Depositary (but not the Trustee or the Security Registrar) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor. Notwithstanding the foregoing, a single Physical Note in the principal amount of up to $2,000,000 may be issued in accordance with the terms of this Indenture at the election of the Company as set forth in the Company Order with respect to the authentication of such Physical

Note and such Physical Note shall be issued to and registered in the name of the Holder thereof as set forth in the Company Order.

(g) The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to each Global Note. Initially, each Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Trustee as custodian for Cede & Co.

(h) Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.07), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for transfers of portions of a Global Note into a Physical Note in accordance with Section 2.07(i)(3) made upon request of a member of, or a participant in, the Depositary (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Depositary in accordance with customary procedures of the Depositary.

(i) If (1) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (2) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days or (3) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of the Notes requests that its Notes be issued as Physical Notes, the Company will execute, and the Trustee, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, will authenticate and deliver Physical Notes to each such beneficial owner of the related Notes (or a portion thereof) in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, and upon delivery of the Global Note to the Trustee such Global Note shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.07(i) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

If Physical Notes are issued, the Holder may present them for conversion, registration of transfer and exchange, without service charge, at the Company's office or agency in New York City, which will initially be the office or agency of the Trustee in New York City. Holders must present and surrender for cancellation any Physical Notes to the Paying Agent in order to receive the final principal payment due thereunder.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is

exchanged for Physical Notes, converted, canceled, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, 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 or increased, as the case may be, 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 or increase.

Section 2.08. Mutilated, Destroyed, Lost or Stolen Notes. If any mutilated Note is surrendered to the Trustee or the Company, together with such security or indemnity as may be required by the Company or the Trustee to save each of them or any agent of either of them harmless, the Company shall execute and the Trustee, upon receipt of a Company Order, shall authenticate and deliver in exchange therefor a new Note of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of actual notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding.

Notwithstanding the provisions of the previous two paragraphs, in case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay the amount due and payable with respect to such Note.

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

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

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

Section 2.09. Cancellation. To the extent permitted by law, the Company may from time to time repurchase any Notes in the open market or by tender offer at any price or by

private agreement without giving prior notice to Holders. The Company may, at its option, surrender any Notes repurchased by it to the Trustee for cancellation, but may not reissue or resell such Notes.

The Company at any time may deliver Notes to the Trustee for cancellation. The Security Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange, payment or conversion. The Trustee and no one else shall cancel and dispose of them in accordance with its customary procedures and upon written request of the Company shall return to the Company all Notes surrendered for registration of transfer, exchange, payment, purchase, conversion or cancellation. All Notes so delivered to the Trustee shall be cancelled promptly by the Trustee and shall no longer be Outstanding under this Indenture. The Company may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation.

At such time as all beneficial interests in a Global Note have either been exchanged for definitive Notes, transferred, paid, repurchased, redeemed, converted or canceled, such Global Note shall be returned by the Depositary or the Custodian to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Physical Notes, transferred in exchange for an interest in another Global Note, paid, repurchased, redeemed, converted or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the Global Note and on the Note Register with respect to such Global Note, by the Security Registrar, to reflect such reduction.

Section 2.10. Payment of Interest; Defaulted Interest. Subject to Section 4.01(c), interest on any Note that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Note (or one or more Predecessor Securities) is registered at the Close of Business on the Record Date for such interest at the office or agency of the Company maintained for such purpose pursuant to Section 2.04.

Subject to Section 4.01(c), any interest on any Note that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date shall forthwith cease to be payable to the registered Holder thereof on the relevant Record Date by virtue of having been such Holder, and such defaulted interest and, if applicable, interest on such defaulted interest (to the extent lawful) at the rate or formula specified in the Notes of such series (such defaulted interest and, if applicable, interest thereon herein collectively called "**Defaulted Interest**") may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Securities) are registered at the Close of Business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company 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 not be less than 20 days after such notice is received by the Trustee), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed 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 record date (the "**Special Record Date**") for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice (which notice shall be prepared by the Company) of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Notes at his address as it appears in the Note Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Securities) are registered at the Close of Business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

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

To the extent lawful, payments of principal or interest on the Notes that are not made when due will accrue interest at the then-applicable interest rate borne by the Notes from the required payment date in accordance with the provisions of this Indenture.

Subject to the foregoing provisions of this Section 2.10, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.11. Execution, Authentication, Delivery and Dating. The Notes shall be executed on behalf of the Company by its President or a Vice President and attested by its Chief Financial Officer, Secretary or an Assistant Secretary. The signature of any of these officers on the Notes may be manual or facsimile signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Notes. Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

A Note shall not be valid until an authorized signatory of the Trustee manually authenticates the Note. The signature of the Trustee on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture.

The Trustee will, upon receipt of a Company Order, authenticate Notes in an unlimited aggregate principal amount, subject to the provisions of this Indenture. Each Company

Order will specify the amount of Notes to be authenticated, the date on which the Notes are to be authenticated.

The Trustee may appoint an agent (the "**Authenticating Agent**") reasonably acceptable to the Company to authenticate the Notes. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Authenticating Agent.

In case the Company pursuant to Article IX shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which the Company shall have been merged, or the Person that shall have received a conveyance, transfer, lease or other disposition as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article VIII, any of the Notes authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may, from time to time, at the request of the successor Person, be exchanged for other Notes executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Company Order of the successor Person, shall authenticate and deliver Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section 2.11 in exchange or substitution for or upon registration of transfer of any Notes, such successor Person, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time Outstanding for Notes authenticated and delivered in such new name.

Section 2.12. No Sinking Fund. No sinking fund is provided for the Notes.

Section 2.13. Ranking. The Notes constitute a senior general unsecured, senior obligation of the Company, ranking equally in right of payment with all of the existing and future senior unsecured indebtedness of the Company and ranking senior in right of payment to any future indebtedness of the Company that is expressly made subordinate to the Notes by the terms of such indebtedness.

Section 2.14. CUSIP Numbers. The Company in issuing the Notes and Common Stock upon conversion of the Notes may use CUSIP numbers (if then generally in use). The Trustee shall not be responsible for the use of CUSIP numbers, and the Trustee makes no representation as to their correctness as printed on any Note, certificate of Common Stock or notice to Holders and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

Section 2.15. Additional Notes. The Company may, without the consent of the Holders, increase the principal amount of the Notes by issuing additional Notes ("**Additional Notes**") in the future on the same terms and conditions, except for any differences in the issue price and interest accrued prior to the issue date of the Additional Notes; *provided* that such

differences do not cause the Additional Notes to be non-fungible with the Notes for U.S. federal income tax purposes. The Notes and any Additional Notes would rank equally and ratably and would be treated as a single class for all purposes under this Indenture. No Additional Notes may be issued if any Event of Default has occurred with respect to the Notes.

ARTICLE III

REDEMPTION

Section 3.01. No Right to Redeem. The Notes shall not be redeemable before their Maturity Date at the option of the Company.

ARTICLE IV

PARTICULAR COVENANTS OF THE COMPANY

Section 4.01. Payment of Notes.

(a) The Company covenants and agrees for the benefit of the Holders of the Notes that it will duly and punctually pay the principal of and interest on the Notes in accordance with the terms of such Notes and this Indenture. Interest on any Note that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Note (or one or more Predecessor Securities) is registered at the Close of Business on the Record Date for such interest at the office or agency of the Company maintained for such purpose pursuant to Section 2.04. Interest on any Global Notes, if any, payable on any Interest Payment Date will be paid to the Depositary, with respect to that portion of such Global Notes held for its account by the Depositary for the purpose of permitting such party to credit the interest, if any, received by it in respect of such Global Notes to the accounts of the beneficial owners thereof. The payment of accrued and unpaid interest made to the Depositary shall be paid by wire transfer in immediately available funds in accordance with such wire transfer instructions and other procedures provided by the Depositary from time to time.

(b) [Reserved.]

(c) On the Maturity Date, the Company will pay accrued and unpaid interest to, but not including, the Maturity Date to the Person to whom the Company pays the principal amount of the Notes.

Section 4.02. Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, New York City, an office or agency (which may be an office of the Trustee or an Affiliate of the Trustee, Security Registrar or co-registrar) where Notes may be surrendered for registration of transfer, exchange or conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other 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; *provided*, *however*, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, New York City, for such purposes. The Company 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 Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company.

Section 4.03. Compliance Certificate; Notice of Default. The Company shall deliver to the Trustee within 120 calendar days after the end of each fiscal year of the Company an Officers' Certificate, one of the signatories of which also shall be the chief executive officer, chief financial officer or chief accounting officer of the Company, stating that in the course of the performance by the signer of his or her duties as an officer of the Company, he or she would normally have knowledge of any Default and whether or not such signer knows of any Default that occurred during such period. If such signer does have knowledge of a Default, the certificate shall describe the Default, its status and what action the Company is taking or proposes to take with respect thereto.

The Company shall deliver to the Trustee, promptly and in no event later than five calendar days after the Company becomes aware of the occurrence of any Default or Event of Default, an Officers' Certificate setting forth the details of such Default or Event of Default and the action that the Company is taking or proposes to take with respect thereto.

Section 4.04. Reservation of Common Stock. The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock or shares held in treasury by the Company, for the purpose of effecting the conversion of Notes, the full number of shares of Common Stock then issuable upon the conversion of all Outstanding Notes.

Section 4.05. Issuance of Shares. All shares of Common Stock delivered upon conversion of the Notes shall be newly issued shares or shares held in treasury by the Company, shall have been duly authorized and validly issued and shall be fully paid and nonassessable, and shall be free from preemptive rights and free of any Lien or adverse claim.

Section 4.06. Transfer Taxes. If a Holder converts Notes, the Company will pay any and all documentary, stamp or similar issue or transfer tax due on the issue or delivery of shares of Common Stock upon the conversion. The Company shall not, however, be required to pay any tax or duty that may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Note or Notes to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

Section 4.07. Reports by Company; 144A Information.

(a) Any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act must be filed by the Company with the Trustee within 15 days after those reports are required to be filed with the Commission (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Documents filed by the Company with the Commission via the EDGAR system will be deemed to be filed with the Trustee as of the time such documents are filed via EDGAR.

(b) The Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to any Holder or beneficial holder of Notes and any prospective purchaser of Notes designated by such Holder or beneficial holder, the information, if any, required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any such Holder or beneficial holder of the Notes, until such time as such securities are no longer "restricted securities" within the meaning of Rule 144, assuming such Notes have not been owned or beneficially owned by an "affiliate" (as defined in Rule 144) of the Company.

(c) 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 Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on an Officers' Certificate). Notwithstanding anything to the contrary in this Section 4.07, the Company, to the extent permitted under the Trust Indenture Act, shall not be required to deliver to the Trustee or the Holders any material for which the Company has sought and received confidential treatment by the Commission.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.01. Events of Default. Each of the following shall be Events of Default with respect to the Notes:

(a) failure by the Company to pay any interest on the Notes when due and such failure continues for a period of 30 calendar days;

(b) failure by the Company to pay principal of the Notes when due at the Maturity Date, or failure by the Company to pay the Fundamental Change Repurchase Price payable, in respect of any Notes when due;

(c) failure by the Company to deliver shares of Common Stock upon the conversion of any Notes and such failure continues for five calendar days following the scheduled settlement date for such conversion;

(d) failure by the Company to issue a Fundamental Change Company Notice on a timely basis in accordance with Section 11.01;

(e) Default in the performance or observation, or breach, of any term, covenant or agreement of the Company in this Indenture with respect to any Note (other than a term,

covenant or agreement a Default in whose performance or observation or whose breach is elsewhere in this Section specifically dealt with), and continuance of such Default or breach for a period of 60 calendar days after there has been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Notes then Outstanding a written notice specifying such Default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(f) a failure to pay principal when due (whether at Maturity Date or otherwise), or an uncured default that results in the acceleration of maturity, of any indebtedness for borrowed money of the Company or any of its Significant Subsidiaries in an aggregate amount in excess of $20,000,000 (or its foreign currency equivalent), unless such indebtedness is discharged, or such acceleration is rescinded, stayed or annulled, within a period of 30 calendar days after written notice of such failure or uncured default is given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then Outstanding;

(g) a final judgment for the payment of $20,000,000 or more (or its foreign currency equivalent) (excluding any amounts covered by insurance) rendered against the Company or any of its Significant Subsidiaries, which judgment is not discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(h) the Company or any of its Significant Subsidiaries pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

(ii) consents to the entry of an order for relief against it in an involuntary case,

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

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

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

(i) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case,

(ii) appoints a Receiver of the Company or any of its Significant Subsidiaries, or for all or substantially all of either of its property, or

(iii) orders the liquidation of the Company or any of its Significant Subsidiaries, and the order or decree remains unstayed and in effect for 90 days.

Notwithstanding anything to the contrary in this Indenture, the sole remedy for the failure by the Company to comply with Section 4.07, and for any failure to comply with any

applicable requirements of Section 314(a)(1) of the Trust Indenture Act (each, a "**Filing Failure**"), will, at the Company's option, for the 365 days after the occurrence an Event of Default relating to such Filing Failure consist of the right to receive additional interest on the Notes ("**Filing Additional Interest**") at an annual rate equal to:

(1) 0.50% of the principal amount of the Notes Outstanding for each day during the period beginning on, and including, that date on which such Event of Default first occurred and ending on the earlier of (x) the date on which such Event of Default is cured or validly waived and (y) the 180th day immediately following, and including, the date on which such Event of Default first occurred; and

(2) If such Event of Default has not been cured or validly waived prior to the 181st day immediately following, and including, the date on which such Event of Default first occurred, 1.0% of the principal amount of the Notes Outstanding for each day during the period beginning on, and including, the 181st day immediately following and including the date on which such Event of Default first occurred and ending on the earlier of (x) the date on which such Event of Default is cured or validly waived and (y) the 365th day immediately following, and including, the date on which such Event of Default first occurred.

Any such Filing Additional Interest shall be payable in arrears on the Interest Payment Dates in the same manner as the stated interest payable on the Notes. In the event the Company does not elect to pay the Filing Additional Interest upon the occurrence of an Event of Default relating to a Filing Failure or if such Event of Default is not waived or validly cured on the 366th day following, and including, the date on which such Event of Default first occurred, the Notes will be subject to acceleration in accordance with Section 5.02 if such Event of Default is continuing. In no event shall the Filing Additional Interest, together with any Additional Interest that may accrue on the Notes pursuant to Section 5.13, exceed an aggregate annual rate of (i) 0.50% during the period described in subclause (1) of this Section 5.01 or (ii) 1.0% during the period described in subclause (2) of this Section 5.01. The provisions described in this paragraph and the preceding paragraph will not affect the rights of holders of Notes in the event of the occurrence of any other Event of Default.

Section 5.02. Acceleration.

(a) In the case of an Event of Default specified in clause (h) or (i) of Section 5.01 hereof with respect to the Company, the principal amount of and accrued and unpaid interest on all Outstanding Notes will become due and payable immediately without further action or notice by the Trustee or any Holder. Subject to Section 5.01, if any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then Outstanding Notes may declare the principal amount of and accrued and unpaid interest on the Notes to be due and payable immediately. Upon any such declaration, the principal amount of and accrued and unpaid interest on the Notes shall become due and payable immediately.

(b) At any time after a declaration of acceleration with respect to the Notes as described in this Section 5.02, but before a judgment or decree for payment of the money due has been obtained by the Trustee, the Holders of a majority in aggregate principal amount of the

Outstanding Notes, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences: (i) if the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; (ii) if all existing Events of Default, other than the nonpayment of principal and interest that has become due solely because of the declaration of acceleration, have been cured or waived; (iii) the Company has paid (or deposited with the Trustee a sum sufficient to pay) all overdue interest on all Notes; (iv) the Company has paid (or deposited with the Trustee a sum sufficient to pay) the principal amount of any Notes that have become due otherwise than by such declaration of acceleration; (v) to the extent the payment of such interest is lawful, the Company has paid (or deposited with the Trustee a sum sufficient to pay) interest on overdue installments of interest; and (vi) if the Company has paid (or deposited with the Trustee a sum sufficient to pay) the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances (including, but not limited to, reasonable attorneys' fees and expenses). No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Section 5.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 5.04. [RESERVED]

Section 5.05. Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the Notes Outstanding may, on behalf of the Holders of all the Notes, waive any past Default or Event of Default under this Indenture and its consequences, except:

(1) failure by the Company to pay principal of or interest (including additional interest, if any) on the Notes when due;

(2) failure by the Company to deliver shares of Common Stock (and cash in lieu of fractional shares) upon the conversion of any Notes;

(3) failure by the Company to pay the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date in connection with a Holder of Notes exercising its repurchase rights in accordance with this Indenture; or

(4) failure of the Company to comply with any of the provisions of Article VIII of this Indenture that require the consent of the Holder of each Outstanding Note affected thereby to any modification or amendment.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture and the

Notes; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 5.06. Control by Majority. Holders of a majority in aggregate principal amount of the then Outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines in good faith may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 5.07. Limitation on Suits. A Holder may pursue a remedy with respect to this Indenture or the Notes only if:

(a) such Holder gives to the Trustee written notice that an Event of Default is continuing;

(b) Holders of at least 25% in aggregate principal amount of the then Outstanding Notes make a written request to the Trustee to pursue the remedy as Trustee;

(c) such Holder or Holders offer and, if requested, provide to the Trustee reasonable security or indemnity satisfactory to the Trustee against any costs, liability or expense;

(d) the Trustee does not comply with the request within 60 calendar days after receipt of the request and the offer of security or indemnity or both; and

(e) during such 60-day period, Holders of a majority in aggregate principal amount of the then Outstanding Notes do not give the Trustee a direction inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 5.08. Rights of Holders of Notes to Receive Payment or Effect Conversion. Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert Notes in accordance with Article X of this Indenture or to bring suit for the enforcement of such conversion, shall not be impaired or affected without the consent of such Holder.

