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

March 27, 2007
(Date of Report (Date of Earliest Event Reported))

EXTRA SPACE STORAGE INC.

(Exact Name of Registrant as Specified in Its Charter)

Maryland	**001-32269**	**20-1076777**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification Number)

2795 East Cottonwood Parkway, Suite 400
Salt Lake City, Utah 84121
(Address of Principal Executive Offices)

(801) 562-5556
(Registrant's Telephone Number, Including Area Code)

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

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

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

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

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

Item 1.01 Entry into a Material Definitive Agreement.

On March 27, 2007, Extra Space Storage LP (the "Operating Partnership"), the operating partnership subsidiary of Extra Space Storage Inc. (the "Company"), issued $250.0 million aggregate principal amount of its 3.625% Exchangeable Senior Notes due 2027 (the "Notes"). The terms of the Notes are governed by an indenture, dated March 27, 2007 (the "Indenture"), among the Operating Partnership, as issuer, the Company, as guarantor, and Wells Fargo Bank, N.A., as trustee. A copy of the Indenture, including the form of the Notes and Guarantee of the Company, the terms of which are incorporated herein by reference, is attached as Exhibit 4.1 to this report. See Item 2.03 below for additional information.

The Notes and the shares of common stock of the Company ("Common Stock") issuable in certain circumstances upon exchange of the Notes have not been registered under the Securities Act of 1933, as amended (the "Securities Act"). The Operating Partnership offered and sold the Notes to the initial purchasers of the Notes (the "Initial Purchasers") in reliance on the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers then sold the Notes to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act.

In connection with the issuance and sale of the Notes, the Operating Partnership and the Company also entered into a registration rights agreement with Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, in their capacity as representatives of the Initial Purchasers, dated March 27, 2007 (the "Registration Rights Agreement"). A copy of the Registration Rights Agreement, the terms of which are incorporated herein by reference, is attached as Exhibit 10.1 to this report.

Pursuant to the Registration Rights Agreement, the Company has agreed that it will:

- file a shelf registration statement (which shall be an automatic shelf registration statement if the Company is then a Well-Known Seasoned Issuer ("WKSI")) with the Securities and Exchange Commission by July 25, 2007 to cover resales of the underlying shares of Common Stock of the Company that may be issuable upon exchange of the Notes;

- if the shelf registration statement is not an automatic shelf registration statement, use its reasonable efforts to have that registration statement declared effective by October 23, 2007; and

- use its reasonable efforts to keep the registration statement effective until the earliest of (1) the 20th trading day immediately following the maturity date of April 1, 2027, and (2) the date on which there are no longer any Notes or "restricted" shares (within the meaning of Rule 144 under the Securities Act) of Common Stock outstanding that have been issued upon exchange of any Notes.

If the Company does not meet these deadlines then, subject to certain exceptions, liquidated damages will accrue on the Notes to be paid semi-annually in arrears at a rate per year equal to 0.25% of the principal amount of Notes to and including the 90th day following such registration default and 0.50% of the principal amount thereafter, for the period during which the registration default is not cured.

On March 21, 2007, the Company issued a press release regarding the pricing of the private placement of $250.0 million in aggregate principal amount of Notes. A copy of the press release is attached as Exhibit 99.1 to this report.

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

On March 27, 2007, the Operating Partnership issued $250.0 million aggregate principal amount of Notes. The Operating Partnership paid a commission of 2% of the initial offering price of the Notes to the Initial Purchasers, and the Initial Purchasers received commissions in an aggregate amount of approximately $5.0 million in connection with the issuance and sale of the Notes. The Notes are general unsecured senior obligations of the Operating Partnership and rank equally in right of payment with all other senior unsecured indebtedness of the Operating Partnership. Interest is payable on April 1 and October 1 of each year beginning October 1, 2007 until the maturity

date of April 1, 2027. The Operating Partnership's obligations under the Notes are fully and unconditionally guaranteed by the Company.

The Notes bear interest at 3.625% per annum and contain an exchange settlement feature, which provides that the Notes may, under certain circumstances, be exchangeable for cash (up to the principal amount of the Notes) and, with respect to any excess exchange value, into cash, shares of Common Stock or a combination of cash and shares of Common Stock at an initial exchange rate of 42.5822 shares per $1,000 principal amount of Notes. At the initial exchange rate, the Notes are exchangeable for Common Stock at an exchange price of approximately $23.48 per share, representing an approximately 20.0% premium over the last reported sale price of the Common Stock on March 21, 2007, which was $19.57 per share. The Notes will be exchangeable only under the following circumstances:

- during any calendar quarter beginning after June 30, 2007 (and only during such calendar quarter) if, and only if, the closing sale price of the Common Stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is more than 130% of the exchange price per share of the Common Stock in effect on the applicable trading day;

- during the five consecutive trading-day period following any five consecutive trading-day period in which the trading price of the Notes was less than 98% of the product of the closing sale price of the Common Stock multiplied by the applicable exchange rate;

- if those Notes have been called for redemption, at any time prior to the close of business on the second business day prior to the redemption date;

- if the Company elects to distribute (1) rights, warrants or options to all holders of its Common Stock entitling such holders to subscribe or purchase the Common Stock at a price less than the closing sale price of the Common Stock on the business day immediately preceding the date the Company declares such a distribution or (2) assets, debt securities or rights to purchase securities of the Company or the Operating Partnership that would have a per share value exceeding 15% of the average closing prices of the Common Stock for the five trading days immediately preceding the date the Company declares such a distribution;

- if the Common Stock ceases to be listed on a U.S. national or regional exchange and is not quoted on the over-the-counter market as reported by Pink Sheets LLC or any similar organization, in each case for 30 consecutive trading days; or

- at any time from, and including, March 1, 2012 to, and including, April 1, 2012 and at any time on or after March 1, 2027.

The Operating Partnership may redeem the Notes at any time to preserve the Company's status as a real estate investment trust. In addition, on or after April 5, 2012, the Operating Partnership may redeem the Notes for cash, in whole or in part, at 100% of the principal amount plus accrued and unpaid interest, upon at least 30 days' but not more than 60 days' prior written notice to holders of the Notes.

The holders of the Notes have the right to require the Operating Partnership to repurchase the Notes for cash, in whole or in part, on each of April 1, 2012, April 1, 2017 and April 1, 2022, and upon the occurrence of a designated event, in each case for a repurchase price equal to 100% of the principal amount of the Notes plus accrued and unpaid interest.

A "designated event" will be deemed to have occurred at the time that any of the following occurs:

- consummation of any transaction or event (whether by means of a share exchange or tender offer applicable to the Common Stock, a liquidation, consolidation, recapitalization, reclassification, combination or merger of the Company or a sale, lease or other transfer of all or substantially all of the consolidated assets of the Company) or a series of related transactions or events pursuant to which all of the outstanding shares of Common Stock is exchanged for, converted into or constitutes solely the right to receive cash, securities or

other property (provided that a "designated event" will not be deemed to have occurred if at least 90% of the consideration in the transaction or event consists of shares of common stock traded on a national or regional securities exchange or quoted on any established automated over-the-counter trading market in the United States);

- any "person" or "group" (as such terms are used for purposes of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, whether or not applicable), other than the Company, the Operating Partnership or any majority-owned subsidiary of the Company or the Operating Partnership or any employee benefit plan of the Company, the Operating Partnership or such subsidiary, is or becomes the "beneficial owner," directly or indirectly, of more than 50% of the total voting power in the aggregate of all classes of capital stock of the Company then outstanding entitled to vote generally in elections of directors;

- during any period of twelve consecutive months after March 27, 2007 (for so long as the Company is the sole owner of the general partner of the Operating Partnership immediately prior to any such transaction), persons who at the beginning of such twelve-month period constituted the board of directors of the Company, together with any new persons whose election was approved by a vote of a majority of the persons then still comprising the board of directors who were either members of the board of directors at the beginning of such period or whose election, designation or nomination for election was previously so approved, cease for any reason to constitute a majority of the board of directors of the Company; or

- the Company (or any successor thereto permitted pursuant to the terms of the Indenture) ceases to be the sole owner of the general partner of the Operating Partnership or ceases to control the Operating Partnership; provided, however, that the pro rata distribution by the Company to its stockholders of shares of its capital stock or shares of any of the Company's other subsidiaries will not, in and of itself, constitute a designated event for purposes of this definition.

If a transaction described in the first bullet under the definition of a "designated event" above occurs on or prior to April 5, 2012 and a holder elects to exchange its Notes in connection with such transaction, we will increase the applicable exchange rate for the Notes surrendered for exchange by a specified number of additional shares of Common Stock as a "make whole premium."

Certain events are considered "Events of Default," which may result in the accelerated maturity of the Notes, including:

- a default for 30 days in the payment of any installment of interest under the Notes;

- a default in the payment of the principal amount or any repurchase price or redemption price due with respect to the Notes, when the same becomes due and payable;

- the Operating Partnership's failure to deliver cash, Common Stock or a combination of cash and Common Stock within 15 days after the due date upon an exchange of the Notes, together with any cash due in lieu of fractional shares of Common Stock;

- the Operating Partnership's failure to comply with any of its other agreements in the Notes or the Indenture, other than an agreement solely for the benefit of a series of debt securities other than the holders of Notes, upon receipt of notice of such default by the trustee or by holders of not less that 25% in aggregate principal amount of the Notes then outstanding and the failure to cure (or obtain a waiver of) such default within 60 days after receiving notice of such failure;

- failure to pay any indebtedness for money borrowed by the Operating Partnership, the Company, any subsidiary in which the Operating Partnership has invested at least $30 million in capital (a "Significant Subsidiary"), in an outstanding principal amount in excess of $30 million at final maturity or upon acceleration after the expiration of any applicable grace period, which indebtedness is not discharged, or such default in payment or acceleration is not cured or rescinded, within 30 days after written notice to the

Operating Partnership from the trustee (or to the Operating Partnership and the trustee from holders of at least 25% in principal amount of the outstanding Notes);

- the Operating Partnership's failure to provide timely notice of a designated event; or

- certain events of bankruptcy, insolvency or reorganization or court appointment of a receiver, liquidator or trustee of the Operating Partnership, the Company or any Significant Subsidiary or any substantial part of their respective property.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) The following exhibits are filed herewith:

Exhibit No.	Description
4.1	Indenture, dated March 27, 2007, among Extra Space Storage LP, Extra Space Storage Inc. and Wells Fargo Bank, N.A., as trustee, including the form of 3.625% Exchangeable Senior Notes due 2027 and the form of guarantee.
10.1	Registration Rights Agreement, dated March 27, 2007, among Extra Space Storage LP, Extra Space Storage Inc., Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
99.1	Press release, dated March 21, 2007, regarding the pricing of the private placement of exchangeable senior notes due 2027.

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.

EXTRA SPACE STORAGE INC.

Date: March 28, 2007

By /s/ Kent W. Christensen
Name: Kent W. Christensen
Title: Executive Vice President and Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
4.1	Indenture, dated March 27, 2007, among Extra Space Storage LP, Extra Space Storage Inc. and Wells Fargo Bank, N.A., as trustee, including the form of 3.625% Exchangeable Senior Notes due 2027 and the form of guarantee.
10.1	Registration Rights Agreement, dated March 27, 2007, among Extra Space Storage LP, Extra Space Storage Inc., Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
99.1	Press release, dated March 21, 2007, regarding the pricing of the private placement of exchangeable senior notes due 2027.

EXTRA SPACE STORAGE LP, as Issuer

EXTRA SPACE STORAGE INC., as Guarantor

WELLS FARGO BANK, N.A., as Trustee

INDENTURE

Dated as of
March 27, 2007

3.625% Exchangeable Senior Notes due 2027

TABLE OF CONTENTS

ARTICLE 11
SATISFACTION AND DISCHARGE OF INDENTURE

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

ARTICLE 13
EXCHANGE OF NOTES

ARTICLE 14
MEETING OF HOLDERS OF NOTES

ARTICLE 15
GUARANTEE

ARTICLE 16
MISCELLANEOUS PROVISIONS

CROSS-REFERENCE TABLE*

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

N.A. means not applicable.
*This Cross-Reference Table is not part of the Indenture.

INDENTURE

INDENTURE dated as of March 27, 2007 among Extra Space Storage LP, a Delaware limited partnership (hereinafter called the **"Issuer"**), Extra Space Storage Inc., a Maryland corporation (hereinafter called the **"Guarantor"**), each having its principal office at 2795 East Cottonwood Parkway, Suite 400, Salt Lake City, Utah 84121, and Wells Fargo Bank, N.A., as trustee hereunder (hereinafter called the **"Trustee"**).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the holders of the Issuers 3.625% Exchangeable Senior Notes due 2027 (hereinafter called the Notes) guaranteed by the Guarantor.

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act (as defined below) or which are by reference therein defined in the Securities Act (as defined below) (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the respective meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this Indenture. The words **"herein**,**" "hereof**,**" "hereunder"** and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

"Additional Designated Event Shares" has the meaning specified in Section 13.11(a).

"Additional Interest" has, with respect to Registration Default Damages, the meaning specified for such Registration Default Damages in Section 7 of the Registration Rights Agreement, and with respect to a Reporting Event of Default, the meaning specified in Section 6.01.

"Additional Interest Notice" has the meaning specified in Section 4.09.

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

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

---

voting securities, by contract or otherwise, and the terms **"controlling"** and **"controlled"** have meanings correlative to the foregoing.

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

The **"Applicable Exchange Period"** means the 10 consecutive Trading Day period commencing on the third Trading Day following the date the Notes are tendered for exchange.

The **"Applicable Exchange Rate"** as of any Trading Day, means the Exchange Rate in effect on such date, after giving effect to any adjustment provided for in Section 13.05 or Section 13.11.

The **"Average Price"** is equal to the average of the Volume Weighted Average Prices per share of Common Stock for each Trading Day in the Applicable Exchange Period.

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

"Benefited Party" has the meaning specified in Section 15.01.

"Board of Directors" means the board of directors of the Guarantor or a committee of such board duly authorized to act for it hereunder.

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

"Charter" means the Articles of Amendment and Restatement of the Guarantor dated as of August 16, 2004, filed with the State Department of Assessments and Taxation of Maryland, as amended, supplemented or restated from time to time.

"Closing Sale Price" of the Common Stock or other capital stock or similar equity interests or other publicly traded securities on any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal United States securities exchange on which the Common Stock or such other capital stock or similar equity interests or other securities are traded or, if the Common Stock or such other capital stock or similar equity interests or other securities are not listed on a United States national or regional securities exchange, any United States system of automated dissemination of quotations of securities prices or an established over-the-counter trading market in the United States. The Closing Sale Price will be determined without regard to after-hours trading or extended market making. In the absence of the foregoing, the Issuer will determine the Closing Sale Price on such basis as the Issuer considers appropriate.

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

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

"Common Stock" means any stock of any class of the Guarantor which has 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 Guarantor and which is not subject to redemption by the Guarantor. Shares of Common Stock issuable on exchange of Notes shall include only shares of the class designated as common stock of the Guarantor at the date of this Indenture (namely, the common stock, par value $0.01) or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Guarantor and which are not subject to redemption by the Guarantor; *provided* that if at any time there shall be more than one such resulting class, the

shares of each such class then so issuable on exchange 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.

"Common Stock Legend" has the meaning specified in Section 2.05(c).

"Corporate Trust Office" or other similar term, means the designated office of the Trustee at which, at any particular time, its corporate trust business as it relates to this Indenture shall be administered, which office is, at the date as of which this Indenture is dated, located at Wells Fargo Bank, N.A., Corporate Trust Services, MAC N9303-120, 608-2nd Avenue South, Minneapolis, MN 55479, or at any other time at such other address as the Trustee may designate from time to time by notice to the Issuer.

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

"Custodian" means Wells Fargo Bank, N.A., as custodian with respect to the Notes in global form, or any successor entity thereto.

The **"Daily Share Amount"** for each $1,000 principal amount of Notes and each Trading Day in the Applicable Exchange Period shall be equal to the greater of:

(a) zero; and

(b) a number of shares of Common Stock determined by the following formula:

$$\frac{(\text{VWAP on such Trading Day} \times \text{ER}) - (\$1{,}000 + \text{Net Cash Amount, if any})}{10 \times \text{VWAP on such Trading Day}}$$

where

"VWAP" on any Trading Day means the volume weighted average price per share of Common Stock on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal exchange or over-the-counter market on which the Common Stock is then listed or traded, from 9:30 a.m. to 4:00 p.m. (New York City time) on that Trading Day as displayed on Bloomberg Page EXR <Equity> VAP (or any successor thereto), or if such volume weighted average price is not available, then the **"VWAP"** will be the market value per share of Common Stock on such Trading Day as determined by a nationally recognized independent investment banking firm retained by the Issuer for this purpose; and

"ER" means the Applicable Exchange Rate.

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

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

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

"Designated Event" means the occurrence at any time of any of the following events: (1) consummation of any transaction or event (whether by means of a share exchange or tender offer applicable to the Common Stock, a liquidation, consolidation, recapitalization, reclassification, combination or merger of the Guarantor or a sale, lease or other transfer of all or substantially all of the consolidated assets of the Guarantor) or a series of related transactions or events pursuant to which all of the outstanding Common Stock is exchanged for, converted into or constitutes solely of the right to receive cash, securities or other property; (2) any person or group (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act, whether or not applicable), other than the Guarantor, the Issuer, any majority-owned Subsidiary of the Guarantor or the Issuer, or any employee benefit plan of the Guarantor, the Issuer or any such Subsidiary, is or becomes the beneficial owner, directly or indirectly, of more than fifty percent (5 0%) of the total voting power in the aggregate of all classes of capital stock of the Guarantor then outstanding and entitled to vote generally in elections of directors (for the avoidance of doubt the ownership of Units will not be deemed to constitute beneficial ownership of capital stock of the Guarantor); (3) during any period of twelve (12) consecutive months after the date of original issuance of the Notes (for so long as the Guarantor is the sole owner of the general partner of the Issuer immediately prior to such

transaction or series of related transactions), persons who at the beginning of such twelve (12)-month period constituted the Board of Directors, together with any new persons whose election was approved by a vote of a majority of the persons then still comprising the Board of Directors who were either members of the Board of Directors at the beginning of such period or whose election, designation or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board of Directors; or (4) the Guarantor (or any successor thereto permitted pursuant to the terms of this Indenture) ceases to be the sole owner of the General Partner or ceases to control the Issuer; *provided, however,* that the pro rata distribution by the Guarantor to its stockholders of shares of the Guarantors capital stock or shares of any of the Guarantors other Subsidiaries will not, in and of itself, constitute a Designated Event for purposes of this definition.

Notwithstanding the foregoing, if any of the transactions or events specified in (1) above shall have occurred, a Designated Event shall not be deemed to have occurred if at least 90% of the consideration (excluding cash payments for fractional shares and cash payments made pursuant to dissenters

appraisal rights) in such transaction or event consists of shares of common stock (or depositary receipts or other certificates representing common equity interests) traded on a national or regional securities exchange or quoted on any established automated over-the-counter trading market in the United States (or will be so traded or quoted immediately following such transaction or event) and as a result of the transaction or event the Notes become exchangeable for such shares of common stock (or depositary receipts or other certificates representing common equity interests).

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

"Designated Event Repurchase Date" has the meaning specified in Section 3.05(a).

"Determination Date" has the meaning specified in Section 13.10(d).

"DTC" means The Depository Trust Company.

"Effective Date" has the meaning specified in Section 13.11(b).

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

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

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

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

"Exchange Date" has the meaning specified in Section 13.02.

"Exchange Notice" has the meaning specified in Section 13.02.

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

"Exchange Rate" has the meaning specified in Section 13.04.

The **"Exchange Value"** for each $1,000 principal amount of Notes is equal to (a) the Applicable Exchange Rate, *multiplied by* (b) the Average Price.

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

"Fair Market Value" shall mean the amount which a willing buyer would pay a willing seller in an arms-length transaction.

"General Partner" means ESS Holdings Business Trust I, and, subject to the provisions of Article 10, shall include its successors and assigns.

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

"Guarantee" means the full and unconditional guarantee provided by the Guarantor in respect of the Notes as made applicable to the Notes in accordance with the provisions of Section 15.01 hereof.

"Guarantee Obligations" has the meaning specified in Section 15.01.

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

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

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

"Initial Purchasers" means each of Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (each, an **"Initial Purchaser").**

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

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

"Issuer Repurchase Notice" has the meaning specified in Section 3.07(b).

"Issuer Repurchase Notice Date" has the meaning specified in Section 3.07(a).

"Make Whole Cap" has the meaning specified in Section 13.1 1(f)(ii).

"Make Whole Floor" has the meaning specified in Section 13.11 (f)(iii).

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

"Maturity Date" means April 1, 2027.

"Maximum Exchange Rate" has the meaning specified in Section 13.05(f).

"**Net Amount"** has the meaning specified in Section 13.10(b)(ii).

"**Net Cash Amount"** has the meaning specified in Section 13.10(b)(ii).

"**Net Shares"** has the meaning specified in Section 13.1 0(b)(ii).

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

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

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

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

"Offering Memorandum" means the Issuers and the Guarantors offering memorandum dated March 21, 2007 relating to the Notes unconditionally guaranteed by the Guarantor.

"Officer" means any person holding any of the following positions with the Guarantor or the General Partner: the Chairman of the Board, the Chief Executive Officer, the President, any Vice President (whether or not designated by a number or numbers or word or words added before or after the title **"Vice President"),** the Chief Financial Officer, the Treasurer and the Secretary.

"Officers Certificate," when used with respect to the Issuer, means a certificate signed by any two Officers or by one such Officer and any Assistant Treasurer or Assistant Secretary of the Guarantor or the General Partner.

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

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

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

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

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

(d) Notes exchanged pursuant to Article 13, and Notes paid or redeemed or repurchased pursuant to Article 3.

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

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

"PORTAL Market" means The PORTAL Market operated by the Nasdaq Stock Market or any successor thereto.

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

"premium" means any premium payable under the terms of the Notes.

"**Principal Return"** has the meaning specified in Section 13. 10(b)(i).

"Purchase Agreement" means the Purchase Agreement, dated as of March 21, 2007, among the Is suer, the Guarantor and the Initial Purchasers.

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

"Redemption Date" means, with respect to any Note or portion thereof to be redeemed in accordance with the provisions of Section 3.01 hereof, the date fixed for such redemption in accordance with the provisions of Section 3.01 hereof.

"Redemption Price" has the meaning provided in Section 3.01 hereof.

