UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): August 15, 2017

APOLLO COMMERCIAL REAL ESTATE FINANCE, INC.
(Exact name of registrant as specified in its charter)

Maryland	**001-34452**	**27-0467113**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

c/o Apollo Global Management, LLC **9 West 57th Street, 43rd Floor** **New York, New York** **(Address of principal executive offices)**	**10019** **(Zip Code)**

Registrant's telephone number, including area code: (212) 515-3200

n/a
(Former name or former address, if changed since last report)

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

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

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

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

On August 15, 2017, Apollo Commercial Real Estate Finance, Inc. (the "Company") entered into an underwriting agreement (the "Underwriting Agreement"), by and among the Company, ACREFI Management, LLC, the Company's external manager (the "Manager"), and, as representatives of the several underwriters named therein (the "Underwriters"), Morgan Stanley & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities LLC. Pursuant to the terms of the Underwriting Agreement, the Company agreed to sell, and the Underwriters agreed to purchase, subject to the terms and conditions set forth in the Underwriting Agreement, $200.0 million principal amount of the Company's 4.75% Convertible Senior Notes due 2022 (the "Notes"). In addition, the Company granted to the Underwriters the option to purchase, within a period of 13 days beginning on, and including, the date the Notes are first issued, up to an additional $30.0 million principal amount of Notes. This option was exercised in full on August 18, 2017. The Underwriting Agreement contains customary representations, warranties and agreements of the Company, conditions to closing, indemnification rights and obligations of the parties and termination provisions.

On August 21, 2017, the Company issued $230.0 million aggregate principal amount of the Notes, which includes $30.0 million aggregate principal amount of the Notes issued pursuant to the Underwriters' exercise of their option to purchase additional Notes. The public offering generated net proceeds of approximately $224.6 million, after deducting the underwriting discount and estimated offering expenses.

The Notes were issued pursuant to an indenture (the "Base Indenture"), dated as of March 17, 2014, between the Company and Wells Fargo Bank, National Association, as trustee (the "Trustee"), as supplemented by the Second Supplemental Indenture, dated as of August 21, 2017 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), with respect to the Notes.

The Notes bear interest at a rate of 4.75% per year, payable semiannually in arrears on February 15 and August 15 of each year, beginning on February 15, 2018. However, the final interest payment date will occur on August 23, 2022, and no interest payment date will occur on August 15, 2022. The Notes will mature on August 23, 2022, unless earlier repurchased, redeemed or converted. Upon conversion, holders of the Notes will receive cash, shares of common stock of the Company, par value $0.01 per share ("Common Stock"), or a combination of cash and shares of Common Stock, at the Company's election. If the Company undergoes a "fundamental change" (as defined in the Indenture), subject to certain conditions, holders of the Notes may require the Company to repurchase for cash all or part of such holders' Notes. The fundamental change repurchase price for the Notes generally will be equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. Holders may convert all or a portion of their Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date, unless the Notes have been previously repurchased or redeemed by the Company.

Any conversion of Notes into shares of Common Stock will be subject to certain ownership limitations (as more fully described in the Indenture). The initial conversion rate for each $1,000 aggregate principal amount of the Notes is 50.2260 shares of Common Stock, equivalent to a conversion price of approximately $19.91 per share of Common Stock, which is an approximately 10% premium to the closing per share price of the Common Stock on August 15, 2017. The conversion rate is subject to adjustment in certain circumstances.

The Company may not redeem the Notes prior to the maturity date, except to the extent, and only to the extent, necessary to preserve the Company's status as a real estate investment trust ("REIT"). If the Company determines that redeeming the Notes is necessary to preserve its status as a REIT, then the Company may redeem all or part of the Notes at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

If an event of default (as defined in the Indenture) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the Notes then outstanding by written notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest, if any, on all the Notes to be due and payable. In the case of an event of default arising out of certain events of bankruptcy, insolvency or reorganization (as set forth in the Indenture), 100% of the principal of and accrued and unpaid interest on all the Notes will automatically become due and payable.

The Notes are senior unsecured obligations of the Company and senior in right of payment to any existing and future indebtedness of the Company that is expressly subordinated in right of payment to the Notes; equal in right of payment to any existing and future liabilities of the Company that are not so subordinated; effectively junior in right of payment to any secured indebtedness of the Company to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness, other liabilities (including trade payables) and (to the extent not held by the Company) preferred stock, if any, of the Company's subsidiaries.