Section 5.09. Collection Suit by Trustee. If an Event of Default specified in Section 5.01(a) or (b) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company, and to enforce such judgment and collect the monies adjudicated or decreed to be payable, for the whole amount of principal of and interest remaining unpaid on the Notes, interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 5.10. Trustee May File Proofs of Claim. The Trustee is authorized 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 (including any claim for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder 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 Holders, to pay to the Trustee any amount due to it for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07 out of the estate in any such proceeding, 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, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 5.11. Priorities. If the Trustee collects any money pursuant to this Article V, it shall pay out the money in the following order:

First: to the Trustee (or any predecessor Trustee), its agents and attorneys for amounts due under Section 6.07, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and

Third: to the Company or such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 5.11. If a record date is fixed, the Trustee shall send, by first class mail, electronically or by any other means approved by the Trustee to the Holders of the Notes of record a notice at least 30 days but not more than 60 days before the payment date. Such notice shall state: (1) that a payment is being made pursuant to this Section 5.11, (2) the relevant Default and the circumstances giving rise to the collection of money pursuant to this Section 5.11, (3) the payment date and (4) the amount of such payment per $1,000 of Notes.

Section 5.12. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Note by his acceptance thereof shall be deemed to have agreed, 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 a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.12 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 5.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then Outstanding Notes.

Section 5.13. Restricted Securities; Additional Interest.

(a) If,

(i) at any time during the six-month period beginning on, and including, the date which is six months after, and ending on, and including, the 365th day after, the last original issuance date of the Notes (the "**Additional Interest Period**"), (A) the Company fails to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (taking into account the extension pursuant to Rule 12b-25 under the Exchange Act), other than current reports on Form 8-K or (B) the Notes are not otherwise freely tradable by holders other than the Company's Affiliates (as a result of restrictions pursuant to U.S. securities law or the terms of this Indenture or the Notes); or

(ii) as of the 365th day after the last date of original issuance of the Notes, the restrictive legend on the Notes has not been removed, the Notes are assigned a restricted CUSIP or the Notes are not otherwise freely tradable by Holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities law or the terms of this Indenture or the Notes);

and any of the conditions specified in clauses (i) or (ii) continues for a period of 14 calendar days, the Company shall pay additional interest ("**Additional Interest**") on the Notes, which shall accrue on the Notes at a rate of 0.50% per annum of the principal amount of Notes Outstanding for each day during the Additional Interest Period for which the Company's failure to file, as described above, has occurred and is continuing. In no event shall Additional Interest, together with any Filing Additional Interest that may accrue on the Notes pursuant to provisions of Section 5.01, accrue at an annual rate in excess of the rates described under Section 5.01 for any violation or Default caused by Company's failure to be current in its Exchange Act reporting obligations.

(b) Notwithstanding 5.13(a), if, as of the 365th day after the last date of the original issuance of the Notes, the restrictive legend on the Notes has not been removed or the Notes are not otherwise freely tradable by holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities law or the terms of this Indenture or the Notes), the Company may elect to designate an effective shelf registration statement for the resale of the Notes or any common stock issuable upon conversion of the Notes. Additional Interest will not accrue for each day on which such registration statement remains effective and usable by holders for the resale of the Notes or any common stock issuable upon conversion of the Notes. Any such

registration will be effected on terms customary for convertible notes generally offered in reliance upon Rule 144A under the Securities Act.

(c) The Company will not, and the Company will not permit any of its Subsidiaries, to resell any of the Notes that constitute "restricted securities" under Rule 144 that have been acquired by any of the Company or the Company's Subsidiaries.

(d) Additional Interest payable in accordance with Section 5.13(a) shall be payable in arrears on each Interest Payment Date for the Notes following accrual in the same manner as regular interest on the Notes.

(e) Notwithstanding anything to the contrary contained in this Section 5.13, no Additional Interest shall accrue following the end of the Additional Interest Period, regardless of whether such failure to file as described in Section 5.13(a) has occurred or is continuing.

(f) Not later than five Business Days prior to an Interest Payment Date, the Company shall notify the Trustee in writing of the incurrence of Additional Interest, the relevant interest rate and the Additional Interest Period.

ARTICLE VI

TRUSTEE

Section 6.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs; *provided*, to the extent permitted by the TIA, that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have provided the Trustee reasonable indemnity, security or both satisfactory to the Trustee against cost, liability or expense.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, directions, notices or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates, directions, notices or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need

not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own grossly negligent action or failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.06.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have provided to the Trustee reasonable security, indemnity or both satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

Section 6.02. Rights of Trustee.

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any paper or document believed by it to be genuine and to have been signed or presented by the proper Person or Persons. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided*, *however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of such counsel appointed with due care with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or other paper or document; but the Trustee, in its discretion, 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 Company at reasonable times, in a reasonable manner and upon reasonable advance notice, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(g) The Trustee shall not be deemed to have knowledge of any Default or Event of Default except, (i) during any period it is serving as Security Registrar and Paying Agent for the Notes, any Event of Default occurring pursuant to Sections 5.01(a), 5.01(b) or 5.01(c) or (ii) any Default or Event of Default of which a Responsible Officer shall have received written notification or obtained actual knowledge. The term "actual knowledge" shall mean the actual fact or statement of knowing by a Responsible Officer without independent investigation with respect thereto.

(h) Delivery of the 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 Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(i) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including 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.

(k) The Trustee may request that the Company 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.

Section 6.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Conversion Agent, Security Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 6.01 and 6.10. In addition, the Trustee shall be permitted to engage in transactions with the Company; *provided*, *however*, that if the Trustee acquires any conflicting interest (as such term is defined in Section 310(b) of the TIA) the Trustee must (i) eliminate such conflict within 90 days of acquiring such conflicting interest, (ii) apply to the Commission for permission to continue acting as Trustee or (iii) resign as Trustee hereunder.

Section 6.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the Notes or the proceeds from the Notes, and it shall not be responsible for any statement of the Company in this Indenture or in any document issued or offering circular (or similar document) used in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication or for the use or application of any funds received by any Paying Agent other than the Trustee.

Section 6.05. Notice of Defaults. If a Default or Event of Default occurs and is continuing and if a Responsible Officer has actual knowledge thereof, the Trustee shall, except as provided in the next paragraph, mail to each Holder notice of all Defaults or Events of Default known to the Trustee within 15 calendar days of being notified by the Company pursuant to Section 4.03 of this Indenture unless any such Default or Event of Default has been cured or waived.

Except in the case of a Default or Event of Default in payment of principal or interest on any Note (including payments pursuant to the required repurchase provisions of such Note, if any), the Trustee may withhold the notice if and so long as its board of directors, a committee of its board of directors or a committee of its Responsible Officers and/or a Responsible Officer in good faith determines that withholding the notice is in the interests of registered Holders.

Section 6.06. Agents. The rights, privileges, protections, immunities and benefits given to the Trustee under this Indenture including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by the Security Registrar, Paying Agent, Conversion Agent and any other similar agent appointed hereunder and their respective officers, employees, agents, custodians and other Persons employed to act hereunder.

Section 6.07. Compensation and Indemnity. The Company covenants and agrees: (a) 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 as shall be agreed by the Company and the Trustee in writing (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); (b) to reimburse the Trustee and each predecessor Trustee upon its request for all reasonable expenses, fees, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation, fees, and the expenses and disbursements of its counsel and of all agents and other Persons not regularly in its employ), except any such reasonable expense, disbursement or advance as shall be determined to have been caused by its own negligence or willful misconduct; and (c) to indemnify the Trustee and each predecessor Trustee for, and to hold it harmless against, any loss, liability, damage, claim or expense, including taxes, if any (other than taxes based upon, determined by or measured by the income of the Trustee), incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including enforcement of this Section 6.07. The obligations of the Company under this Section 6.07 to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, fees, disbursements and advances shall constitute an additional obligation hereunder and shall survive the satisfaction and discharge of this Indenture, the resignation or removal of the Trustee or the termination of this Indenture. To secure the obligations of the Company to the Trustee under this Section 6.07, the Trustee shall have a prior Lien upon all property and funds held or collected by the Trustee as such, except funds and property paid by the Company and held in trust for the benefit of the Holders of particular Notes. When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.01(h) or (i) occurs, such expenses and compensation for services are intended to constitute expenses of administration under Bankruptcy Law.

Section 6.08. Replacement of Trustee. The Trustee may resign with 30 days prior written notice to the Company. The Holders of a majority in principal amount of the Notes may remove the Trustee by so notifying the Company and the Trustee with 30 days prior written notice and the Company may appoint a successor Trustee provided, however, that in the event of a bankruptcy, the resigning Trustee will have the right to appoint a successor trustee within ten Business Days after giving notice of resignation if the Company has not already appointed a successor trustee. The Company shall remove the Trustee if:

(a) the Trustee fails to comply with Section 6.10;

(b) the Trustee is adjudged bankrupt or insolvent;

(c) a receiver or other public officer takes charge of the Trustee or its property; or

(d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Company or by the Holders of a majority in principal amount of the Notes and the Company does not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Holders of a majority in aggregate principal amount of the Notes may appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall upon payment of its charges hereunder promptly transfer all property held by it as Trustee to the successor Trustee, upon payment of any fees and expenses due and owing to it hereunder.

If the Company has not appointed a successor Trustee within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the Notes may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 6.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section 6.08, the Company's obligations under Section 6.07 shall continue for the benefit of the retiring Trustee.

Section 6.09. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have.

Section 6.10. Eligibility; Disqualification. There shall at all times be a Trustee hereunder which shall be eligible to act as Trustee under Trust Indenture Act Sections 310(a)(1) and (2) and which shall have a combined capital and surplus of at least $50,000,000, and have a Corporate Trust Office in the Borough of Manhattan in New York City, State of New York. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation 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 6.10, the Trustee shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

ARTICLE VII

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 7.01. Satisfaction and Discharge of Indenture. When (a) the Company delivers to the Trustee all Outstanding Notes (other than Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08) for cancellation or (b) all Outstanding Notes have become due and payable and the Company deposits with the Trustee, the Paying Agent or the Conversion Agent, as applicable, whether at the Maturity Date or any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or shares of Common Stock (or Reference Property) and cash, as applicable under this Indenture, sufficient to pay all amounts due and owing on all Outstanding Notes (other than Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08); and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect, and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the satisfaction and discharge contemplated by this provision have been complied with, and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction and discharging this Indenture. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred, and to compensate the Trustee for any services thereafter reasonably and properly rendered, by the Trustee in connection with this Indenture or the Notes.

Section 7.02. Application of Funds or Securities Deposited for Payment of Notes. All moneys or securities deposited with the Trustee, Paying Agent or Conversion Agent, as applicable, shall be held in trust and applied by it to the payment, either directly or through any Paying Agent or Conversion Agent (other than the Company or any Subsidiary thereof, as applicable), to the Holders of the Notes for the payment of which such moneys or securities have been deposited, of all sums due and to become due thereon, but such money need not be segregated from other funds or securities except to the extent required by law.

Section 7.03. Repayment by Trustee, Paying Agent or Conversion Agent. In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all moneys or securities then held by any Paying Agent or Conversion Agent under the provisions of this Indenture with respect to the Notes shall, upon demand of the Company, be repaid to it and thereupon such Paying Agent or Conversion Agent shall be released from all further liability with respect to such moneys or securities.

Any moneys or securities deposited with or paid to the Trustee, Paying Agent or Conversion Agent, as applicable, for the payment of any amount on the Notes and not applied but remaining unclaimed for two years after the date upon which such amount shall have become due and payable, shall, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee, Paying Agent or Conversion Agent, as applicable, and the Holder of the Notes shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Company for any payment which such Holder may be entitled to collect, and all liability of the Trustee, Paying

Agent or Conversion Agent with respect to such moneys or securities shall thereupon cease; *provided*, *however*, that the Trustee, Paying Agent or Conversion Agent, before being required to make any such repayment with respect to moneys or securities deposited with it for any payment in respect of the Notes, shall, at the expense of the Company, mail by first-class mail to Holders of the Notes at their addresses as they shall appear on the Note Register notice that such moneys or securities remain and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed balance of such money or securities then remaining will be repaid to the Company.

ARTICLE VIII

SUPPLEMENTAL INDENTURES AND AMENDMENTS

Section 8.01. Without Consent of Noteholders. Without the consent of any Holders of the Notes, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee, at any time and from time to time, may amend, waive, modify or supplement this Indenture or the Notes for any of the following purposes:

(a) to provide for conversion rights of Holders of Notes and the Company's repurchase obligations in connection with a Fundamental Change in the event of any reclassification of the Common Stock, merger or consolidation, or sale, conveyance, transfer or lease of the Company's property and assets substantially as an entirety, in accordance with the requirements of this Indenture;

(b) to secure the Notes;

(c) to provide for the assumption of the Company's obligations to Holders of Notes in the event of a merger or consolidation, or sale, conveyance, transfer or lease of the Company's property and assets substantially as an entirety, in accordance with the requirements of this Indenture;

(d) to surrender any right or power herein conferred upon the Company, for the benefit of the Holders of the Notes;

(e) to add to the covenants of the Company for the benefit of the Holders of the Notes;

(f) to cure any ambiguity or correct or supplement any inconsistent or otherwise defective provision contained in this Indenture in a manner that is not materially adverse to the Holders of the Notes;

(g) to conform the provisions of this Indenture to the "Description of the Notes" section contained in the Company's offering memorandum related to the Notes dated April 7, 2011;

(h) to make any provision with respect to matters or questions arising under this Indenture that the Company may deem necessary or desirable and that shall not be inconsistent

with provisions of this Indenture; *provided* that such change or modification does not adversely affect the interests of the Holders of the Notes in any material respect;

(i) to increase the Conversion Rate; *provided* that the increase will not adversely affect the interest of the Holders of the Notes;

(j) to provide for the addition or modification of any of the provisions of this Indenture as shall be necessary or desirable to provide for or facilitate the guarantee of the Notes by one or more guarantors; and

(k) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee.

Section 8.02. Modification and Amendment with Consent of Noteholders. With the written consent or the affirmative vote of the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes delivered to the Company and the Trustee, the Company when authorized by a Board Resolution, together with the Trustee, may amend, waive, modify or supplement any other provision of this Indenture or the Notes; *provided*, *however*, that no such amendment, waiver, modification or supplement may, without the written consent or the affirmative vote of the Holder of each Outstanding Note affected thereby:

(a) change the Maturity Date;

(b) reduce the rate or extend the time for payment of interest on the Notes;

(c) reduce the principal amount of any Notes;

(d) reduce any amount payable upon repurchase of any Notes;

(e) impair the right of a Holder to receive payment with respect to any Notes or to institute suit for the enforcement of any such payment on or after the Maturity Date thereof (or, in the case of repayment at the option of the Holder, on or after the Fundamental Change Repurchase Date, as the case may be);

(f) change the currency in which the principal of any Note or the interest thereon is payable;

(g) change the Company's obligation to repurchase any Notes upon a Fundamental Change in a manner adverse to the Holders;

(h) make any change that affects the right of any Holder to convert Notes into shares of Common Stock or reduce the number of shares of Common Stock or any other property receivable upon conversion pursuant to the terms of this Indenture;

(i) relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, New York City; or

(j) modify any provisions of this Indenture requiring the consent of holders or relating to the wavier of past defaults or relating to the waiver of certain covenants, except to increase any such percentage or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the holder of each outstanding note affected thereby.

Upon the written request of the Company accompanied by a copy of a Board Resolution authorizing the execution of any such supplemental indenture or other agreement, instrument or waiver, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture or other agreement, instrument or waiver.

It shall not be necessary for any act of Holders under this Section to approve the particular form of any proposed supplemental indenture or other agreement, instrument or waiver, but it shall be sufficient if such act shall approve the substance thereof. Any Notes held by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded (both from the numerator and the denominator) for purposes of determining whether the Holders of the requisite aggregate principal amount of the outstanding Notes have consented to a modification, amendment or waiver of the terms of this Indenture.

Section 8.03. Execution of Supplemental Indentures, Agreements and Waivers. In executing any supplemental indenture, agreement, instrument or waiver permitted by this Article VIII or the modifications thereby of this Indenture, the Trustee shall be provided with, and (subject to Section 6.01 hereof) shall be fully protected in relying upon, an Opinion of Counsel and an Officers' Certificate from each obligor under the Notes entering into such supplemental indenture, agreement, instrument or waiver, each stating that the execution of such supplemental indenture, agreement, instrument or waiver (a) is authorized or permitted by this Indenture; (b) does not violate the provisions of any agreement or instrument evidencing any other indebtedness of the Company, or any Subsidiary of the Company; and (c) that all conditions precedent in this Indenture relating to such supplemental indenture have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture, agreement, instrument or waiver which affects the Trustee's own rights, duties or immunities under this Indenture, the Notes or otherwise. After a modification or amendment under this Indenture becomes effective, the Company shall mail to the Holders a notice briefly describing such modification or amendment. However, any failure by the Company to give such notice to all of the Holders, or any defect in the notice, will not impair or affect the validity of the modification or amendment.

Section 8.04. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article VIII, this Indenture, the Notes, if applicable, shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture and the Notes, if applicable, as the case may be, for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 8.05. Compliance with Trust Indenture Act. Every supplemental indenture or amendment to this Indenture or the Notes shall comply with the TIA as then in effect, to the extent the TIA is applicable to this Indenture or any supplemental indenture hereto.

Section 8.06. Reference in Notes to Supplemental Indentures. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article VIII may, and shall if required by the Trustee, bear a notation in a form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee, at the expense of the Company, upon a Company Order in exchange for Outstanding Notes.

Section 8.07. Revocation and Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Note shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver made pursuant to Section 8.02 shall become effective upon receipt by the Trustee of the requisite number of written consents.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall become valid or effective more than 120 days after such record date.

Section 8.08. Notation on or Exchange of Notes. If an amendment changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Note shall issue and the Trustee, upon receipt of a Company Order and at the expense of the Company, shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment.

ARTICLE IX

CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

Section 9.01. Consolidation, Merger and Sale of Assets. The Company will not, in a single transaction or a series of related transactions, consolidate with or merge with or into any other Person, or sell, convey, transfer or lease its property and assets substantially as an entirety to another Person, unless:

(1) either (a) the Company shall be the continuing corporation or (b) the resulting, surviving or transferee Person (if other than the Company) shall be a corporation or limited liability company organized and existing under the laws of the United States of America, any State thereof or the District of Columbia (the "**Successor Company**"), and such Successor Company shall expressly assume, by an indenture supplemental to this Indenture, executed and delivered to the Trustee, all the obligations of the Company under the Notes and this Indenture;

(2) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing; and

(3) the Company shall have delivered to the Trustee an Officers' Certificate and Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article IX and that all conditions precedent herein provided for relating to such transaction have been satisfied.