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

"Reference Property" has the meaning specified in Section 13.01 (a)(iv).

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of March 27, 2007, among the Issuer, the Guarantor and the Initial Purchasers, as amended from time to time in accordance with its terms.

"Reporting Event of Default" has the meaning specified in Section 6.01.

"Repurchase Date" has the meaning specified in Section 3.06(a).

"Repurchase Notice" has the meaning specified in Section 3.06(c).

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

"Restricted Notes Legend" has the meaning specified in Section 2.05(c).

"Restricted Securities" has the meaning specified in Section 2.05(c).

"Rule 144A" means Rule 144A as promulgated under the Securities Act as it may be amended from time to time hereafter.

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

"Significant Subsidiary" has the meaning specified in Section 6.01(e).

"Stated Maturity," with respect to any Note or any installment of principal thereof or interest thereon, means the date established by or pursuant to this Indenture or such Note as the fixed date on which the principal of such Note or such installment of principal or interest is due and payable.

"Stock Price" has the meaning specified in Section 13.11(b).

"Subsidiary" means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of

capital stock or other equity interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or managing general partner of which is such Person or a subsidiary of such Person or (b) the only general partners of which are such Person or of one or more subsidiaries of such Person (or any combination thereof).

"Trading Day" means a day on which (i) there is no Market Disruption Event and (ii) trading in securities generally occurs on the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, on the principal other market on which the Common Stock is then traded.

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

"transfer" has the meaning specified in Section 2.05(c).

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

"Trustee" means Wells Fargo Bank, N.A., and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

"Units" means the limited partnership units of the Is suer.

ARTICLE 2
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Designation Amount and Issue of Notes.* The Notes shall be designated as **"3.625% Exchangeable Senior Notes due 2027."** Upon the execution of this Indenture, and from time to time thereafter, Notes may be executed by the Issuer and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver Notes upon a written order of the Issuer, such order signed by two Officers or by an Officer and either an Assistant Treasurer of the Guarantor or any Assistant Secretary of the Guarantor, without any further action by the Issuer hereunder.

The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is unlimited; *provided that* upon initial issuance (including any issuance upon exercise of the Initial Purchasers option set forth in Section 1 of the Purchase Agreement), the aggregate principal amount of Notes outstanding shall not

exceed $287,500,000, except as provided in Section 2.06. The Issuer may, without the consent of the Holders of Notes, issue additional Notes (the **"Additional Notes"**) from time to time in the future with the same terms and the same CUSIP number as the Notes originally issued under this Indenture (the **"Initial Notes"**) in an unlimited principal amount, *provided* that such Additional Notes must be part of the same issue as and fungible with the Initial Notes for United States federal income tax purposes. The Initial Notes and any such Additional Notes will constitute a single series of debt securities, and in circumstances in which this Indenture provides for the Holders of Notes to vote or take any action, the Holders of Initial Notes and the Holders of any such Additional Notes will vote or take that action as a single class.

Section 2.02. *Form of Notes.* The Notes, the Guarantee and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A hereto. The terms and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Issuer and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends, endorsements or changes as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required by the Custodian, the Depositary or by the National Association of Securities Dealers, Inc. in order for the Notes to be tradable on The PORTAL Market or as may be required for the Notes to be tradable on any other market developed for trading of securities pursuant to Rule 144A or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Notes are subject.

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

Any Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to

reflect redemptions, repurchases, exchanges, or transfers permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal of, interest on and premium, if any, on any Global Note shall be made to the Holder of such Note.

Section 2.03. *Date and Denomination of Notes; Payments of Interest.* The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the form of Note attached as Exhibit A hereto. Interest on the Notes shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at 5:00 p.m., New York City time, on any Record Date with respect to any interest payment date shall be entitled to receive the interest payable on such interest payment date. Notwithstanding the foregoing, any Note or portion thereof surrendered for exchange during the period from 5:00 p.m., New York City time, on the Record Date for any interest payment date to 5:00 p.m., New York City time, on the applicable interest payment date must be accompanied by payment, in immediately available funds or other funds acceptable to the Issuer, of an amount equal to the interest otherwise payable on such interest payment date on the principal amount being exchanged; *provided, however,* that no such payment need be made (1) if a Holder exchanges its Notes in connection with a redemption and the Issuer has specified a Redemption Date that is after a Record Date and on or prior to the Business Day immediately succeeding such interest payment date, (2) if a Holder

exchanges its Notes in connection with a Designated Event and the Issuer has specified a Designated Event Repurchase Date that is after a Record Date and on or prior to such interest payment date or (3) to the extent of any overdue interest, if any overdue interest exists at the time of exchange with respect to such Note. Interest shall be payable at the office of the Issuer maintained by the Issuer for such purposes, which shall initially be an office or agency of the Trustee. The Issuer shall pay interest (i) on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register; *provided, however*, that a Holder of any Notes in certificated form in the aggregate principal amount of more than $2.0 million may specify by written notice to the Issuer that it pay interest by wire transfer of immediately available funds to the account specified by the Noteholder in such notice, or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee. If a payment date is not a Business Day, payment shall be made on the next succeeding Business Day, and no additional interest shall accrue thereon. 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.

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any April 1 or October 1 (herein called **"Defaulted Interest"**) shall

forthwith cease to be payable to the Noteholder registered as such on the relevant Record Date, and such Defaulted Interest shall be paid by the Issuer, at its election in each case, as provided in clause (a) or (b) below:

(a) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at 5:00 p.m., New York City time, on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty-five (25) calendar days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon, the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than fifteen (15) calendar days and not less than ten (10) calendar days prior to the date of the proposed payment, and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment (unless, the Trustee shall consent to an earlier date). The Trustee shall promptly notify the Is suer of such special record date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be delivered to each Holder at its address as it appears in the Note Register, not less than ten (10) calendar days prior to such special record date (unless, the Trustee shall consent to an earlier date). Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so delivered, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at 5:00 p.m., New York City time, on such special record date and shall no longer be payable pursuant to the following clause (b) of this Section 2.03.

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

Section 2.04. *Execution of Notes.* The Notes shall be signed in the name and on behalf of the Issuer by the manual or facsimile signature of an Officer. Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually by the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 16.11), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Issuer shall be conclusive evidence that the Note so authenticated has been duly

authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

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

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

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

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Issuer pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Issuer

shall execute, and the Trustee shall authenticate and deliver, the Notes which the Noteholder making the exchange is entitled to receive bearing registration numbers not contemporaneously outstanding.

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

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

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

In the event of any redemption in part, the Issuer shall not be required to: (i) issue or register the transfer or exchange of any Note during a period beginning at the opening of business 15 days before any selection of Notes for redemption and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of Notes to be so redeemed, or (ii) register the transfer or exchange of any Note so selected for redemption, in whole or in part, except the unredeemed portion of any Note being redeemed in part.

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

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

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

(iii) Notes issued in exchange for a Global Note or any portion thereof pursuant to clause (ii) above shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Note or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear any legends required hereunder. Any Global Note to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Note Registrar. With regard to any Global Note to be exchanged in part, either such

Global Note shall be so surrendered for exchange or, if the Trustee is acting as Custodian for the Depositary or its nominee with respect to such Global Note, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and make available for delivery the Note issuable on such exchange to or upon the written order of the Depositary or an authorized representative thereof.

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

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

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

(c) Every Note (and all securities issued in exchange therefor or in substitution thereof) that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (the **"Restricted Notes Legend"**), and any Common Stock that bears or is required under this Section 2.05(c) to bear the Common Stock legend set forth in this Section 2.05(c) (the **"Common Stock Legend"**) (collectively, the **"Restricted Securities"**) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including those set forth in the legends below) unless such restrictions on transfer shall

be waived by written consent of the Issuer, and the Holder of each such Restricted Security, by such Note Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c), the term **"transfer"** means any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

Until the Maturity Date for the Notes any certificate evidencing a Restricted Security shall bear a legend in substantially the following form, or unless otherwise agreed by the Issuer in writing, with written notice thereof to the Trustee:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT (A) TO THE ISSUER, EXTRA SPACE STORAGE INC. OR A SUBSIDIARY OF THE ISSUER; OR (B) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE).

Until the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), any certificate evidencing any stock certificate representing shares of Common Stock issued upon exchange of any Note, shall bear a Common Stock Legend unless such Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or pursuant to Rule 144 under the Securities Act or any similar provision then in force, or unless otherwise agreed by the Issuer in writing, with written notice thereof to the Trustee:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT (A) TO THE ISSUER, EXTRA SPACE STORAGE LP OR A SUBSIDIARY OF THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE

SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY, FURNISH TO THE TRANSFER AGENT AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such shares of Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Common Stock Legend set forth therein have been satisfied may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear the Common Stock Legend required by this Section 2.05(c).

(d) By its acceptance of any Note bearing the Restricted Notes Legend, each Holder of such Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Restricted Notes Legend and agrees that it will transfer such Note only as provided in this Indenture and as permitted by applicable law.

(e) Any Restricted Securities purchased or owned by the Issuer or any Affiliate thereof may not be resold by the Issuer or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction which results in such Notes or Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

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

procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Agent Members.

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

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Issuer in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and make available for delivery, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case, the applicant for a substituted Note shall furnish to the Issuer, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Issuer, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

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

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional

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

Section 2.07. *Temporary Notes.* Pending the preparation of Notes in certificated form, the Issuer may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the written request of the Issuer, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form, but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Issuer. Every such temporary Note shall be executed by the Issuer and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay, the Issuer will execute and deliver to the Trustee or such authenticating agent Notes in certificated form and thereupon any or all temporary Notes may be surrendered in exchange therefor, at each office or agency maintained by the Issuer pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Issuer at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

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

Section 2.09. *CUSIP Numbers.* The Issuer in issuing the Notes may use **"CUSIP"** numbers (if then generally in use), and, if so, the Trustee shall use **"CUSIP"** numbers in notices of redemption as a convenience to Noteholders; *provided* that any

such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee of any change in the **"CUSIP"** numbers.

ARTICLE 3
REDEMPTION AND REPURCHASE OF NOTES

Section 3.01. *Optional Redemption of Notes.* (a) The Issuer shall have the right to redeem the Notes for cash, in whole or in part, (i) prior to April 5, 2012, if the Issuer determines it is necessary to redeem the Notes in order to preserve the Guarantor's status as a real estate investment trust and (ii) at any time or from time to time, on or after April 5, 2012, in each case upon the notice set forth in Section 3.02 at a redemption price (**"Redemption Price"**) equal to 100% of the principal amount of the Notes to be redeemed plus unpaid interest, if any, accrued thereon to, but excluding, the Redemption Date; *provided, however* that if the Redemption Date falls after a Record Date and on or prior to the corresponding interest payment date, the Issuer will pay the full amount of accrued and unpaid interest, if any, on such interest payment date to the Holder of record at the close of business on the corresponding Record Date (instead of the Holder surrendering its Notes for redemption) and the Redemption Price shall be equal to 100% of the principal amount of the Notes to be redeemed. In connection with any redemption by the Issuer pursuant to clause (i) in this Section 3.01(a), the Issuer shall provide the Trustee with an Officers' Certificate evidencing that the Board of Directors has, in good faith, made the determination that it is necessary to redeem the Notes in order to preserve the Guarantor's status as a real estate investment trust.

(b) The Issuer shall not redeem the Notes pursuant to Section 3.01(a) on any date if the principal amount of the Notes has been accelerated, and such an acceleration has not been rescinded or cured on or prior to such date (except in the case of an acceleration resulting from a default by the Issuer in the payment of the Redemption Price with respect to the Notes to be redeemed).

Section 3.02. *Notice of Optional Redemption; Selection of Notes.* In case the Issuer shall desire to exercise the right to redeem all or, as the case may be, any part of the Notes pursuant to Section 3.01, it shall fix a date for redemption and it or, at its written request received by the Trustee not fewer than five (5) Business Days prior (or such shorter period of time as may be acceptable to the Trustee) to the date the notice of redemption is to be delivered, the Trustee in the name of and at the expense of the Issuer, shall deliver or cause to be delivered a notice of such redemption not fewer than thirty (30) calendar days nor more than sixty (60) calendar days prior to the Redemption Date to each Holder of Notes so to be redeemed in whole or in part at its last address as the same appears on the Note Register; *provided* that if the Issuer makes such request of the Trustee, it shall, together with such request, also give written notice of the Redemption Date to the Trustee, *provided further* that the text of the notice shall be prepared by the

Issuer. The notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly delivered, whether or not the Holder receives such notice. In any case, failure to deliver such notice or any defect in the notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Concurrently with the delivery of any such notice of redemption, the Issuer shall issue a press release announcing such redemption or post notice of such redemption on its website or otherwise distribute a notice through such public medium as the Issuer deems appropriate, the form and content of which press release or notice shall be determined by the Issuer in its sole discretion. The failure to issue any such press release or notice or any defect therein shall not affect the validity of the redemption notice or any of the proceedings for the redemption of any Note called for redemption.

Each such notice of redemption shall specify: (i) the aggregate principal amount of Notes to be redeemed, (ii) the CUSIP number or numbers of the Notes being redeemed, (iii) the Redemption Date (which shall be a Business Day), (iv) the Redemption Price at which Notes are to be redeemed, (v) the place or places of payment and that payment will be made upon presentation and surrender of such Notes, (vi) that interest accrued and unpaid to, but excluding, the Redemption Date will be paid as specified in said notice, and that on and after said date interest thereon or on the portion thereof to be redeemed will cease to accrue, (vii) that the Holder has a right to exchange the Notes called for redemption, (viii) the Exchange Rate on the date of such notice, (ix) the time and date on which the right to exchange such Notes or portions thereof pursuant to this Indenture will expire, and (x) either (aa) the Issuer will not withhold under Section 1445 of the Code in connection with such exchange, or (bb) the Issuer, after reasonable efforts, believes that the Guarantor is not, or has not been able to determine whether it is, "a domestically controlled qualified investment entity" as defined in Section 897(h) of the Code and, therefore, will withhold under Section 1445 of the Code in connection with such exchange unless another exception to withholding is available at such time. If fewer than all the Notes are to be redeemed, the notice of redemption shall identify the Notes to be redeemed (including CUSIP numbers, if any). In case any Note is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, on and after the Redemption Date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion thereof will be issued.

Whenever any Notes are to be redeemed, the Issuer will give the Trustee written notice of the Redemption Date, together with an Officers' Certificate as to the aggregate principal amount of Notes to be redeemed not fewer than thirty (30) calendar days (or such shorter period of time as may be acceptable to the Trustee) prior to the Redemption Date.

On or prior to the Redemption Date specified in the notice of redemption given as provided in this Section 3.02, the Issuer will deposit with the Paying Agent (or, if the Issuer is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) an amount of money in immediately available funds sufficient to redeem on the Redemption Date all the Notes (or portions thereof) so called for redemption

(other than those theretofore surrendered for exchange) at the appropriate Redemption Price; *provided* that if such payment is made on the Redemption Date, it must be received by the Paying Agent, by 11:00 a.m., New York City time, on such date. If any Note called for redemption is exchanged pursuant hereto

prior to such Redemption Date, any money deposited with the Paying Agent or so segregated and held in trust for the redemption of such Note shall be paid to the Issuer or, if then held by the Issuer, shall be discharged from such trust.

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

Upon any redemption of less than all of the outstanding Notes, the Issuer and the Trustee may (but need not), solely for purposes of determining the allocation among such Notes that are unexchanged and outstanding at the time of redemption, treat as outstanding any Notes surrendered for exchange during the period of fifteen (15) calendar days preceding the delivery of a notice of redemption and may (but need not) treat as outstanding any Note authenticated and delivered during such period in exchange for the unexchanged portion of any Note exchanged in part during such period.

Section 3.03. *Payment of Notes Called for Redemption by the Issuer*. If notice of redemption has been given as provided in Section 3.02, the Notes or portion of Notes with respect to which such notice has been given shall, unless exchanged pursuant to the terms hereof, become due and payable on the Redemption Date and at the place or places stated in such notice at the Redemption Price, and unless the Issuer shall default in the payment of such Notes at the Redemption Price, interest on the Notes or portion of Notes so called for redemption shall cease to accrue on and after the Redemption Date and, after 5:00 p.m., New York City time, on the second Business Day immediately preceding the Redemption Date (unless the Issuer shall default in the payment of the Redemption Price) such Notes shall cease to be exchangeable pursuant to this Indenture and, except as provided in Section 7.05 and Section 11.02, to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Notes except the right to receive the Redemption Price thereof. On presentation and surrender of such Notes at a place of payment in said notice specified, the said Notes or the specified portions thereof shall be paid and redeemed by the Issuer at the Redemption Price, together with interest accrued thereon to, but excluding, the Redemption Date.

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

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

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

Section 3.05. *Repurchase at Option of Holders Upon a Designated Event.* (a) If there shall occur a Designated Event at any time prior to maturity of the Notes, then each Noteholder shall have the right, at such Holder's option, to require the Issuer to repurchase all of such Holder's Notes, or any portion thereof that is an integral multiple of $1,000 principal amount, in cash, on a date (the **"Designated Event Repurchase Date"**) specified by the Issuer, which may be no earlier than fifteen (15) days and no later than thirty (30) days after the date of the Issuer Repurchase Notice related to such Designated Event, at a repurchase price equal to 100% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest to, but excluding, the Designated Event Repurchase Date; *provided, however,* that if the Designated Event Repurchase Date falls after a Record Date and on or prior to the corresponding interest payment date, the Issuer will pay the full amount of accrued and unpaid interest, if any, on such interest payment date to the Holder of record at the close of business on the corresponding Record Date, and the repurchase price will be 100% of the principal amount of the Notes to be repurchased.

(b) On or before the tenth calendar day after the occurrence of a Designated Event, the Issuer shall deliver or cause to be delivered to all Holders of record on the date of the Designated Event (and to beneficial owners as required by applicable law) an Issuer Repurchase Notice as set forth in Section 3.07 with respect to such Designated Event. The Issuer shall also deliver a copy of the Issuer Repurchase Notice to the Trustee and the Paying Agent at such time as it is delivered to Noteholders. In addition to the delivery of such Issuer Repurchase Notice, the Issuer shall disseminate a press release through Dow Jones & Company, Inc. or Bloomberg Business News announcing the occurrence of such Designated Event or publish such information in The Wall Street Journal or another newspaper of general circulation in The City of New York or on the Guarantor's web site, or through such other public medium as the Issuer shall deem appropriate at such time.

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

(c) For a Note to be repurchased at the option of the Holder pursuant to this Section 3.05(c), the Holder must deliver to the Paying Agent, prior to 5:00 p.m., New York City time, on the second Business Day immediately prior to the Designated Event Repurchase Date, (i) a written notice of repurchase (the **"Designated Event Repurchase Notice"**) in the form set forth on the reverse of the Note duly completed (if the Note is certificated) or stating the following (if the Note is represented by a Global Note): (A) the certificate number of the Note that the Holder will deliver to be repurchased (if the Note is certificated) or that the relevant Designated Event Repurchase Notice complies with

the appropriate Depositary procedures (if the Note is represented by a Global Note), (B) the portion of the principal amount of the Note which the Holder will deliver to be repurchased, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000 *(provided* that the remaining principal amount of Notes not subject to repurchase must be in an integral multiple of $1,000) and (C) that such Note shall be repurchased as of the Designated Event Repurchase Date pursuant to the terms and conditions specified in the Note and in this Indenture; together with (ii) such Notes duly endorsed for transfer (if the Note if certificated) or book-entry transfer of such Note (if such Note is represented by a Global Note). The delivery of such Note to the Paying Agent with, or at any time after delivery of, the Designated Event Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent shall be a condition to the receipt by the Holder of the repurchase price therefore; *provided, however,* that such repurchase price shall be so paid pursuant to

this Section 3.05 only if the Notes so delivered to the Paying Agent shall conform in all respects to the description thereof in the Designated Event Repurchase Notice. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Note for repurchase shall be determined by the Issuer, whose determination shall be final and binding absent manifest error.

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

(e) Notwithstanding the foregoing, no Notes may be repurchased by the Issuer pursuant to this Section 3.05 if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded or cured, on or prior to the relevant Designated Event Repurchase Date (except in the case of an acceleration resulting from a default by the Issuer in the payment of the repurchase price pursuant to this Section 3.05 with respect to the Notes to be repurchased).

(f) The Paying Agent shall promptly notify the Issuer of the receipt by it of any Designated Event Repurchase Notice or written notice of withdrawal thereof.

(g) The Issuer may arrange for a third party to purchase any Notes (provided that the Trustee is so notified by Issuer promptly) for which the Issuer receives a valid Designated Event Repurchase Notice that is not withdrawn, in the manner and otherwise in compliance with the requirements set forth herein. If a third party purchases any Notes under these circumstances, interest will continue to accrue on those Notes and such Notes will continue to be outstanding after the Designated Event Repurchase Date. The third party subsequently may resell such purchased Notes to other investors.

Any repurchase by the Issuer contemplated pursuant to the provisions of this Section 3.05 shall be consummated by the delivery of the consideration to be received by the Holder (i) on the Designated Event Repurchase Date if the book-entry transfer or delivery of the Notes to the Paying Agent is effected prior to the close of business on the second Business Day prior to the Designated Event Repurchase Date, and (ii) if delivered

later, within two (2) Business Days following the time of the book-entry transfer or delivery of the Note. Payment of the repurchase price for a Note for which a Designated Event Repurchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the Notes, together with necessary endorsements, to the Paying Agent.

Section 3.06. *Repurchase of Notes at the Option of Holders.* (a) Each Noteholder shall have the right, at such Holder's option, to require the Issuer to repurchase all of such Holder's Notes, or any portion thereof that is an integral multiple of $1,000 principal amount, in cash, on April 1, 2012, April 1, 2017, and April 1, 2022 (each, a **"Repurchase Date"**), at a repurchase price of 100% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest to, but excluding, the Repurchase Date; *provided, however,* that if the Repurchase Date falls after a Record Date and on or prior to the corresponding interest payment date, the Issuer will pay the full amount of accrued and unpaid interest, if any, on such interest payment date to the Holder of record at the close of business on the corresponding Record Date and the repurchase price will be 100% of the principal amount of the Notes to be repurchased.