The preceding description is qualified in its entirety by reference to the Underwriting Agreement, the Base Indenture and the Supplemental Indenture, copies of which are attached or incorporated by reference hereto as Exhibits 1.1, 4.1 and 4.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

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

The information required by this Item 2.03 relating to the Notes is contained in Item 1.01 above and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

1.1	Underwriting Agreement, dated August 15, 2017, by and among the Company, the Manager, and Morgan Stanley & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities LLC, as representatives of the several Underwriters listed on Schedule 1 attached thereto
4.1	Indenture, dated as of March 17, 2014, between the Company and Wells Fargo Bank, National Association, as Trustee (incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K filed on March 21, 2014)
4.2	Second Supplemental Indenture, dated as of August 21, 2017, between the Company and Wells Fargo Bank, National Association, as Trustee (including the form of 4.75% Convertible Senior Note due 2022)
5.1	Opinion of Clifford Chance US LLP
8.1	Opinion of Clifford Chance US LLP
12.1	Statements of Computation of Ratios of Earning to Fixed Charges and Earnings to Combined Fixed Charges and Preferred Stock Dividends
23.1	Consent of Clifford Chance US LLP (included in Exhibit 5.1)
23.2	Consent of Clifford Chance US LLP (included in Exhibit 8.1)

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.

August 21, 2017

APOLLO COMMERCIAL REAL ESTATE FINANCE, INC.

/s/ Stuart A. Rothstein
Stuart A. Rothstein
President and Chief Executive Officer

EXHIBIT INDEX

Exhibit No.	Description
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Exhibit 1.1

Execution Version

APOLLO COMMERCIAL REAL ESTATE FINANCE, INC.

4.75% Convertible Senior Notes due 2022

Underwriting Agreement (this "**Agreement**")

August 15, 2017

Morgan Stanley & Co. LLC
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Citigroup Global Markets Inc.
J.P. Morgan Securities LLC
As Representatives (the "**Representatives**") of the
several Underwriters listed in Schedule 1 hereto
c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

Apollo Commercial Real Estate Finance, Inc., a Maryland corporation (the "**Company**"), which is externally managed and advised by ACREFI Management, LLC, a limited liability company organized and existing under the laws of Delaware (the "**Manager**"), proposes to issue and sell to the several Underwriters listed in Schedule 1 hereto (the "**Underwriters**"), for whom you are acting as representatives (the "**Representatives**"), $200,000,000 principal amount of its 4.75% Convertible Senior Notes due 2022 (the "**Underwritten Securities**") and, at the option of the Underwriters, up to an additional $30,000,000 principal amount of its 4.75% Convertible Senior Notes due 2022 (the "**Option Securities**") if and to the extent that the Underwriters shall have determined to exercise the option to purchase such 4.75% Convertible Senior Notes due 2022 granted to the Underwriters in Section 2 hereof. The Underwritten Securities and the Option Securities are herein referred to as the "**Securities**". The Securities will be convertible into shares (the "**Underlying Securities**") of common stock of the Company, par value $0.01 per share (the "**Common Stock**"). The Securities will be issued pursuant to an indenture dated as of March 17, 2014 (the "**Base Indenture**"), between the Company and Wells Fargo Bank, National Association, as trustee (the "**Trustee**"), as supplemented by a supplemental indenture to be dated as of August 21, 2017 between the Company and the Trustee (together with the Base Indenture, the "**Indenture**").

The Company hereby confirms its agreement with the several Underwriters concerning the purchase and sale of the Securities, as follows:

1. Registration Statement. The Company has prepared and filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Securities Act**"), a registration statement on Form S-3 (File No. 333-203971), including a prospectus, relating to

the Securities. Such registration statement, as amended at the time it became effective, including the information, if any, deemed pursuant to Rule 430A, 430B or 430C under the Securities Act to be part of the registration statement at the time of its effectiveness ("**Rule 430 Information**"), is referred to herein as the "**Registration Statement**"; and as used herein, the term "**Preliminary Prospectus**" means each prospectus included in such registration statement (and any amendments thereto) before effectiveness, any prospectus filed with the Commission pursuant to Rule 424(a) under the Securities Act and the prospectus included in the Registration Statement at the time of its effectiveness that omits Rule 430 Information, and the term "**Prospectus**" means the prospectus in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Securities. If the Company has filed an abbreviated registration statement pursuant to Rule 462(b) under the Securities Act (the "**Rule 462 Registration Statement**"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus. Any reference in this Agreement to the Registration Statement, the Pricing Disclosure Package, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the effective date of the Registration Statement or the date of such Preliminary Prospectus or the Prospectus, as the case may be. Any reference to "amendment" or "supplement" with respect to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after such date under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Exchange Act") that are deemed to be incorporated by reference therein.