Section 9.02. Successor Substituted. In the event of any transaction described in and complying with the conditions listed in Section 9.01 in which the Company is not the continuing corporation, the Successor Company formed or remaining shall succeed, and be substituted for, and may exercise every right and power of, the Company, and the Company shall be discharged from its obligations, under the Notes and this Indenture.

ARTICLE X

CONVERSION OF NOTES

Section 10.01. Conversion Privilege.

(a) Upon compliance with the provisions of this Article X, a Holder of Notes shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Note at any time prior to the Close of Business on the Business Day immediately preceding the Maturity Date at a rate (the "**Conversion Rate**") of 67.7415 shares of Common Stock (subject to adjustment by the Company as provided in Section 10.04) per $1,000 principal amount of Notes, together with cash in lieu of fractional shares (collectively, the "**Conversion Obligation**") in accordance with Section 10.03, only under the following circumstances.

(i) *Conversion Based on Common Stock Price*. Prior to the Close of Business on the Business Day immediately preceding January 1, 2016, Holders may surrender Notes for conversion in any calendar quarter (and only during such calendar quarter) commencing after June 30, 2011 if the Last Reported Sale Price of Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of the preceding calendar quarter is more than 110% of the Conversion Price on each applicable Trading Day. The Conversion Agent shall determine at the

beginning of each calendar quarter commencing at any time after June 30, 2011 (through and including December 31, 2015) whether the Notes are convertible as a result of the price of Common Stock and notify the Company and the Trustee.

(ii) *Conversion upon Satisfaction of Trading Price Condition*. Prior to the Close of Business on the Business Day immediately preceding January 1, 2016, Holders may surrender their Notes for conversion during the five Business Day period immediately following any ten consecutive Trading Day period in which, for each Trading Day of such ten consecutive Trading Day period, the Trading Price per $1,000 principal amount of the Notes on such Trading Day, as determined following a request by a Holder of the Notes, in accordance with the procedures described below, was less than 98% of the product of the Last Reported Sale Price of Common Stock on such Trading Day and the Conversion Rate on such Trading Day (such condition, the "**Trading Price Condition**").

The Trustee shall have no obligation to determine the Trading Price of the Notes unless the Company shall have requested such determination, and the Company shall have no obligation to make such request unless a Holder of the Notes provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of the Notes at such time would be less than 98% of the product of the Last Reported Sale Price of Common Stock and the Conversion Rate. Promptly (but in no event later than two Business Days) after receiving such evidence, the Company shall instruct the Trustee (or other Person appointed by the Company to solicit bids) to determine the Trading Price of the Notes beginning on the next Trading Day after the Company shall have delivered such instructions and on each successive Trading Day until the Trading Price per $1,000 principal amount of the Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of Common Stock and the Conversion Rate. If the Company does not so instruct the Trustee or another Person to solicit bids when required, the Trading Price per $1,000 principal amount of the Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of Common Stock and the Conversion Rate on each day the Company fails to do so.

If the Trading Price Condition has been met, the Company shall so notify the Holders and the Trustee. At any time after the Trading Price Condition has been met, the Company shall notify the Holders and the Trustee on the first Trading Day on which the Trading Price per $1,000 principal amount of the Notes is greater than 98% of the product of the Last Reported Sale Price of Common Stock on such Trading Day and the Conversion Rate on such Trading Day.

Neither the Trustee nor other Person appointed to solicits bids will have liability for the bids it receives or for its non-negligent failure to obtain bids.

(iii) *Conversion upon Specified Corporate Events*. Prior to the Close of Business on the Business Day immediately preceding January 1, 2016, if the Company elects to distribute to all Holders of Common Stock:

(A) rights or warrants entitling them to subscribe for or purchase, for a period of not more than 60 days from the issuance date for such distribution, Common Stock at a price per share less than the Last Reported Sale Price of Common Stock on the Trading Day immediately preceding the declaration date of such distribution, or

(B) assets, debt securities (or other evidence of indebtedness) or rights to purchase securities of the Company, which distribution (excluding for this purposes a distribution required to avoid the imposition of tax on undistributed income) has a per share value, as determined by the Board of Directors, exceeding 10% of the Last Reported Sale Price of Common Stock on the Trading Day immediately preceding the declaration date of such distribution,

the Company shall notify the Holders at least 10 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender their Notes for conversion pursuant to this Section 10.01(a)(iii) at any time until the earlier of (1) the Close of Business on the Business Day prior to such Ex-Dividend Date and (2) an announcement by the Company that such distribution will not take place. A Holder may not convert any of its Notes pursuant to this Section 10.01(a)(iii) if the Holder of the Notes participates at the same time and upon the same terms as holders of Common Stock and, as a result of holding the Notes, without having to convert its Notes, as if it held a number of shares of Common Stock equal to the applicable Conversion Rate multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

If a Fundamental Change or a Non-Stock Change of Control occurs or if the Company is a party to a consolidation, merger or binding share exchange, pursuant to which Common Stock would be converted into cash, securities or other assets, or sale, conveyance, transfer or lease of all or substantially all of the Company's assets, the Notes may be surrendered for conversion at any time from or after the effective date of the transaction until the earlier of (1) (x) 35 Business Days after the effective date of such transaction or, (y) if such transaction also constitutes a Fundamental Change, until the Fundamental Change Repurchase Date and (2) the Company's announcement that such transaction will not take place. The Company shall notify the Holders of any such transaction no later than the effective date of such transaction.

(iv) *Conversion on or After January 1, 2016*. On or after January 1, 2016, a Holder may surrender all or a portion of its Notes (in multiples of $1,000) for conversion at any time until the Close of Business on the Business Day immediately preceding the Maturity Date.

(b) If and only to the extent a Holder elects to convert Notes prior to the Maturity Date in connection with a transaction described in clause (a), clause (c) (without giving effect to the exception contained in subclause (iii) thereunder) or clause (d) of the definition of Fundamental Change pursuant to which 10% or more of the consideration for the Common Stock (other than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) in such transaction consists of cash or securities (or other property) that are not

shares of common stock traded or scheduled to be traded immediately following such transaction on the New York Stock Exchange, NYSE Amex, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors), referred to herein as a "**Non-Stock Change of Control**", then the Conversion Rate applicable to each $1,000 principal amount of Notes so converted shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described in Section 10.01(d) below. The Company shall notify Holders and Trustee of the effective date of a Fundamental Change meeting the conditions of this Section 10.01(b) no later than such time that the Fundamental Change occurs. Settlement of Notes tendered for conversion to which Additional Shares shall be added to the Conversion Rate as provided in this subsection shall be settled pursuant to Section 10.02 below, as applicable.

(c) For purposes of Section 10.01(b), a conversion of Notes shall be deemed to be "in connection with" a Non-Stock Change of Control if the related conversion notice is received by the Conversion Agent following the Effective Date of the Non-Stock Change of Control but before the Close of Business on the Business Day immediately preceding the related Fundamental Change Repurchase Date (or if there is no Fundamental Change Repurchase Date, the date that is 40 calendar days after the Effective Date). Such conversion notice shall indicate that the Holder of Notes has elected to convert Notes in connection with a Non-Stock Change of Control; *provided*, *however*, that the failure to so indicate shall not in any way affect the Conversion Obligation or the right of such Holder to convert at the Conversion Rate increased by the number of Additional Shares.

(d) The number of Additional Shares by which the Conversion Rate will be increased pursuant to Section 10.01(b) shall be determined by reference to the table attached as Schedule A hereto, based on the date on which the Non-Stock Change of Control occurs or becomes effective (the "**Effective Date**"), and the Stock Price; *provided*, that if the Stock Price is between two Stock Price amounts in the table attached as Schedule A hereto or the Effective Date is between two Effective Dates in the table attached as Schedule A hereto, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Price amounts and the two Effective Dates, as applicable, based on a 360-day year; *provided further* that if (x) the Stock Price is greater than $30.00 per share of Common Stock (subject to adjustment in the same manner as set forth in Section 10.04), the Conversion Rate shall not be increased, or (y) the Stock Price is less than $13.42 per share of Common Stock (subject to adjustment in the same manner as set forth in Section 10.04), the Conversion Rate shall not be increased.

The number of Additional Shares within the table in Schedule A hereto shall be adjusted in the same manner as and as of any date on which the Conversion Rate is adjusted as set forth in Section 10.04 (other than by operation of an adjustment to the Conversion Rate pursuant to this Section 10.01). The Stock Prices set forth in the first row of the table attached as Schedule A hereto (i.e., the column headers) shall be simultaneously adjusted as of any date on which the Conversion Rate is adjusted (other than by operation of an adjustment to the Conversion Rate pursuant to this Section 10.01). The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. Notwithstanding the foregoing, in no event shall the total number of shares of Common Stock

issuable upon conversion exceed 74.5156 per $1,000 principal amount of Notes, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 10.04.

Section 10.02. Conversion Procedures.

(a) Each Note shall be convertible at the office of the Conversion Agent and, if applicable, in accordance with the Applicable Procedures.

(b) In order to exercise the conversion privilege with respect to any interest in a Global Note, the Holder must complete the appropriate instruction form for conversion pursuant to the Depositary's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company or the Conversion Agent, pay the funds, if any, required by Section 10.02(g) and, if required, pay all taxes or duties, if any, for which the Holder is responsible pursuant to Section 4.06, and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depositary. In order to exercise the conversion privilege with respect to any certificated Notes, the Holder of any such Notes to be converted, in whole or in part, shall:

(i) complete and manually sign the conversion notice provided on the back of the Note and attached hereto as Exhibit B (the "**Conversion Notice**") or a facsimile of the Conversion Notice;

(ii) deliver the completed Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents;

(iv) pay the funds, if any, required by Section 10.02(g); and

(v) if required, pay all taxes or duties pursuant to Section 4.06.

The date on which the Holder satisfies all of the applicable requirements set forth in this Section 10.02(b) is the "**Conversion Date**." The Conversion Agent will provide the Company with notice of any conversion by a Holder of the Notes on the Conversion Date (which, for the avoidance of doubt, shall be the next Business Day if the applicable requirements are satisfied after the Close of Business on a Business Day and prior to the Opening of Business on the next Business Day). The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

Each conversion shall be deemed to have been effected as to any Notes (or portion thereof) surrendered for conversion immediately prior to the Close of Business on the relevant Conversion Date. The person in whose name the certificate or certificates for the number of shares of Common Stock that shall be issuable upon such conversion shall become the holder of record of such shares of Common Stock as of the Close of Business on such Conversion Date. Notwithstanding the foregoing and anything contained in this Indenture to the contrary, in no event shall a Holder be entitled to the benefit of a Conversion Rate adjustment pursuant to the provisions of Article X hereof in respect of Notes surrendered for conversion if, by virtue of being deemed the record holder of the shares of Common Stock issuable upon such

conversion pursuant to the foregoing sentence, such Holder participates, as a result of being such holder of record, in the transaction or event that would otherwise give rise to such Conversion Rate adjustment at the same time and upon the same terms as holders of shares of Common Stock generally and as a result of holding the Notes, without having to convert its Notes, as if it held a number of shares of Common Stock equal to the applicable Conversion Rate multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

(c) Each Conversion Notice shall state the name or names (with address or addresses) in which any certificate or certificates for shares of Common Stock which shall be issuable upon such conversion shall be issued. All such Notes surrendered for conversion shall, unless the shares of Common Stock issuable upon conversion are to be issued in the same name as the registration of such Notes, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or his duly authorized attorney.

(d) In case any certificated Notes of a denomination greater than $1,000 shall be surrendered for partial conversion, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and deliver to the Holder of the Notes so surrendered, without charge, new Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

(e) Upon the conversion of an interest in Global Notes, the Trustee shall make a notation on such Global Notes as to the reduction in the principal amount represented thereby.

(f) Notwithstanding the foregoing, a Note in respect of which a Holder has delivered a Fundamental Change Repurchase Notice exercising such Holder's option to require the Company to purchase such Note may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with Section 11.01(c) hereof.

(g) If a Holder surrenders a Note for conversion after the Close of Business on any Record Date and prior to the Opening of Business on the Interest Payment Date corresponding to such Record Date, such Holder must accompany such Note with an amount of cash equal to the amount of interest if any, that will be payable on such Note on such Interest Payment Date; *provided*, *however*, that a Holder need not make such payment (A) if the Holder surrenders the Note after the Close of Business on the last Record Date immediately preceding the Maturity Date, (B) if the Holder surrenders the Note after the Company has specified a Fundamental Change Repurchase Date that is after the Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or (C) to the extent of any overdue interest on the Note, if any overdue interest exists at the time of conversion with respect to the Note.

Section 10.03. Payments Upon Conversion.

(a) Upon any conversion of any Notes, the Company or its stock transfer agent shall deliver to the converting Holder a number of shares of Common Stock equal to (i) the aggregate principal amount of such Notes to be converted divided by $1,000, multiplied by (ii) the Conversion Rate in effect as of such Conversion Date, together with any cash payment for any fractional share of Common Stock as described in Section 10.03(c), on the third Business Day

immediately following the Conversion Date, unless such Conversion Date occurs on or following March 1, 2016, in which case the Company shall make such delivery on the Maturity Date. Except as provided in Section 10.04, the Company will not make any payment or other adjustment for dividends on any Common Stock issued upon conversion of any Notes.

(b) Except as provided in this Section 10.03(b), upon conversion, Holders shall not receive any separate cash payment of accrued and unpaid interest on the Notes. Accrued and unpaid interest to the Conversion Date shall be deemed to be paid in full with the shares of Common Stock issued rather than cancelled, extinguished or forfeited. If a Holder converts its Note after the Record Date for an interest payment but prior to the corresponding Interest Payment Date, on such Interest Payment Date, the Company shall pay the interest accrued and unpaid on the Note to the Holder of record as of the Close of Business on the corresponding Record Date, notwithstanding the conversion of the Note prior to the Interest Payment Date.

(c) The Company shall not issue fractional shares of Common Stock upon conversion of Notes. If multiple Notes shall be surrendered for conversion at one time by the same Holder, the number of full shares which 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. If any fractional share of Common Stock would be issuable upon the conversion of any Notes, the Company shall make payment therefor in cash in lieu of fractional shares of Common Stock based on the Last Reported Sale Price of the Common Stock on the relevant Conversion Date.

(d) Notwithstanding anything to the contrary in this Indenture, no Holder of Notes will be entitled to receive shares of Common Stock upon conversion to the extent (but only to the extent) that such receipt would cause such converting Holder to become, directly or indirectly, a "beneficial owner" (within the meaning of Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder) of 5.0% or more of the Common Stock outstanding at such time (the "**Limitation**"). Any purported delivery of shares of Common Stock upon conversion of Notes shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the converting Holder becoming the beneficial owner of more than the Limitation. If any delivery of shares of Common Stock owed to a Holder upon conversion of Notes is not made, in whole or in part, as a result of the Limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall deliver such shares as promptly as practicable after any such converting Holder gives notice to the Company that such delivery would not result in it being the beneficial owner of 5.0% or more of the shares of Common Stock outstanding at such time. The Limitation shall no longer apply following the effective date of any Fundamental Change.

Section 10.04. Adjustment of Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or effects a share split or share combination of Common Stock, then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_1 = the Conversion Rate in effect immediately after the Opening of Business on the Ex-Dividend Date of such dividend or distribution or immediately after the Opening of Business on the effective date of such share split or combination, as the case may be;

CR_0 = the Conversion Rate in effect immediately prior to the Opening of Business on such Ex-Dividend Date or effective date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Opening of Business on such Ex-Dividend Date or effective date; and

OS_1 = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, share split or combination, as the case may be.

Such adjustment shall become effective immediately after the Opening of Business on the Ex-Dividend Date for such dividend or distribution or the effective date of such share split or combination, as the case may be. If any dividend or distribution of the type described in this Section 10.04(a) is declared but not so paid or made, or the outstanding shares of Common Stock are not subdivided or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or subdivide or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, subdivision or combination had not been declared.

(b) In case the Company shall distribute to all or substantially all holders of Common Stock any rights or warrants (other than rights issued pursuant to a stockholders' rights plan) entitling them for a period of not more than 60 days from the issuance date for such distribution to subscribe for or purchase shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive trading day period ending on, and including, the Trading Day immediately preceding the declaration date of such distribution, the Conversion Rate will be increased based on the following formula; provided that the Conversion Rate will be readjusted to the extent that such rights or warrants are not exercised prior to their expiration:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CR_1 = the Conversion Rate in effect immediately after the Opening of Business on the Ex-Dividend Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Opening of Business on such Ex-Dividend Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Opening of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants, divided by the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the declaration date for such distribution.

Such adjustment shall be successively made whenever any such rights or warrants are issued and shall become effective immediately following the Opening of Business on the Ex-dividend date for such distribution. If such rights or warrants are not issued or to the extent they are not so exercised prior to their expiration, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed or such rights or warrants were not issued, as the case may be.

In determining whether any rights or warrants entitle the holder thereof to subscribe for or purchase shares of Common Stock at a price per share less than the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the declaration date of such distribution, and in determining the aggregate price payable to exercise such rights or warrants of such Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, where the value of such consideration, if other than cash, shall be determined by the Board of Directors.

(c)

(i) In case the Company shall distribute shares of Capital Stock, evidences of indebtedness or other assets or property to all or substantially all holders of Common Stock (excluding dividends or distributions covered by Section 10.04(a), Section 10.04(b), dividends or distributions paid exclusively in cash, and distributions described below in Section 10.04(c)(ii) with respect to Spin-Offs) (any of such shares of Capital Stock, evidences of indebtedness or other asset or property hereinafter in this Section 10.04(c) called the "**Distributed Property**"), then, in each such case the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

CR_1 = the Conversion Rate in effect immediately after the Opening of Business on the Ex-Dividend Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Opening of Business on such Ex-Dividend Date;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors or a committee thereof) of the Distributed Property distributed with respect to each outstanding share of Common Stock as of the Opening of Business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately following the Opening of Business on the Ex-Dividend Date for such distribution; *provided* that (1) if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above) or (2) if the difference between "SP_0" and "FMV" is less than $0.01, in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of shares of Common Stock, the amount of Distributed Property that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If such dividend or distribution consists of rights or warrants, the Conversion Rate shall be readjusted to the extent that such rights or warrants are not exercised prior to their expiration. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 10.04(c)(i) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in determining "SP_0" above.