(b) On or before the twentieth (20th) Business Day immediately preceding each Repurchase Date, the Issuer shall deliver or cause to be delivered to all Holders of record on such date an Issuer Repurchase Notice as set forth in Section 3.07. The Issuer shall also deliver a copy of the Issuer Repurchase Notice to the Trustee and the Paying Agent at such time as it is delivered to Noteholders. In addition to the delivery of such Issuer Repurchase Notice, the Issuer shall disseminate a press release through Dow Jones & Company, Inc. or Bloomberg Business News containing the information specified in such notice or publish such information in The Wall Street Journal or another newspaper of general circulation in The City of New York or on the Guarantor's web site, or through such other public medium as the Issuer shall deem appropriate at such time. No failure of the Issuer to give the foregoing notices and no defect therein shall limit the Noteholders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 3.06.

(c) For a Note to be so repurchased at the option of the Holder pursuant to this Section 3.06, the Holder must deliver to the Paying Agent, during the period beginning at 9:00 a.m., New York City time, on the date that is twenty (20) Business Days prior to the applicable Repurchase Date and ending at 5:00 p.m., New York City time, on the second Business Day immediately prior to the applicable Repurchase Date, (i) a written notice of repurchase (the **"Repurchase Notice"**) in the form set forth on the reverse of the Note duly completed (if the Note is certificated) or stating the following (if the Note is represented by a Global Note): (A) the certificate number of the Note which the Holder will deliver to be repurchased (if the Note is certificated) or that the relevant Repurchase Notice complies with the appropriate Depositary procedures (if the Note is represented by Global Note), (B) the portion of the principal amount of the Note which the Holder will deliver to be repurchased, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000 (*provided* that the remaining principal amount of Notes not subject to repurchase must be in an integral multiple of $1,000) and (C) that such Note shall be repurchased as of the Repurchase Date pursuant to the terms and conditions

specified in the Note and in this Indenture; together with (ii) such Notes duly endorsed for transfer (if the Note if certificated) or book entry transfer of such Note (if such Note is represented by a Global Note). The delivery of such Note to the Paying Agent with, or at any time after delivery of, the Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent shall be a condition to the receipt by the Holder of the repurchase price therefore; *provided, however,* that such repurchase price shall be so paid pursuant to this Section 3.06 only if the Notes so delivered to the Paying Agent shall conform in all respects to the description thereof in the Repurchase Notice. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Note for repurchase shall be determined by the Issuer, whose determination shall be final and binding absent manifest error.

(d) The Issuer, if so requested, shall repurchase from the Holder thereof, pursuant to this Section 3.06, a portion of a Note, if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the

repurchase of such portion of such Note.

(e) Notwithstanding the foregoing, no Notes may be repurchased by the Issuer pursuant to this Section 3.06 if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded or cured, on or prior to the relevant Repurchase Date (except in the case of an acceleration resulting from a default by the Issuer in the payment of the repurchase price pursuant to this Section 3.06 with respect to the Notes to be repurchased).

(f) The Paying Agent shall promptly notify the Issuer of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

(g) The Issuer may arrange for a third party to purchase any Notes (provided that the Trustee is so notified by Issuer promptly) for which the Issuer receives a valid Repurchase Notice that is not withdrawn, in the manner and otherwise in compliance with the requirements set forth herein. If a third party purchases any Notes under these circumstances, interest will continue to accrue on those Notes and such Notes will continue to be outstanding after the Repurchase Date. The third party subsequently may resell such purchased Notes to other investors.

Any repurchase by the Issuer contemplated pursuant to the provisions of this Section 3.06 shall be consummated by the delivery of the consideration to be received by the Holder (i) on the Repurchase Date if the book-entry transfer or delivery of the Notes to the Paying Agent is effected prior to the close of business on the Business Day prior to the Repurchase Date, and (ii) if delivered later, within two (2) Business Days following the time of the book-entry transfer or delivery of the Note. Payment of the repurchase price for a Note for which a Repurchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the Notes, together with necessary endorsements, to the Paying Agent.

Section 3.07. *Issuer Repurchase Notice.* (a) The Issuer Repurchase Notice, as provided in Section 3.07(b), shall be given to Holders in the event of a Designated Event,

on or before the tenth calendar day after the occurrence of such a Designated Event as provided in Section 3.05(b) or on or before the twentieth (20th) Business Day prior to each Repurchase Date as provided in Section 3.06(b) (in either case, the **"Issuer Repurchase Notice Date"**).

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

Each Issuer Repurchase Notice shall:

(i) state the repurchase price, and the Designated Event Repurchase Date or the Repurchase Date to which the relevant Issuer Repurchase Notice relates;

(ii) state, if applicable, the circumstances constituting the Designated Event;

(iii) state that Holders must exercise their right to elect to repurchase prior to 5:00 p.m., New York City time, on the second Business Day immediately prior to the Repurchase Date or the second Business Day immediately prior to the Designated Event Repurchase Date, as the case may be;

(iv) include a form of Repurchase Notice or Designated Event Repurchase Notice, if applicable;

(v) state the name and address of the Trustee, any Paying Agent and, if applicable, the Exchange Agent;

(vi) state that Notes must be surrendered to the Paying Agent to collect the repurchase price;

(vii) state that a Holder may withdraw its Repurchase Notice or the Designated Event Repurchase Notice, as the case may be, at any time prior to 5:00 p.m., New York City time, on the Business Day immediately prior to the Repurchase Date, or on the Business Day immediately prior to the Designated Event Repurchase Date, as the case may be, by delivering a valid written notice of withdrawal in accordance with Section 3.08;

(viii) if the Notes are then exchangeable pursuant to Article 13, state that Notes as to which a Repurchase Notice or the Designated Event Repurchase Notice, as the case may be, has been given may be exchanged only if the Repurchase Notice or Designated Event Repurchase Notice, as the case may be, is withdrawn in accordance with the terms of this Indenture;

(ix) state the amount of interest accrued and unpaid per $1,000 principal amount of Notes to, but excluding, the Designated Event Repurchase Date or Repurchase Date, as the case may be;

(x) state that, unless the Issuer defaults in making payment of the repurchase price, interest on Notes covered by any Repurchase Notice or Designated Event Repurchase Notice, as the case may be, shall cease to accrue on and after the Repurchase Date or the Designated Event Repurchase Date, as the case may be;

(xi) state the CUSIP number of the Notes, if CUSIP numbers are then in use; and

(xii) state the procedures for withdrawing a Repurchase Notice or Designated Event Repurchase Notice, as the case may be, including a form of notice of withdrawal (as specified in Section 3.08).

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

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

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

Section 3.08. *Efect of Repurchase Notice; Withdrawal.* Upon receipt by the Paying Agent of the Repurchase Notice or Designated Event Repurchase Notice, as the case may be, the Holder of the Note in respect of which such Repurchase Notice or Designated Event Repurchase Notice, as the case may be, was given shall (unless such Repurchase Notice or Designated Event Repurchase Notice, as the case may be, is validly withdrawn in accordance with this Section 3.08) thereafter be entitled to receive solely the repurchase price with respect to such Note. Such repurchase price shall be paid to such Holder, within two (2) Business Days following the later of (x) the Repurchase Date or the Designated Event Repurchase Date, as the case may be, with respect to such Note (provided the Holder has satisfied the conditions in Section 3.05 or Section 3.06, as applicable) and (y) the time of book-entry transfer or delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.05 or Section 3.06.

Notes in respect of which a Repurchase Notice or Designated Event Repurchase Notice, as the case may be, has been given by the Holder thereof may not be exchanged

pursuant to Article 13 hereof on or after the date of the delivery of such Repurchase Notice or Designated Event Repurchase Notice, as the case may be, unless such Repurchase Notice or Designated Event Repurchase Notice, as the case may be, has first been validly withdrawn.

A Repurchase Notice or Designated Event Repurchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent at any time prior to 5:00 p.m., New York City time, on the Business Day immediately prior to the Designated Event Repurchase Date, or on the Business Day immediately prior to the Repurchase Date, as the case may be, specifying:

(a) the name of the Holder;

(b) the certificate number(s) of all withdrawn Notes in certificated form or that the notice of withdrawal complies with appropriate Depositary procedures with respect to all withdrawn Notes represented by a Global Note;

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

(d) the principal amount of Notes, if any, that remains subject to the original Repurchase Notice or Designated Event Repurchase Notice, as the case may be, and that has been or will be delivered for repurchase by the Issuer, which must be an integral multiple of $1,000.

If a Repurchase Notice or Designated Event Repurchase Notice, as the case may be, is properly withdrawn, the Issuer shall not be obligated to repurchase the Notes listed in such Repurchase Notice or Designated Event Repurchase Notice, as the case may be.

Section 3.09. *Deposit of Repurchase Price.* (a) Prior to 11:00 a.m., New York City time, on the Designated Event Repurchase Date or the Repurchase Date, the Issuer shall deposit with the Paying Agent or, if the Issuer is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 4.04 an amount of cash (in immediately available funds if deposited on the Designated Event Repurchase Date or the Repurchase Date, as the case may be), sufficient to pay the aggregate repurchase price of all the Notes or portions thereof that are to be repurchased as of the Designated Event Repurchase Date or the Repurchase Date, as the case may be.

(b) If on the Designated Event Repurchase Date or the Repurchase Date the Paying Agent holds money sufficient to pay the repurchase price of the Notes that Holders have elected to require the Is suer to repurchase in accordance with Section 3.05 or Section 3.06, as the case may be, then, on the Designated Event Repurchase Date or the Repurchase Date, as the case may be, such Notes will cease to be outstanding, interest on such Notes will cease to accrue and all other rights of the Holders of such Notes will terminate, other than the right to receive the repurchase price upon delivery or book-entry transfer of the Note. This will be the case whether or not book-entry transfer of the Note has been made or the Note has been delivered to the Paying Agent.

Section 3.10. *Notes Repurchased in Part.* Upon presentation of any Note repurchased only in part, the Is suer shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Issuer, a new Note or Notes in aggregate principal amount equal to the unrepurchased portion of the Notes presented (provided that the unrepurchased portion of the Notes must be in an integral multiple of $1,000).

Section 3.11. *Repayment to the Issuer.* Subject to Section 11.04, the Paying Agent shall return to the Is suer any cash that remains unclaimed, together with interest, if any, thereon, held by them for the payment of the repurchase price; *provided* that to the extent that the aggregate amount of cash deposited by the Issuer pursuant to Section 3.09 exceeds the aggregate repurchase price of the Notes or portions thereof which the Is suer is obligated to repurchase as of the Designated Event Repurchase Date or the Repurchase Date, as the case may be, then, unless otherwise agreed in writing with the Issuer, promptly after the second Business Day following the Designated Event Repurchase Date or the Repurchase Date, as the case may be, the Paying Agent shall return any such excess to the Issuer, together with interest, if any, thereon.

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

Section 4.02. *Maintenance of Office or Agency.* The Issuer will maintain an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for exchange, redemption or repurchase and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. As of the date of this Indenture, such office shall be the Corporate Trust Office and, at any other time, at such other address as the Trustee may designate from time to time by notice to the Issuer. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

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

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

Section 4.03. *Appointments to Fill Vacancies in Trustee's Ofice.* The Issuer, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, upon the terms and conditions and otherwise as provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.

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

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

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

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

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

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

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Issuer may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in

trust by the Issuer or any Paying Agent hereunder as required by this Section 4.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Issuer or any Paying Agent to the Trustee, the Issuer or such Paying Agent shall be released from all further liability with respect to such sums.

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

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

Section 4.05. *Existence.* Subject to Article 10, each of the Issuer and the Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided* that neither the Issuer nor the Guarantor shall be required to preserve any such right if the Issuer or the Guarantor, as applicable, shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer or the Guarantor, as applicable, and that the loss thereof is not disadvantageous in any material respect to the Noteholders.

Section 4.06. *Rule 144A Information Requirement.* If so required by Rule 144A the Guarantor and the Issuer will promptly furnish to the Holders, beneficial owners and prospective purchasers of the Notes and of any Common Stock delivered upon exchange of the Notes, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) to facilitate the resale of the Notes and the Common Stock pursuant to Rule 144A.

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

Section 4.08. *Compliance Certificate.* Within one hundred twenty (120) calendar days after the end of each fiscal year of the Is suer, the Is suer and the Guarantor shall deliver to the Trustee a certificate signed by any of the principal executive officer, principal financial officer or principal accounting officer of the Issuer and the Guarantor, as the case may be, stating whether or not the signer has knowledge of any default under this Indenture, and, if so, specifying each default and the nature and the status thereof.

The Issuer will deliver to the Trustee, promptly within five business days upon becoming aware of (i) any default in the performance or observance of any covenant, agreement or condition contained in this Indenture, including a default related to Section 6.01(e), or (ii) any Event of Default, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Issuer has taken, is taking or proposes to take with respect thereto.

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

Section 4.09. *Additional Interest Notice.* In the event that the Issuer is required to pay Additional Interest to Holders of Notes pursuant to Section 6.01 in the event of a Reporting Event of Default or the Registration Rights Agreement, the Issuer will provide written notice ("**Additional Interest Notice**") to the Trustee of its obligation to pay Additional Interest no later than fifteen (15) calendar days prior to the proposed interest payment date for Additional Interest, and the Additional Interest Notice shall set forth the amount of Additional Interest to be paid by the Issuer on such interest payment date. The Trustee shall not at any time be under any duty or responsibility to any Holder of Notes to determine the Additional Interest, or with respect to the nature, extent or calculation of the amount of Additional Interest when made, or with respect to the method employed in such calculation of the Additional Interest.

ARTICLE 5
NOTEHOLDERS LISTS AND REPORTS BY THE ISSUER AND THE TRUSTEE

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

Section 5.02. *Preservation and Disclosure of Lists.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of Notes contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar or co-registrar in respect of the Notes, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

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

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

Section 5.03. *Reports by Trustee.* (a) Within sixty (60) calendar days after March 30 of each year beginning with March 30, 2008, the Trustee shall transmit to Holders of Notes such reports dated as of March 30 of the year in which such reports are made concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. In the event that no events have occurred under the applicable sections of the Trust Indenture Act the Trustee shall be under no duty or obligation to provide such reports.

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

Section 5.04. *Reports by Issuer or Guarantor.* Any document or report that the Guarantor is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed by the Issuer or the Guarantor with the Trustee within thirty (30) days after the same is required to be

filed with the Commission. 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 Issuers' compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officers' Certificate). The Guarantor and Issuer shall be deemed to have complied with their obligations under this Section 5.04 if they deliver such document or report by email at the email address designated by the Trustee.

ARTICLE 6
REMEDIES OF THE TRUSTEE AND NOTEHOLDERS ON AN EVENT OF DEFAULT

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

(a) default for thirty (30) days in the payment of any installment of interest under the Notes; or

(b) default in the payment of the principal amount or any repurchase price or Redemption Price due with respect to the Notes, when the same becomes due and payable; or

(c) the Issuer fails to deliver cash, Common Stock or a combination of cash and Common Stock within fifteen (15) days after the due date upon an exchange of Notes pursuant to Article 13, together with any cash due in lieu of fractional shares; or

(d) the Issuer fails to comply with any of the Issuers other agreements contained in the Notes or this Indenture, other than an agreement solely for the benefit of a series of debt securities other than the Notes, upon receipt by the Issuer of notice of such default by the Trustee or by Holders of not less than 25% in aggregate principal amount of the Notes then outstanding and the Issuer fails to cure (or obtain a waiver of) such default within sixty (60) days after the Issuer receives such notice; or

(e) failure to pay any indebtedness for money borrowed by the Issuer, the Guarantor, any Subsidiary in which the Issuer has invested at least $30,000,000 in capital (a "**Significant Subsidiary"**) or any entity in which the Issuer is the general partner in an outstanding principal amount in excess of $30,000,000 at final maturity or upon acceleration after the expiration of any applicable grace period, which indebtedness is not discharged, or such default in payment or acceleration is not cured or rescinded, within thirty (30) days after written notice to the Issuer from the Trustee (or to the Issuer and the Trustee from Holders of at least 25% in principal amount of the outstanding Notes); or

(f) the Issuer fails to provide on a timely basis an Issuer Repurchase Notice after the occurrence of a Designated Event as provided in Section 3.05(b) and Section 3.07(b); or

(g) the Issuer, the Guarantor or any of its Significant Subsidiaries pursuant to or under or within meaning of any Bankruptcy Law:

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

(ii) consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against the Issuer, the Guarantor or a Significant Subsidiary; or

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

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

(h) an involuntary case or other proceeding shall be commenced against the Issuer, the Guarantor or any of its Significant Subsidiaries seeking liquidation, reorganization or other relief with respect to the Issuer, the Guarantor or a Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Issuer, the Guarantor or a Significant Subsidiary or any substantial part of the property of the Issuer, the Guarantor or a Significant Subsidiary, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of thirty (30) calendar days; or

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

(i) is for relief against the Issuer, the Guarantor or any of its Significant Subsidiaries in an involuntary case or proceeding; or

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

(iii) orders the liquidation of the Issuer, the Guarantor or a Significant Subsidiary; and, in each case in this clause (i), the order or decree remains unstayed and in effect for thirty (30) calendar days;

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

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

If, at any time after the principal amount of and premium, if any, and interest on the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, Holders of a majority in aggregate principal amount of the Notes then outstanding on behalf of the Holders of all of the Notes then outstanding, by written notice to the Issuer and to the Trustee, may waive all defaults or Events of Default and rescind and annul such declaration and its consequences, subject in all respects to Section 6.07, if: (a) the rescission would not conflict with any judgment or decree of a court of

competent jurisdiction; (b) all Events of Default, other than the nonpayment of the principal amount and any accrued and unpaid interest that have become due solely because of such acceleration, have been cured or waived; (c) interest on overdue installments of interest (to the extent that payment of such interest is lawful) and on overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and (d) the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances pursuant to Section 7.06. No such rescission and annulment shall extend to or shall affect any subsequent default or Event of Default, or shall impair any right consequent thereon. The Issuer shall notify in writing a Responsible Officer of the Trustee, promptly upon becoming aware thereof, of any Event of Default, as provided in Section 4.08.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Issuer, the Holders of Notes, and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Issuer, the Holders of Notes, and the Trustee shall continue as though no such proceeding had been taken.

Notwithstanding the foregoing, to the extent the Issuer so elects by written notice to the Trustee and the Noteholders not later than the last day of the applicable 60-day period referred to in Section 6.01(d), the sole remedy for an Event of Default (each a **"Reporting Event of Default"**) relating to the failure to file any documents or reports that the Guarantor is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, the Issuers failure to comply with Section 5.04, or any failure to comply with any requirements the Issuer may be deemed to have pursuant to Section 31 4(a)(1) of the Trust Indenture Act, shall for the first 180 days after the occurrence of such a Reporting Event of Default consist exclusively of the right to receive, for so long as such Reporting Event of Default exists, additional interest (**"Additional Interest"**) on the Notes equal to 0.25% per annum of the principal amount of the Notes outstanding. Any Additional Interest due pursuant to this Section 6.01 shall be payable in cash on each interest payment date during or, if such 180-day period ends or such Reporting Event of Default is waived or cured on a date that is not an interest payment date, on the interest payment date next succeeding such 180-day period to Holders entitled to receive interest on the relevant record date for such interest payment date. If any Notes cease to be outstanding during any period for which such Additional Interest is accruing, the Issuer shall prorate the Additional Interest payable with respect to such Notes. The Additional Interest will be in addition to any Additional Interest that may accrue as Registration Default Damages pursuant to the Registration Rights Agreement; *provided* that in no event shall Additional Interest hereunder and thereunder accrue at a rate, in the aggregate, in excess of 0.50% per annum regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest in connection with Reporting Events of Default or as Registration Default Damages. On the 180th day after such Reporting Event of Default (if such Reporting Event of Default is not cured or waived prior to such 180th day), the Notes shall be subject to acceleration as provided in this Section 6.01.

The preceding paragraph shall not affect the rights of Holders of the Notes in the event of the occurrence of any other Event of Default. In the event the Issuer does not elect to pay the Additional Interest upon a Reporting Event of Default in accordance with the preceding paragraph, the Notes will be subject to acceleration as provided in this Section 6.01.

Section 6.02. *Payments of Notes on Default; Suit Therefor.* The Issuer covenants that in the case of an Event of Default pursuant to Section 6.01(a) or 6.01(b), upon demand of the Trustee, the Issuer will pay to the Trustee, for the benefit of the Holders of the Notes, (i) the whole amount that then shall be due and payable on all such Notes for principal and premium, if any, or interest, as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of accrued and unpaid interest at the rate borne by the Notes, plus 1%, from the required payment date and, (ii) in addition thereto, any amounts due the Trustee under Section 7.06. Until such demand by the Trustee, the Issuer may pay the principal of and premium, if any, and interest on the Notes to the registered Holders, whether or not the Notes are overdue.

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

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Issuer or any other obligor on the Notes under any Bankruptcy Law, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or such other obligor, the property of the Issuer or such other obligor, or in the case of any other judicial proceedings relative to the Issuer or such other obligor upon the Notes, or to the creditors or property of the Issuer or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, accrued and unpaid interest in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in such judicial proceedings relative to the Issuer or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 7.06, and to take any other action with respect to such claims, including participating as a member of any

official committee of creditors, as it reasonably deems necessary or advisable, unless prohibited by law or applicable regulations, and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including counsel fees and expenses incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

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

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

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

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

SECOND: In case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of accrued and unpaid interest, if any, on the Notes in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) as provided in Section 6.02 upon the overdue installments of interest at the annual rate of 1% above the then applicable interest rate, such payments to be made ratably to the Persons entitled thereto;

THIRD: In case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount then owing and unpaid upon the Notes for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of accrued and unpaid interest,

as provided in Section 6.02, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest; and

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

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

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

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

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

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

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

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

The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may, on behalf of the Holders of all of the Notes, waive any past default or Event of Default hereunder and its consequences *except* (i) a default in the payment of the principal of (including the Redemption Price or repurchase price upon redemption or repurchase pursuant to Article 3), premium, if any, or interest on the Notes, (ii) a failure by the Issuer to exchange any Notes as required by this Indenture, (iii) a default in the payment of the Redemption Price on the Redemption Date pursuant to Article 3, (iv) a default in the payment of the repurchase price on the Designated Event Repurchase Date or the Repurchase Date pursuant to Article 3 or (v) a default in respect of a covenant or

provisions hereof which under Article 9 cannot be modified or amended without the consent of the Holders of all Notes then outstanding.