At or prior to the Applicable Time (as defined below), the Company had prepared the following information (collectively, the "**Pricing Disclosure Package**"): a Preliminary Prospectus dated August 15, 2017, each "free-writing prospectus" (as defined pursuant to Rule 405 under the Securities Act), if any, listed on Annex B hereto and the information listed on Annex C hereto.

"**Applicable Time**" means 6:00 a.m., New York City time, on August 16, 2017.

2. Purchase of the Securities by the Underwriters.

(a) *Underwritten Securities*. The Underwriters propose to offer the Underwritten Securities from time to time for sale in negotiated transactions or otherwise, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices. The Company agrees to issue and sell the Underwritten Securities to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective principal amount of Underwritten Securities set forth opposite such Underwriter's name in Schedule 1 hereto at a price equal to 97.75% of the principal amount thereof (the "**Purchase Price**") plus accrued interest, if any, from August 21, 2017 to the Closing Date (as defined below).

(b) *Option Securities*. In addition, the Company agrees to issue and sell the Option Securities to the several Underwriters as provided in this Agreement, and the Underwriters, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, shall have the option to purchase, severally and not jointly, from the Company the Option Securities at the Purchase Price plus accrued interest, if any, from August 21, 2017 to the date of payment and delivery.

If any Option Securities are to be purchased, the principal amount of Option Securities to be purchased by each Underwriter shall be the principal amount of Option Securities which bears the same ratio to the aggregate principal amount of Option Securities being purchased as the principal amount of Underwritten Securities set forth opposite the name of such Underwriter in Schedule 1 hereto (or such amount increased as set forth in Section 12 hereof) bears to the aggregate principal amount of Underwritten Securities being purchased from the Company by the several Underwriters, subject, however, to such adjustments to eliminate Securities in denominations other than $1,000.00 as the Representatives in their sole discretion shall make.

The Underwriters may, by notice as provided in the immediately following sentence, exercise the option to purchase Option Securities at any time in whole, or in part, provided that the Additional Closing Date with respect thereto will in no event be (x) earlier than the Closing Date; (y) later than the thirteenth day from, and including, the Closing Date; or (z) later than the tenth full business day (as hereinafter defined) after the date of such notice. Such option may be exercised by written notice from the Representatives to the Company setting forth the aggregate principal amount of Option Securities plus accrued interest, if any, as to which the option is being exercised and the date and time when the Option Securities are to be delivered and paid for. Any such notice shall be given at least two business days prior to the date and time of delivery specified therein.

(c) *Public Offering*. The Company understands that the Underwriters intend to make a public offering of the Securities as soon after the effectiveness of this Agreement as in the judgment of the Representatives is advisable, and initially to offer the Securities on the terms set forth in the Prospectus. The Company acknowledges and agrees that the Underwriters may offer and sell Securities to or through any affiliate of an Underwriter.

(d) *Closing*. Payment for the Securities shall be made by wire transfer in immediately available funds to the account specified by the Company to the Representatives (A) in the case of the Underwritten Securities, at the offices of Latham & Watkins LLP at 10:00 A.M., New York City time, on August 21, 2017, or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Representatives and the Company may agree upon in writing or, (B) in the case of the Option Securities, on the date and at the time and place specified by the Representatives in the written notice of the Underwriters' election to purchase such Option Securities. The time and date of such payment for the Underwritten Securities is referred to herein as the "**Closing Date**", and the time and date for such payment for the Option Securities, if other than the Closing Date, is herein referred to as the "**Additional Closing Date**".

Payment for the Securities to be purchased on the Closing Date or the Additional Closing Date, as the case may be, shall be made against delivery to the nominee of The Depository Trust

Company ("**DTC**") for the respective accounts of the several Underwriters of the Securities to be purchased on such date of one or more global notes representing the Securities (collectively, the "**Global Note**"), with any transfer taxes payable in connection with the sale of such Securities duly paid by the Company. The Global Note will be made available for inspection by the Representatives at the office of Morgan Stanley & Co. LLC set forth above not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date or the Additional Closing Date, as the case may be.