(ii) With respect to an adjustment pursuant to this Section 10.04(c) where there has been a payment of a dividend or other distribution on the Common Stock in shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company that are listed on a national or regional securities exchange (a "**Spin-Off'**), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Valuation Period (as defined below);

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the last Trading Day of the Valuation Period;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or other similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period immediately following, and including, the Ex-Dividend Date for such Spin-Off (such period, the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices of Common Stock over the Valuation Period.

Such adjustment shall occur immediately after the Opening of Business on the day after the last day of the Valuation Period but will be given effect immediately following the Close of Business on the Ex-Dividend Date for the Spin-Off. Because the Company will make the adjustment to the Conversion Rate at the end of the Valuation Period with retroactive effect, the Company will delay the settlement of any Notes where the Conversion Date occurs during the Valuation Period. In such event, the Company will deliver shares of Common Stock (and cash in lieu of any fractional shares), based on the adjusted Conversion Rate, on the third Business Day following the last day of the Valuation Period. If such dividend or distribution is not so paid or made, the conversion rate shall be decreased to be the conversion rate that would then be in effect if such dividend or distribution had not been declared.

Rights or warrants distributed by the Company to all holders of Common Stock, entitling the holders thereof to subscribe for or purchase Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 10.04(c) (and no adjustment to the Conversion Rate under this Section 10.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 10.04(c). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 10.04 was made, (1) in the case of any such rights or warrants that shall all

have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

(d) In case the Company shall pay any cash dividend or distribution paid exclusively in cash is made to all or substantially all holders of Common Stock (other than dividends or distributions made in connection with the liquidation, dissolution or winding-up of the Company or distributions to which Section 10.06 applies), other than a regular monthly cash dividend that does not exceed the DTA, then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0 - DTA}{SP_0 - C}$$

where

CR_1 = the Conversion Rate in effect immediately after the Opening of Business on the Ex-Dividend Date for such dividend or distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Opening of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution;

DTA = the dividend threshold amount, which will initially be equal to $0.1066 per month; provided that if there is not an Ex-Dividend Date for a dividend in any month, the dividend threshold amount may be carried forward by the Company to the next subsequent month and to the extent the aggregate amount of any dividends with an Ex-Dividend Date in such subsequent month is less than $0.2132 such difference may be carried forward to the second subsequent month, subject to a maximum dividend threshold amount at any time of $0.3198; and

C = the amount in cash per share that the Company distributes to holders of Common Stock.

Such adjustment shall become effective immediately following the Opening of Business on the Ex-Dividend Date for such dividend or distribution.

The dividend threshold amount (DTA) is subject to adjustment on an inversely proportional basis whenever the Conversion Rate is adjusted; *provided* that no adjustment will be made to the dividend threshold amount (DTA) for any adjustment made to the Conversion Rate under this Section 10.04(d). If an adjustment is required to be made as set forth in this Section 10.04(d) as a result of a distribution that is not a regular monthly dividend, the dividend threshold amount (DTA) will be deemed to be zero. Notwithstanding the foregoing, if at any time regular dividends are distributed other than on a monthly basis, the dividend threshold amount (DTA) shall be appropriately adjusted as set forth in an Officers' Certificate delivered to the Trustee and shall apply to such regular dividends.

If "C" (as defined above) is equal to or greater than "SP_0" (as defined above), or if the difference between "SP_0" and "C" is less than $0.01, in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of shares of Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

For the avoidance of doubt, for purposes of this Section 10.04(d), in the event of any reclassification of the Common Stock, as a result of which the Notes become convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 10.04(d), references in this Section 10.04(d) to one share of Common Stock or Last Reported Sale Price of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which the Notes are then convertible equal to the number of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(e) In case the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for 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 Last Reported 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 Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last day of the Averaging Period (as defined below);

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires (the "**Averaging Period**");

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

SP_1 = the average of the Last Reported Sale Prices of Common Stock over the Averaging Period;

OS_1 = the number of shares of Common Stock outstanding immediately after the Close of Business on the day such tender or exchange offer expires (after giving effect to such tender offer or exchange offer); and

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer).

Such adjustment shall occur after the Close of Business on the last day of the Averaging Period, but will be given effect at the Close of Business on the Trading Day next succeeding the date such tender offer or exchange offer expires. Because the Company will make the adjustment to the Conversion Rate at the end of the Averaging Period with retroactive effect, the Company will delay the settlement of any Notes where the Conversion Date occurs during the Averaging Period. In such event, the Company will deliver shares of Common Stock (and any cash in lieu of fractional shares), based on the adjusted Conversion Rate on the third Business Day immediately following the last day of the Averaging Period.

(f) Notwithstanding any other provision of this Section 10.04, no adjustments to the Conversion Rate pursuant to this Section 10.04 will be made:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase such shares pursuant to any present or future employee, director or consultant benefit plan or program or employee stock purchase plan of, or assumed by, the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this Section 10.04(g) and outstanding as of the date the Notes were first issued;

(iv) for a change in the par value of the Common Stock;

(v) for accrued and unpaid interest; or

(vi) under any sub-section of Section 10.04 for any event as to which an adjustment has already been effected pursuant to another sub-section of Section 10.04.

(g) To the extent a transaction qualifies under two or more of Section 10.04(a), Section 10.04(b), Section 10.04(c), Section 10.04(d) and Section 10.04(e), the Conversion Rate shall be adjusted pursuant to Section 10.04(c)(i).

(h) [Reserved.]

(i) All calculations and other determinations under this Article X shall be made by the Company in accordance with Section 12.15 hereof and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. Except as provided in this Article X, no adjustment to the Conversion Rate shall be made for the Company's issuance of Common Stock or any securities convertible into or exchangeable for Common Stock, or the right to purchase Common Stock or such convertible or exchangeable securities, other than as provided in this Section 10.04. The Company will not make any adjustment to the Conversion Rate in connection with any dividend, distribution, issuance or tender if Holders may participate in such dividend, distribution, issuance or tender at the same time and upon the same terms as the holders of Common Stock and as a result of holding the Notes, without having to convert their Notes, as if each such Holder held a number of shares of Common Stock equal to the applicable Conversion Rate multiplied by the principal amount (expressed in thousands) of Notes held by such Holder. No adjustment shall be made to the Conversion Rate unless such adjustment would require a change of at least 1% in the Conversion Rate then in effect at such time. The Company shall carry forward any adjustments that are less than 1% of the Conversion Rate, take such carried-forward adjustments into account in any subsequent adjustment, and make such carried forward adjustments, regardless of whether the aggregate adjustment is less than 1%, (i) annually on the anniversary of the first date of issue of the Notes and otherwise (ii) (1) 10 Business Days prior to the Maturity Date, (2) 10 Business Days prior to any Fundamental Change Repurchase Date, or (iii) on any Conversion Date.

(j) Whenever the Conversion Rate is adjusted as herein provided, the Company 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. The Trustee and Conversion Agent may conclusively rely on the accuracy of the Conversion Rate adjustment provided by the Company. 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 without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company 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 provide notice to Holders of such adjustment.

(k) For purposes of this Section 10.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(l) If the Company pays withholding taxes on a Holder's behalf as a result of an adjustment to the Conversion Rate of the Notes, the Company may, at its option, set off such payments against payments of cash and Common Stock received upon conversion of the Notes.

Section 10.05. Shares to be Fully Paid. Subject to Section 10.03(c), the Company shall provide, free from preemptive rights, sufficient Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion.

Section 10.06. Effect of Reclassification, Consolidation, Merger or Sale.

(a) If the Company:

(i) reclassifies or changes its Common Stock (other than changes resulting from a subdivision or combination); or

(ii) consolidates or merges with or into any Person or sells, leases, transfers, conveys or otherwise disposes of all or substantially all of its assets and those of its Subsidiaries taken as a whole to another Person;

and in either case holders of Common Stock receive stock, other securities or other property or assets (including cash or any combination thereof) with respect to or in exchange for their Common Stock (any such event, a "**Merger Event**"), then from and after the effective date of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that upon occurrence of any conversion triggering event set forth in Section 10.01(a) and during periods described therein, each Outstanding Note will, without the consent of Holders of the Notes, become convertible in accordance with this Indenture into the consideration the holders of Common Stock received in such Merger Event (such consideration, the "**Reference Property**"). If the transaction causes the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), the Reference Property into which the Notes will become convertible will be deemed to be the kind and amount of consideration elected to be received by a majority of shares of Common Stock which voted for such an election (if electing between two types of consideration) or a plurality of shares of Common Stock which voted for such an election (if electing between more than two types of consideration), as the case may be. The Company shall not become a party to any such Merger Event unless its terms are consistent with this Section 10.06 in all material respects.

(b) The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the Note Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section 10.06 shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances. If this Section 10.06 applies to any Merger Event, Section 10.04 shall not apply.

Section 10.07. Notice to Holders Prior to Certain Actions. In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 10.04; or

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

(c) of any reclassification of Common Stock (other than a subdivision or combination of the outstanding 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 or merger to which the Company is a party and for which approval of any shareholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company,

the Company shall cause to be filed with the Trustee and to be mailed to each Noteholder at his address appearing on the Note Register at least 10 days before the applicable date specified in clause (x) or (y) below, as the case may be, 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 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 Common Stock of record shall be entitled to convert their 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 10.08. Shareholder Rights Plans. To the extent that any future shareholders' rights plan adopted by the Company is in effect upon conversion of the Notes into Common Stock, Holders shall receive, in addition to any Common Stock issuable upon such conversion, the rights under the applicable rights agreement unless the rights have separated from the Common Stock at the time of conversion of the Notes, in which case, the Conversion Rate will be adjusted as if the Company distributed to all holders of its Common Stock shares of its Capital Stock, evidences of indebtedness or assets as described in Section 10.04(c)(i), subject to readjustment in the event of the expiration, termination or redemption of such rights. If, and only if, the Holders receive rights under such shareholders' rights plan as described in the preceding sentence upon conversion of their Notes, then no other adjustment pursuant to this Article X shall be made in connection with such shareholders' rights plan.

Section 10.09. Company to Comply with NYSE Rules. The Company will not take any action that would result in an increase in the Conversion Rate pursuant to Section 10.01(b) or an adjustment to the Conversion Rate pursuant to Section 10.04 or otherwise without, to the extent necessary, complying with Section 312 of the New York Stock Exchange's Listed Company Manual or any successor provision (or provision of any future exchange on

which the Common Stock is listed if it is no longer listed on the New York Stock Exchange) requiring stockholder approval of certain issuances of stock.

ARTICLE XI

REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 11.01. Repurchase at Option of Holders Upon a Fundamental Change.

(a) If a Fundamental Change occurs at any time prior to the Maturity Date, then each Noteholder shall have the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof that is a multiple of $1,000 in principal amount, for cash on the date (the "**Fundamental Change Repurchase Date**") specified by the Company in the Fundamental Change Company Notice that is not less than twenty calendar days and not more than thirty-five calendar days after the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date. Notwithstanding the foregoing, if the Fundamental Change Repurchase Date is after a Record Date and on or prior to the corresponding Interest Payment Date, the accrued and unpaid interest will be paid on the Fundamental Change Repurchase Date to the Holder of record on the Record Date.

Repurchases of Notes under this Section 11.01 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Trustee (or other Paying Agent appointed by the Company) by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Note or, if the Notes are Global Notes, in compliance with the Depository's procedures for surrendering their interests in Global Notes at any time prior the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery or book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Company) at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Company) in the Borough of Manhattan, such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; *provided* that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 11.01 only if the Note so delivered to the Trustee (or other Paying Agent appointed by the Company) shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

(A) if Physical Notes, the certificate numbers of Notes to be delivered for repurchase;

(B) the portion of the principal amount of Notes to be repurchased, which must be $1,000 or an integral multiple thereof; and

(C) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture,

provided, however, that if the Notes are not Physical Notes, the Fundamental Change Repurchase Notice must comply with the Applicable Procedures.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 11.01 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Fundamental Change Repurchase Date and the time of the book-entry transfer or delivery of the Note.

The Trustee (or other Paying Agent appointed by the Company) shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof in accordance with the provisions of Section 11.01(c).

Any Note that is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Note so surrendered.

(b) On or before the fifth calendar day after the occurrence of a Fundamental Change, the Company shall provide to all Holders of record of the Notes as of the date of the Fundamental Change at their addresses shown in the Note Register (and to beneficial owners to the extent required by applicable law) and the Trustee and Paying Agent a written notice (the "**Fundamental Change Company Notice**") of the occurrence of such Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. Such mailing shall be by first class mail. Simultaneously with providing such Fundamental Change Company Notice, the Company shall publish a notice containing the information included therein once in a newspaper of general circulation in The City of New York or publish such information on the Company's website or through such other public medium as the Company may use at such time.

Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) that the Holder must exercise the repurchase right prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

(vi) the name and address of the Paying Agent and the Conversion Agent;

(vii) that the Fundamental Change also gives the Holder the right to convert;

(viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company 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 11.01.

(c) A Fundamental Change Repurchase Notice may be withdrawn by delivering a written notice of withdrawal to the Paying Agent in accordance with the Fundamental Change Company Notice at any time prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) if Physical Notes have been issued, the certificate numbers of the withdrawn Notes;

(ii) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted; and

(iii) the principal amount, if any, of such Notes that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000;

provided, however, that if the Notes are not Physical Notes, the notice must comply with Applicable Procedures. The Paying Agent will promptly return to the respective Holders thereof any Physical Notes with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with the provisions of this Section 11.01(c). If the Notes are not Physical Notes, such return must comply with the appropriate procedures of the Depositary. If a Fundamental Change Repurchase Notice is given and then subsequently withdrawn in accordance with this Section 11.01(c), then the Company shall not be obligated to repurchase any Notes listed in such Fundamental Change Repurchase Notice.

(d) On or prior to 10:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Company will deposit with the Trustee (or other Paying Agent appointed by the Company) or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust in accordance with this Indenture an amount of money sufficient to repurchase as of

the Fundamental Change Repurchase Date all of the Notes to be repurchased as of such date at the Fundamental Change Repurchase Price. Subject to receipt of funds by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn) prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date will be made promptly after the later of (x) the Fundamental Change Repurchase Date with respect to such Note (*provided* the Holder has satisfied the conditions to the payment of the Fundamental Change Repurchase Price in this Section 11.01), and (y) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by this Section 11.01 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register (in the case of Physical Notes) or by wire transfer of immediately available funds to the account of the Depositary or its nominee (for Global Notes). The Trustee shall, promptly upon written instructions from the Company after such payment return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(e) If the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to repurchase as of the Fundamental Change Repurchase Date all the Notes or portions thereof that are to be purchased as of the Fundamental Change Repurchase Date, then on and after the Fundamental Change Repurchase Date (i) such Notes will cease to be Outstanding, (ii) interest will cease to accrue on such Notes, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent, as the case may be, and (iii) all other rights of the Holders of such Notes will terminate other than the right to receive the Fundamental Change Repurchase Price upon delivery or transfer of such Notes.

Section 11.02. Compliance with Tender Offer Rules.

In connection with any offer to purchase Notes under Section 11.01 hereof, the Company shall, in each case if required, (a) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable, (b) file a Schedule TO or any other required schedule under the Exchange Act and (c) comply with all federal and state securities laws so as to permit the rights and obligations under Section 11.01 to be exercised in the time and in the manner specified in Section 11.01.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01. Trust Indenture Act Controls.

If this Indenture is, at any time, required to be qualified under the Trust Indenture Act and any provision of this Indenture limits, qualifies or conflicts with another provision that is required to be included in this Indenture by the Trust Indenture Act, the required provision shall control.

Section 12.02. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall, upon request, deliver to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and, upon request, an Opinion of Counsel stating that in the opinion of such counsel, all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

Section 12.03. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than Officers' Certificates provided for in Section 4.03) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving an Opinion of Counsel, counsel may rely as to factual matters on an Officers' Certificate or such other certificates of officer(s) of the Company as it may deem appropriate and on certificates of public officials.

Section 12.04. Successors. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture and the Notes shall bind its successors and assigns whether so expressed or not. All agreements of the Trustee in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 12.05. 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 Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or entity that shall at the time be the lawful sole successor of the Company.

Section 12.06. 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 Noteholders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Fifth Street

Finance Corp., 10 Bank Street, 12th Floor, White Plains, New York 10606, Attention: Bernard D. Berman. Any notice, direction, request or demand hereunder to or upon the Trustee shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed, or sent by facsimile, to Deutsche Bank Trust Company Americas, Trust and Securities Services, 60 Wall Street, MS NYC 60-2710, New York, New York 10005, Attention: Corporate Deal Manager — Fifth Street Finance Corp., Tel: (212) 250-4565, Fax: (732) 578-4635, with a copy to Deutsche Bank Trust Company Americas, c/o Deutsche Bank National Trust Company, Trust & Securities Services, 100 Plaza One, MS JCY 03-0699, Jersey City, New Jersey 07311, Attention: Corporates Team Deal Manager — Fifth Street Finance Corp., Tel: (212) 250-4565, Fax: (732) 578-4635.

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

Any notice or communication mailed to a Noteholder shall be mailed to him by first class mail, postage prepaid, at his address as it appears on the Note Register and shall be sufficiently given to him 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 12.07. 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 12.08. Benefits of Indenture. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Authenticating Agent, any Security Registrar and their successors hereunder, the Noteholders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 12.09. 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 12.10. Counterparts. This Indenture may be executed and delivered in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 12.11. Trustee. The Trustee makes no representations as to the validity or sufficiency of this Indenture. The statements and recitals herein are deemed to be those of the Company and not of the Trustee.