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

Section 6.08. *Notice of Defaults.* The Trustee shall, within ninety (90) calendar days after a Responsible Officer of the Trustee has knowledge of the occurrence of a default, deliver to all Noteholders, as the names and addresses of such Holders appear upon the Note Register, notice of all defaults known to a Responsible Officer, unless such defaults shall have been cured or waived before the giving of such notice; *provided* that except in the case of default in the payment of the principal of (including the Redemption Price or repurchase price upon redemption or repurchase pursuant to Article 3), or interest on any of the Notes, the Trustee shall be protected in withholding such notice if and so long as a trust committee and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Noteholders.

Section 6.09. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than ten percent in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of (including the Redemption Price or repurchase price upon redemption or repurchase pursuant to Article 3), or interest on any Note on or after the due date expressed in such Note or to any suit for the enforcement of the right to exchange any Note in accordance with the provisions of Article 13.

ARTICLE 7
THE TRUSTEE

Section 7.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default

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

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

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

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

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

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

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

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

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or

notice effected by the Issuer or any Paying Agent (other than the Trustee) or any records maintained by any co-registrar (other than the Trustee) with respect to the Notes;

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

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

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

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

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

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

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

Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice,

request, direction, consent, order, bond, Note or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

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

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

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

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

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

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

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

Section 7.05. *Monies to Be Held in Trust.* Subject to the provisions of Section 11.02, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required

by law. Except as otherwise provided herein, the Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Issuer and the Trustee.

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

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

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

Section 7.08. *Conflicting Interests of Trustee.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall

either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 7.09. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.10. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Issuer and to the Holders of Notes. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment sixty (60) calendar days after the delivery of such notice of resignation to the Noteholders, the resigning Trustee may, upon ten Business Days' notice to the Issuer and the Noteholders, appoint a successor identified in such notice or may petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor trustee. A majority of Noteholders who have been bona fide holders of Notes for at least six months may also petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

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

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

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

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

of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.09, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided* that if no successor Trustee shall have been appointed and have accepted appointment sixty (60) calendar days after either the Issuer or the Noteholders has removed the Trustee, or the Trustee resigns, the Trustee so removed may petition, at the expense of the Issuer, any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

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

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

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

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

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

days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Issuer.

Section 7.12. *Succession by Merger.* Any corporation into which the Trustee may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any merger, exchange or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09.

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

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

ARTICLE 8
THE NOTEHOLDERS

Section 8.01. *Action by Noteholders.* Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders of Notes voting in favor thereof at any meeting of Noteholders, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Issuer or the Trustee solicits the taking of any action by the Holders of the Notes, the Issuer or the Trustee may fix in advance of such solicitation a

date as the Record Date for determining Holders entitled to take such action. The Record Date, if any, shall be not more than fifteen (15) calendar days prior to the date of commencement of solicitation of such action.

Section 8.02. *Proof of Execution by Noteholders.* Subject to the provisions of Sections 7.01 and 7.02, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the registry of such Notes or by a certificate of the Note Registrar.

Section 8.03. *Absolute Owners.* The Issuer, the Trustee, any Paying Agent, any Exchange Agent and any Note Registrar may deem the Person in whose name such Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Issuer or any Note Registrar) for the purpose of receiving payment of or on account of the principal of (including the Redemption Price or repurchase price upon redemption or repurchase pursuant to Article 3), premium, if any, and interest on such Note, for exchange of such Note and for all other purposes; and neither the Issuer nor the Trustee nor any Paying Agent nor any Exchange Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any Holder in whose name any Note is registered on the Note Register on any record date or special record date, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note.

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

above described Persons, and, subject to Section 7.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05. *Revocation of Consents; Future Holders Bound.* A consent to an amendment or a waiver by a Noteholder of a Note shall bind the Noteholder and every subsequent Noteholder of that Note or portion of the Note that evidences the same debt as the consenting Noteholder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Noteholder or subsequent Noteholder may revoke the consent or waiver as to such Noteholder'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 in accordance with the terms of this Indenture, it shall bind every Noteholder. An amendment or waiver becomes effective once both (i) the requisite number of consents have been received by the Issuer or the Trustee and (ii) such amendment or waiver has been executed by the Issuer and the Trustee.

ARTICLE 9
SUPPLEMENTAL INDENTURES

Section 9.01. *Supplemental Indentures Without Consent of Noteholders.* The Issuer, when authorized by the resolutions of the Board of Directors, the Guarantor and the Trustee may, from time to time, and at any time enter into an indenture or indentures supplemental without the consent of the Holders of the Notes hereto for one or more of the following purposes:

(a) to evidence a successor to the Issuer as obligor or to the Guarantor as guarantor under this Indenture;

(b) to add to the covenants of the Issuer or the Guarantor for the benefit of the Holders of the Notes or to surrender any right or power conferred upon the Issuer or the Guarantor in this Indenture or in the Notes;

(c) to add Events of Default for the benefit of the Holders of the Notes;

(d) to amend or supplement any provisions of this Indenture; *provided* that no amendment or supplement shall materially adversely affect the interests of the Holders of any Notes then outstanding;

(e) to secure the Notes;

(f) to provide for the acceptance of appointment of a successor Trustee or facilitate the administration of the trusts under this Indenture by more than one Trustee;

(g) to provide for rights of Noteholders if any reclassification or change of shares of Common Stock or any consolidation, merger or sale of all or substantially all of the Issuer's or the Guarantor's property or assets occurs;

(h) to cure any ambiguity, defect or inconsistency in this Indenture; *provided* that this action shall not adversely affect the interests of the Holders of the Notes in any material respect;

(i) to supplement any of the provisions of this Indenture to the extent necessary to permit or facilitate defeasance and discharge of any of the Notes; *provided* that the action shall not adversely affect the interests of the Holders of the Notes in any material respect;

(j) to modify this Indenture and the Notes to increase the Exchange Rate or reduce the Exchange Price; *provided* that the increase or reduction, as the case may be, is in accordance with the terms of the Notes or will not adversely affect the interests of the Holders of the Notes; or

(k) to conform any non-conforming language or defined terms in the text of this Indenture, any Guarantee or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, so that such a provision in the "Description of Notes" section reflects a verbatim recitation of a provision in this Indenture, such Guarantee or the Notes.

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

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

Section 9.02. *Supplemental Indenture With Consent of Noteholders.* With the consent (evidenced as provided in Article 8) of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, the Issuer, when authorized by the resolutions of the Board of Directors, the Guarantor and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding

any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or modifying in any manner the rights of the Holders of the Notes; *provided* that no such supplemental indenture shall, without the consent of the Holder of each Note:

(a) change the Stated Maturity of the principal of or any installment of interest on the Notes, reduce the principal amount of, or the rate or amount of interest on, or any

premium payable on redemption of, the Notes, or adversely affect any right of repayment of the Holder of the Notes, change the place of payment, or the coin or currency, for payment of principal of or interest on any Note or impair the right to institute suit for the enforcement of any payment on or with respect to the Notes;

(b) reduce the percentage in principal amount of the outstanding Notes necessary to modify or amend this Indenture, to waive compliance with certain provisions of this Indenture or certain defaults and their consequences provided in this Indenture, or to reduce the requirements of quorum or change voting requirements set forth in this Indenture;

(c) modify or affect in any manner adverse to the Holders the terms and conditions of the obligations of the Issuer in respect of the due and punctual payments of principal and interest;

(d) modify any of this Section 9.02 or Section 6.07 or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required percentage to effect the action or to provide that certain other provisions may not be modified or waived without the consent of the Holders of the Notes;

(e) modify the provisions of Section 3.05 in a manner adverse to the Holders of the Notes, including the Issuer's obligation to repurchase the Notes following a Designated Event; or

(f) adversely affect the Holders' rights contained in Section 3.06 and Section 13.01 of this Indenture.

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

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

Section 9.03. *Efect of Supplemental Indenture.* Any supplemental indenture executed pursuant to the provisions of this Article 9 shall comply with the Trust Indenture Act, as then in effect, *provided* that this Section 9.03 shall not require such supplemental indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time, if ever, such qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time, if ever, such

qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 9, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Issuer and the Holders of Notes shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 9 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Issuer's expense, be prepared and executed by the Issuer, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 16.11) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

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

ARTICLE 10
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 10.01. *Issuer May Consolidate on Certain Terms.* Nothing contained in this Indenture or in the Notes shall prevent any consolidation or merger of the Issuer with or into any other Person or Persons (whether or not affiliated with the Issuer), or successive consolidations or mergers in which either the Issuer will be the continuing entity or the Issuer or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or lease of all or substantially all of the property of the Issuer, to any other Person (whether or not affiliated with the Issuer); *provided, however,* that the following conditions are met:

(a) the Issuer shall be the continuing entity, or the successor entity (if other than the Issuer) formed by or resulting from any consolidation or merger or which shall have received the transfer of assets shall be an entity organized under the laws of the United States, any state thereof, or the District of Columbia and shall expressly assume payment of the principal of and interest on all of the Notes and the due and punctual performance and observance of all of the covenants and conditions in this Indenture;

(b) if as a result of such transaction the Notes become exchangeable for common stock or other securities issued by a third party, such third party fully and unconditionally guarantees all obligations under the Notes and this Indenture;

(c) immediately after giving effect to such transaction, no Event of Default and no event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and

(d) the Issuer shall, at or prior to the effective date of such consolidation, merger or transfer, have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to such consolidation, merger or transfer have been complied with (including, if a supplemental indenture is required in connection with such transaction, that such supplemental indenture complies with this Article 10).

No such consolidation, merger, sale, conveyance, transfer or lease shall be permitted by this Section 10.01 unless prior thereto the Guarantor shall have delivered to the Trustee a Guarantor's Officers' Certificate and an Opinion of Counsel, each stating that the Guarantor's obligations hereunder shall remain in full force and effect thereafter.

Section 10.02. *Issuer Successor to Be Substituted.* Upon any consolidation by the Issuer with or merger of the Issuer into any other Person or any sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Issuer to any Person in accordance with Section 10.01, the successor Person formed by such consolidation or into which the Issuer is merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and, except in the case of a sale of assets or a lease, may exercise every right and power of, the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein, and thereafter, except in the case of a sale of assets or a lease, the predecessor Person shall be released and discharged from all obligations and covenants under this Indenture and the Notes.

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

Section 10.03. *Guarantor May Consolidate on Certain Terms.* Nothing contained in this Indenture or in the Notes shall prevent any consolidation or merger of the Guarantor with or into any other Person or Persons (whether or not affiliated with the Guarantor), or successive consolidations or mergers in which either the Guarantor will be the continuing entity or the Guarantor or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or lease of all or substantially all of the property of the Guarantor, to any other Person (whether or not affiliated with the Guarantor); *provided, however,* that:

(a) the Guarantor shall be the continuing entity, or the successor entity (if other than the Guarantor) formed by or resulting from any consolidation or merger or which

shall have received the transfer of assets shall expressly assume the obligations of the Guarantor under the Guarantee and the due and punctual performance and observance of all of the covenants and conditions in this Indenture;

(b) if as a result of such transaction the Notes become exchangeable for common stock or other securities issued by a third party, such third party fully and unconditionally guarantees all obligations under the Notes and this Indenture;

(c) immediately after giving effect to such transaction, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(d) the Guarantor has, at or prior to the effective date of such consolidation, merger or transfer, delivered to the Trustee an Officers' Certificate of the Guarantor and an Opinion of Counsel, each stating that all conditions precedent to such consolidation, merger or transfer have been complied with (including, if a supplemental indenture is required in connection with such transaction, that such supplemental indenture complies with this Article 10).

Section 10.04. *Guarantor Successor to Be Substituted.* Upon any consolidation or merger or any sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Guarantor to any Person in accordance with Section 10.04, the successor Person formed by such consolidation or into which the Guarantor is merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Guarantor under this Indenture with the same effect as if such successor Person had been named as the Guarantor herein, and thereafter, except in the case of a lease, the predecessor Person shall be released and discharged from all obligations and covenants under this Indenture.

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

Section 10.05. *Assumption by Guarantor.* The Guarantor, or a Subsidiary thereof, may directly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, any premium and interest on all the Notes and the performance of every covenant of this Indenture on the part of the Issuer to be performed or observed. Upon any such assumption, the Guarantor or such Subsidiary shall succeed to, and be substituted for and may exercise every right and power of, the Issuer under this Indenture with the same effect as if the Guarantor or such Subsidiary had been named as the Issuer herein, and the Issuer shall be released from all obligations and covenants with respect to the Notes. No such assumption shall be permitted unless the Guarantor has delivered to the Trustee (i) an Officers' Certificate of the Guarantor and an Opinion of Counsel, each stating that such assumption and supplemental indenture comply with this Article 10, and that all conditions precedent herein provided for relating to such transaction have been complied with and that, in the event of assumption by a Subsidiary, the Guarantee and all other

covenants of the Guarantor herein remain in full force and effect and (ii) an opinion of independent counsel that the Holders of Notes shall have no materially adverse United States federal income tax consequences as a result of such assumption, and that, if any Notes are then listed on the New York Stock Exchange, that such Notes shall not be delisted as a result of such assumption.

ARTICLE 11
SATISFACTION AND DISCHARGE OF INDENTURE

Section 11.01. *Discharge of Indenture.* This Indenture shall cease to be of further effect (except as to any surviving rights of exchange, registration of transfer or exchange of Notes herein expressly provided for and except as further provided below), and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) either: (1) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 11.04 and (ii) Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer as provided in Section 11.04) have been delivered to the Trustee for cancellation; or (2) all such Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable, whether at the Maturity Date, Repurchase Date or Designated Event Repurchase Date or upon exchange or otherwise, or (ii) are to be called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer, in the case of clause (1) or (2) above, has irrevocably deposited or caused to be irrevocably deposited with the Trustee, a Paying Agent or the Exchange Agent (other than the Issuer or any of its Affiliates), as applicable, as trust funds in trust cash and/or shares of Common Stock (as applicable under the terms of the Indenture) in an amount sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Notes which have become due and payable) or to the Maturity Date, Redemption Date, Repurchase Date or Designated Event Repurchase Date, as the case may be; *provided, however,* that there shall not exist, on the date of such deposit, a default or Event of Default; *provided, further,* that such deposit shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Issuer is a party or to which the Issuer is bound; (b) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer; and (c) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee under Section 7.06 shall survive and, if money shall have been deposited with the Trustee pursuant to subclause (2) of clause (a) of this Section, the provisions of Sections 2.05, 2.06, 2.07, 3.05, 3.06, 5.01, Article 13 and this Article 11, shall survive until the Notes have been paid in full.

Section 11.02. *Deposited Monies to Be Held in Trust by Trustee.* Subject to Section 11.04, all monies deposited with the Trustee pursuant to Section 7.05 shall be held in trust for the sole benefit of the Noteholders, and such monies shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Issuer if acting as its own Paying Agent), to the Holders of the particular Notes for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest. All moneys deposited with the Trustee pursuant to Section 7.05 (and held by it or any Paying Agent) for the payment of Notes subsequently exchanged shall be returned to the Issuer upon request. The Trustee is not responsible to anyone for interest on any deposited funds except as agreed in writing.

Section 11.03. *Paying Agent to Repay Monies Held.* Subject to the provisions of Section 11.04, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Noteholders, all money deposited with it pursuant to Section 11.01 and shall apply the deposited money in accordance with this Indenture and the Notes to the payment of the principal of (including the Redemption Price or repurchase price upon redemption or repurchase pursuant to Article 3) and interest on the Notes.

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

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

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. *Indenture and Notes Solely Corporate Obligations.* Except as otherwise expressly provided in Article 15, no recourse for the payment of the principal of (including the Redemption Price or repurchase price upon redemption or repurchase pursuant to Article 3) or, premium, if any, or interest on any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer in this Indenture or in any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, partner, member, manager, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Guarantor, the General Partner, the Issuer or any of the Issuers subsidiaries or of any successor thereto, either directly or through the Guarantor, the General Partner, the Issuer or any of the Issuers subsidiaries or any successor thereto, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
EXCHANGE OF NOTES

Section 13.01. *Right to Exchange.* (a) Subject to the restrictions on ownership of shares of Common Stock as set forth in Section 13.12 and upon compliance with the provisions of this Indenture, on or prior to the close of business on the Business Day immediately preceding the Maturity Date, the Holder of any Notes not previously redeemed or repurchased shall have the right, at such Holders option, to exchange its Notes, or any portion thereof which is an integral multiple of $1,000, into cash, or a combination of cash and Common Stock, as the case may be, with an aggregate value equal to the Exchange Value, by surrender of such Notes so to be exchanged in whole or in part, together with any required funds, under the circumstances and in the manner described in this Article 13. Holders may exchange their Notes at any time on or after March 1, 2027. In addition, Holders may exchange their Notes at any time prior to the close of business on the Business Day immediately preceding the Maturity Date only under the following circumstances:

(i) *Exchange Upon Satisfaction of Market Price Condition.* A Holder may surrender any of its Notes for exchange during any calendar quarter beginning after June 30, 2007 (and only during such calendar quarter) if, and only if, the Closing Sale Price of the Common Stock for at least twenty (20) Trading Days in the period of thirty (30) consecutive Trading Days ending on the last Trading Day of the preceding calendar quarter is more than 130% of the Exchange Price per share of Common Stock in effect on the applicable Trading Day. The Board of Directors will make appropriate adjustments, in its good faith determination, to account for any adjustment to the Exchange Rate that becomes

effective, or any event requiring an adjustment to the Exchange Rate where the ex-dividend date of the event occurs, during that thirty (30) consecutive Trading Day period.

The Trustee (or other Exchange Agent appointed by the Issuer) shall, on behalf of the Issuer, determine on a daily basis during the time period specified in this Section 13.01 (a)(i) whether the Notes shall be exchangeable as a result of the occurrence of an event specified in this clause (i) and, if the Notes shall be so exchangeable, the Trustee (or other Exchange Agent appointed by the Issuer) shall promptly deliver to the Issuer and the Trustee (if the Trustee is not the Exchange Agent) written notice thereof.

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

"Trading Price" per $1,000 principal amount of Notes on any date of determination means the average of the secondary market bid quotations per $1,000 principal amount of Notes obtained by the Trustee for a $2,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from two independent nationally recognized securities dealers the Is suer selects, which may include the Initial Purchasers; *provided* that if at least two such bids cannot reasonably be obtained by the Trustee, but one such bid can reasonably be obtained by the Trustee, then one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for a $2,000,000 principal amount of Notes from a nationally recognized securities dealer or, in the Issuers reasonable judgment, the bid quotations are not indicative of the secondary market value of the Notes, then the Trading Price per $1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Closing Sale Price of Common Stock and the Exchange Rate on such determination date.

The Trustee shall have no obligation to determine the Trading Price of the Notes unless the Issuer shall have requested such determination, and the Issuer shall have no obligation to make such request unless a Holder provides the Issuer with reasonable evidence that the Trading Price per

$1,000 principal amount of Notes would be less than 98% of the product of the Closing Sale Price per share of Common Stock and the Exchange Rate, whereupon the Issuer shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Sale Price per share of Common Stock and the Applicable Exchange Rate. The Issuer or, at the Issuers request, the Trustee in the name and at the expense of the Issuer, shall notify the Exchange Agent and the Holders of (i) the Trustee's

determination that the Trading Price per $1,000 principal amount of Notes was less than 98% of the product of the Closing Sale Price per share of Common Stock and the Exchange Rate, and (ii) the Trustees determination that such Trading Price condition described in clause (i) is no longer met. In addition to the delivery of each such notice, the Issuer shall disseminate a press release through Dow Jones & Company, Inc. or Bloomberg Business News with the content of such notice or publish such information in The Wall Street Journal or another newspaper of general circulation in The City of New York or on the Guarantors web site, or through such other public medium as the Is suer shall deem appropriate at such time. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

(iii) *Exchange Upon Notice of Redemption.* A Holder may surrender for exchange any of the Notes called for redemption at any time prior to the close of business on the second Business Day immediately prior to a Redemption Date even if the Notes are not otherwise exchangeable at such time. The right to exchange Notes pursuant to this clause (iii) shall expire after 5:00 p.m., New York City time, on the second Business Day immediately preceding the Redemption Date unless the Is suer defaults in payment of the Redemption Price. If a Holder has delivered a Repurchase Notice or Designated Event Repurchase Notice with respect to a Note, such Holder shall not surrender such Note for exchange until such Holder has withdrawn such Repurchase Notice or Designated Event Repurchase Notice in accordance with Section 3.08.

(iv) *Exchange Upon Specified Transactions.* If the Guarantor elects to:

(1) distribute to all holders of the Common Stock rights, warrants or options entitling them for a period of up to forty five (45) days after the issuance thereof to subscribe for or purchase Common Stock at an exercise price per share of Common Stock less than the Closing Sale Price of Common Stock on the Business Day immediately preceding the declaration date of such distribution; or

(2) distribute to all holders of Common Stock assets, debt securities or certain rights to purchase securities of the Issuer or the Guarantor, which distribution (excluding for this purpose a distribution solely in the form of cash required to preserve the status of the Guarantor as a real estate investment trust) has a per share value exceeding 15% of the average of the Closing Sale Prices of the Common Stock for the five (5) consecutive Trading Days ending on the date immediately preceding the declaration date of such distribution, then:

(A) The Issuer must notify the Exchange Agent and the Holders of Notes at least twenty (20) calendar days prior to the ex-dividend date for such distribution.

(B) Following the issuance of such notice, Holders may surrender their Notes for exchange at any time until the earlier of the close of business on the Business Day immediately preceding the ex-dividend date or an announcement that such distribution will not take place; *provided, however,* that a Holder may not exchange its Notes

pursuant to this Section 13.01(a)(iv) if such Holder participates in the distribution, without exchange of its Notes, as if such Holder held on the date such distribution is made a number of shares of Common Stock equal to a fraction the numerator of which is the product of the Exchange Rate in effect on the ex-dividend date for such distribution, *and* the aggregate principal amount of Notes held by such Holder and the denominator of which is one thousand dollars ($1,000). The **"ex-dividend date"** means, with respect to any distribution on shares of Common Stock, the first date upon which a sale of the Common Stock does not automatically transfer the right to receive the relevant distribution from the seller of the Common Stock to its buyer.

In addition, if the Guarantor is a party to (1) a share exchange or tender offer, liquidation, consolidation, recapitalization, reclassification, combination or merger, or a sale or lease or other transfer of all or substantially all of its respective properties and assets, or a series of related transactions or events, in each case pursuant to which all of the outstanding Common Stock would be exchanged for, be converted into or constitute solely the right to receive cash, securities or other property, or (2) a Designated Event, a Holder may surrender its Notes for exchange at any time from and including the date that is fifteen (15) Business Days prior to the anticipated effective time of the transaction or event up to and including five (5) Business Days after the actual date of such transaction or event, unless such transaction also constitutes a Designated Event, in which case the Notes may be surrendered for exchange until the related Designated Event Repurchase Date. The Issuer shall notify the Exchange Agent and the Holders of Notes as promptly as practicable following the date such transaction or event is publicly announced (but in no event less than fifteen (15) Business Days prior to the effective time of such transaction or event).