(e) The Company acknowledges and agrees that each Underwriter is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, none of the Representatives or any other Underwriter is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Company with respect thereto. Any review by the Underwriters of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company.

3. Representations and Warranties of the Company. The Company represents and warrants to each Underwriter that:

(a) *Preliminary Prospectus.* No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus included in the Pricing Disclosure Package, at the time of filing thereof, complied in all material respects with the Securities Act.

(b) *Pricing Disclosure Package*. The Pricing Disclosure Package as of the Applicable Time did not, and as of the Closing Date and as of the Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use in such Pricing Disclosure Package, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 9(b) hereof.

(c) *Issuer Free Writing Prospectus*. Other than the Registration Statement, the Preliminary Prospectus and the Prospectus, the Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not prepared, used, authorized, approved or referred to and will not prepare, use, authorize, approve or refer to any "written communication" (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clause (i)

below) that would constitute an "issuer free writing prospectus" as defined in Rule 433 under the Securities Act, an "**Issuer Free Writing Prospectus**") other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Securities Act or Rule 134 under the Securities Act or (ii) the documents listed on Annex B hereto, each electronic road show and any other written communications approved in writing in advance by the Representatives. Each such Issuer Free Writing Prospectus complied in all material respects with the Securities Act, has been or will be (within the time period specified in Rule 433) filed in accordance with the Securities Act (to the extent required thereby) and, when taken together with the Preliminary Prospectus accompanying, or delivered prior to delivery of, such Issuer Free Writing Prospectus, did not, and as of the Closing Date and as of the Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus or Preliminary Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use in such Issuer Free Writing Prospectus or Preliminary Prospectus, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 9(b) hereof.

(d) *Registration Statement and Prospectus.* The Registration Statement has been declared effective by the Commission. No order suspending the effectiveness of the Registration Statement has been issued by the Commission, and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering of the Securities has been initiated or threatened by the Commission; as of (i) the applicable effective date of the Registration Statement and any post-effective amendment thereto, (ii) the date of the Prospectus and (iii) the Closing Date and the Additional Closing Date, as the case may be, the Registration Statement and any such post-effective amendment complied and will comply in all material respects with the Securities Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Trust Indenture Act**"), and did not and will not 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 not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of the Closing Date and as of the Additional Closing Date, as the case may be, the Prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use in the Registration Statement and the Prospectus and any amendment or supplement thereto, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 9(b) hereof.

(e) *Well-Known Seasoned Issuer*. (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of

prospectus), (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the Securities Act) made any offer relating to the Securities in reliance on the exemption of Rule 163 of the Securities Act, and (iv) at the time this Agreement is executed and delivered by the parties hereto (with such date being used as the determination date for purposes of this clause (iv)), the Company was and is a "well known seasoned issuer" as defined in Rule 405 of the Securities Act. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 of the Securities Act, and the Company has not received from the Commission any notice pursuant to Rule 401(g)(2) of the Securities Act objecting to use of the automatic shelf registration statement form.

(f) *Incorporated Documents*. The documents incorporated by reference in the Registration Statement, the Prospectus and the Pricing Disclosure Package, when they were filed with the Commission, conformed in all material respects to the requirement of the Exchange Act, and none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) *Financial Statements.* The financial statements (including the related notes thereto) of the Company and its consolidated subsidiaries and Apollo Residential Mortgage, Inc., a Maryland corporation ("**AMTG**"), and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly the financial position of the Company and its consolidated subsidiaries and AMTG and its consolidated subsidiaries, respectively, as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis throughout the periods covered thereby, and any supporting schedules in the Registration Statement present fairly the information required to be stated therein; the Company's ratios of earnings to fixed charges and, if applicable, ratios of earnings to combined fixed charges and preferred stock dividends (actual and, if any, pro forma) included in the Pricing Disclosure Package and the Prospectus have been calculated in compliance with Item 503(d) of Regulation S-K of the Commission; and the other financial information of the Company included in the Registration Statement, the Pricing Disclosure Package and the Prospectus has been derived from the accounting records of the Company and its consolidated subsidiaries and presents fairly, in all material respects, the information shown thereby. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Pricing Disclosure Package and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(h) *Pro Forma Financial Statements*. The unaudited pro forma condensed consolidated financial statements (including the related notes) of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus have been prepared in accordance in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and, in the opinion of the Company, the assumptions used in the preparation thereof are reasonable and provide a reasonable basis for presenting the significant effects directly

attributable to the transactions or events described therein, and the related adjustments used therein give appropriate effect to the transactions and circumstances referred to therein and the pro forma columns therein reflect the proper application of these adjustments to the corresponding historical financial statement amounts.