Section 12.12. Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 12.13. Waiver of Jury Trial. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 12.14. Force Majeure. In no event shall the Trustee, Paying Agent or Conversion Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or other acts of God, and interruptions, loss or malfunction of utilities, communications or computer (software or hardware) services; it being understood that the Trustee and the Conversion Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 12.15. Calculations. Except as otherwise provided in this Indenture, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Price of Common Stock, accrued interest payable on the Notes and the Conversion Rate and Conversion Price. The Company or its agents shall make all these calculations in good faith and, absent manifest error, such calculations will be final and binding on Holders of the Notes. The Company shall provide a schedule of these calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification. The Trustee will forward these calculations to any Holder of the Note upon the written request of that Holder.

Section 12.16. USA Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act Deutsche Bank Trust Company Americas, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The parties to this agreement agree that they will provide Deutsche Bank Trust Company Americas with such information as it may request in order for Deutsche Bank Trust Company Americas to satisfy the requirements of the USA Patriot Act**.**

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first above written.

COMPANY:

FIFTH STREET FINANCE CORP.

By: _____
Name: Bernard D. Berman
Title: President

[*Signature page to Indenture*]

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Trustee, Paying Agent, Registrar and Conversion Agent

By: Deutsche Bank National Trust Company

By: _____
Name:
Title:

By: _____
Name:
Title:

[*Signature page to Indenture*]

SCHEDULE A

Stock Price

Effective Date	$13.42	$14.00	$15.00	$16.00	$17.00	$18.00	$19.00	$20.00	$22.50	$25.00	$27.50	$30.00
April 1, 2011	6.7741	5.0345	2.7820	1.3246	0.5188	0.2148	0.1529	0.1411	0.1232	0.1085	0.0968	0.0870
April 1, 2012	6.7741	5.9317	3.4224	1.7435	0.7414	0.2845	0.1618	0.1415	0.1232	0.1085	0.0968	0.0870
April 1, 2013	6.7741	6.6187	3.8920	2.0424	0.9064	0.3465	0.1726	0.1422	0.1232	0.1085	0.0968	0.0870
April 1, 2014	6.7741	6.7741	3.9885	2.0539	0.8897	0.3345	0.1699	0.1420	0.1232	0.1085	0.0968	0.0870
April 1, 2015	6.7741	6.2530	3.3119	1.4897	0.5465	0.2157	0.1528	0.1411	0.1232	0.1085	0.0968	0.0870
April 1, 2016	6.7741	3.6871	—	—	—	—	—	—	—	—	—	—

EXHIBIT A

[FORM OF FACE OF NOTE]

[Global Note Legend]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY 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 IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), 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.]

[Restricted Note Legend]

THE NOTES AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, AND NOT SUBJECT TO, REGISTRATION.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

1. REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

2. AGREES FOR THE BENEFIT OF FIFTH STREET FINANCE CORP. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, ASSIGN, TRANSFER, PLEDGE, ENCUMBER OR OTHERWISE DISPOSE OF THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED

BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT: (A) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, OR (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY, AND THE TRANSFER AGENT, IN THE CASE OF ANY COMMON STOCK ISSUED UPON THE CONVERSION OF THE NOTES, AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY PURCHASE OR OTHERWISE ACQUIRE THIS NOTE OR A BENEFICIAL INTEREST HEREIN.

[Regulation D Note Legend]

THE NOTES AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, AND NOT SUBJECT TO, REGISTRATION.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF FIFTH STREET FINANCE CORP. (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, ASSIGN, TRANSFER, PLEDGE, ENCUMBER OR OTHERWISE DISPOSE OF THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR

AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT: (A) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, OR (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY, AND THE TRANSFER AGENT, IN THE CASE OF ANY COMMON STOCK ISSUED UPON THE CONVERSION OF THE NOTES, AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Fifth Street Finance Corp.

5.375% Senior Convertible Notes due 2016

No._____ $_____

CUSIP No. [_____] ISIN No. [_____]

Fifth Street Finance Corp., a corporation organized under the laws of [•] (herein called the "**Company**," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO., or registered assigns (the "**Depositary**")]'[1], the principal sum of [_____] ($[_____])[, or such principal amount as shall be reflected in the books and records of the Trustee and the Depositary,][2] on April 1, 2016, unless earlier converted or repurchased.

This Note shall bear interest at the rate of 5.375% per year from April 12, 2011, or from the most recent date to which interest had been paid or provided. Interest on this Note shall be computed on the basis of a 360-day year comprised of twelve 30-day months. Except as otherwise provided in the Indenture, interest is payable semi-annually in arrears on each April 1 and October 1, commencing October 1, 2011, to Holders of record at the Close of Business on the preceding March 15 and September 15, respectively. Interest payable on each Interest Payment Date shall equal the amount of interest accrued from, and including the immediately preceding Interest Payment Date (or from and including April 12, 2011, if no interest has been paid hereon) to but excluding such Interest Payment Date. To the extent lawful, payments of principal or interest on the Notes that are not made when due will accrue interest at the annual rate specified in this Note from the required payment date in accordance with the provisions of the Indenture.

Payment of the principal and interest, on this Note will be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, City of New York, or elsewhere as provided in the Indenture, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided*, *however*, that at the option of the Company, payment of interest, may be made by (i) check mailed to the address of the Person entitled thereto as such address shall appear in the Note Register or (ii) wire transfer to an account of the Person entitled thereto located inside the United States; *provided further*, however, that, with respect to any Holder of Notes with an aggregate principal amount of $5,000,000 or more, at the application of such Holder in writing to the Company, interest on such Holder's Notes shall be paid by wire transfer in immediately available funds to such Holder's account in the United States supplied by such Holder from time to time to the Trustee and Paying Agent (if different from the Trustee) at least five Business Days prior to the relevant Interest Payment Date. Notwithstanding the foregoing, payment of interest in respect of Notes held in global form shall be made in accordance with Applicable Procedures.

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1 Use bracketed language for a Global Note.

2 Use bracketed language for a Global Note.

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 into Common Stock on the terms and subject to the limitations referred to on the reverse hereof and as more fully 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 be governed by, and construed in accordance with, the laws of the State of New York.

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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed by the undersigned officer.

FIFTH STREET FINANCE CORP.

By: _____
Name: [ ]
Title: [President or Vice President]

Attest

By: _____
Name: [ ]
Title: [Secretary or Assistant Secretary]

Dated: [ ], 2011

TRUSTEE'S CERTIFICATE OF AUTHENTICATION:

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

DEUTSCHE BANK TRUST COMPANY AMERICAS,
not in its individual capacity but solely as Trustee

By: Deutsche Bank National Trust Company

BY: _____
Authorized Officer

Date of Authentication: [ ], 2011

[*Signature page to [Global/Physical] Note*]

[FORM OF REVERSE OF NOTE]

Fifth Street Finance Corp.
5.375% Senior Convertible Notes due 2016

This Note is one of a duly authorized issue of Notes of the Company, designated as its 5.375% Senior Convertible Notes due 2016 (herein called the "Notes"), issued under and pursuant to an Indenture dated as of April 12, 2011 (herein called the "Indenture") between the Company and Deutsche Bank Trust Company Americas (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 Company and the Holders of the Notes. Capitalized terms used but not defined in this Note shall have the meanings ascribed to them in the Indenture.

In case certain Events of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of and interest on all Notes may be declared, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture. In the case of an Event of Default specified in clause (h) or (i) of Section 5.01 of the Indenture with respect to the Company, the principal amount of and accrued and unpaid interest on all Outstanding Notes will become due and payable immediately without further action or notice by the Trustee or any Holder.

Subject to the terms and conditions of the Indenture and except as provided in the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in other circumstances, with the consent of the Holders of not less than a majority in principal amount of the Notes at the time Outstanding, evidenced as in the Indenture provided, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the Holders of the Notes; *provided*, *however*, that no such supplemental indenture shall make any of the changes set forth in Section 8.02 of the Indenture, without the consent of each Holder of an Outstanding Note affected thereby. It is also provided in the Indenture that, prior to any declaration accelerating the maturity of the Notes, the Holders of a majority in 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 under the Indenture and its consequences except as provided in the Indenture. Any such consent or waiver by the Holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Note and any securities which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other securities.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and accrued and unpaid interest on this Note or deliver shares of Common Stock upon conversion of this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. At the office or agency of the Company 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 or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes (except as otherwise provided in the Indenture), Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations.

The Notes are not subject to redemption and will not be entitled to the benefit of any sinking fund.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) in accordance with the provisions of the Indenture on the Fundamental Change Repurchase Date at a price equal to 100% of the principal amount of the Notes such holder elects to require the Company to repurchase, together with accrued and unpaid interest to but excluding the Fundamental Change Repurchase Date. The Company shall mail to all Holders of record of the Notes a notice of the occurrence of a Fundamental Change and of the repurchase right arising as a result thereof at any time following the Company entering into a definitive agreement that, if consummated, would give rise to a Fundamental Change, but in any event not later than the fifth (5th) calendar day after the occurrence of a Fundamental Change.

Subject to and upon compliance with the provisions of the Indenture, the Holder may surrender for conversion all or any portion of this Note that is in an integral multiple of $1,000. Upon conversion, the Holder shall be entitled to receive the consideration specified in the Indenture. No fractional share of Common Stock shall be issued upon conversion of a Note. Instead, the Company shall pay cash in lieu of such fractional share of Common Stock as provided in the Indenture. The initial Conversion Rate shall be 67.7415 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment in accordance with the provisions of the Indenture. If a Holder converts all or a part of this Note in connection with the occurrence of certain Non-Stock Change of Control transactions, the Conversion Rate shall be increased in the manner and to the extent described in the Indenture.

Upon due presentment for registration of transfer of this Note at the office or agency of the Company in the Borough of Manhattan, City of New York, a new Note or Notes of authorized denominations for an equal aggregate principal amount will be issued to the transferee in exchange thereof, subject to the limitations provided in the Indenture, without charge except for any tax, assessments or other governmental charge imposed in connection with any registration of transfer or exchange of Notes (except as otherwise set forth in the Indenture).

The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Security Registrar may deem and treat the registered Holder hereof as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing hereon), for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any other authenticating agent nor any Paying Agent nor any other Conversion Agent nor any Security Registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered Holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Note.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TENANT (=tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform gift to Minors Act).

EXHIBIT B

FORM OF CONVERSION NOTICE

To: Fifth Street Finance Corp.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (which is $1,000 principal amount or an integral multiple thereof) below designated into shares of Common Stock in accordance with the terms of the Indenture referred to in this Note, and directs that the shares of Common Stock issuable and deliverable upon such conversion, together with any check in payment for fractional shares of Common Stock, 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. 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 pay all transfer taxes and duties payable with respect thereto. Any amount required to be paid to the undersigned on account of interest accompanies this Note.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended, if shares of Common Stock is to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares of Common Stock if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all): $____,000

Social Security or Other Taxpayer Identification Number

EXHIBIT C

FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: Fifth Street Finance Corp.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Fifth Street Finance Corp. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is $1,000 principal amount or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Note, to the registered holder hereof.

Dated: _____

Signature(s)

Social Security or Other Taxpayer Identification Number Principal amount to be repaid (if less than all): $____,000
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.

EXHIBIT D

FORM OF ASSIGNMENT AND TRANSFER

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the Notes prior to the Resale Restriction Termination Date, the undersigned confirms that such Notes are being transferred:

§ To Fifth Street Finance Corp. or a subsidiary thereof; or

§ To a "qualified institutional buyer" in compliance with Rule 144A under the Securities Act of 1933, as amended; or

§ Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended; or

§ Pursuant to a Registration Statement which has been declared effective under the Securities Act of 1933, as amended, and which continues to be effective at the time of transfer;

[and unless the Notes has been transferred to Fifth Street Finance Corp. or a subsidiary thereof, the undersigned confirms that such Notes are not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended.][3]

Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Indenture between Fifth Street Finance Corp. and Deutsche Bank Trust Company Americas, as Trustee.

Unless one of the boxes is checked, the Trustee shall refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an

3 For Non-Regulation D Notes only.

approved signature guarantee medallion program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended, if Common Stock is to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the conversion notice, the option to elect repurchase upon a Fundamental Change, or the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT E

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO THIS CLAUSE (I) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM THAT ANY SUCH EXEMPTION IS AVAILABLE TO THE HOLDER, (II) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (III) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

EXECUTION VERSION

Exhibit 10.1

Fifth Street Finance Corp.

$150,000,000 5.375% Convertible Senior Notes due 2016

Purchase Agreement

April 7, 2011

J.P. Morgan Securities LLC
Morgan Stanley & Co. Incorporated

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

As representatives (the "Representatives") of the several Initial Purchasers named in Schedule I hereto

Ladies and Gentlemen:

Fifth Street Finance Corp., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell to the initial purchasers named in Schedule I hereto (the "Initial Purchasers"), for whom J.P. Morgan Securities LLC and Morgan Stanley & Co. Incorporated are acting as representatives (in such capacity, the "Representatives"), $150,000,000 aggregate principal amount of 5.375% Convertible Senior Notes due 2016 (the "Convertible Notes") of the Company (the "Initial Securities"), and at the election of the Initial Purchasers, up to $22,500,000 aggregate principal amount of additional Convertible Notes (the "Option Securities") of the Company (the Initial Securities and the Option Securities that the Initial Purchasers elect to purchase pursuant to Section 3 hereof being collectively called, the "Securities").

The Securities will be issued under an indenture to be dated as of April 12, 2011 (the "Indenture") between the Company and Deutsche Bank Trust Company Americas, as trustee. The Securities will be issued to Cede & Co. as nominee of the Depository Trust Company ("DTC") pursuant to a blanket letter of representations (the "DTC Agreement"), between the Company and DTC. The Securities will be convertible into shares (the "Underlying Securities") of common stock of the Company, $0.01 par value per share (the "Common Stock").

The Securities will be offered and sold to the Initial Purchasers without being registered under the Securities Act of 1933, as amended (the "Act"), in reliance upon an exemption therefrom. The Company has prepared a preliminary offering memorandum, dated April 6, 2011 (the "Preliminary Offering Memorandum") and will prepare an offering memorandum dated the date hereof (the "Offering Memorandum") setting forth information concerning the Company and the Securities. Copies of the

Preliminary Offering Memorandum have been, and copies of the Offering Memorandum will be, delivered by the Company to the Initial Purchasers pursuant to the terms of this Agreement. The Company hereby confirms that it has authorized the use of the Preliminary Offering Memorandum, the other Time of Sale Information (as defined below) and the Offering Memorandum in connection with the offering and resale of the Securities by the Initial Purchasers in the manner contemplated by this Agreement.

On January 2, 2008, Form N-54A Notification of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940, (File No. 814-00755) (the "Notification of Election") was filed with the Securities and Exchange Commission (the "Commission") under the Investment Company Act of 1940, as amended, and the rules and regulations thereunder (collectively, the "Investment Company Act"), pursuant to which the Company elected to be treated as a business development company ("BDC").

The Company has entered into an amended and restated investment advisory and management agreement, dated as of April 30, 2008 (the "Investment Advisory Agreement"), with Fifth Street Management LLC, a Delaware limited liability company (the "Adviser"), registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and the rules and regulations thereunder (the "Advisers Act").

The Company has entered into an administration agreement, dated as of December 14, 2007 (the "Administration Agreement"), with FSC, Inc., a New York corporation (the "Administrator").

This Agreement, the Indenture, the Securities, the Underlying Securities, the Investment Advisory Agreement, the Administration Agreement and the Custody Agreement (as defined below) are hereinafter called, collectively, the "Transaction Documents."