If the Guarantor is a party to a consolidation, merger, binding share exchange, reclassification or sale or conveyance of all or substantially all of its properties and assets, in each case pursuant to which all of the Common Stock is exchanged for cash, securities or other property (the **"Reference Property"),** then at the effective time of the transaction any exchange of Notes and the Exchange Value will be based on the kind and amount of Reference Property that a Holder of Notes would have received if such Holder had, immediately prior to the effective time of such transaction, exchanged its Notes for a number of shares of Common Stock equal to a fraction the numerator of which is the product of the Exchange Rate in effect immediately prior to the effective time of such transaction, *and* the aggregate principal amount of Notes held by such Holder and the denominator of which is one thousand dollars ($1,000). In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in any such transaction or event, then from and after the effective date of such transaction or event, the Notes shall be exchangeable for cash with respect to the Principal Return and, if the Issuer elects to deliver property other than cash in satisfaction of the Net Amount, if any, into the consideration that a majority of the

holders of Common Stock who made such an election received in such transaction or as a result of such event with respect to the Daily Share Amounts.

(v) *Exchange during Specified Periods*. The Notes may be surrendered for exchange at any time from, and including, March 1, 2012 to, and including, April 1, 2012.

(vi) *Exchange Upon Delisting of the Common Stock.* A Holder may surrender for exchange any of its Notes at any time beginning on the first Business Day after the Common Stock has ceased to be listed on a U.S. national or regional securities exchange and is not quoted on the over-the-counter market as reported by Pink Sheets LLC or any similar organization, and in each case continuing for a period of thirty (30) consecutive Trading Days.

(b) A Note in respect of which a Holder has delivered a Designated Event Repurchase Notice or Repurchase Notice, as the case may be, exercising such Holders right to require the Issuer to repurchase such Note pursuant to Section 3.05 or 3.06 may be exchanged only if such Repurchase Notice is withdrawn in accordance with Section 3.07 prior to 5:00 p.m., New York City time, on the Business Day immediately prior to the Repurchase Date or on the Business Day immediately prior to the Designated Event Repurchase Date, as applicable.

(c) A Holder of Notes is not entitled to any rights of a Holder of Common Stock until such Holder has exchanged its Notes and received upon exchange thereof shares of Common Stock.

Section 13.02. *Exercise of Exchange Right; No Adjustment for Interest or Dividends.* In order to exercise the exchange right with respect to any Note in certificated form, the Issuer must receive at the office or agency of the Issuer maintained for that purpose in the City of Minneapolis or, at the option of such Holder, the Corporate Trust Office, such Note with the original or facsimile of the form entitled **"Exchange Notice"** on the reverse thereof, duly completed and signed manually or by facsimile, together with such Notes duly endorsed for transfer, accompanied by the funds, if any, required by this Section 13.02. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock that shall be issuable on such exchange shall be issued, and shall be accompanied by transfer or similar taxes, if required pursuant to Section 13.06.

To exchange the Notes, a Holder must (a) complete and manually sign the Exchange Notice on the reverse of the Note (or complete and manually sign a facsimile of such notice) and deliver such notice to the Exchange Agent at the office maintained by the Exchange Agent for such purpose, (b) with respect to Notes that are in certificated form, surrender the Notes to the Exchange Agent, (c) furnish appropriate endorsements and transfer documents if required by the Exchange Agent and (d) pay any transfer or similar tax, if required. The date on which the Holder satisfies all such requirements shall be deemed to be the date on which the applicable Notes shall have been tendered for exchange.

Whether the Notes to be exchanged are held in book-entry or certificated form, the Exchange Notice will require the Holder to certify that it or the Person on whose behalf the Notes are being exchanged is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act.

Notes in respect of which a Holder has delivered a Repurchase Notice or a Designated Event Repurchase Notice may be exchanged only if such notice is withdrawn in accordance with the terms of Section 3.05 or Section 3.06, as the case may be.

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

If the Issuer is required to deliver shares of Common Stock upon settlement in accordance with Sections 13.10 and 13.11, if applicable, as promptly as practicable (but no later than the fifth Business Day following the last day of the Applicable Exchange Period), after satisfaction of the requirements for exchange set forth above, subject to compliance with any restrictions on transfer if shares issuable on exchange are to be issued in a name other than that of the Noteholder (as if such transfer were a transfer of the Note or Notes (or portion thereof) so exchanged), and in accordance with the time periods set forth in this Article 13, the Issuer shall issue and shall deliver to such Noteholder at the office or agency maintained by the Issuer for such purpose pursuant to Section 4.02, (i) a certificate or certificates for the number of full shares of Common Stock (if any) issuable upon the exchange of such Note or portion thereof as determined by the Is suer in accordance with the provisions of Sections 13.10 and 13.11 and (ii) a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such exchange, calculated by the Issuer as provided in Section 13.03. The cash, and, if applicable, a certificate or certificates for the number of full shares of Common Stock into which the Notes are exchanged (and cash in lieu of fractional shares) will be delivered to an exchanging holder after satisfaction of the requirements for exchange set forth above, in accordance with this Section 13.02 and Sections 13.10 and, if applicable, 13.11.

Each exchange shall be deemed to have been effected as to any such Note (or portion thereof) on the date on which the requirements set forth above in this Section 13.02 have been satisfied as to such Note (or portion thereof) or, if later, the Determination Date (the **"Exchange Date"),** and the Person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such exchange shall be deemed to have become on said date the holder of record of the shares represented thereby; *provided* that any such surrender on any date when the stock transfer books of the Guarantor shall be closed shall be deemed to be by the Person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such exchange shall be at the Exchange Rate in effect on the Exchange Date.

Any Note or portion thereof surrendered for exchange during the period from 5:00 p.m., New York City time, on the Record Date for any interest payment date to 5:00 p.m., New York City time, on the applicable interest payment date shall be accompanied by payment, in immediately available funds or other funds acceptable to the Is suer, of an amount equal to the interest otherwise payable on such interest payment date on the principal amount being exchanged; *provided* that no such payment need be made (1) if a Holder exchanges its Notes in connection with a redemption and the Issuer has specified a Redemption Date that is after a Record Date and on or prior to the Business Day immediately succeeding the next interest payment date, (2) if a Holder exchanges its Notes in connection with a Designated Event and the Issuer has specified a Designated Event Repurchase Date that is after a Record Date and on or prior to the corresponding interest payment date or (3) to the extent of any overdue interest, if any overdue interest exists at the time of exchange with respect to such Note. Except as otherwise provided above in this Article 13, no payment or other adjustment shall be made for interest accrued on any Note exchanged or for dividends on any shares issued upon the exchange of such Note as provided in this Article 13. Notwithstanding the foregoing, in the case of Notes submitted for exchange in connection with a Designated Event, such Notes shall continue to represent the right to receive the Additional Designated Event Shares, if any, payable pursuant to Section 13.11, until such Additional Designated Event Shares are so paid.

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

Upon the exchange of a Note, the accrued but unpaid interest attributable to the period from the issue date of the Note to the Exchange Date, with respect to the exchanged Note, shall not be deemed canceled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of cash and, if applicable, shares of Common Stock (together with the cash payment, if any in lieu of fractional shares) in exchange for the Note being exchanged pursuant to the provisions hereof.

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

Section 13.03. *Cash Payments in Lieu of Fractional Shares.* No fractional shares of Common Stock or scrip certificates representing fractional shares shall be issued upon exchange of Notes. If more than one Note shall be surrendered for exchange at one time by the same Holder, the number of full shares that shall be issuable upon exchange 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 exchange of any Note or Notes, the Issuer shall make an adjustment and payment therefor in cash to the Holder of Notes at a price equal to the Average Price.

Section 13.04. *Exchange Rate.* The initial Exchange Rate for the Notes is 42.5822 shares of Common Stock per each $1,000 principal amount of the Notes, subject to adjustment as provided in Sections 13.05 and 13.11 (herein called the **"Exchange Rate").**

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

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

$ER_1 = ER_0 \times OS_1/OS_0$

where

ER_0 = the Exchange Rate in effect immediately prior to the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination;

ER_1 = the new Exchange Rate in effect immediately after the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination;

OS_0 = the number of shares of Common Stock outstanding immediately prior to such dividend or distribution, or the effective date of such share split or share combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or the effective date of such share split or share combination.

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

(b) If the Guarantor distributes to all holders of Common Stock any rights, warrants or options entitling them for a period of not more than 45 days after the date of issuance thereof to subscribe for or purchase Common Stock for a period of not more than 45 days after the date of issuance thereof, in either case at an exercise price per share of Common Stock less than the Closing Sale Price of the Common Stock on the Business

Day immediately preceding the time of announcement of such issuance, the Exchange Rate will be adjusted based on the following formula:

$$ER_1 = ER_0 \times (OS_0 + X)/(OS_0 + Y)$$

where

ER_0 = the Exchange Rate in effect immediately prior to the ex-dividend date for such distribution;

ER_1 = the new Exchange Rate in effect immediately after the ex-dividend date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the ex-dividend date for such distribution;

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

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

For purposes of this paragraph (b), in determining whether any rights, warrants or options entitle the holders to subscribe for or purchase Common Stock at less than the applicable Closing Sale Price of the Common Stock, and in determining the aggregate exercise or conversion price payable for such Common Stock, there shall be taken into account any consideration received by the Guarantor for such rights, warrants or options and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined by the Board of Directors. If any right, warrant or option described in this paragraph (b) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof, the new Exchange Rate shall be readjusted to the Exchange Rate that would then be in effect if such right, warrant or option had not been so issued.

(c) If the Guarantor distributes shares of capital stock, evidences of indebtedness or other assets or property of the Guarantor to all holders of Common Stock, excluding:

(A) dividends, distributions, rights, warrants or options referred to in paragraph (a) or (b) above;

(B) dividends or distributions paid exclusively in cash; and

(C) Spin-Offs described below in this paragraph (c),

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

$$ER_1 = ER_0 \times SP_0/(SP_0\ FMV)$$

where

ER_0 = the Exchange Rate in effect immediately prior to the ex-dividend date for such distribution;

ER_1 = the new Exchange Rate in effect immediately after the ex-dividend date for such distribution;

SP_0 = the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days prior to the Business Day immediately preceding the earlier of the record date or the ex-dividend date for such distribution; and

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

provided that if "FMV" with respect to any distribution of shares of capital stock, evidences of indebtedness or other assets or property of the Guarantor is equal to or greater than "SP_0" with respect to such distribution, then in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of Notes shall have the right to receive on the date such shares of capital stock, evidences of indebtedness or other assets or property of the Guarantor are distributed to holders of Common Stock, for each Note, the amount of shares of capital stock, evidences of indebtedness or other assets or property of the Guarantor such holder of Notes would have received had such holder of Notes owned a number of shares of Common Stock equal to a fraction the numerator of which is the product of the Exchange Rate in effect on the ex-dividend date for such distribution, *and* the aggregate principal amount of Notes held by such Holder and the denominator of which is one thousand dollars ($1,000).

An adjustment to the Exchange Rate made pursuant to the immediately preceding paragraph shall become effective on the ex-dividend date for such distribution.

If the Guarantor distributes to all holders of Common Stock, capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit of the Guarantor (a "**Spin-Off"),** the Exchange Rate in effect immediately before the tenth Trading Day from and including the effective date of the Spin-Off will be adjusted based on the following formula:

$$ER1 = ER_0 \times (FMV_0 + MP_0)/MP_0$$

where

ER_0 = the Exchange Rate in effect immediately prior to the tenth Trading Day immediately following, and including, the effective date of the Spin-Off;

ER_1 = the new Exchange Rate immediately after the tenth Trading Day immediately following, and including, the effective date of the Spin-Off;

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

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

An adjustment to the Exchange Rate made pursuant to the immediately preceding paragraph will occur on the tenth Trading Day from and including the effective date of the Spin-Off; *provided* that in respect of any exchange within the ten (10) Trading Days following the effective date of any Spin-Off, references within this paragraph (c) to ten (10) Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the effective date of such Spin-Off and the Exchange Date in determining the Applicable Exchange Rate.

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

(d) If the Guarantor makes any cash dividend or distribution to all holders of outstanding Common Stock (excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Issuer) during any of its quarterly fiscal periods in an aggregate amount that, together with other cash dividends or distributions made during such quarterly fiscal period, exceeds the product of $0.2275 per share of Common Stock (the **"Reference Dividend"**) and the number of shares of Common Stock outstanding on the Record Date for such distribution, the Exchange Rate will be adjusted based on the following formula:

$$ER_1 = ER_0 \times SP_0 /(SP_0 – C)$$

where

ER_0 = the Exchange Rate in effect immediately prior to the ex-dividend date for such distribution;

ER_1 = the new Exchange Rate immediately after the ex-dividend date for such distribution;

SP_0 = the average of the Closing Sale Prices of the Common Stock for the ten (10) consecutive Trading Days prior to the Business Day immediately preceding the earlier of the record date or the day prior to the ex-dividend date for such distribution; and

C = the amount in cash per share that the Guarantor distributes to holders of Common Stock that exceeds the Reference Dividend;

provided that if "C" with respect to any such cash dividend or distribution is equal to or greater than "SP_0" with respect to any such cash dividend or distribution, then in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of Notes shall have the right to receive on the date such cash is distributed to holders of Common Stock, for each Note, the amount of cash such holder of Notes would have received had such holder of Notes owned a number of shares of Common Stock equal to a fraction the numerator of which is the product of the Exchange Rate in effect on the ex-dividend date for such dividend or distribution, *and* the aggregate principal amount of Notes held by such Holder and the denominator of which is one thousand dollars ($1,000).

An adjustment to the Exchange Rate made pursuant to this paragraph (d) shall become effective on the ex-dividend date for such dividend or distribution. If any dividend or distribution described in this paragraph (d) is declared but not so paid or made, the new Exchange Rate shall be readjusted to the Exchange Rate that would then be in effect if such dividend or distribution had not been declared.

The Reference Dividend amount is subject to adjustment on account of any of the events set forth in paragraphs (a), (b) and (c) above and paragraph (e) below. Any such adjustment will be effected by multiplying the Reference Dividend by a fraction, the numerator of which will equal the Exchange Rate in effect immediately prior to the adjustment on account of such event and the denominator of which will equal the Exchange Rate as adjusted; *provided* that no adjustment will be made to the Reference Dividend amount for any adjustment made to the Exchange Rate under this paragraph (d).

Notwithstanding the foregoing, if an adjustment is required to be made under this paragraph as a result of a distribution that is not a quarterly dividend, the Reference Dividend will be deemed to be zero.

(e) If the Guarantor 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 Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (the **"Expiration Time"**), the Exchange Rate will be adjusted based on the following formula:

$ER_1 = ER_0 \times (AC + (SP_I \times OS_1))/(SP_1 \times OS_0)$

where

ER_0 = the Exchange Rate in effect on the day immediately following the date such tender offer or exchange offer expires;

ER_1 = the Exchange Rate in effect on the second day immediately following the date such tender offer or exchange offer expires;

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

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

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

SP_1 = the Closing Sale Price of the Common Stock for the Trading Day next succeeding the date such tender offer or exchange offer expires.

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

Any adjustment to the Exchange Rate made pursuant to this paragraph (e) shall become effective on the second day immediately following the Expiration Time. If the Guarantor or one of its Subsidiaries is obligated to purchase Common Stock pursuant to any such tender offer or exchange offer but is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the new Exchange Rate shall be readjusted to be the Exchange Rate that would be in effect if such tender offer or exchange offer had not been made.

(f) Notwithstanding the foregoing, in the event of an adjustment to the exchange rate pursuant to paragraphs (d) and (e) above, in no event will the Exchange Rate exceed 51.0986 shares of Common Stock per each $1,000 principal amount of the Notes (the **"Maximum Exchange Rate"**). The Maximum Exchange Rate shall be adjusted in the same manner and for the same events as the Exchange Rate is adjusted pursuant to clauses (a), (b) and (c) above.

(g) If the Guarantor has in effect a stockholder's rights plan while any Notes remain outstanding, Holders of Notes will receive, upon an exchange of Notes in respect of which the Issuer elects to deliver any Net Shares, in addition to such Net Shares, rights under the Guarantor's stockholder rights plan unless, prior to exchange, the rights have expired, terminated or been redeemed or unless the rights have separated from the Common Stock. If the rights provided for in the stockholder's rights plan adopted by the Guarantor have separated from the Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that Holders of Notes would not be entitled to receive any rights in respect of any Net Shares that the Issuer elects to deliver upon an exchange of Notes, the Exchange Rate will be adjusted at the time of separation as if the Guarantor had distributed, to all holders of Common Stock, capital stock, evidences of indebtedness or other assets or property pursuant to paragraph (c) above, subject to readjustment upon the subsequent expiration, termination or redemption of the rights.

In addition to the adjustments pursuant to paragraphs (a) through (e) above, the Issuer may increase the Exchange Rate in order to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of capital stock (or rights to acquire Common Stock) or from any event treated as such for income tax purposes. The Issuer may also, from time to time, to the extent permitted by applicable law and the applicable rules of the New York Stock Exchange, increase the Exchange Rate by any amount for any period if the Issuer has determined that such increase would be in the best interests of the Issuer or the Guarantor. If the Issuer makes such determination, it will be conclusive and the Issuer will deliver to the Exchange Agent and Holders of the Notes a notice of the increased Exchange Rate and the period during which it will be in effect at least fifteen (15) days prior to the date the increased Exchange Rate takes effect in accordance with applicable law.

The Issuer shall not make any adjustment to the Exchange Rate if Holders of the Notes participate in the dividend, distribution or transaction that would otherwise result in an adjustment to the Exchange Rate at the same time as holders of the Common Stock and as if such Holders of Notes owned a number of shares of Common Stock equal to a fraction the numerator of which is the product of the Exchange Rate in effect on the ex-dividend date or effective date for the relevant dividend, distribution or transaction, *and* the aggregate principal amount of Notes held by such Holder and the denominator of which is one thousand dollars ($1,000).

Notwithstanding anything to the contrary contained herein, in addition to the other events set forth herein on account of which no adjustment to the Exchange Rate shall be made, the Applicable Exchange Rate shall not be adjusted for:

(i) the issuance of any Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Issuer or those of the Guarantor and the investment of additional optional amounts in the Common Stock under any plan;

(ii) the issuance of any the Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director, trustee or consultant benefit plan, employee agreement or arrangement or program of the Issuer or the Guarantor;

(iii) the issuance of any the Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security outstanding as of the date the Notes were first issued;

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

(v) accrued and unpaid interest;

(vi) accumulated and unpaid dividends or distributions; and

(vii) the issuance of Units by the Issuer and the issuance of the Common Stock or the payment of cash upon redemption thereof.

No adjustment in the Exchange Rate will be required unless the adjustment would require an increase or decrease of at least 1% of the Exchange Rate. If the adjustment is not made because the adjustment does not change the Exchange Rate by at least 1%, then the adjustment that is not made will be carried forward and taken into account in any future adjustment. All required calculations will be made to the nearest cent or 1/1000th of a share, as the case may be. Notwithstanding the foregoing, if the Notes are called for redemption, all adjustments not previously made will be made on the applicable Redemption Date.

Whenever the Exchange Rate is adjusted as herein provided, the Guarantor or the Issuer shall as promptly as reasonably practicable file with the Trustee and any Exchange Agent other than the Trustee an Officers' Certificate setting forth the Exchange Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Promptly after delivery of such certificate, the Guarantor or the Issuer shall prepare a notice of such adjustment of the Exchange Rate setting forth the adjusted Exchange Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Exchange Rate to the Holders of the Notes within twenty (20) Business Days of the Effective Date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

Unless and until the Exchange Agent receives written notice setting forth an adjustment to the Exchange Rate, the Exchange Agent may assume without inquiry that the Exchange Rate has not been adjusted and that the current Exchange Rate of which it has knowledge remains in effect.

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

If any of the following events occur, namely (i) any reclassification or change of the outstanding Common Stock (other than a subdivision or combination to which Section 13.05(a) applies), (ii) any consolidation, merger or combination of the Guarantor with another Person, or a binding share exchange in respect of all of the outstanding Common Stock as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such the Common Stock or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Guarantor to any other Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such the Common Stock, then the Guarantor 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). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 13.05. The Guarantor shall cause notice of the execution of such supplemental indenture to be delivered to each Holder of Notes within twenty (20)

Business Days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The provisions of this paragraph shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances. If the provisions of this paragraph applies to any event or occurrence, then the provisions of Sections Section 13.05(a) through (g) shall not apply.

Section 13.06. *Taxes on Shares Issued.* The issue of stock certificates, if any, on exchange of Notes shall be made without charge to the exchanging Noteholder for any documentary, stamp or similar issue or transfer tax in respect of the issue thereof. The Issuer shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Note exchanged, and the Issuer shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Issuer the amount of such tax or shall have established to the satisfaction of the Issuer that such tax has been paid.

Section 13.07. *Reservation of Shares, Shares to Be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock.* The Guarantor shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the exchange of the Notes as required by this Indenture from time to time as such Notes are presented for exchange.

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

The Guarantor covenants that, if any shares of Common Stock to be provided for the purpose of exchange of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon exchange, the Guarantor shall, as expeditiously as possible secure such registration or approval, as the case may be.

The Guarantor further covenants that, if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national or regional securities exchange or automated quotation system, the Guarantor will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all the Common Stock issuable upon exchange of the Notes; *provided* that if the rules of such exchange or automated quotation system permit the Guarantor to defer the listing of such the

Common Stock until the first exchange of the Notes in accordance with the provisions of this Indenture, the Guarantor covenants to list such the Common Stock issuable upon exchange of the Notes in accordance with the requirements of such exchange or automated quotation system at such time.