(i) *No Material Adverse Change*. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since the date of the most recent financial statements of the Company included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (i) there has not been any change in the capital stock (other than the issuance of shares of Common Stock upon exercise of stock options and warrants or vesting of restricted stock units described as outstanding in, and the grant of options and awards under existing equity incentive plans described in, the Registration Statement, the Pricing Disclosure Package and the Prospectus), short-term debt or long-term debt of the Company or any of its subsidiaries (other than under the revolving credit facilities and repurchase facilities described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or short-term indebtedness incurred in the ordinary course of business), or, except for the regular quarterly dividends on the shares of Common Stock in amounts per share that are consistent with past practice, any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, results of operations or prospects of the Company and its subsidiaries taken as a whole; and (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement except in the ordinary course of business that is material to the Company and its subsidiaries taken as a whole or, subject to Section 3(rr), incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole, except any liability or obligation in the ordinary course of business.

(j) *Organization and Good Standing*. Each of the Company and its subsidiaries has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, is duly qualified to do business and is in good standing in each jurisdiction in which its ownership or lease of property or the conduct of its business requires such qualification, and has all power and authority necessary to own or hold its properties and to conduct the business in which it is now engaged and in which it proposes to be engaged as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, stockholders' equity results of operations or prospects of the Company and its subsidiaries taken as a whole (a "**Company Material Adverse Effect**"). The subsidiaries listed in Schedule 2 to this Agreement are the only significant subsidiaries of the Company.

(k) *Capitalization.* The Company has an authorized capitalization as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the heading "Capitalization"; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except as described in or expressly contemplated by the

Registration Statement, the Pricing Disclosure Package and the Prospectus and other than the issuance of shares of Common Stock upon exercise of stock options and warrants or vesting of restricted stock units under existing equity incentive plans described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no outstanding rights (including, without limitation, pre-emptive rights), restricted stock units, warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; the capital stock of the Company conforms in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and all the outstanding shares of capital stock or other equity interests of each subsidiary owned, directly or indirectly, by the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

(l) *Equity Incentive Awards.* With respect to the stock options, restricted stock awards, restricted stock units and/or other equity incentive awards (the "**Equity Incentive Awards**") granted pursuant to the stock-based compensation plans of the Company and its subsidiaries, including without limitation the Company's 2009 Equity Incentive Plan (the "**Company Stock Plans**"), (i) each Equity Incentive Award intended to qualify as an "incentive stock option" under Section 422 of the Code so qualifies, (ii) each grant of an Equity Incentive Award was duly authorized no later than the date on which the grant of such Equity Incentive Award was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto, (iii) each such grant was made in accordance with the terms of the Company Stock Plans, the Exchange Act and all other applicable laws and regulatory rules or requirements, including the rules of the New York Stock Exchange (the "**Exchange**") and any other exchange on which Company securities are traded, and (iv) each such grant was properly accounted for in accordance with generally accepted accounting principles in the United States applied on a consistent basis in the financial statements (including the related notes) of the Company and disclosed in the Company's filings with the Commission in accordance with the Exchange Act and all other applicable laws. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company of granting, Equity Incentive Awards prior to, or otherwise coordinating the grant of Equity Incentive Awards with, the release or other public announcement of material information regarding the Company or its subsidiaries or their results of operations or prospects.

(m) *Due Authorization*. The Company has full right, power and authority to execute and deliver this Agreement, the Indenture and the Securities (collectively, the "**Transaction Documents**") and to perform its obligations hereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of the Transaction Documents and the consummation by it of the transactions contemplated by the Transaction Documents has been duly and validly taken.

(n) *The Indenture*. The Indenture has been duly authorized by the Company and upon effectiveness of the Registration Statement and on the Closing Date and on the Additional Closing Date, as the case may be, was or will have been duly qualified under the Trust Indenture Act and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability (collectively, the "**Enforceability Exceptions**").

(o) *Underwriting Agreement*. This Agreement has been duly authorized, executed and delivered by the Company.