1. The Company represents and warrants to and agrees with each of the Initial Purchasers, and the Adviser and the Administrator, jointly and severally, represent and warrant to and agree with each of the Initial Purchasers, that:

(a) The Preliminary Offering Memorandum, as of its date, did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. For purposes of this Agreement, the "Applicable Time" is 7:35 a.m. (Eastern time) on April 7, 2011. At or prior to the Applicable Time, the Company had prepared the following information (collectively, the "Time of Sale Information"): the Preliminary Offering Memorandum, as supplemented and amended by the written communications listed on Schedule II(b) hereto. The Time of Sale Information, at the Applicable Time, did not, and at each Time of Delivery (as defined herein) 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. The Offering Memorandum, as of its date and at each Time of Delivery, 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. Each Additional Disclosure Item (as defined in Section 7 hereof) listed on Schedule II(a) hereto does not and will not conflict with the information contained in the Time of Sale Information or the Offering Memorandum and each such Additional Disclosure Item, as supplemented by and taken together with the Time of Sale Information as of the Applicable Time, did not and 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. Notwithstanding the foregoing,

this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Initial Purchaser Content (as defined below);

(b) There are no contracts or agreements that would be required to be described in the Time of Sale Information if the offering of the Securities was pursuant to a registration statement under the Act that are not described in the Time of Sale Information or the Offering Memorandum, as applicable;

(c) None of Fifth Street Funding, LLC, a Delaware limited liability company ("Funding"), FSFC Holdings, Inc., a Delaware corporation, FSF/MP Holdings, Inc., a Delaware corporation, Fifth Street Mezzanine Partners IV, L.P., a Delaware limited partnership, Fifth Street Fund of Funds, LLC, a Delaware limited liability company and FSMP IV GP, LLC, a Delaware limited liability company (collectively, the "Subsidiaries") or the Company has sustained since the date of the latest audited financial statements included in the Time of Sale Information any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information; and, since the date as of which information is given in the Time of Sale Information, there has not been any change in the capital stock or long-term debt of the Company or any of its Subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its Subsidiaries (any such change or development is hereinafter referred to as a "Material Adverse Change"), otherwise than as set forth in the Time of Sale Information; and other than the Subsidiaries, the Company has no other subsidiaries;

(d) The Company and each of its Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Time of Sale Information or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries; and any real property and buildings held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries; the Company and its Subsidiaries own, lease or have access to all properties and other assets that are necessary to the conduct of their business as described in the Time of Sale Information and the Offering Memorandum;

(e) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the Time of Sale Information and the Offering Memorandum and to enter into and perform its obligations under this Agreement, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction; and each Subsidiary of the Company has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with power and authority (corporate and other) to own its properties and conduct its business as described in the Time of Sale Information and the Offering Memorandum, and has been duly qualified as a foreign corporation or entity for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is

subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction;

(f) The Company has an authorized, issued and outstanding capitalization as set forth in the Time of Sale Information and the Offering Memorandum under the caption "Capitalization" and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and conform to the description of such capital stock contained in the Time of Sale Information and the Offering Memorandum; and other than the lien granted by the Company on all of its equity interests in Funding in connection with the Company's $100 million credit facility with Wells Fargo Bank, National Association, all of the issued equity capital of each Subsidiary has been duly and validly authorized and issued, is fully paid and non-assessable and is owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims;

(g) The Securities to be issued and sold by the Company to the Initial Purchasers hereunder have been duly and validly authorized and, when duly executed, authenticated, issued and delivered as provided in the Indenture against payment therefor as provided herein, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or law) (collectively, the "Enforceability Exceptions"), and will be entitled to the benefits of the Indenture. The Securities will conform in all material respects to the description of the Securities contained in the Time of Sale Information and the Offering Memorandum, and the offer and sale of the Securities as contemplated hereby has been duly approved by all necessary corporate action;

(h) This Agreement has been duly authorized, executed and delivered by the Company; each of the License Agreement, dated as of December 14, 2007 (the "License Agreement"), between the Company and Fifth Street Capital LLC, the Custody Agreement, dated as of January 31, 2011 (the "Custody Agreement"), between the Company and U.S. Bank National Association, the Investment Advisory Agreement and the Administration Agreement have been duly authorized, executed and delivered by the Company and constitute valid, binding and enforceable agreements of the Company, subject, as to enforcement, to the Enforceability Exceptions; and the Investment Advisory Agreement has been approved by the Company's board of directors and stockholders in accordance with Section 15 of the Investment Company Act, contains the applicable provisions required by Section 205 of the Advisers Act and Section 15 of the Investment Company Act and otherwise complies in all material respects with the requirements of the Advisers Act and the Investment Company Act;

(i) The Indenture has been duly authorized and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions; and at the First Time of Delivery (as defined below), the Indenture will conform in all material respects to the requirements of the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), and the rules and regulations of the Commission applicable to an indenture that is qualified thereunder. The Indenture conforms in all material respects to the description thereof contained in the Time of Sale Information and the Offering Memorandum;

(j) Upon issuance and delivery of the Securities in accordance with this Agreement and the Indenture, the Securities will be convertible at the option of the holder thereof into shares of the Underlying Securities in accordance with the terms of the Securities and the Indenture; the Underlying Securities issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon conversion of

the Securities in accordance with the terms of the Securities and the Indenture, will be duly and validly issued and fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive, co-sale right, rights of first refusal or other similar rights of any security holder of the Company or any other person. The Underlying Securities will conform to the description thereof contained in the Time of Sale Information and the Offering Memorandum;

(k) Except as disclosed in the Preliminary Offering Memorandum and the Offering Memorandum, none of the execution, delivery and performance of this Agreement, the Indenture, or the Securities, the issuance and sale of the Securities (including the issuance of the Underlying Securities upon conversion thereof) or the consummation of the transactions contemplated hereby and thereby, will (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement 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 is bound or to which any of the property or assets of the Company or any of its Subsidiaries is subject, or (ii) result in any violation of the provisions of the Restated Certificate of Incorporation or the Amended and Restated Bylaws (the "Bylaws") of the Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its Subsidiaries or any of their properties except, with respect to clause (i), to the extent that any such conflict, breach or violation would not, individually or in the aggregate, result in a Material Adverse Change; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery or performance of any of the Transaction Documents, or the consummation of the transactions contemplated hereby and thereby (including the issuance of the Underlying Securities upon conversion thereof), except such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Initial Purchasers and such consents, approvals, authorization, registrations or qualifications which have been obtained or effected;

(l) Neither the Company nor any of its Subsidiaries is in violation of its Certificate of Incorporation, Bylaws or any other organizational documents or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound;

(m) The statements set forth in the Time of Sale Information and the Offering Memorandum under the captions "Description of Notes" and "Description of Our Capital Stock", insofar as they purport to constitute a summary of the terms of the Securities and the Underlying Securities, respectively, and under the captions "Regulation", "Material U.S. Federal Income Tax Considerations" and "Plan of Distribution", insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair;

(n) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof, will not be a "registered management investment company", as such term is used in the Investment Company Act;

(o) Other than as set forth in the Time of Sale Information, there are no legal or governmental proceedings pending to which the Company or any of its Subsidiaries is a party or of which any property of the Company or any of its Subsidiaries is the subject which, if determined adversely to the Company or any of its Subsidiaries, would individually or in the aggregate have a material adverse effect on the current or future financial position, stockholders' equity or results of operations of the

Company and its Subsidiaries; and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(p) The Company has duly elected to be regulated by the Commission as a BDC under the Investment Company Act, and no order of suspension or revocation has been issued or proceedings therefor initiated or, to the knowledge of the Company, threatened by the Commission. Such election has not been withdrawn and the provisions of the Company's Restated Certificate of Incorporation and Bylaws and compliance by the Company with the investment objective, policies and restrictions described in the Time of Sale Information and the Offering Memorandum, will not conflict with the provisions of the Investment Company Act applicable to the Company;

(q) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company, are independent public accountants of the Company as required by the Act and the rules and regulations of the Commission thereunder;

(r) Grant Thornton LLP, who have certified certain financial statements of the Company, were independent public accountants of the Company as required by the Act and the rules and regulations of the Commission thereunder at that time of such certification;

(s) The financial statements included in the Time of Sale Information and the Offering Memorandum, together with the related notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, changes in net assets, cash flows and financial highlights of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles applied on a consistent basis throughout the periods involved. The selected financial data included in the Time of Sale Information and the Offering Memorandum present fairly the information shown therein and was compiled on a basis consistent with that of the audited financial statements included in the Time of Sale Information and the Offering Memorandum;

(t) The Company maintains a system of internal accounting and other controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization and with the investment objective, policies and restrictions of the Company and the applicable requirements of the Investment Company Act and the Code (as defined below); (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. generally accepted accounting principles and to maintain accountability for assets and to maintain material compliance with the books and records requirements under the Investment Company Act; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Time of Sale Information, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness (whether or not remediated) in the Company's internal control over financial reporting (as such term is defined in Rule 13a-15 and 15d-15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) and (2) no change in the Company's internal control over financial reporting that has materially negatively affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting;

(u) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including material information pertaining to the Company's operations and assets managed by the Adviser, is made known

to the Company's Chief Financial Officer by others within the Company and the Adviser, and such disclosure controls and procedures are effective to perform the functions for which they were established;

(v) There are no agreements requiring the registration under the Act of, and there are no options, warrants or other rights to purchase any shares of, or exchange any securities for shares of, the Company's capital stock;

(w) The Company owns, or has obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), trade names, copyrights, trade secrets and other proprietary information described in the Time of Sale Information and the Offering Memorandum which are necessary for the conduct of its businesses;

(x) The Company maintains insurance covering its properties, operations, personnel and businesses as the Company deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Company and its business; all such insurance is fully in force;

(y) Except as disclosed in the Time of Sale Information, the Company has not sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in the Time of Sale Information or filed as an exhibit to the Company's most recent annual report on Form 10-K and quarterly report on Form 10-Q filed with the Commission, and no such termination or non-renewal has been threatened by the Company or, to the Company's knowledge, any other party to any such contract or agreement;

(z) The Company has not, directly or indirectly, extended credit, arranged to extend credit, or renewed any extension of credit, in the form of a personal loan, to or for any director or executive officer of the Company, or to or for any family member or affiliate of any director or executive officer of the Company;

(aa) Neither the Company nor, to the Company's knowledge, any employee or agent of the Company has made any payment of funds of the Company or received or retained any funds in violation of any law, rule or regulation, which payment, receipt or retention of funds is of a character required by the Act to be disclosed in a registration statement to be filed with the Commission under the Act and that is not so described in the Time of Sale Information;

(bb) Neither the Company nor, to the Company's knowledge, any of its respective directors, officers, affiliates or controlling persons has taken, directly or indirectly, any action designed, or which has constituted or might reasonably be expected to cause or result in, under the Exchange Act, to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Securities;

(cc) Except as disclosed in the Time of Sale Information, (i) no person is serving or acting as an officer, director or investment adviser of the Company, except in accordance with the provisions of the Investment Company Act and the Advisers Act and (ii) to the knowledge of the Company, no director of the Company is an "affiliated person" (as defined in the Investment Company Act) of any of the Initial Purchasers;

(dd) The operations of the Company are in compliance in all material respects with the provisions of the Investment Company Act applicable to a BDC and the rules and regulations of the Commission thereunder;

(ee) The Company has not distributed any offering material in connection with the offering or sale of the Securities other than the Preliminary Offering Memorandum, the Time of Sale Information or the Offering Memorandum;

(ff) None of the persons identified as "independent directors" in the Time of Sale Information is an "interested person" as that term is defined in Section 2(a)(19) of the Investment Company Act;

(gg) Except as described in the Time of Sale Information, no relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers or stockholders of the Company, on the other hand, that is required by the Act to be described in a registration statement to be filed with the Commission, which is not so described in the Time of Sale Information;

(hh) Except as disclosed in the Time of Sale Information, neither the Company nor the Adviser has any lending or other commercial relationship with any affiliate of any Initial Purchaser and the Company will not use any of the proceeds from the sale of the Securities to repay any indebtedness owed to any affiliate of any Initial Purchaser;

(ii) The Company qualified to be treated as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"), for its taxable year ended September 30, 2010. The Company is in compliance with the requirements of the Code necessary to continue to qualify as a RIC. The Company intends to direct the investment of the net proceeds of the offering of the Securities and to continue to conduct its activities in such a manner as to continue to comply with the requirements for qualification as a RIC under Subchapter M of the Code. Each of the Company and its Subsidiaries has filed all tax returns that are required to be filed and have paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such tax, assessment, fine or penalty that is currently being contested in good faith by appropriate actions and except for such taxes, assessments, fines or penalties the nonpayment of which would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Change. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in the Time of Sale Information in respect of all federal, state, local and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its Subsidiaries has not been finally determined. The Company is not aware of any tax deficiency that has been or might be asserted or threatened against the Company or any of its Subsidiaries that could, individually or in the aggregate, result in a Material Adverse Change;

(jj) Other than the Subsidiaries and except as disclosed in the Time of Sale Information, the Company does not own, directly or indirectly, any shares of stock or any other equity or long term debt securities of any corporation or other entity. Other than Lighting by Gregory LLC and Nicos Polymers & Grinding Inc., the Company does not control (as such term is defined in Section 2(a)(9) of the Investment Company Act) any of the companies described in the Time of Sale Information under the caption "Portfolio Companies";

(kk) The Company is not aware that any executive, key employee or significant group of employees of any of the Company, the Adviser or the Administrator, plans to terminate employment with the Company or any such executive or key employee is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Company;

(ll) The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on The New York Stock Exchange (the "Exchange"). The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange, nor has the Company received any notification that the Commission or the Exchange is contemplating terminating such registration or listing. The Company has continued to satisfy all Exchange listing requirements;

(mm) The Company (i) has adopted and implemented written policies and procedures reasonably designed to prevent violation of the Federal Securities Laws (as that term is defined in Rule 38a-1 under the Investment Company Act) by the Company and its Subsidiaries, (ii) is conducting its business in compliance with all laws, rules, regulations, decisions, directives and orders, except for such failure to comply which would not, either individually or in the aggregate, reasonably be expected to, result in a Material Adverse Change and (iii) is conducting its business in compliance with the requirements of the Investment Company Act;

(nn) The Company's filings under the Exchange Act and the Investment Company Act, when they were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Exchange Act and the Investment Company Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an 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 in light of the circumstances under which they were made;

(oo) Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its Subsidiaries is aware of or has taken any action, directly or indirectly, that has resulted or would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA;

(pp) The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened;

(qq) Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate, person acting on behalf of the Company or any of its Subsidiaries or any person or entity to whom the Company or any of its Subsidiaries has made loans, is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not directly or indirectly use any of the proceeds received by the Company from the sale of Securities contemplated by this Agreement, or lend, contribute or otherwise make available any such proceeds to any subsidiary, joint venture partner or other

person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC;

(rr) At each Time of Delivery, the Securities will not be of the same class as securities listed on a national exchange registered under Section 6 of the Exchange Act or quoted in an automated inter-dealer quotation system; and each of the Time of Sale Information, as of the Applicable Time, and the Offering Memorandum, as of its date, contains or will contain all the information that, if requested by a prospective purchaser of the Securities, would be required to be provided to such prospective purchaser pursuant to Rule 144A(d)(4) under the Act;

(ss) Neither the Company, the Adviser nor the Administrator, nor any of their respective affiliates (as defined in Rule 501(b) of Regulation D under the Act) has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Act), that is or will be integrated with the sale of the Securities in a manner that would require registration of the Securities under the Act;

(tt) Neither the Company, the Adviser nor the Administrator, nor any of their respective affiliates, nor any other person acting on their behalf (other than the Initial Purchasers, as to which no representation is made) has solicited offers for, or offered or sold, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D under the Act or in any manner involving a public offering within the meaning of Section 4(2) of the Act; and

(uu) Assuming the accuracy of the representations and warranties of the Initial Purchasers contained in Section 2(c) and their compliance with their agreements set forth therein, it is not necessary, in connection with the issuance and sale of the Securities to the Initial Purchasers and the offer, resale and delivery of the Securities by the Initial Purchasers in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum, to register the Securities under the Act or to qualify the Indenture under the Trust Indenture Act.

2. (a) The Adviser represents and warrants to the Initial Purchasers that:

(i) The Adviser has not sustained since January 2, 2008 any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information; and, since January 2, 2008, there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Adviser (any such change or development is hereinafter referred to as an "Adviser Material Adverse Change"), otherwise than as set forth or contemplated in the Time of Sale Information;

(ii) The Adviser has been duly formed and is validly existing as a limited liability company and is in good standing under the laws of the State of Delaware, with power and authority to own its properties and conduct its business as described in the Time of Sale Information and the Offering Memorandum, and has been duly qualified as a foreign entity for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction;

(iii) The Adviser is duly registered with the Commission as an investment adviser under the Advisers Act and is not prohibited by the Advisers Act or the Investment Company Act from acting under the Investment Advisory Agreement for the Company as contemplated by the Time of Sale Information. There does not exist any proceeding or, to the Adviser's knowledge, any facts or circumstances the existence of which could lead to any proceeding which might adversely affect the registration of the Adviser with the Commission;

(iv) This Agreement and the Investment Advisory Agreement have each been duly authorized, executed and delivered by the Adviser and constitute valid, binding and enforceable agreements of the Adviser, subject, as to enforcement, to the Enforceability Exceptions; except as amended as of April 30, 2008, the Investment Advisory Agreement has not been amended and continues in full force and effect;

(v) None of the execution, delivery and performance of this Agreement or the Investment Advisory Agreement, or the consummation of transactions contemplated hereby and thereby (including the issuance and sale of the Securities and the issuance of the Underlying Securities upon conversion thereof), will (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Adviser or any of its subsidiaries is a party or by which the Adviser or any of its subsidiaries is bound or to which any of the property or assets of the Adviser or any of its subsidiaries is subject, or (ii) result in any violation of the provisions of the limited liability company agreement of the Adviser or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Adviser or any of its subsidiaries or any of its properties except, with respect to clause (i), to the extent that any such conflict, breach or violation would not, individually or in the aggregate, result in an Adviser Material Adverse Change; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery or performance of any of this Agreement or the Investment Advisory Agreement, or the consummation of the transactions contemplated hereby and thereby by the Adviser, including the conduct of its business and the issuance and sale of the Securities and the issuance of the Underlying Securities upon conversion thereof, except such as have been obtained under the Investment Company Act and the Advisers Act;

(vi) There are no legal or governmental proceedings pending to which the Adviser is a party or of which any of its property is the subject which, if determined adversely to the Adviser would individually or in the aggregate materially adversely affect the Adviser's ability to properly render services to the Company or have a material adverse effect on the current or future financial position, stockholders' equity or results of operations of the Adviser and, to the best of its knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(vii) The Adviser is not in violation of its limited liability company agreement or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound;

(viii) The Adviser possesses all licenses, certificates, permits and other authorizations issued by appropriate federal, state or foreign regulatory authorities necessary to conduct its business, and has not received any notice of proceeding relating to the revocation or modification of any such license, certificate, permit or authorization which, singly or in the aggregate, if the

subject of an unfavorable decision, ruling or finding, would have a Adviser Material Adverse Change;

(ix) The descriptions of the Adviser and its principals and business, and the statements attributable to the Adviser, in the Time of Sale Information and the Offering Memorandum do not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(x) The Adviser has the financial resources available to it necessary for the performance of its services and obligations as contemplated in the Time of Sale Information and the Offering Memorandum and under this Agreement and the Investment Advisory Agreement; the Adviser owns, leases or has access to all properties and other assets that are necessary to the conduct of its business and to perform the services, as described in the Time of Sale Information and the Offering Memorandum;

(xi) The Adviser is not aware that (i) any of its executives, key employees or significant group of employees plans to terminate employment with the Adviser or (ii) any such executive or key employee is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Adviser;

(xii) The Adviser maintains a system of internal controls sufficient to provide reasonable assurance that (i) transactions effectuated by it under the Investment Advisory Agreement are executed in accordance with its management's general or specific authorization; and (ii) access to the Company's assets is permitted only in accordance with its management's general or specific authorization;

(xiii) The Adviser has not taken, nor will the Adviser take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities, and the Adviser is not aware of any such action being taken by any affiliates of the Adviser;

(xiv) The Adviser maintains insurance covering its properties, operations, personnel and businesses as it deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Adviser and its businesses; all such insurance is fully in force and effect;

(xv) Neither the Adviser nor and of its subsidiaries, nor, to the knowledge of the Adviser, any director, officer, agent, employee, affiliate or other person acting on behalf of the Adviser or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that has resulted or would result in a violation by such persons of the FCPA, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA;