Section 13.08. *Responsibility of Trustee.* The Trustee and any other Exchange Agent shall not at any time be under any duty or responsibility to any holder of Notes to

determine the Exchange Rate or whether any facts exist which may require any adjustment of the Exchange Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Exchange Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any capital stock, other securities or other assets or property, which may at any time be issued or delivered upon the exchange of any Note; and the Trustee and any other Exchange Agent make no representations with respect thereto. Neither the Trustee nor any Exchange Agent shall be responsible for any failure of the Issuer to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of exchange or to comply with any of the duties, responsibilities or covenants of the Issuer contained in this Article 13. Without limiting the generality of the foregoing, neither the Trustee nor any Exchange Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.05 relating either to the kind or amount of shares of capital stock or other securities or other assets or property (including cash) receivable by Noteholders upon the exchange of their Notes after any event referred to in such Section 13.05 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Issuer shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. The Trustee shall not at any time be under any duty or responsibility to any holder of Notes to determine the accuracy of the method employed in calculating the Trading Price or whether any facts exist which may require any adjustment of the Trading Price.

Section 13.09. *Notice to Holders Prior to Certain Actions.* In case:

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

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

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

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

the Issuer shall cause to be filed with the Trustee and to be delivered to each holder of Notes at its address appearing on the Note Register provided for in Section 2.05 of this Indenture, as promptly as possible but in any event at least ten (10) calendar days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) (i) 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 exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up and (ii) either (aa) the Issuer will not withhold under Section 1445 of the Code in connection with such exchange, or (bb) the Issuer, after reasonable efforts, believes that the Guarantor is not, or has not been able to determine whether it is, a domestically controlled qualified investment entity as defined in Section 897(h) of the Code and, therefore, will withhold under Section 1445 of the Code in connection with such exchange unless another exception to withholding is available at such time. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 13.10. *Settlement upon Exchange.* (a) Upon exchange of any Notes, subject to Sections 13.01, 13.02 and this Section 13.10, the Issuer shall satisfy its obligation upon exchange (the **"Exchange Obligation"**) by payment and delivery of cash and, if applicable as provided herein, shares of Common Stock for each $1,000 aggregate principal amount of Notes tendered for exchange in accordance with their terms.

(b) Upon exchange of Notes, the Issuer will deliver, in respect of each $1,000 principal amount of Notes tendered for exchange in accordance with their terms:

(i) cash in an amount (the **"Principal Return"**) equal to the lesser of (A) the aggregate principal amount of the Notes to be exchanged and (B) the aggregate Exchange Value of the Notes to be exchanged;

(ii) if the Exchange Value is greater than the Principal Return, an amount (the **"Net Amount"**), at the election of the Issuer, in cash (the **"Net Cash Amount"**), shares of Common Stock (the **"Net Shares"**) determined pursuant to Section 13.10(c), or a combination of cash and shares of Common Stock with an aggregate value equal to the difference between the Exchange Value and the Principal Return; and

(iii) an amount in cash in lieu of any fractional shares of Common Stock deliverable in connection with payment of the Net Shares based upon the Average Price.

(c) The Net Shares to be delivered pursuant to Section 13.10(b) will be equal to the sum of the Daily Share Amounts for each Trading Day during the Applicable Exchange Period as to which the Issuer has elected to deliver shares.

(d) The Exchange Value, Principal Return, Net Amount, Net Cash Amount and the number of Net Shares, as applicable, will be determined by the Issuer promptly after the end of the Applicable Exchange Period (the **"Determination Date"**). Prior to the close of business on the second Trading Day following the date on which Notes are tendered for exchange, the Issuer shall inform the Exchange Agent and the Holders of such Notes of its election to pay cash for all or a portion of the Net Amount and, if applicable, the portion of the Net Amount that will be paid in cash and the portion that will be delivered in the form of Net Shares.

(e) Payment of the Principal Return and cash in lieu of fractional shares, and delivery of the Net Shares or payment of the Net Cash Amount as applicable, shall be made by the Issuer as promptly as practicable following the Determination Date, but in no event later than five Business Days thereafter (the **"Exchange Settlement Date"**) to the holder of a Note surrendered for exchange, or such holders nominee or nominees, and issue, or cause to be issued, and deliver to the Exchange Agent or to such holder, or such holders nominee or nominees, certificates or a book-entry transfer through the Depositary for the number of full shares of Common Stock equal to the Net Shares, if any, to which such holder shall be entitled as part of such Exchange Obligation.

Section 13.11. *Exchange Rate Adjustment After Certain Designated Events.* (a) Subject to the provisions hereof, if a Noteholder elects to exchange its Notes following the occurrence of a transaction described in clause (1) of the definition of Designated Event that occurs prior to April 5, 2012, the Issuer will increase the Applicable Exchange Rate for the Notes so surrendered for exchange by a number of shares of Common Stock (the **"Additional Designated Event Shares"**) as specified below; *provided that* the Additional Designated Event Shares will only be payable as set forth below. An exchange of Notes will be deemed for these purposes to be in connection with such a Designated Event if the Exchange Notice is received by the Exchange Agent from and after the Effective Date of the Designated Event until the corresponding Designated Event Repurchase Date.

(b) The number of Additional Designated Event Shares will be determined by reference to the table in paragraph (e) below and is based on the date on which the relevant Designated Event transaction becomes effective (the **"Effective Date"**) and the price (the **"Stock Price"**) paid per share of Common Stock in such transaction. If the holders of Common Stock receive only cash in the relevant Designated Event transaction, the Stock Price will equal the cash amount paid per share of Common Stock. In all other cases, the Stock Price will equal the average of the Closing Sale Prices of the Common Stock on the ten (10) consecutive Trading Days up to but excluding the Effective Date.

(c) The Stock Prices set forth in the first row of the table below shall be adjusted as of any date on which the Exchange Rate of the Notes is adjusted pursuant to Section 13.05. The adjusted Stock Prices will equal the Stock Prices applicable

immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Exchange Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and (ii) the denominator of which is the Exchange Rate as so adjusted.

(d) The number of Additional Designated Event Shares set forth in the table below will be adjusted in the same manner and for the same events as the Exchange Rate is adjusted pursuant to Section 13.05.

(e) The following table sets forth the Stock Price and number of Additional Designated Event Shares issuable per $1,000 principal amount of Notes:

	Stock Price										
Effective Date	**$ 19.57**	**$ 22.00**	**$ 24.00**	**$ 26.00**	**$ 28.00**	**$ 30.00**	**$ 32.00**	**$ 34.00**	**$ 36.00**	**$ 38.00**	**$ 40.00**
March 27, 2007	8.5164	5.6398	4.0448	2.9198	2.1218	1.5528	1.1440	0.8481	0.6332	0.4754	0.3578
April 1, 2008	8.5164	5.6060	3.9226	2.7514	1.9362	1.3669	0.9685	0.6891	0.4920	0.3525	0.2518
April 1, 2009	8.5164	5.4575	3.6849	2.4781	1.6615	1.1113	0.7413	0.4942	0.3285	0.2176	0.1411
April 1, 2010	8.5164	5.1130	3.2495	2.0307	1.2494	0.7570	0.4515	0.2650	0.1519	0.0834	0.0435
April 1, 2011	8.5164	4.4077	2.4489	1.2850	0.6375	0.2981	0.1290	0.0476	0.0164	0.0037	0.0000
April 5, 2012	8.5164	2.8724	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

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

(i) if the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Designated Event Shares will be determined by a straight-line interpolation between the number of Additional Designated Event Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is equal to or in excess of $40.00 per share of Common Stock (the "**Make Whole Cap"**), no Additional Designated Event Shares will be issued upon exchange; and

(iii) if the Stock Price is less than $19.57 per share of Common Stock (the "**Make Whole Floor**"), no Additional Designated Event Shares will be issued upon exchange.

(g) The Make Whole Cap and Make Whole Floor shall be adjusted as of any date the Exchange Rate of the Notes is adjusted pursuant to Section 13.05. The adjusted Make Whole Cap or Make Whole Floor, as the case may be, shall equal the Make Whole Cap or Make Whole Floor, as the case may be, applicable immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Exchange Rate immediately prior to the adjustment giving rise to the adjustment and (ii) the denominator of which is the Exchange Rate as so adjusted.

(h) Notwithstanding the foregoing, in no event shall the total number of shares of Common Stock issuable upon exchange exceed 51.0986 shares per $1,000 principal amount, subject to adjustment as provided for in Section 13.05.

Section 13.12. *Ownership Limit and Withholding.* (a) Notwithstanding any other provision of the Notes, no Holders of Notes shall be entitled to receive shares of Common Stock upon an exchange of Notes to the extent that receipt of such shares would cause such Holder (together with such Holder's Affiliates) to exceed the ownership limit contained in Article VI of the Charter. The Trustee shall have no obligation for monitoring ownership limits upon the transfer or exchange of Notes.

(b) At the Maturity Date, upon earlier redemption or repurchase of the Notes or at any time a payment is made with respect to the Notes, and as otherwise required by law, the Issuer may deduct and withhold from such amount otherwise deliverable to the Holder the amount required to be deducted and withheld under applicable law, and such amount shall be deemed paid to such Holder for all purposes of this Indenture.

Section 13.13. *Calculation in Respect of Notes.* Except as otherwise specifically stated herein or in the Notes, all calculations to be made in respect of the Notes shall be the obligation of the Issuer. All calculations made by the Issuer or its agent as contemplated pursuant to the terms hereof and of the Notes shall be made in good faith and be final and binding on the Notes and the Holders of the Notes absent manifest error. The Issuer shall provide a schedule of calculations to the Trustee, and the Trustee shall be entitled to rely upon the accuracy of the calculations by the Issuer without independent verification. The Trustee shall forward calculations made by the Issuer to any Holder of Notes upon written request.

Section 13.14. *Surrender to Financial Institution in Lieu of Exchange.* When a Holder surrenders Notes for exchange, the Issuer may direct the Exchange Agent to surrender, on or prior to the commencement of the Applicable Exchange Period, such Notes to a financial institution designated by the Issuer for transfer in lieu of exchange. In order to accept any Notes surrendered for exchange, the designated institution must agree to deliver, in exchange for such Notes, either (i) all cash or a combination of cash and shares of Common Stock equal to the consideration due upon exchange, as determined under Section 13.10(b) or (ii) a number of shares of Common Stock per $1,000 of Notes equal to the Exchange Rate, at the option of the designated financial institution. By the close of business on the Trading Day immediately preceding the start of the Applicable Exchange Period, the Issuer shall notify the Exchange Agent and the Holder surrendering Notes for exchange that the Issuer has directed the designated financial institution to accept the Notes in lieu of exchange and such financial institution will be required to notify the Exchange Agent whether it will deliver, upon exchange, shares of Common Stock, cash or a specified combination thereof.

If the designated financial institution accepts any such Notes, it will deliver the appropriate number of shares of Common Stock or cash, or any combination thereof, to the Exchange Agent, and the Exchange Agent will deliver those shares of Common Stock or cash, or combination thereof, as the case may be, to the Holder. Any Notes accepted by the designated financial institution will remain outstanding. If the designated financial institution agrees to accept any Notes but does not timely deliver the related consideration, or if such designated financial institution does not accept the Notes, the Issuer will, as promptly as practical thereafter, but not later than the third Business Day

following determination of the Exchange Value, exchange the Notes for cash and shares, if any, of Common Stock, as described in Section 13.02.

The Issuer's designation of a financial institution to which the Notes may be surrendered in lieu of exchange does not require the financial institution to accept any Notes. The Issuer will not pay any consideration to, or otherwise enter into any agreement with, the designated financial institution for or with respect to such designation.

ARTICLE 14
MEETINGS OF HOLDERS OF NOTES

Section 14.01. *Purposes for Which Meetings May Be Called.* A meeting of Holders of Notes may be called at any time and from time to time pursuant to this Article 14 to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other act provided by this Indenture to be made, given or taken by Holders of Notes.

Section 14.02. *Call, Notice and Place of Meetings.* (a) The Trustee may at any time call a meeting of Holders of Notes for any purpose specified in Section 14.01, to be held at such time and at such place in The City of New York, New York as the Trustee shall determine. Notice of every meeting of Holders of Notes, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 16.03, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Issuer, the Guarantor or the Holders of at least 10% in principal amount of the outstanding Notes shall have requested the Trustee to call a meeting of the Holders of Notes for any purpose specified in Section 14.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered notice of or made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuer, the Guarantor, if

applicable, or the Holders of Notes in the amount above specified, as the case may be, may determine the time and the place in the City of New York, New York, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in clause (a) of this Section.

Section 14.03. *Persons Entitled to Vote at Meetings.* To be entitled to vote at any meeting of Holders of Notes, a Person shall be (a) a Holder of one or more outstanding Notes, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more outstanding Notes by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Notes shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel, any representatives of the Guarantor and its counsel and any representatives of the Issuer and its counsel.

Section 14.04. *Quorum; Action.* The Persons entitled to vote a majority in principal amount of the outstanding Notes shall constitute a quorum for a meeting of Holders of Notes; *provided, however,* that if any action is to be taken at the meeting with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which may be made, given or taken by the Holders of not less than a specified percentage in principal amount of the outstanding Notes, the Persons holding or representing the specified percentage in principal amount of the outstanding Notes will constitute a quorum. In the absence of a quorum within sixty (60) minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Notes, be dissolved. In any other case, the meeting may be adjourned for a period of not less than ten (10) days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than ten (10) days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 14.02, except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the outstanding Notes which shall constitute a quorum.

Except as limited by the proviso to Section 9.02, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the outstanding Notes; *provided, however,* that, except as limited by the proviso to Section 9.02, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the outstanding Notes may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the outstanding Notes.

Any resolution passed or decision taken at any meeting of Holders of Notes duly held in accordance with this Section 14.04 shall be binding on all the Holders of Notes, whether or not such Holders were present or represented at the meeting.

Section 14.05. *Determination of Voting Rights; Conduct and Adjournment of Meetings.* (a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Notes in regard to proof of the holding of Notes and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Notes shall be proved in the manner specified in Section 8.03 and the appointment of any proxy shall be proved in the manner specified in Section 8.01.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Holders of Notes as provided in Section 14.02(b), in which case the Issuer, the Guarantor or the Holders of Notes calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the outstanding Notes of such series represented at the meeting.

(c) At any meeting, each Holder of a Note or proxy shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him; *provided, however,* that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Note or proxy.

(d) Any meeting of Holders of Notes duly called pursuant to Section 14.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the outstanding Notes represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 14.06. *Counting Votes and Recording Action of Meetings.* The vote upon any resolution submitted to any meeting of Holders of Notes shall be by written ballots on which shall be subscribed the signatures of the Holders of Notes or of their representatives by proxy and the principal amounts and serial numbers of the outstanding Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Notes shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 14.02 and, if applicable, Section 14.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuer and the Guarantor, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE 15

GUARANTEE

Section 15.01. *Guarantee.* By its execution hereof, the Guarantor acknowledges and agrees that it receives substantial benefits from the Issuer and that the Guarantor is providing its Guarantee for good and valuable consideration, including, without limitation, such substantial benefits. Accordingly, subject to the provisions of this Article 15, the Guarantor hereby unconditionally guarantees to each Holder of a Note

authenticated and delivered by the Trustee and its successors and assigns that: (i) the principal of (including the Redemption Price or repurchase price upon redemption or repurchase, as the case may be, pursuant to Article 3), premium, if any, and interest and Additional Interest, if any, on the Notes shall be duly and punctually paid in full when due, whether at the Maturity Date, upon acceleration, upon redemption, upon a repurchase, upon repurchase due to a Designated Event or otherwise, and interest on overdue principal, premium, if any, Additional Interest, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes and all other obligations of the Issuer to the Holders or the Trustee hereunder or under the Notes (including fees, expenses or other) shall be promptly paid in full or performed, all in accordance with the terms hereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at the Maturity Date, by acceleration, call for redemption, upon repurchase, upon repurchase due to a Designated Event or otherwise, subject, however, in the case of clauses (i) and (ii) above, to the limitations set forth in Section 15.03 hereof (collectively, the "**Guarantee Obligations**").

Subject to the provisions of this Article 15, the Guarantor hereby agrees that its Guarantee hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any thereof, the entry of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of the Guarantor. The Guarantor hereby waives and relinquishes: (a) any right to require the Trustee, the Holders or the Issuer (each, a "**Benefited Party**") to proceed against the Issuer or any other Person or to proceed against or exhaust any security held by a Benefited Party at any time or to pursue any other remedy in any secured partys power before proceeding against the Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of a Benefited Party to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons; (c) demand, protest and notice of any kind (except as expressly required by this Indenture), including but not limited to notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Guarantor, the Issuer, any Benefited Party, any creditor of the Guarantor or the Issuer or on the part of any other Person whomsoever in connection with any obligations the performance of which are hereby guaranteed; (d) any defense based upon an election of remedies by a Benefited Party, including but not limited to an election to proceed against the Guarantor for reimbursement; (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (f) any defense arising because of a Benefited Party's election, in any proceeding instituted under the Bankruptcy Law, of the application of Section 1111 (b)(2) of the Bankruptcy Code; and (g) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. The Guarantor hereby covenants that, except as otherwise provided therein, the Guarantee shall not be discharged except by payment in full of all Guarantee Obligations,

including the principal, premium, if any, and interest on the Notes and all other costs provided for under this Indenture or as provided in Article 7.

If any Holder or the Trustee is required by any court or otherwise to return to either the Issuer or the Guarantor, or any trustee or similar official acting in relation to either the Issuer or the Guarantor, any amount paid by the Issuer or the Guarantor to the Trustee or such Holder, the Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. The Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Guarantee Obligations hereby until payment in full of all such obligations guaranteed hereby. The Guarantor agrees that, as between it, on the one hand, and the Holders of Notes and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes hereof, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guarantee Obligations, and (y) in the event of any acceleration of such obligations as provided in Article 6 hereof, such Guarantee Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purpose of the Guarantee.

Section 15.02. *Execution and Delivery of Guarantee.* To evidence the Guarantee set forth in Section 15.01 hereof, the Guarantor agrees that a notation of the Guarantee substantially in the form included in Exhibit A hereto shall be endorsed on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of the Guarantor by an officer of the Guarantor.

The Guarantor agrees that the Guarantee set forth in this Article 15 shall remain in full force and effect and apply to all the Notes notwithstanding any failure to endorse on each Note a notation of the Guarantee.

If an Officer whose facsimile signature is on a Note or a notation of Guarantee no longer holds that office at the time the Trustee authenticates the Note on which the Guarantee is endorsed, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantor.

Section 15.03. *Limitation of Guarantors Liability; Certain Bankruptcy Events.* (a) The Guarantor, and by its acceptance hereof each Holder, hereby confirms that it is the intention of all such parties that the Guarantee Obligations of the Guarantor pursuant to its Guarantee not constitute a fraudulent transfer or conveyance for purposes of any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law. To effectuate the foregoing intention, the Holders and the Guarantor hereby irrevocably agree that the Guarantee Obligations of the Guarantor under this Article 15 shall be limited to the maximum amount as shall, after giving effect to all other contingent and fixed liabilities of the Guarantor, result in the Guarantee Obligations of the Guarantor under the Guarantee not constituting a fraudulent transfer or conveyance.

(b) The Guarantor hereby covenants and agrees, to the fullest extent that it may do so under applicable law, that in the event of the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Issuer, the Guarantor shall not file (or join in any filing of), or otherwise seek to participate in the filing of, any motion or request seeking to stay or to prohibit (even temporarily) execution on the Guarantee and hereby waives and agrees not to take the benefit of any such stay of execution, whether under Section 362 or 105 of the Bankruptcy Law or otherwise.

Section 15.04. *Application of Certain Terms and Provisions to the Guarantor.* (a) For purposes of any provision of this Indenture which provides for the delivery by the Guarantor of an Officers' Certificate and/or an Opinion of Counsel, the definitions of such terms in Section 1.01 hereof shall apply to the Guarantor as if references therein to the Issuer or the General Partner, as applicable, were references to the Guarantor.

(b) Any request, direction, order or demand which by any provision of this Indenture is to be made by the Guarantor shall be sufficient if evidenced as described in Section 16.03 hereof as if references therein to the Issuer were references to the Guarantor.

(c) Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Notes to or on the Guarantor may be given or served as described in Section 16.03 hereof as if references therein to the Issuer were references to the Guarantor.

(d) Upon any demand, request or application by the Guarantor to the Trustee to take any action under this Indenture, the Guarantor shall furnish to the Trustee such certificates and opinions as are required in Section 16.05 hereof as if all references therein to the Issuer were references to the Guarantor.

ARTICLE 16
MISCELLANEOUS PROVISIONS

Section 16.01. *Provisions Binding on Issuer's and Guarantor's Successors.* All the covenants, stipulations, promises and agreements by the Issuer or Guarantor contained in this Indenture shall bind their respective successors and assigns whether so expressed or not.

Section 16.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Issuer shall and may be done and performed with like force and effect by the like board, committee or officer of any Person that shall at the time be the lawful sole successor of the Issuer or Guarantor.

Section 16.03. *Addresses for Notices, etc.* Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Notes on the Issuer or Guarantor shall be in writing and shall be

deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box, or sent by overnight courier, or sent by telecopier transmission addressed as follows:

To Issuer:

Extra Space Storage LP
2795 East Cottonwood Parkway
Suite 400
Salt Lake City, Utah 84121
Telecopier No.: (801) 365-4947
Attention: Corporate Legal Counsel

To Guarantor:

Extra Space Storage Inc.
2795 East Cottonwood Parkway
Suite 400
Salt Lake City, Utah 84121
Telecopier No.: (801) 365-4947
Attention: Corporate Legal Counsel

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

Wells Fargo Bank, N.A.
Corporate Trust Services
MAC N-9303-120
608 2nd Avenue South
Minneapolis, MN 55479
Telecopier No.: (612) 667-9825
Attention: Extra Space Storage Account Manager

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

Any notice or communication delivered to a Noteholder shall be delivered at such Noteholder's address as it appears on the Note Register and shall be sufficiently given to such Noteholder if so delivered within the time prescribed.

Failure to deliver 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 delivered in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 16.04. *Governing Law.* This Indenture shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles that would result in the application of any laws other than the laws of the State of New York.

Section 16.05. *Evidence of Compliance with Conditions Precedent, Certificates to Trustee.* Upon any application or demand by the Issuer to the Trustee to take any action under any of the provisions of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and, if requested by the Trustee, an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

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

Section 16.06. *Legal Holidays.* In any case in which the Maturity Date of interest on or principal of the Notes or the Redemption Date or Repurchase Date of any Note will not be a Business Day, then payment of such interest on or principal of the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Maturity Date or the Redemption Date or Repurchase Date, and no interest shall accrue for the period from and after such date.

Section 16.07. *Trust Indenture Act.* This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of, and to govern indentures qualified under, the Trust Indenture Act, but this incorporation by reference shall not, for the avoidance of doubt and to the extent permitted by law, be construed as subjecting this Indenture or the Trustee to the qualification requirements under the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 16.08. *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction in which property of the Issuer or its subsidiaries is located.