(p) *The Securities*. The Securities to be issued and sold by the Company hereunder have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(q) *The Underlying Securities*. Upon issuance and delivery of the Securities in accordance with this Agreement and the Indenture, the Securities will be convertible at the option of the holder thereof into shares of the Underlying Securities in accordance the terms of the Securities; the Underlying Securities reserved for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

(r) *Other Material Agreements*. Each of the Management Agreement, dated September 23, 2009, between the Company and the Manager which, among other things, provides for the management of the Company by the Manager (the "**Management Agreement**") and that certain license agreement, dated September 23, 2009, between the Company and Apollo Global Management, LLC ("**Apollo**") pursuant to which, among other things, Apollo granted to the Company a non-exclusive, royalty-free license to use the name "Apollo" (the "**License Agreement**") remains in full force and effect.

(s) *Descriptions of Documents*. Each of the Transaction Documents, the Management Agreement and the License Agreement conforms in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(t) *No Violation or Default*. Neither the Company nor any of its subsidiaries is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries

is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Company Material Adverse Effect.

(u) *No Conflicts.* The execution, delivery and performance by the Company of the Transaction Documents, the issuance and sale of the Securities (including the issuance of the Underlying Securities upon conversion thereof), and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company or any of its subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, have a Company Material Adverse Effect.

(v) *No Consents Required.* No consent, approval, authorization, order, license, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of the Transaction Documents, the issuance and sale of the Securities (including the issuance of the Underlying Securities upon conversion thereof) and the consummation of the transactions contemplated by the Transaction Documents, except for (i) such as has been obtained or made, (ii) the registration of the Securities under the Securities Act, the qualification of the Indenture under the Trust Indenture Act and such consents, approvals, authorizations, orders and (iii) registrations or qualifications as may be required by the Financial Industry Regulatory Authority, Inc. ("**FINRA**") and under applicable state securities laws in connection with the purchase and distribution of the Securities by the Underwriters.

(w) *Legal Proceedings.* Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is a party or to which any property of the Company or any of its subsidiaries is the subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, could reasonably be expected to have a Company Material Adverse Effect; no such investigations, actions, suits or proceedings are, to the knowledge of the Company, threatened or contemplated by any governmental or regulatory authority or threatened by others; and there are no statutes, regulations or contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement or described in the Registration Statement, the Pricing Disclosure Package or the Prospectus that are not so filed as exhibits to the Registration Statement or described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(x) *Accuracy of Disclosure*. The descriptions in the Registration Statement, the Pricing Disclosure Package and the Prospectus of statutes, legal, governmental and regulatory proceedings and organizational documents, contracts, benefit plans, and other documents are accurate in all material respects; (i) the statements in the Preliminary Prospectus and Prospectus under the headings "Underwriting" and "Additional U.S. Federal Income Tax Considerations", (ii) the statements in the Registration Statement under the headings "Description of Certain Provisions of the Maryland General Corporation Law and Our Charter and Bylaws," "Description of Common Stock" and "U.S. Federal Income Tax Considerations" (as modified and supplemented by the statements in the Preliminary Prospectus and Prospectus under the heading "Additional U.S. Federal Income Tax Considerations"), to the extent that they constitute summaries of the terms of stock, matters of law or regulation or legal conclusions, fairly summarize the matters described therein in all material respects.

(y) *Independent Accountants*. Deloitte & Touche LLP, who has certified certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act. Deloitte & Touche LLP, who has certified certain financial statements of AMTG and its subsidiaries, is an independent registered public accounting firm with respect to the AMTG and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(z) *Title to Real and Personal Property*. The Company and its subsidiaries have good and marketable title in fee simple (in the case of real property) to, or have valid and marketable rights to lease or otherwise use, all items of real and personal property and assets that are material to the respective businesses of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or may arise or exist directly as a result of borrowings under any applicable repurchase agreements which are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (ii) do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries or (iii) could not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect.

(aa) *Title to Intellectual Property*. The Company and its subsidiaries own or possess adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses as currently conducted and as proposed to be conducted (as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus), and to the knowledge of the Company, the conduct of their respective businesses will not conflict in any material respect with any such rights of others. The Company and its subsidiaries have not received any notice of any claim of infringement, misappropriation or conflict with any such rights of others in connection with its patents, patent rights, licenses, inventions, trademarks, service marks, trade names, copyrights and knowhow, which could reasonably be expected to result in a Company Material Adverse Effect.