(xvi) The operations of the Adviser and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the

Money Laundering Laws and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Adviser or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Adviser, threatened; and

(xvii) Neither the Adviser nor any of its subsidiaries nor, to the knowledge of the Adviser, any director, officer, agent, employee, affiliate or person acting on behalf of the Adviser or any of its subsidiaries is currently subject to any U.S. sanctions administered by the OFAC; and the Adviser will not cause the Company to use any of the proceeds received by the Company from the sale of Securities contemplated by this Agreement, or cause the Company to lend, contribute or otherwise make available any such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(b) The Administrator represents and warrants to the Initial Purchasers that:

(i) The Administrator has not sustained since January 2, 2008 any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information; and, since January 2, 2008, there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Administrator (any such change or development is hereinafter referred to as an "Administrator Material Adverse Change"), otherwise than as set forth or contemplated in the Time of Sale Information;

(ii) The Administrator has been duly formed and is validly existing as a corporation and is in good standing under the laws of the State of New York, with power and authority to own its properties and conduct its business as described in the Time of Sale Information and the Offering Memorandum, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction;

(iii) This Agreement and the Administration Agreement have each been duly authorized, executed and delivered by the Administrator and constitute valid, binding and enforceable agreements of the Administrator, subject, as to enforcement, to the Enforceability Exceptions; and the Administration Agreement has not been amended and continues in full force and effect;

(iv) None of the execution, delivery and performance of this Agreement or the Administration Agreement, or the consummation of transactions contemplated hereby and thereby (including the issuance and sale of the Securities and the issuance of the Underlying Securities upon conversion thereof), will (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Administrator or any of its subsidiaries is a party or by which the Administrator or any of its subsidiaries is bound or to which any of the property or assets of the Administrator or any of its subsidiaries is subject, or (ii) result in any violation of the provisions of the organizational documents of the Administrator or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Administrator or any of its subsidiaries or any of its properties except, with

respect to clause (i), to the extent that any such conflict, breach or violation would not, individually or in the aggregate, result in an Administrator Material Adverse Change; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery or performance of any of this Agreement or the Administration Agreement, or the consummation of the transactions contemplated hereby and thereby by the Administrator, including the conduct of its business and the issuance and sale of the Securities and the issuance of the Underlying Securities upon conversion thereof, except such as have been obtained;

(v) There are no legal or governmental proceedings pending to which the Administrator is a party or of which any of its property is the subject which, if determined adversely to the Administrator would individually or in the aggregate have a material adverse effect on the current or future financial position, stockholders' equity or results of operations of the Administrator and, to the best of its knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(vi) The Administrator is not in violation of its certificate of incorporation or bylaws or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound;

(vii) The Administrator possesses all licenses, certificates, permits and other authorizations issued by appropriate federal, state or foreign regulatory authorities necessary to conduct its business, and has not received any notice of proceeding relating to the revocation or modification of any such license, certificate, permit or authorization which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Administrator Material Adverse Change;

(viii) The descriptions of the Administrator and its principals and business, and the statements attributable to the Administrator, the Time of Sale Information and the Offering Memorandum, if any, do not and will not contain an untrue statement of a material fact or omit to state a material fact necessary required to be stated therein or necessary to make the statements therein not misleading;

(ix) The Administrator has the financial resources available to it necessary for the performance of its services and obligations as contemplated in the Time of Sale Information and the Offering Memorandum and under this Agreement and the Administration Agreement; the Administrator owns, leases or has access to all properties and other assets that are necessary to the conduct of its business and to perform the services, as described in the Time of Sale Information and the Offering Memorandum;

(x) The Administrator is not aware that (i) any of its executives, key employees or significant group of employees plans to terminate employment with the Administrator or (ii) any such executive or key employee is subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreement that would be violated by the present or proposed business activities of the Administrator;

(xi) The Administrator maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions for which it has bookkeeping and record keeping responsibility for under the Administration Agreement are recorded as necessary to

permit preparation of the Company's financial statements in conformity with generally accepted accounting principles and to maintain accountability for the Company's assets and (ii) the recorded accountability for such assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(xii) The Administrator has not taken, nor will the Administrator take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities, and the Administrator is not aware of any such action being taken by any affiliates of the Administrator;

(xiii) The Administrator maintains insurance covering its properties, operations, personnel and businesses as it deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Administrator and its businesses; all such insurance is in full force and effect;

(xiv) Neither the Administrator nor and of its subsidiaries, nor, to the knowledge of the Administrator, any director, officer, agent, employee, affiliate or other person acting on behalf of the Administrator or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that has resulted or would result in a violation by such persons of the FCPA, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA;

(xv) The operations of the Administrator and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Money Laundering Laws and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Administrator or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Administrator, threatened; and

(xvi) Neither the Administrator nor any of its subsidiaries nor, to the knowledge of the Administrator, any director, officer, agent, employee, affiliate or person acting on behalf of the Administrator or any of its subsidiaries is currently subject to any U.S. sanctions administered by the OFAC.

(c) Each of the Company, the Adviser and the Administrator understands that the Initial Purchasers intend to offer the Securities for resale on the terms set forth in the Time of Sale Information and the Offering Memorandum. Each Initial Purchaser, severally and not jointly, represents and warrants with the Company as of the date hereof, as of the Applicable Time and as of each Time of Delivery and agrees with the Company as follows that:

(i) it is a qualified institutional buyer within the meaning of Rule 144A under the Act (a "QIB") and an accredited investor within the meaning of Rule 501(a) under the Act with such knowledge and experience in financial and business matters as are necessary to evaluate the merits and risks of an investment in Securities;

(ii) neither it nor any person acting on its behalf has solicited offers for, or offered or sold, or will solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D under the Act or in any manner involving a public offering within the meaning of Section 4(2) of the Act; and

(iii) it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell, the Securities as part of their offering except (a) to persons whom it reasonably believes to be QIBs in transactions pursuant to Rule 144A under the Act ("Rule 144A") and in connection with each such sale, it has taken or will take reasonable steps to ensure that the purchaser of the Securities is aware that such sale is being made in reliance on Rule 144A or (b) in accordance with the restrictions set forth under the caption "Transfer Restrictions" in the Time of Sale Information.

3. Subject to the terms and conditions herein set forth, (a) the Company agrees to issue and sell the Initial Securities to each of the Initial Purchasers, and each of the Initial Purchasers agrees, severally and not jointly, to purchase from the Company, at a price equal to 97.50% of the principal amount thereof (the "Purchase Price") plus accrued interest, if any, from April 12, 2011 to the First Time of Delivery, the aggregate principal amount of Initial Securities set forth opposite the name of such Initial Purchaser in Schedule I hereto and (b) in the event and to the extent that the Initial Purchasers shall exercise the election to purchase Option Securities as provided below, the Company agrees to issue and sell the Option Securities to each of the Initial Purchasers, and each of the Initial Purchasers agrees, severally and not jointly, to purchase from the Company, at the Purchase Price plus accrued interest, if any, from April 12, 2011 to the Additional Time of Delivery with respect to such Option Securities. If any Option Securities are to be purchased, the amount of Option Securities to be purchased by each Initial Purchaser shall be the amount of Option Securities which bears the same ratio to the aggregate amount of Option Securities being purchased as the amount of Initial Securities set forth opposite the name of such Initial Purchaser in Schedule I hereto (or such amount increased as set forth in Section 11 hereof) bears to the aggregate amount of Initial Securities being purchased from the Company by the several Initial Purchasers, subject, however, to such adjustments to eliminate Securities in denominations other than $1,000 as the Representatives in their sole discretion shall make.

Any such election to purchase Option Securities may be exercised only by written notice from the Representatives to the Company, given at any time in whole, or from time to time in part, within a period of 30 calendar days after the date of this Agreement, setting forth the aggregate amount of Option Securities to be purchased and the date on which such Option Securities are to be delivered, as determined by the Representatives but in no event earlier than the First Time of Delivery (as defined in Section 5(a) hereof) or, unless the Representatives and the Company otherwise agree in writing, earlier than two or later than ten business days after the date of such notice.

4. Upon the authorization by you of the release of the Initial Securities, the several Initial Purchasers propose to offer the Initial Securities for sale upon the terms and conditions set forth in the Offering Memorandum.

5. (a) The Securities to be purchased by each Initial Purchaser hereunder, in one or more global Securities in book-entry form, all of which will contain the legends set forth in the Offering Memorandum under the caption "Transfer Restrictions", which will be deposited by or on behalf of the Company with the Depository Trust Company ("DTC") or its designated custodian, for the account of such Initial Purchaser, against payment by or on behalf of such Initial Purchaser of the purchase price therefor by wire transfer of Federal (same-day) funds to the account specified by the Company to the Representatives at least forty-eight hours in advance. The Company will cause the certificates

representing the Securities to be made available for checking and packaging at least twenty-four hours prior to the Time of Delivery (as defined below) with respect thereto at the office of Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, NY 10004 (the "Closing Location"). The time and date of such delivery and payment shall be, with respect to the Initial Securities, 10:30 a.m., New York City time, on the third New York Business Day (as defined below) following the date hereof or such other time and date as the Representatives and the Company may agree upon in writing, and, with respect to the Option Securities, 10:30 a.m., New York time, on the date specified by the Representatives in the written notice given by the Representatives of the Initial Purchasers' election to purchase such Option Securities, or such other time and date as the Representatives and the Company may agree upon in writing. Such time and date for delivery of the Initial Securities is herein called the "First Time of Delivery", such time and date for delivery of the Option Securities, if not the First Time of Delivery, is herein called an "Additional Time of Delivery", and each such time and date for delivery is herein called a "Time of Delivery".

(b) The documents to be delivered at each Time of Delivery by or on behalf of the parties hereto pursuant to Section 9 hereof, including the cross receipt for the Securities and any additional documents requested by the Initial Purchasers pursuant to Section 9(k) hereof, will be delivered at the Closing Location, and the Securities will be delivered at DTC or its designated custodian, all at such Time of Delivery. A meeting will be held at the Closing Location at 3:00 p.m., New York City time, on the New York Business Day next preceding such Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. For the purposes of this Section 5, "New York Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday, which is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

6. (A) The Company agrees with each of the Initial Purchasers:

(a) To prepare the Offering Memorandum in a form approved by you; to make no further amendment or any supplement to the Preliminary Offering Memorandum, any Additional Disclosure Item, the Time of Sale Information or the Offering Memorandum prior to the last Time of Delivery which shall be disapproved by you promptly after reasonable notice thereof; to furnish you with copies of any amendment or supplement to the Time of Sale Information or the Offering Memorandum;

(b) Promptly from time to time to take such action as you may reasonably request to qualify the Securities for offering and sale under the securities laws of such jurisdictions as you may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Securities, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction;

(c) To notify you promptly, and if requested by the Initial Purchasers, confirm such advice in writing, (i) of the issuance by any governmental or regulatory authority of any order preventing or suspending the use of the Time of Sale Information or the Offering Memorandum or the initiation or threatening of any proceeding for that purpose; (ii) of the occurrence of any event at any time prior to the completion of the initial offering of the Securities as a result of which any of the Time of Sale Information or the Offering Memorandum as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when such Time of Sale Information or the Offering Memorandum is delivered to a purchaser, not misleading; and (iii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use

its best efforts to prevent the issuance of any such order preventing or suspending the use of the Time of Sale Information or the Offering Memorandum or suspending any such qualification of the Securities and, if any such order is issued, will promptly use its best efforts to obtain withdrawal thereof as soon as possible;

(d) To reserve and keep available at all times, free of preemptive rights, shares of Common Stock for the purpose of enabling the Company to satisfy all obligations to issue the Underlying Securities upon conversion of the Securities. The Company will use its best efforts to cause the Underlying Securities to be listed on the Exchange and to maintain such listing;

(e) While the Securities remain outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Act, the Company will, during any period in which the Company is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, furnish to holders of the Securities, prospective purchasers of the Securities designated by such holders, in each case upon request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Act;

(f) Neither the Company nor any of its affiliates (as defined in Rule 501(b) of Regulation D under the Act) will, directly or through any agent, sell, offer for sale, solicit offers to buy or otherwise negotiate in respect of, any security (as defined in the Act), that is or will be integrated with the sale of the Securities in a manner that would require registration of the Securities under the Act;

(g) None of the Company or any of its affiliates or any other person acting on its or their behalf (other than the Initial Purchasers, as to which no covenant is given) will solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D under the Act or in any manner involving a public offering within the meaning of Section 4(2) of the Act;

(h) During the period from the First Time of Delivery until one year after a Time of Delivery, the Company will not, and will not permit any of its subsidiaries to, resell any of the Securities that constitute "restricted securities" under Rule 144 under the Act that have been reacquired by any of them, except for Securities purchased by the Company or any of its subsidiaries and resold in a transaction registered under the Act;

(i) To cooperate with the Representatives and use its reasonable best efforts to permit the offered Securities to be eligible for clearance and settlement through DTC;

(j) Prior to 3:00 p.m., New York City time, on the New York Business Day next succeeding the date of this Agreement and from time to time, to furnish the Initial Purchasers with written and electronic copies of the Offering Memorandum in New York City in such quantities as you may reasonably request, and, if at any time prior to the expiration of nine months after the date of the Offering Memorandum, any event shall have occurred as a result of which the Offering Memorandum as then amended or supplemented would include an 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 when such Offering Memorandum is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Offering Memorandum in order to comply with law, to notify you and upon your request to prepare and furnish without charge to each Initial Purchaser and to any dealer in securities as many written and electronic copies as you may from time to time reasonably request of an amended Offering Memorandum or a supplement to the Offering Memorandum which will correct such statement or omission or effect such compliance;

(k) If at any time prior to the First Time of Delivery, any event shall have occurred as a result of which any of the Time of Sale Information as then amended or supplemented would include an 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 when such Time of Sale Information is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement any of the Time of Sale Information in order to comply with law, to notify you and upon your request to prepare and furnish without charge to each Initial Purchaser and to any dealer in securities as many written and electronic copies as you may from time to time reasonably request of such amended or supplemented Time of Sale Information which will correct such statement or omission or effect such compliance;

(l) During the period beginning from the date hereof and continuing to and including the date 45 days after the date of the Offering Memorandum (the "Lock-Up Period"), not to offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose, except as provided hereunder, of any securities of the Company that are substantially similar to the Common Stock, including but not limited to any options or warrants to purchase shares of Common Stock or any securities that are convertible into or exchangeable for, or that represent the right to receive, Common Stock or any such substantially similar securities (other than pursuant to the dividend reinvestment plan described in the Time of Sale Memorandum), without the prior written consent of the Representatives; provided, however, that if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or announces material news or a material event or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 15-day period following the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be automatically extended until the expiration of the 18-day period beginning on the date of release of the earnings results or the announcement of the material news or material event, as applicable, unless each of J.P. Morgan Securities LLC, Morgan Stanley & Co. Incorporated and Wells Fargo Securities, LLC waive, in writing, such extension;

(m) During a period of five years from the effective date of the Offering Memorandum and only to the extent not otherwise available on the Commission's EDGAR system, to furnish to you copies of all reports or other communications (financial or other) furnished to stockholders, and to deliver to you (i) as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed; and (ii) such additional information concerning the business and financial condition of the Company as you may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its stockholders generally or to the Commission);

(n) To use the net proceeds received by it from the sale of the Securities pursuant to this Agreement in the manner specified in the Time of Sale Information under the caption "Use of Proceeds";

(o) To use its best efforts to maintain in effect its qualification and election to be treated as a RIC under Subchapter M of the Code for each taxable year during which it is a BDC under the Investment Company Act;

(p) The Company, during a period of two years from the date hereof, will use its best efforts to maintain its status as a BDC; provided, however, the Company may change the nature of its business so as to cease to be, or to withdraw its election as, a BDC, with the approval of the board of directors and a vote of stockholders as required by Section 58 of the Investment Company Act or any successor provision;

(q) To not take, and to cause its affiliates to refrain from taking, directly or indirectly, any action designed, to cause or result in, or that has constituted or might reasonably be expected to constitute, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Securities;

(r) To maintain a transfer agent and, if necessary under the jurisdiction of incorporation of the Company, a registrar for the Common Stock; and

(s) The Company will comply with the Act, the Exchange Act and the Investment Company Act, and the rules and regulations thereunder, so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and the Offering Memorandum.

(B) The Adviser agrees with each of the Initial Purchasers:

(a) The Adviser will not take, and will cause its affiliates to refrain from taking, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Securities;

(b) Neither the Adviser nor any of its affiliates (as defined in Rule 501(b) of Regulation D under the Act) will, directly or through any agent, sell, offer for sale, solicit offers to buy or otherwise negotiate in respect of, any security (as defined in the Act), that is or will be integrated with the sale of the Securities in a manner that would require registration of the Securities under the Act; and

(c) Neither the Adviser nor any of its affiliates or any other person acting on its or their behalf (other than the Initial Purchasers, as to which no covenant is given) will solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D under the Act or in any manner involving a public offering within the meaning of Section 4(2) of the Act.

(d) During the period from the Closing Time until one year after a Time of Delivery, the Adviser will not, and will not permit any of its subsidiaries to, resell any of the Securities that constitute "restricted securities" under Rule 144 under the Act that have been reacquired by any of them, except for Securities purchased by the Company or any of its subsidiaries and resold in a transaction registered under the Act.

7. The Company represents and agrees that, without the prior consent of the Representatives, (i) it will not distribute any offering material other than the Time of Sale Information or the Offering Memorandum, and (ii) it has not made and will not make any offer relating to the Securities that would constitute a "written communication" as defined in Rule 405 under the Act and which the parties agree, for the purposes of this Agreement, includes (x) any "advertisement" as defined in Rule 482 under the Act; and (y) any sales literature, materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities, including any in-person roadshow or investor presentations (including slides and scripts relating thereto) made to investors by or on behalf of the Company (the materials and information referred to in this Section 7 are herein referred to as an "Additional Disclosure Item"); any Additional Disclosure Item the use of which has been consented to by the Representatives is listed on Schedule II(a) hereto.