Section 16.09. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any authenticating agent, any Note Registrar and their successors hereunder and the Holders of Notes any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 16.10. *Table of Contents, Headings, etc.* The table of contents and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 16.11. *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf, and subject to its direction, in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Sections 2.04, 2.05, 2.06, 2.07, 3.03, 3.05 and 3.06, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.09.

Any corporation into which any authenticating agent may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any merger, consolidation or exchange to which any authenticating agent shall be a party, or any corporation succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section 16.11, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

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

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

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

The provisions of Sections 7.02, 7.03, 7.04 and 8.03 and this Section 16.11 shall be applicable to any authenticating agent.

Section 16.12. *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 16.13. *Severability.* In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Wells Fargo Bank, N.A., hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein above set forth.

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

EXTRA SPACE STORAGE LP

By: ESS Holdings Business Trust I, its
General Partner

By: /s/ Kenneth M. Woolley
Name: Kenneth M. Woolley
Title: Trustee

EXTRA SPACE STORAGE INC.,
as Guarantor

By: /s/ Kent W. Christensen
Name: Kent W. Christensen
Title: Executive Vice President and Chief Financial Officer

WELLS FARGO BANK, N.A.,
as Trustee

By: /s/Lynn M. Steiner
Name: Lynn M. Steiner
Title: Vice President

EXHIBIT A

[Include only for Global Notes]

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

[Include only for Notes that are Restricted Securities]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT (A) TO THE ISSUER, EXTRA SPACE STORAGE INC. OR A SUBSIDIARY OF THE ISSUER; OR (B) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE).

[Include only for shares of Common Stock that are Restricted Securities]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT (A) TO THE ISSUER, EXTRA SPACE STORAGE LP OR A SUBSIDIARY OF THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECT IVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR

ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY, FURNISH TO THE TRANSFER AGENT AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXTRA SPACE STORAGE LP
3.625% EXCHANGEABLE SENIOR NOTES DUE 2027

CUSIP No.:

ISIN:

No.:

$[ ]

Extra Space Storage LP, a Delaware limited partnership (herein called the **"Issuer"**, which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to Cede & Co., or its registered assigns, the principal sum of [ ] Million DOLLARS ($[ ]), or such lesser amount as is set forth in the Schedule of Increases or Decreases in Note on the other side of this Note, on April 1, 2027 at the office or agency of the Issuer maintained for that purpose in accordance with the terms of the Indenture, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest, semi-annually on April 1 and October 1 of each year, commencing October 1, 2007, on said principal sum at said office or agency, in like coin or currency, at the rate per annum of 3.625%, from the April 1 or October 1, as the case may be, next preceding the date of this Note to which interest has been paid or duly provided for, unless no interest has been paid or duly provided for on the Notes, in which case from March 27, 2007 until payment of said principal sum has been made or duly provided for. The Issuer shall pay interest on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register; *provided, however*, that a Holder of any Notes in certificated form in the aggregate principal amount of more than $2.0 million may specify by written notice to the Issuer that it pay interest by wire transfer of immediately available funds to the account specified by the Noteholder in such notice, or on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

The Issuer promises to pay interest on overdue principal, premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) interest at the rate of 1% per annum above the rate borne by the Notes.

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 exchange this Note into cash and, if applicable, shares of Common Stock, cash or a combination thereof, as the case may be, at the election of the Issuer, 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 not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

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

Dated:

EXTRA SPACE STORAGE LP

By: ESS Holdings Business Trust I, its General Partner

By: _____
Name:
Title:

TRUSTEES CERTIFICATE OF AUTHENTICATION

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

Dated:

WELLS FARGO BANK, N.A.,
as Trustee

By: _____
Authorized Signatory

[FORM OF REVERSE SIDE OF NOTE]

EXTRA SPACE STORAGE LP
3.625% EXCHANGEABLE SENIOR NOTES DUE 2027

This Note is one of a duly authorized issue of Notes of the Issuer, designated as its 3.625% Exchangeable Senior Notes due 2027 (herein called the **"Notes"**), issued under and pursuant to an Indenture dated as of March 27, 2007 (herein called the **"Indenture"**), among the Issuer, the Guarantor and Wells Fargo Bank, N.A., as trustee (herein called the **"Trustee"**), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Issuer and the Holders of the Notes. Defined terms used but not otherwise defined in this Note shall have the respective meanings ascribed thereto in the Indenture.

If an Event of Default (other than an Event of Default specified in Section 6.01(g), 6.01(h) and 6.01(i)) with respect to the Issuer) occurs and is continuing, the principal of , premium, if any, and accrued and unpaid interest (including Additional Interest, if any) on all Notes may be declared to be due and payable by either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding, and, upon said declaration the same shall be immediately due and payable, subject only, in the event of a Reporting Event of Default, to the Issuer's right to pay Additional Interest for the first 180 days of such Reporting Event of Default, as described in Section 6.01. If an Event of Default specified in Section 6.01(g), 6.01(h) or 6.01(i) of the Indenture occurs with respect to the Issuer, the principal of and premium, if any, and accrued and unpaid interest (including Additional Interest, if any) on all the Notes, shall be immediately and automatically due and payable without necessity of further action.

The Indenture contains provisions permitting the Issuer and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, to execute supplemental indentures 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, subject to exceptions set forth in Section 9.02 of the Indenture. Subject to the provisions of the Indenture, the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding may, on behalf of the Holders of all of the Notes, waive any past default or Event of Default, subject to exceptions set forth in the Indenture.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall impair, as among the Issuer and the Holder of the Notes, the obligation of the Issuer, which is absolute and unconditional, to pay the principal of, premium, if any, and interest (including Additional Interest, if any) on this Note at the place, at the respective times, at the rate and in the coin or currency herein and in the Indenture prescribed.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

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

The Issuer shall have the right to redeem the Notes under certain circumstances as set forth in Section 3.01, Section 3.02 and Section 3.03 of the Indenture.

The Notes are not subject to redemption through the operation of any sinking fund.

Upon the occurrence of a Designated Event, Holders of Notes shall have the right to require the Issuer to repurchase all or a portion of their Notes pursuant to Section 3.05 of the Indenture.

On each of April 1, 2012, April 1, 2017, and April 1, 2022, Holders of shall have the right to require the Issuer to repurchase all or a portion of their Notes pursuant to Section 3.06 of the Indenture.

Subject to and in compliance with the provisions of the Indenture, the Holder hereof shall have the right to exchange each $1,000 principal amount of this Note into cash and, if applicable, shares of Common Stock, cash or a combination thereof, as the case may be, at the election of the Issuer, with an aggregate value equal to the Exchange Value.

In the event the Holder surrenders this Note for exchange in connection with certain Designated Events occurring prior to April 5, 2012, the Issuer will increase the Applicable Exchange Rate by the Additional Designated Event Shares as and when provided in the Indenture.

Except as expressly provided in Article 15 of the Indenture, no recourse for the payment of the principal of or any premium or interest on this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer in the Indenture or any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, partner, member, manager, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Guarantor, the General Partner, the Issuer or any of the Issuer's Subsidiaries or of any successor thereto, either directly or through the Guarantor, the General Partner, the Issuer or any of the Issuer's subsidiaries or of any successor thereto, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived

---

and released as a condition of, and as consideration for, the execution of the Indenture and the issue of this Note.

In addition to the rights provided to Holders of Notes under the Indenture, Holders shall have all the rights set forth in the Registration Rights Agreement dated as of March 27, 2007, among the Issuer, the Guarantor and the Initial Purchasers named therein (the **"Registration Rights Agreement"**).

ABBREVIATIONS

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

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

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

GUARANTEE

The Guarantor listed below (hereinafter referred to as the **Guarantor,** which term includes any successors or assigns under the Indenture, dated the date hereof, among the Guarantor, the Issuer (defined below) and Wells Fargo Bank, N.A., as trustee (the **Indenture),** has irrevocably and unconditionally guaranteed on a senior basis the Guarantee Obligations (as defined in Section 15.01 of the Indenture), which include (i) the due and punctual payment of the principal of, premium, if any, and interest and Additional Interest, if any, on the 3.625% Exchangeable Senior Notes due 2027 (the **Notes)** of Extra Space Storage LP, a Delaware limited partnership (the **Is suer),** whether at maturity, by acceleration, call for redemption, upon a repurchase or otherwise, the due and punctual payment of interest on the overdue principal and premium, if any, and (to the extent permitted by law) interest on any interest on the Notes, and the due and punctual performance of all other obligations of the Issuer, to the Holders of the Notes or the Trustee all in accordance with the terms set forth in Article 15 of the Indenture, and (ii) in case of any extension of time of payment or renewal of any Notes or any such other obligations, that the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at maturity, by acceleration, call for redemption, upon a repurchase or otherwise.

The obligations of the Guarantor to the Holders of the Notes and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article 15 of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

No past, present or future director, officer, employee, incorporator, stockholder, partner, member, manager or agent (direct or indirect) of the Guarantor (or any such successor entity), as such, shall have any liability for any obligations of the Guarantor under this Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation.

The Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, the benefit of discussion, protest or notice with respect to the Notes and all demands whatsoever.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon the Guarantor and its successors and assigns until full and final payment of all of the Issuers obligations under the Notes and Indenture or until legally discharged in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders of the Notes, and, in the event of any transfer or assignment of rights by any Holder of the Notes or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

This Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Note upon which this Guarantee is noted shall have been executed

by the Trustee under the Indenture by the manual signature of one of its authorized officers.

The obligations of the Guarantor under this Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law.

THE TERMS OF ARTICLE 15 OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

IN WITNESS WHEREOF, the Guarantor has caused this instrument to be duly executed.

Dated:

EXTRA SPACE STORAGE INC.

By: _____

Name:
Title:

EXCHANGE NOTICE

TO: EXTRA SPACE STORAGE LP
WELLS FARGO BANK, N.A., as Trustee

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

The undersigned registered owner of this Note hereby certifies that it or the Person on whose behalf the Notes are being exchanged is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act of 1933, as amended.

Dated: _____

_____

_____
Signature(s)

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

_____
Signature Guarantee

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

Please print name and address

_____
(Name)

_____
(Street Address)

_____
(City, State and Zip Code)

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

$ _____

Social Security or Other Taxpayer
Identification Number:

_____

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

REPURCHASE NOTICE

TO: EXTRA SPACE STORAGE LP
WELLS FARGO BANK, N.A., as Trustee

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

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

_____

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

Social Security or Other Taxpayer Identification Number

Dated: _____

_____

_____

Signature(s)

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

_____

Signature Guarantee

ASSIGNMENT

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

In connection with any transfer of the Note, the undersigned confirms that such Note is being transferred:

- o To Extra Space Storage LP, Extra Space Storage Inc. or a subsidiary of Extra Space Storage LP; or
- o To a **qualified institutional buyer** in compliance with Rule 144A under the Securities Act of 1933, as amended.

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

_____

Signature Guarantee

NOTICE: The signature on this 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.

ASSIGNMENT

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

In connection with any transfer of the shares of Common Stock prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision) (other than any transfer pursuant to a registration statement that has been declared effective under the Securities Act), the undersigned confirms that such shares of Common Stock are being transferred:

o To Extra Space Storage LP, Extra Space Storage Inc. or a subsidiary of Extra Space Storage LP; or

o Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended; or

o To a person the undersigned reasonably believes is a qualified institutional buyer that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or

o 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.

Unless one of the boxes is checked, the Transfer Agent will refuse to register any of the shares of Common Stock evidenced by this certificate in the name of any person other than the registered holder thereof.

[Include Schedule I only for a Global Note]
SCHEDULE OF INCREASES OR DECREASES IN NOTE

The initial principal amount of this Global Note is [ ] Million DOLLARS ($[ ]). The following increases or decreases in part of this Note have been made:

Date	Amount of Increase in Principal Amount of this Note	Amount of Decrease in Principal Amount of this Note	Principal Amount of this Note following such Increase or Decrease	Signature of Authorized Officer or Trustee

Exhibit 10.1

EXECUTION COPY

Extra Space Storage LP

$250,000,000 3.625% Exchangeable Senior Notes due 2027

Registration Rights Agreement

March 27, 2007

Citigroup Global Markets Inc.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
As representatives of the Initial Purchasers
c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

Extra Space Storage LP, a Delaware limited partnership (the "Operating Partnership") proposes to issue and sell to certain purchasers (the "Initial Purchasers"), for whom you (the "Representatives") are acting as representatives, its 3.625% Exchangeable Senior Notes due 2027 (the "Notes"), upon the terms set forth in the Purchase Agreement by and among the Operating Partnership, Extra Space Storage Inc., a Maryland corporation (the "Company"), and the Representatives, dated as of March 21, 2007 (the "Purchase Agreement"), relating to the initial placement (the "Initial Placement") of the Notes. In certain circumstances, the Notes will be exchangeable for shares of common stock, $0.01 par value (the "Common Stock") of the Company in accordance with the terms of the Notes and the Indenture (as defined below). The Company will fully and unconditionally guarantee the payment by the Operating Partnership of principal and interest on the Notes. To induce the Initial Purchasers to enter into the Purchase Agreement and to satisfy their obligations thereunder, the holders of the Notes will have the benefit of this registration rights agreement by and among the Operating Partnership, the Company and the Initial Purchasers whereby the Company agrees with you for your benefit and the benefit of the holders from time to time of the Notes (including the Initial Purchasers) (each a "Holder" and, collectively, the "Holders"), as follows:

1. Definitions. Capitalized terms used herein without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following capitalized defined terms shall have the following meanings:

"Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Affiliate" shall have the meaning specified in Rule 405 under the Act and the terms "controlling" and "controlled" shall have meanings correlative thereto.

"Automatic Shelf Registration Statement" shall mean a Registration Statement filed by a Well-Known Seasoned Issuer which shall become effective upon filing thereof pursuant to General Instruction I.D for Form S-3.

"Broker-Dealer" shall mean any broker or dealer registered as such under the Exchange Act.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

"Closing Date" shall mean the date of the first issuance of the Notes.

"Commission" shall mean the Securities and Exchange Commission.

"Common Stock" shall have the meaning set forth in the preamble hereto.

"Company" shall have the meaning set forth in the preamble hereto.

"Deferral Period" shall have the meaning indicated in Section 3(i) hereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Exchange Price" shall have the meaning specified in the Indenture.

"Final Memorandum" shall mean the final offering memorandum, dated March 21, 2007, relating to the Notes, including any and all annexes thereto and any information incorporated by reference therein as of such date.

"Holder" shall have the meaning set forth in the preamble hereto.

"Indenture" shall mean the Indenture relating to the Notes, dated the date hereof, by and among the Operating Partnership, the Company, as guarantor, and Wells Fargo Bank, N.A., as the same may be amended from time to time in accordance with the terms thereof.

"Initial Placement" shall have the meaning set forth in the preamble hereto.

"Initial Purchasers" shall have the meaning set forth in the preamble hereto.

"Losses" shall have the meaning set forth in Section 5(d) hereof.

"Majority Holders" shall mean, on any date, Holders of a majority of the Common Stock registered under the Shelf Registration Statement.

"Managing Underwriters" shall mean the investment banker or investment bankers and manager or managers that administer an underwritten offering, if any, conducted pursuant to Section 6 hereof.

"NASD Rules" shall mean the Conduct Rules and the By-Laws of the National Association of Securities Dealers, Inc.

"Note" shall have the meaning set forth in the preamble.

"Notice and Questionnaire" shall mean a written notice delivered to the Company substantially in the form attached as Annex A to the Final Memorandum.

"Notice Holder" shall mean, on any date, any Holder of Registrable Securities that has delivered a properly completed Notice and Questionnaire to the Company on or prior to such date.

"Operating Partnership" shall have the meaning set forth in the preamble hereto.

"Prospectus" shall mean a prospectus included in the Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A or Rule 430B under the Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Common Stock covered by the Shelf Registration Statement, and all amendments and supplements thereto, including any and all exhibits thereto and any information incorporated by reference therein.

"Purchase Agreement" shall have the meaning set forth in the preamble hereto.

"Registrable Securities" shall mean shares of Common Stock initially issuable in exchange for the Notes initially sold to the Initial Purchasers pursuant to the Purchase Agreement other than those that have (i) been registered under the Shelf Registration Statement and disposed of in accordance therewith, (ii) become eligible to be sold without restriction as contemplated by Rule 144(k) under the Act or any successor rule or regulation thereto that may be adopted by the Commission, (iii) ceased to be outstanding, whether as a result of redemption, repurchase, cancellation, exchange or otherwise, or (iv) been sold to the public pursuant to Rule 144 under the Act.

"Registration Default Damages" shall have the meaning set forth in Section 7 hereof.

"Shelf Registration Period" shall have the meaning set forth in Section 2(c) hereof.

"Shelf Registration Statement" shall mean a "shelf" registration statement of the Company pursuant to the provisions of Section 2 hereof which covers some or all of the Common Stock on an appropriate form under Rule 415 under the Act, or any similar rule that may be adopted by the Commission, amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"underwriter" shall mean any underwriter of Common Stock in connection with an offering thereof under the Shelf Registration Statement.

"Well-Known Seasoned Issuer" shall have the meaning set forth in Rule 405 under the Act.

2. Shelf Registration. (a) The Company shall as promptly as practicable (but in no event more than 120 days after the Closing Date) file with the Commission a Shelf Registration Statement (which shall be, if the Company is then a Well-Known Seasoned Issuer, an Automatic Shelf Registration Statement) providing for the registration of, and the sale on a continuous or delayed basis by the Holders of, all of the Registrable Securities, from time to time in accordance with the methods of distribution elected by such Holders, pursuant to Rule 415 under the Act or any similar rule that may be adopted by the Commission.

(b) If the Shelf Registration Statement is not an Automatic Shelf Registration Statement, the Company shall use its commercially reasonable efforts to cause the Shelf Registration Statement to become or be declared effective under the Act no later than 210 days after the Closing Date.

(c) The Company shall use its commercially reasonable efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the Act, in order to permit the Prospectus forming part thereof to be usable by Holders for a period (the "Shelf Registration Period") from the date the Shelf Registration Statement is declared effective by the Commission (or becomes effective in the case of an Automatic Shelf Registration Statement) until the earlier of (i) the 20th trading day immediately following the maturity date of the Notes or (ii) the date upon which there are no Notes or Registrable Securities outstanding. The Company shall be deemed not to have used its commercially reasonable efforts to keep the Shelf Registration Statement effective during the Shelf Registration Period if it voluntarily takes any action that would result in Holders of Registrable Securities not being able to offer and sell such Common Stock at any time during the Shelf Registration Period, unless such action is (x) required by applicable law or otherwise undertaken by the Company in good faith and for valid business reasons (not including avoidance of the Company's obligations

hereunder), including the acquisition or divestiture of assets, and (y) permitted by Section 3(i) hereof. None of the Company, the Operating Partnership or any of their respective securityholders (other than Holders of Registrable Securities) shall have the right to include any securities of the Company or the Operating Partnership in any Shelf Registration Statement other than Registrable Securities.

(d) The Company shall cause the Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement or such amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Act; and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(e) The Company shall issue a press release through a reputable national newswire service announcing the anticipated effective date of the Shelf Registration Statement at least 15 Business Days prior to the anticipated effective date thereof. Each Holder of Registrable Securities agrees to deliver a Notice and Questionnaire and such other information as the

Company may reasonably request in writing, if any, to the Company at least ten Business Days prior to the anticipated effective date of the Shelf Registration Statement as announced in the press release. From and after the effective date of the Shelf Registration Statement, the Company shall use commercially reasonable efforts, as promptly as is practicable after the date a Notice and Questionnaire is delivered, and in any event within 20 Business Days after such date, (i) if required by applicable law, to file with the Commission a post-effective amendment to the Shelf Registration Statement or to prepare and, if permitted or required by applicable law, to file a supplement to the related Prospectus or an amendment or supplement to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus, and so that such Holder is permitted to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its commercially reasonable efforts to cause such post-effective amendment to be declared effective under the Act as promptly as is practicable; provided, that the Company shall not be required to file more than two post-effective amendments in any 90-day period in accordance with this Section 2(e)(i); (ii) provide such Holder, upon request, copies of any documents filed pursuant to Section 2(e)(i) hereof; and (iii) notify such Holder as promptly as practicable after the effectiveness under the Act of any post-effective amendment filed or the filing of any supplement to the related Prospectus, pursuant to Section 2(e)(i) hereof; provided, that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(i) hereof. Notwithstanding anything contained herein to the contrary, the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in the Shelf Registration Statement or related Prospectus; provided, however, that any Holder that becomes a Notice Holder pursuant to the provisions of this Section 2(e) (whether or not such Holder was a Notice Holder at the effective date of the Shelf Registration Statement) shall be named as a selling securityholder in the Shelf Registration Statement or related Prospectus in accordance with the requirements of this Section 2(e). Notwithstanding the foregoing, if (A) the Notes are called for redemption and the then prevailing market price of the Common Stock is above the Exchange Price or (B) the Notes are exchanged as provided for in Section 13.01(i), 13.01(ii) or 13.01(iv) of the Indenture, then the Company shall use commercially reasonable efforts to file the post-effective amendment or supplement to the related Prospectus within five Business Days of the redemption date or the end of the exchange period, as applicable.

3. Registration Procedures. The following provisions shall apply in connection with the Shelf Registration Statement.

(a) The Company shall:

(i) furnish to each of the Representatives and to counsel for the Notice Holders (as appointed in accordance with Section 4), not less than five Business Days prior to the filing thereof with the Commission, a copy of the Shelf Registration Statement and each amendment thereto and each amendment or supplement, if any, to the Prospectus included therein (including all documents incorporated by reference therein after the initial filing) and shall use its

commercially reasonable efforts to reflect in each such document, when so filed with the Commission, such comments as the Representatives reasonably propose; and

(ii) include information regarding the Notice Holders and the methods of distribution they have elected for their Registrable Securities provided to the Company in Notices and Questionnaires as necessary to permit such distribution by the methods specified therein.

(b) The Company shall ensure that:

(i) the Shelf Registration Statement and any amendment thereto and any Prospectus forming part thereof and any amendment or supplement thereto complies in all material respects with the Act; and

(ii) the Shelf Registration Statement and any amendment thereto does not, when it becomes effective, 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.