8. The Company covenants and agrees with the several Initial Purchasers that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants; (ii) all expenses in connection with the preparation, printing and reproduction of

the Preliminary Offering Memorandum, the Time of Sale Information and the Offering Memorandum and amendments and supplements thereto and the mailing and delivering of copies thereof to the Initial Purchasers and dealers; (iii) the cost of printing or producing any Agreement among Initial Purchasers, this Agreement, the Indenture, the Blue Sky Memorandum, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities and the Underlying Securities; (iv) all expenses in connection with the qualification of the Securities for offering and sale under state securities laws as provided in Section 6(A)(b) hereof, including the fees and disbursements of counsel for the Initial Purchasers in connection with such qualification and in connection with the Blue Sky survey; (v) any fees charged by rating agencies for rating the Securities; (vi) all fees and expenses in connection with listing the Underlying Securities on the Exchange; (vii) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (viii) the costs and charges of any transfer agent or registrar; (ix) the expenses and application fees incurred in connection with the approval of the Securities for book-entry transfer by DTC; (x) "road show" expenses of the Company (including but not limited to travel and accommodations), and (xi) all other costs and expenses incident to the performance by the Company, the Adviser and the Administrator of their obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section, and Sections 10 and 13 hereof, the Initial Purchasers will pay all of their own costs and expenses, including the fees of their counsel, stock transfer taxes on resale of any of the Securities by them, and any advertising expenses connected with any offers they may make.

9. The obligations of the Initial Purchasers hereunder, as to the Securities to be delivered at each Time of Delivery, shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company, the Adviser and the Administrator herein are, at and as of such Time of Delivery, true and correct, the condition that the Company, the Adviser and the Administrator shall have performed all of their respective obligations hereunder theretofore to be performed, and the following additional conditions:

(a) Subsequent to the earlier of (A) the Applicable Time and (B) the execution and delivery of this Agreement, (i) no downgrading shall have occurred in the rating accorded any securities or preferred stock of or guaranteed by the Company or any of its subsidiaries by any "nationally recognized statistical rating organization", as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of any securities or preferred stock of or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading).

(b) Fried, Frank, Harris, Shriver & Jacobson LLP, counsel for the Initial Purchasers, shall have furnished to the Representatives such written opinion or opinions, dated such Time of Delivery, in form and substance satisfactory to the Representatives, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

(c) Sutherland Asbill & Brennan LLP, counsel for the Company, shall have furnished to you their written opinion (a draft of such opinion is attached as Annex I(a) hereto), dated such Time of Delivery, in form and substance satisfactory to you;

(d) Sutherland Asbill & Brennan LLP, counsel for the Adviser and the Administrator, shall have furnished to you their written opinion (a draft of such opinion being attached as Annex I(b) hereto), dated such Time of Delivery in form and substance satisfactory to you;

(e) At the time of the execution of this Agreement, each of PricewaterhouseCoopers LLP and Grant Thornton LLP shall have furnished to the Representatives a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Initial Purchasers containing statements and information of the type ordinarily included in accountants' "comfort letters" to initial purchasers with respect to the financial statements of the Company and its Subsidiaries included in the Time of Sale Information and the Offering Memorandum;

(f) At each Time of Delivery, the Representatives shall have received from each of PricewaterhouseCoopers LLP and Grant Thornton LLP a letter, dated as of the Time of Delivery, to the effect that they reaffirm the statements made in the letter furnished pursuant to paragraph (e) of this Section, except that the specified data referred to shall not be more than three (3) business days prior to the Time of Delivery;

(g) (i) Neither the Company nor any of its Subsidiaries shall have sustained since the date of the latest audited financial statements included in the Time of Sale Information any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information, and (ii) since the respective dates as of which information is given in the Time of Sale Information there shall not have been any change in the capital stock or long-term debt of the Company or any of its Subsidiaries or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its Subsidiaries, otherwise than as set forth or contemplated in the Time of Sale Information, the effect of which, in any such case described in clause (i) or (ii), is in your judgment so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities being delivered at such Time of Delivery on the terms and in the manner contemplated in the Offering Memorandum;

(h) On or after the Applicable Time there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the Exchange; (ii) a suspension or material limitation in trading in the Company's securities on the Exchange; (iii) a general moratorium on commercial banking activities 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; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in your judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities being delivered at such Time of Delivery on the terms and in the manner contemplated in the Offering Memorandum;

(i) The Underlying Securities shall have been duly listed, subject to notice of issuance, on the Exchange;

(j) The Company shall have complied with the provisions of Section 6(A)(j) hereof with respect to the furnishing of offering memorandums on the New York Business Day next succeeding the date of this Agreement;

(k) The Company, the Adviser and the Administrator shall have furnished or caused to be furnished to you at such Time of Delivery certificates of their respective officers satisfactory to you as to the accuracy of the representations and warranties of the Company, the Adviser and the Administrator herein at and as of such Time of Delivery, as to the performance by the Company, the

Adviser and the Administrator of all of their respective obligations hereunder to be performed at or prior to such Time of Delivery, as to the matters set forth in subsections (a) and (g) of this Section and as to such other matters as you may reasonably request;

(l) The Company shall continue to be regulated as a BDC under the Investment Company Act;

(m) The Securities shall be eligible for clearance and settlement through DTC;

(n) The Company shall have obtained and delivered to the Initial Purchasers executed copies of an agreement from each of the directors and officers of the Company (as considered prior to the First Time of Delivery) in the form attached hereto as Exhibit A; and

(o) The Company shall have furnished or caused to be furnished to you at such Time of Delivery certificates of any officers of the Company satisfactory to you regarding his or her investment intent with respect to the purchase of any Convertible Notes such officer is purchasing from the Company concurrently with the offer and sale of the Securities.

10. (a) The Company will indemnify and hold harmless each Initial Purchaser, against any losses, claims, damages or liabilities, joint or several, to which such Initial Purchaser may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Time of Sale Information, the Offering Memorandum, or any amendment or supplement thereto, or any Additional Disclosure Item, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary in order to make the statements therein in the light of the circumstances under which they were made, not misleading, and will reimburse each Initial Purchaser for any legal or other expenses reasonably incurred by such Initial Purchaser in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company shall 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 an untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Offering Memorandum, the Time of Sale Information or the Offering Memorandum, or any amendment or supplement thereto, or any Additional Disclosure Item in reliance upon and in strict conformity with the Initial Purchaser Content.

(b) The Adviser and the Administrator, severally and not jointly, will indemnify and hold harmless each Initial Purchaser against any losses, claims, damages or liabilities, joint or several, to which such Initial Purchaser may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Time of Sale Information, the Offering Memorandum, or any amendment or supplement thereto, or any Additional Disclosure Item, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and will reimburse each Initial Purchaser for any legal or other expenses reasonably incurred by such Initial Purchaser in connection with investigating or defending any such action or claim as such expenses are incurred, 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 the Preliminary Offering Memorandum, the Time of Sale Information, the Offering Memorandum, or any amendment or supplement thereto, or any Additional Disclosure Item, in

reliance upon and in conformity with written information furnished to the Company by the Adviser (in the case of the Adviser) or the Administrator (in the case of the Administrator), respectively.

(c) Each Initial Purchaser will indemnify and hold harmless the Company, the Adviser and the Administrator against any losses, claims, damages or liabilities to which the Company may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Time of Sale Information or the Offering Memorandum,, or any amendment or supplement thereto, or any Additional Disclosure Item, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, 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 the Preliminary Offering Memorandum, the Time of Sale Information or the Offering Memorandum, or any amendment or supplement thereto, or any Additional Disclosure Item, in reliance upon and in conformity with the Initial Purchaser Content; and will reimburse the Company, the Adviser and the Administrator for any legal or other expenses reasonably incurred by the Company, the Adviser and the Administrator in connection with investigating or defending any such action or claim as such expenses are incurred; it being understood and agreed that the only such information furnished by any Initial Purchaser consists of the following information in the Preliminary Offering Memorandum and the Offering Memorandum furnished on behalf of each Initial Purchaser (collectively, the "Initial Purchaser Content"): (i) the first two sentences of the twelfth paragraph of text in the Preliminary Offering Memorandum and the Offering Memorandum under the caption "Plan of Distribution", concerning price stabilization and (ii) the first sentence of the thirteenth paragraph of text in the Preliminary Offering Memorandum under the caption "Plan of Distribution", concerning penalty bids.

(d) Promptly after receipt by an indemnified party under subsection (a), (b), (c) or (d) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. 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 elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel satisfactory to such indemnified party; provided 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 legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under Section 10(a), (b), (c) or (d) for any legal or other expenses subsequently incurred by such indemnified party (other than reasonable costs of investigation) in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel, approved by the Representatives, representing the indemnified parties who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the

action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; and except that, if clause (i) or (iii) is applicable, such liability shall be only in respect of the counsel referred to in such clause (i) or (iii). No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(e) If the indemnification provided for in this Section 10 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a), (b), (c) or (d) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party 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 the relative benefits received by the Company, the Adviser and the Administrator on the one hand and the Initial Purchasers on the other from the offering of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (d) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company, the Adviser and the Administrator on the one hand and the Initial Purchasers on the other in connection with the statements or omissions which 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, the Adviser and the Administrator on the one hand and the Initial Purchasers on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total discounts and commissions received by the Initial Purchasers. The relative fault 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, the Adviser or the Administrator on the one hand or the Initial Purchasers on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Adviser and the Administrator and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this subsection (e) were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (e). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (e), no Initial Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to investors were offered to the public exceeds the amount of any damages which such Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Initial Purchasers' obligations in this subsection (f) to contribute are several in proportion to their respective underwriting obligations and not joint.

(f) The obligations of the Company, the Adviser and the Administrator under this Section 10 shall be in addition to any liability which the Company, the Adviser and the Administrator may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Initial Purchaser within the meaning of the Act and each broker-dealer affiliate of any Initial Purchaser; and the obligations of the Initial Purchasers under this Section 10 shall be in addition to any liability which the respective Initial Purchasers may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and the Adviser and to each person, if any, who controls the Company, the Adviser and the Administrator within the meaning of the Act. No party shall be entitled to indemnification under this Section 10 if such indemnification of such party would violate Section 17(i) of the Investment Company Act.

11. (a) If any Initial Purchaser shall default in its obligation to purchase the Securities which it has agreed to purchase hereunder at a Time of Delivery, you may in your discretion arrange for you or another party or other parties to purchase such Securities on the terms contained herein. If within thirty-six hours after such default by any Initial Purchaser you do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to you to purchase such Securities on such terms. In the event that, within the respective prescribed periods, you notify the Company that you have so arranged for the purchase of such Securities, or the Company notifies you that it has so arranged for the purchase of such Securities, you or the Company shall have the right to postpone such Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Time of Sale Information or the Offering Memorandum, or in any other documents or arrangements, and the Company agrees to prepare promptly any amendments or supplements to the Time of Sale Information or the Offering Memorandum which in your opinion may thereby be made necessary. The term "Initial Purchaser" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Securities.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Initial Purchaser or Initial Purchasers by you and the Company as provided in subsection (a) above, the aggregate principal amount of such Securities which remains unpurchased does not exceed one-eleventh of the aggregate principal amount of all the Securities to be purchased at such Time of Delivery, then the Company shall have the right to require each non-defaulting Initial Purchaser to purchase the principal amount of Securities which such Initial Purchaser agreed to purchase hereunder at such Time of Delivery and, in addition, to require each non-defaulting Initial Purchaser to purchase its pro rata share (based on the principal amount of Securities which such Initial Purchaser agreed to purchase hereunder) of the Securities of such defaulting Initial Purchaser or Initial Purchasers for which such arrangements have not been made; but nothing herein shall relieve a defaulting Initial Purchaser from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Initial Purchaser or Initial Purchasers by you and the Company as provided in subsection (a) above, the aggregate principal amount of such Securities which remains unpurchased exceeds one-eleventh of the aggregate principal amount of all the Securities to be purchased at such Time of Delivery, or if the Company shall not exercise the right described in subsection (b) above to require non-defaulting Initial Purchasers to purchase Securities of a defaulting Initial Purchaser or Initial Purchasers, then this Agreement (or, with respect to the Second Time of Delivery, the obligations of the Initial Purchasers to purchase and of the Company to sell the Option Securities) shall thereupon terminate, without liability on the part of any non-defaulting Initial Purchaser or the Company, except for the expenses to be borne by the Company as provided in Section 8 hereof and the indemnity and contribution agreements in Section 10 hereof; but nothing herein shall relieve a defaulting Initial Purchaser from liability for its default.

12. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Adviser, the Administrator and the several Initial Purchasers, as 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 any investigation (or any statement as to the results thereof) made by or on behalf of any Initial Purchaser or any controlling person of any Initial Purchaser, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Securities.

13. If this Agreement shall be terminated pursuant to Section 11 hereof, the Company, the Adviser and the Administrator shall not then be under any liability to any Initial Purchaser except as provided in Sections 8 and 10 hereof; but, if for any other reason, any Securities are not delivered by or on behalf of the Company as provided herein, the Company will reimburse the Initial Purchasers through you for all out-of-pocket expenses approved in writing by you, including fees and disbursements of counsel, reasonably incurred by the Initial Purchasers in making preparations for the purchase, sale and delivery of the Securities not so delivered, but the Company shall then be under no further liability to any Initial Purchaser except as provided in Sections 8 and 10 hereof.

14. In all dealings hereunder, the Representatives shall act on behalf of each of the Initial Purchasers, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Initial Purchasers made or given by the Representatives jointly.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Initial Purchasers shall be delivered or sent by mail or overnight mail to you as the Representatives in care of J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179 and Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York 10036; and if to the Company shall be delivered or sent by mail or overnight mail to 10 Bank Street, Suite 1210, White Plains NY, 10606, Attention: Secretary; provided, however, that notices under subsection 6(A)(k) shall be in writing, and if to the Initial Purchasers shall be delivered or sent by mail or overnight mail to you as the Representatives at J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179 or Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Department with a copy to Legal Department. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Initial Purchasers are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Initial Purchasers to properly identify their respective clients.

15. This Agreement shall be binding upon, and inure solely to the benefit of, the Initial Purchasers, the Company, the Adviser and the Administrator and, to the extent provided in Sections 10 and 12 hereof, the officers and directors of the Company and each person who controls the Company or any Initial Purchaser, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Securities from any Initial Purchaser shall be deemed a successor or assign by reason merely of such purchase.

16. Time shall be of the essence of this Agreement.

17. Each of the Company, the Adviser and the Administrator hereby acknowledges and agrees that (i) the purchase and sale of the Securities pursuant to this Agreement is an arm’s-length

commercial transaction between the Company, the Adviser and the Administrator on the one hand, and the several Initial Purchasers, on the other, (ii) in connection therewith and with the process leading to such transaction each Initial Purchaser is acting solely as a principal and not the agent or fiduciary of the Company, (iii) no Initial Purchaser has assumed an advisory or fiduciary responsibility in favor of the Company, the Adviser or the Administrator with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Initial Purchaser has advised or is currently advising the Company on other matters) or any other obligation to the Company, the Adviser or the Administrator except the obligations expressly set forth in this Agreement and (iv) each of the Company, the Adviser or the Administrator has consulted its own legal and financial advisors to the extent it deemed appropriate. Each of the Company, the Adviser and the Administrator agrees that it will not claim that the Initial Purchasers, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, the Adviser and the Administrator in connection with such transaction or the process leading thereto.

18. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Adviser and the Administrator on the one hand and the Initial Purchasers on the other, or any of them, with respect to the subject matter hereof.

19. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCES TO ITS PRINCIPLES OF CONFLICTS OF LAW.**

20. **THE COMPANY, THE ADVISER, THE ADMINISTRATOR AND EACH OF THE INITIAL PURCHASERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

21. **THIS AGREEMENT MAY BE EXECUTED BY ANYONE OR MORE OF THE PARTIES HERETO IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED TO BE AN ORIGINAL, BUT ALL SUCH COUNTERPARTS SHALL TOGETHER CONSTITUTE ONE AND THE SAME INSTRUMENT.**

22. Notwithstanding anything herein to the contrary, the Company is authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company relating to that treatment and structure, without the Initial Purchasers imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

23. Except as set forth below, no claim, counterclaim or dispute of any kind or nature whatsoever arising out of or in any way relating to this Agreement (a "Claim") may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company, the Adviser and the Administrator each consents to the jurisdiction of such courts and personal service with respect thereto. The Company, the Adviser and the Administrator each hereby consents to personal jurisdiction, service and venue in any court in which any Claim arising out of or in any way relating to this Agreement is brought by any third party against any Initial Purchaser or any indemnified party. Each Initial

Purchaser and the Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates), the Adviser and the Administrator (each on its behalf and, to the extent permitted by applicable law, its members and affiliates) each waive all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement. The Company, the Adviser and the Administrator each agrees that a final judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon each of the Company, the Adviser and the Administrator and may be enforced in any other courts to the jurisdiction of which any of the Company, the Adviser and the Administrator each is or may be subject, by suit upon such judgment.

If the foregoing is in accordance with your understanding, please sign and return to us five counterparts hereof, and upon the acceptance hereof by the Representatives, on behalf of each of the Initial Purchasers, this Agreement and such acceptance hereof shall constitute a binding agreement among each of the Initial Purchasers, the Company, the Adviser and the Administrator. It is understood that the Representatives acceptance of this Agreement on behalf of each of the Initial Purchasers is pursuant to the authority set forth in a form of Agreement among Initial Purchasers, the form of which shall be submitted to the Company for examination upon request, but without warranty on your part as to the authority of the signers thereof.

[Signature page follows]

Very truly yours,

Fifth Street Finance Corp.

By: _____
Name: Bernard D. Berman
Title: President, Secretary, and Chief Compliance Officer

Fifth Street Management LLC

By: _____
Name: Bernard D. Berman
Title: Member

FSC, Inc.

By: _____
Name: Leonard M. Tannenbaum
Title: Chief Executive Officer

Accepted as of the date hereof:

J.P. Morgan Securities LLC

By: _____
Name:
Title:

Morgan Stanley & Co. Incorporated

By: _____
Name:
Title:

On behalf of themselves and each of the other Several Initial Purchasers listed in Schedule I hereto