(c) The Company shall advise the Representatives, the Notice Holders and any underwriter that has provided in writing to the Company a telephone or facsimile number and address for notices, and confirm such advice in writing (which notice pursuant to clauses (ii) through (v) hereof shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension):

(i) when the Shelf Registration Statement and any amendment thereto has been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for any amendment or supplement to the Shelf Registration Statement or the Prospectus or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the institution or threatening of any proceeding for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Common Stock included therein for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose; and

(v) of the happening of any event that requires any change in the Shelf Registration Statement or the Prospectus so that, as of such date, they (A) do not contain any untrue statement of a material fact and (B) do not omit to state a material fact required to be stated therein or necessary to make the statements

therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) The Company shall use its commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of the Shelf Registration Statement or the qualification of the securities therein for sale in any jurisdiction and, if issued, to obtain as soon as possible the withdrawal thereof. The Company shall undertake additional reasonable actions as required to permit unrestricted resales of the Common Stock in accordance with the terms and conditions of this Agreement.

(e) Upon request, the Company shall furnish to each Notice Holder, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment thereto, including all material incorporated therein by reference, and, if a Notice Holder so requests in writing, all exhibits thereto (including exhibits incorporated by reference therein).

(f) During the Shelf Registration Period, the Company shall promptly deliver to each Initial Purchaser, each Notice Holder, and any sales or placement agents or underwriters acting on their behalf, without charge, as many copies of the Prospectus (including the preliminary Prospectus, if any) included in the Shelf Registration Statement and any amendment or supplement thereto as any such person may reasonably request. The Company consents to the use of the Prospectus or any amendment or supplement thereto by each of the foregoing in connection with the offering and sale of the Common Stock.

(g) Prior to any offering of Common Stock pursuant to the Shelf Registration Statement, the Company shall arrange for the qualification of the Common Stock for sale under the laws of such jurisdictions as any Notice Holder shall reasonably request and shall maintain such qualification in effect so long as required; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not then so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the Initial Placement or any offering pursuant to the Shelf Registration Statement, in any jurisdiction where it is not then so subject.

(h) Upon the occurrence of any event contemplated by subsections (c)(ii) through (v) above, the Company shall promptly (or within the time period provided for by Section 3(i) hereof, if applicable) prepare a post-effective amendment to the Shelf Registration Statement or an amendment or supplement to the related Prospectus or file any other required document so that, as thereafter delivered to Initial Purchasers of the securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) Upon the occurrence or existence of any pending corporate development, public filings with the Commission or any other material event that, in the reasonable judgment of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus, the Company shall give notice (without notice of the nature or details of such events) to the Notice Holders that the availability of the Shelf Registration Statement is suspended and, upon actual receipt of any such notice, each Notice

Holder agrees not to sell any Registrable Securities pursuant to the Shelf Registration Statement until such Notice Holder's receipt of copies of the supplemented or amended Prospectus provided for in Section 3(h) hereof, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the "Deferral Period") shall not exceed 45 days in any 90-day period or 90 days in any 360-day period; provided, that, if the event triggering the Deferral Period relates to a proposed or pending material business transaction, the disclosure of which the board of directors of the Company determines in good faith would be reasonably likely to impede the ability to consummate the transaction or would otherwise be seriously detrimental to the Company and its subsidiaries taken a whole, the Company may extend the Deferral Period from 45 days to 60 days in any 90-day period or from 90 days to 120 days in any 360-day period.

(j) The Company shall comply with all applicable rules and regulations of the Commission and shall make generally available to its securityholders an earnings statement satisfying the provisions of Section 11(a) of, and Rule 158 under, the Act as soon as practicable after the effective date of the Shelf Registration Statement and in any event no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Shelf Registration Statement.

(k) The Company may require each Holder of Common Stock to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such Common Stock as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement. The Company may exclude from the Shelf Registration Statement the Common Stock of any Holder that unreasonably fails to furnish such information within ten Business Days after receiving such request.

(l) Subject to Section 6 hereof, the Company shall enter into customary agreements (including, if requested, an underwriting agreement in customary form) and take all other appropriate actions in order to expedite or facilitate the registration or the disposition of the Common Stock, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain customary indemnification provisions and procedures.

(m) Subject to Section 6 hereof, the Company shall:

(i) make reasonably available for inspection by the Holders of Common Stock to be registered thereunder, any underwriter participating in any disposition pursuant to the Shelf Registration Statement, and any attorney, accountant or other agent retained by the Holders or any such underwriter all relevant financial and other records and pertinent corporate documents of the Company and its subsidiaries;

(ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the

Holders or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement as is customary for similar due diligence examinations;

(iii) make such representations and warranties to the Holders of Common Stock registered thereunder and the underwriters, if any, in form, substance and scope as are customarily made by issuers to underwriters in primary underwritten offerings and covering matters including, but not limited to, those set forth in the Purchase Agreement;

(iv) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters, if any) addressed to each selling Holder and the underwriters, if any, covering such matters as are customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such Holders and underwriters;

(v) obtain "comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Shelf Registration Statement), addressed to each selling Holder of Common Stock registered thereunder and the underwriters, if any, in customary form and covering matters of the type customarily covered in "comfort" letters in connection with primary underwritten offerings; and

(vi) deliver such documents and certificates as may be reasonably requested by the Majority Holders or the Managing Underwriters, if any, including those to evidence compliance with Section 3(i) hereof and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

The actions set forth in clauses (iii) through (vi) of this paragraph (m) shall be performed in connection with any underwriting or similar agreement as and to the extent required thereunder.

(n) In the event that any Broker-Dealer shall underwrite any Common Stock or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the NASD Rules) thereof, whether as a Holder of such Common Stock or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company shall assist such Broker-Dealer in complying with the NASD Rules.

(o) The Company shall use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Common Stock covered by the Shelf Registration Statement.

4. Registration Expenses. The Company shall bear all expenses incurred in connection with the performance of its obligations under Sections 2 and 3 hereof and shall reimburse the Holders for the reasonable fees and disbursements of one firm or counsel (which shall initially be Hogan & Hartson LLP, but which may be another nationally recognized law firm experienced in securities matters designated by the Majority Holders) to act as counsel for the Holders in connection therewith; provided, however, that such expenses shall not include, and the Company shall not have any obligation to pay, any underwriting fees, discounts or commissions attributable to the sale of such Registrable Securities, or any fees and expenses of any Broker-Dealer or other financial intermediary engaged by any Holder.

5. Indemnification and Contribution. (a) The Company and the Operating Partnership agree to indemnify and hold harmless each Holder of Common Stock covered by the Shelf Registration Statement, each Initial Purchaser, the directors, officers, employees, Affiliates and agents of each such Holder or Initial Purchaser and each person who controls any such Holder or Initial Purchaser within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement as

originally filed or in any amendment thereof, or in any preliminary Prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any preliminary Prospectus or the Prospectus, in the light of the circumstances under which they were made) not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company and the Operating Partnership will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the party claiming indemnification specifically for inclusion therein. This indemnity agreement shall be in addition to any liability that the Company and the Operating Partnership may otherwise have to the indemnified party.

The Company and the Operating Partnership also agree to indemnify as provided in this Section 5(a) or contribute as provided in Section 5(d) hereof to Losses of each underwriter, if any, of Common Stock registered under the Shelf Registration Statement, its directors, officers, employees, Affiliates or agents and each person who controls such underwriter on substantially the same basis as that of the indemnification of the Initial Purchasers and the selling Holders provided in this paragraph (a) and shall, if requested by any Holder, enter into an underwriting agreement reflecting such agreement, as provided in Section 3(l) hereof.

(b) Each Holder of securities covered by the Shelf Registration Statement (including each Initial Purchaser that is a Holder, in such capacity) severally and not jointly agrees to indemnify and hold harmless the Company and the Operating Partnership, each of its directors, each of its officers who signs the Shelf Registration Statement and each person who

controls the Company or the Operating Partnership within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company and the Operating Partnership to each such Holder, but only with reference to written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement shall be acknowledged by each Notice Holder that is not an Initial Purchaser in such Notice Holder's Notice and Questionnaire and shall be in addition to any liability that any such Notice Holder may otherwise have to the Company or the Operating Partnership.

(c) Promptly after receipt by an indemnified party under this Section 5 or notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses; and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, 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 that are different from or additional to those available to the indemnifying party; (iii) 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 the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability arising out of such claim, action, suit or proceeding.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 5 is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party shall have a joint and several obligation to contribute to

the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending loss, claim, liability, damage or action) (collectively "Losses") to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the Initial Placement and the Shelf Registration Statement which resulted in such Losses; provided, however, that in no case shall any Initial Purchaser be responsible, in the aggregate, for any amount in excess of the commission applicable to the Notes, as set forth in the Final Memorandum, nor shall any underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the securities purchased by such underwriter under the Shelf Registration Statement which resulted in such Losses. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the indemnifying party and the indemnified party shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company and the Operating Partnership shall be deemed to be equal to the total net proceeds from the Initial Placement (before deducting expenses) as set forth in the Final Memorandum. Benefits received by the Initial Purchasers shall be deemed to be equal to the total commissions as set forth in the Final Memorandum, and benefits received by any other Holders shall be deemed to be equal to the value of receiving Common Stock registered under the Act. Benefits received by any underwriter shall be deemed to be equal to the total underwriting discounts and commissions, as set forth on the cover page of the Prospectus forming a part of the Shelf Registration Statement which

resulted in such Losses. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information provided by the indemnifying party, on the one hand, or by the indemnified party, on the other hand, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The parties agree that it would not be just and equitable if contribution were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), 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. For purposes of this Section 5, each person who controls a Holder within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of such Holder shall have the same rights to contribution as such Holder, and each person who controls the Company or the Operating Partnership within the meaning of either the Act or the Exchange Act, each officer of the Company or the Operating Partnership who shall have signed the Shelf Registration Statement and each director of the Company or the Operating Partnership shall have the same rights to contribution as the Company and the Operating Partnership, subject in each case to the applicable terms and conditions of this paragraph (d).

(e) The provisions of this Section 5 shall remain in full force and effect, regardless of any investigation made by or on behalf of any Holder or the Company or the Operating Partnership or any of the indemnified persons referred to in this Section 5, and shall survive the sale by a Holder of securities covered by the Shelf Registration Statement.

6. Underwritten Registrations. (a) In no event will the method of distribution of Registrable Securities take the form of an underwritten offering without the prior written consent of the Company.

(b) If any shares of Common Stock covered by the Shelf Registration Statement are to be sold in an underwritten offering, the Managing Underwriters shall be selected by the Company, subject to the prior written consent of the Majority Holders, which consent shall not be unreasonably withheld.

(c) No person may participate in any underwritten offering pursuant to the Shelf Registration Statement unless such person (i) agrees to sell such person's shares of Common Stock on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements; and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

7. Registration Defaults. If any of the following events shall occur, then the Company shall pay liquidated damages (the "Registration Default Damages") to the Holders as follows:

(a) if the Shelf Registration Statement (which shall be, if the Company is then a Well-Known Seasoned Issuer, an Automatic Shelf Registration Statement) is not filed with the Commission on or prior to the 120th day following the Closing Date, then commencing on the 121st day after the Closing Date, Registration Default Damages shall accrue on the aggregate outstanding principal amount of the Notes, at a rate of 0.25% per annum for the first 90 days from and including such 121st day and 0.50% per annum thereafter; or

(b) if the Shelf Registration Statement is not declared effective by the Commission (or has not become effective in the case of an Automatic Shelf Registration Statement) on or prior to the 210th day following the Closing Date, then commencing on the 211th day after the Closing Date, Registration Default Damages shall accrue on the aggregate outstanding principal amount of the Notes, at a rate of 0.25% per annum for the first 90 days from and including such 211th day and 0.50% per annum thereafter; or

(c) if the Shelf Registration Statement has been declared or becomes effective but ceases to be effective or usable for the offer and sale of the Registrable Securities, other than in connection with (A) a Deferral Period or (B) as a result of a requirement to file a post-effective amendment or supplement to the Prospectus to make changes to the information regarding selling securityholders or the plan of distribution provided for therein, at any time during the Shelf Registration Period and the Company does not cure the lapse of effectiveness or usability within ten Business Days (or, if a Deferral Period is then in effect and subject to the 20 Business Day filing requirement and the proviso regarding the filing of post-effective amendments in Section 2(e) with respect to any Notice and Questionnaire received during such period, within ten Business Days following the expiration of such Deferral Period or period permitted pursuant to Section 2(e)) then Registration Default Damages shall accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first 90

days from and including the day following such tenth Business Day and 0.50% per annum thereafter; or

(d) if the Company through its omission fails to name as a selling securityholder any Holder that had complied timely with its obligations hereunder in a manner to entitle such Holder to be so named in (i) the Shelf Registration Statement at the time it first became effective or (ii) any Prospectus at the later of time of filing thereof or the time the Shelf Registration Statement of which the Prospectus forms a part becomes effective then Registration Default Damages shall accrue, on the aggregate outstanding principal amount of the Notes held by such Holder, at a rate of 0.25% per annum for the first 90 days from and including the day following the effective date of such Shelf Registration Statement or the time of filing of such Prospectus, as the case may be, and 0.50% per annum thereafter; or

(e) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i) hereof, then commencing on the day the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period, Registration Default Damages shall accrue on the aggregate outstanding principal amount of the Notes at a rate of 0.25% per annum for the first 90 days from and including such date, and 0.50% per annum thereafter;

provided, however, that (1) upon the filing of the Shelf Registration Statement (in the case of paragraph (a) above), (2) upon the effectiveness of the Shelf Registration Statement (in the case of paragraph (b) above), (3) upon such time as the Shelf Registration Statement which had ceased to remain effective or usable for resales again becomes effective and usable for resales (in the case of paragraph (c) above), (4) upon the time such Holder is permitted to sell its Registrable Securities pursuant to any Shelf Registration Statement and Prospectus in accordance with applicable law (in the case of paragraph (d) above) or (5) upon the termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(i) to be exceeded (in the case of paragraph (e) above), the Registration Default Damages shall cease to accrue.

Any amounts of Registration Default Damages due pursuant to this Section 7 will be payable in cash on the next succeeding interest payment date to Holders entitled to receive such Registration Default Damages on the relevant record dates for the payment of interest. If any Note ceases to be outstanding during any period for which Registration Default Damages are accruing, the Company will prorate the Registration Default Damages payable with respect to such Note.

The Registration Default Damages rate on the Notes shall not exceed in the aggregate 0.50% per annum and shall not be payable under more than one clause above for any given period of time, except that if Registration Default Damages would be payable because of more than one Registration Default, but at a rate of 0.25% per annum under one Registration Default and at a rate of 0.50% per annum under the other, then the Registration Default Damages rate shall be the higher rate of 0.50% per annum. Other than the Company's obligation to pay Registration Default Damages in accordance with this Section 7, neither the Company nor the Operating Partnership will have any liability for damages with respect to a Registration Default.

Notwithstanding any provision in this Agreement, in no event shall Registration Default Damages accrue to holders of Common Stock issued upon exchange of Notes. In lieu thereof, the Company shall increase the Exchange Rate (as defined in the Indenture) by 3% for each $1,000 principal amount of Notes exchanged at a time when such Registration Default has occurred and is continuing.

In no event shall Registration Default Damages, together with Additional Interest (as defined in the Indenture) relating to a Reporting Event of Default (as defined in the Indenture), accrue on the Notes at a per annum rate, in the aggregate, in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Registration Default Damages and Additional Interest.

8. No Inconsistent Agreements. Neither the Company nor the Operating Partnership has entered into, and each agrees not to enter into, any agreement with respect to its securities that is inconsistent with the registration rights granted to the Holders herein.

9. Rule 144A and Rule 144. So long as any Registrable Securities remain outstanding, the Company shall use its commercially reasonable efforts to file the reports required to be filed by it under Rule 144A(d)(4) under the Act and the Exchange Act in a timely manner and, if at anytime the Company is not required to file such reports, it will, upon the written request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales of such Holder's Registrable Securities pursuant to Rules 144 and 144A of the Act. The Company covenants that it will take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Act within the limitation of the exemptions provided by Rules 144 and 144A (including, without limitation, the requirements of Rule 144A(d)(4)). Upon the written request of any Holder of Registrable Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 9 shall be deemed to require the Company or the Operating Partnership to register any of its securities pursuant to the Exchange Act.

10. Listing. So long as any Registrable Securities are outstanding, the Company shall use its commercially reasonable efforts to maintain the approval of the Common Stock for listing on the New York Stock Exchange or such other exchange or trading market as the Common Stock is then listed.

11. Amendments and Waivers. The provisions of this Agreement may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Majority Holders; provided that, with respect to any matter that directly or indirectly affects the rights of any Initial Purchaser hereunder, the Company shall obtain the written consent of each such Initial Purchaser against which such amendment, qualification, supplement, waiver or consent is to be effective; provided, further, that no amendment, qualification, supplement, waiver or consent with respect to Section 7 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder; and provided, further, that the provisions of this Section 11 may not be amended, qualified, modified or supplemented, and

waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Initial Purchasers and each Holder.

12. Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail, telex, telecopier or air courier guaranteeing overnight delivery:

(a) if to a Holder, at the most current address given by such holder to the Company in accordance with the provisions of the Notice and Questionnaire;

(b) if to the Initial Purchasers or the Representatives, initially at the address or addresses set forth in the Purchase Agreement; and

(c) if to the Company or the Operating Partnership, initially at its address set forth in the Purchase Agreement.

All such notices and communications shall be deemed to have been duly given when received.

The Initial Purchasers, the Company or the Operating Partnership by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

Notwithstanding the foregoing, notices given to Holders (i) holding Notes in book-entry form may be given through the facilities of DTC or any successor depository and (ii) may be given by e-mail at the e-mail address provided by such Holder in accordance with the provisions of the Notice and Questionnaire.

13. Remedies. Each Holder, in addition to being entitled to exercise all rights provided to it herein or in the Purchase Agreement or granted by law, including recovery of liquidated or other damages, will be entitled to specific performance of its rights under this Agreement. The Company and the Operating Partnership agree that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by them of the provisions of this Agreement and hereby agree to waive in any action for specific performance the defense that a remedy at law would be adequate.

14. Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, including, without the need for an express assignment or any consent by the Company or the Operating Partnership thereto, subsequent Holders of Registrable Securities, and the indemnified persons referred to in Section 5 hereof. The Company and the Operating Partnership hereby agree to extend the benefits of this Agreement to any Holder of Registrable Securities, and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

15. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

16. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

17. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. The parties hereto each hereby waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

18. Severability. In the event that any one of more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

19. Common Stock Held by the Company, etc. Whenever the consent or approval of Holders of a specified percentage of Common Stock is required hereunder, Common Stock held by the Company or its Affiliates (other than subsequent Holders of Common Stock if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such Common Stock) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement by and among the Company, the Operating Partnership and the several Initial Purchasers.

Very truly yours,

EXTRA SPACE STORAGE LP

By: /s/ Kenneth M. Woolley
Name: Kenneth M. Woolley
Title: Trustee of ESS Holdings Business Trust I, its General Partner

EXTRA SPACE STORAGE INC.

By: /s/ Kent W. Christensen
Name: Kent W. Christensen
Title: Executive Vice President and Chief Financial Officer

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

Citigroup Global Markets Inc.
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

By: Citigroup Global Markets Inc.

By: /s/ Paul Ingrassia
Name: Paul Ingrassia
Title: Managing Director

For themselves and the other several Initial Purchasers named in Schedule I to the Purchase Agreement

Exhibit 99.1

News Release

Extra Space Storage Inc. Announces Pricing of Private Offering of $250 Million of 3.625% Exchangeable Senior Notes Due 2027

SALT LAKE CITY, UT, Mar 21, 2007 (MARKET WIRE via COMTEX News Network) — Extra Space Storage Inc. (the "Company") (NYSE: EXR) announced today that its operating partnership subsidiary, Extra Space Storage LP (the "Operating Partnership"), priced a private placement of $250.0 million aggregate principal amount of 3.625% Exchangeable Senior Notes due 2027 (the "Notes"). The Operating Partnership has granted the initial purchasers of the Notes a 30-day option to purchase up to an additional $37.5 million aggregate principal amount of Notes to cover over-allotments, if any.

The Notes will be senior unsecured obligations of the Operating Partnership and will be fully and unconditionally guaranteed by the Company. The Operating Partnership intends to use the net proceeds from the private offering for general corporate purposes and self-storage property acquisitions.

Prior to March 1, 2027, upon the occurrence of specified events, the Notes will be exchangeable at the option of the holder into cash and, at the Operating Partnership's option, shares of common stock of the Company at an initial exchange rate of 42.5822 shares per $1,000 principal amount of Notes. The initial exchange price of $23.48 represents a 20% premium over the last reported sale price per share of the Company's common stock on March 21, 2007, which was $19.57 per share. The initial exchange rate is subject to adjustment in certain circumstances.

Prior to April 5, 2012, the Operating Partnership may not redeem the Notes except to preserve the Company's status as a real estate investment trust. On or after April 5, 2012, the Operating Partnership may redeem all or a portion of the Notes for cash equal to 100% of the principal amount of the Notes to be redeemed plus unpaid interest, if any, accrued to, but excluding, the repurchase date.

The holders of the Notes may require the Operating Partnership to repurchase all or a portion of the Notes on April 1, 2012, April 1, 2017 and April 1, 2022 for cash equal to 100% of the principal amount of the Notes to be repurchased plus unpaid interest, if any, accrued to, but excluding, the repurchase date.

The Notes will be offered and sold only to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The Notes and the Company's common stock issuable upon exchange of the Notes have not been registered under the Securities Act or any state securities laws and may not be offered or sold in the United States

---

absent registration or an applicable exemption from registration requirements. The Company has agreed to file a registration statement regarding resales of the shares of common stock of the Company issuable upon exchange of the Notes with the Securities and Exchange Commission within 120 days of the closing of this private placement. This release shall not constitute an offer to sell or the solicitation of an offer to buy any of these securities, nor shall it constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful.

Forward-Looking Statements

When used in this discussion and elsewhere, the words "believes," "anticipates," "projects," "should," "estimates," "expects" and similar expressions are intended to identify forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company to be materially different from those expressed or implied in the forward-looking statements. For a further list and description of such risks and uncertainties, please refer to the Company's SEC filings, including its most recent Annual Report on Form 10-K for the year ended December 31, 2006. The Company disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

For Information:

James Overturf
Extra Space Storage Inc.
(801) 365-4501

Mark Collinson
CCG Investor Relations
(310) 231-8600

SOURCE: Extra Space Storage Inc.