(bb) *No Undisclosed Relationships*. No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its subsidiaries, on the other, that is required by the Securities Act to be described in the Registration Statement and the Prospectus and that is not so described in such documents and in the Pricing Disclosure Package.

(cc) *Investment Company Act*. The Company is not, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus will not be, required to register as an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Investment Company Act**").

(dd) *Taxes.* The Company and its subsidiaries have paid all material federal, state, local and foreign taxes and filed all material tax returns required to be filed through the date hereof; and except as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there is no material tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its subsidiaries or any of their respective properties or assets.

(ee) *Real Estate Investment Trust*. Commencing with its taxable year ended December 31, 2009, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust ("**REIT**") under the Code, and its proposed method of operation will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code.

(ff) *Description of Organization and Method of Operations*. The description of the Company's organization and method of operation and its qualification and taxation as a REIT set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus is accurate and presents fairly the matters referred to therein; the Company's operating policies and investment guidelines described in the Registration Statement, the Pricing Disclosure Package and the Prospectus accurately reflect in all material respects the operation of the Company's business, and no material deviation from such guidelines or policies is currently contemplated.

(gg) *Licenses and Permits.* The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations (collectively, "**Licenses**") issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties and the conduct of their respective businesses as conducted as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except where the failure to possess or make the same would not, individually or in the aggregate, have a Company Material Adverse Effect; and except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

(hh) *No Labor Disputes.* The Company is not aware of any existing or imminent labor disturbance by, or dispute with, the employees of any of the Company, its subsidiaries or the Manager, except as would not have a Company Material Adverse Effect.

(ii) *Employee Matters*. Neither the Company nor, to the best of the Company's knowledge, any employer of any officers, investment professionals or other key persons of the Company or the Manager named in the Registration Statement, the Pricing Disclosure Package and the Prospectus (each, a "**Company-Focused Professional**") has been notified that any such Company-Focused Professional plans to terminate his or her employment or association with his or her employer. Neither the Company nor, to the best of the Company's knowledge, any Company-Focused Professional is subject to any noncompetition, non-disclosure, confidentiality, employment, consulting or similar agreement that would be violated by the business activities of the Company or the Manager as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus. The Company does not have any employees. No subsidiary of the Company has any employees.

(jj) *ERISA.* Prior to the Closing Date, the Company will not have an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974.

(kk) *Disclosure Controls*. The Company and its subsidiaries maintain an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to provide reasonable assurances that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(ll) *Accounting Controls.* The Company and its subsidiaries maintain systems of "internal control over financial reporting" (as defined in Rule 13a-15(f) and 15d-15 of the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv)

the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Pricing Disclosure Package and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto. Other than as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no material weaknesses in the Company's internal controls. The Company's auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which have adversely affected or are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

(mm) *Insurance*. The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in such amounts as are prudent and customary for the businesses in which they are engaged; and neither the Company nor any of its subsidiaries has been refused any insurance coverage sought or applied for or has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary for it to continue business.

(nn) *No Unlawful Payments.* Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent or other person associated with and acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977 or any similar law applicable to the Company; or (iv) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment.

(oo) *Compliance with Money Laundering Laws*. The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(pp) Compliance with OFAC.

1. Neither the Company nor any of its subsidiaries, nor any director, officer or employee thereof, nor, to the Company's knowledge, any agent, affiliate or representative of the Company or any of its subsidiaries, is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is

(a) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**") (collectively, "Sanctions"); nor

(b) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Crimea, Sudan and Syria).

2. The Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(a) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(b) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

3. Since their inception, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(qq) *No Restrictions on Subsidiaries*. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus or directly as a result of borrowings under any applicable repurchase agreements which are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(rr) *Indebtedness*. Neither the Company nor any of its direct or indirect subsidiaries has any indebtedness as of the date hereof other (A) than as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (B) increases in the principal amount outstanding under revolving credit facilities and repurchase facilities which are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus and (C) immaterial short-term indebtedness incurred in the ordinary course of business.

(ss) *No Dissolution Proceedings*. Neither the Company nor any subsidiary of the Company has commenced any legal proceedings, nor have any legal proceedings been threatened, to the knowledge of the Company, against the Company or any subsidiary of the Company for the winding up, liquidation or dissolution of the Company or any subsidiary of the Company.

(tt) *No Broker's Fees*. Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any of its subsidiaries or any Underwriter for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities.

(uu) *No Registration Rights*. No person has the right to require the Company or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Securities, except pursuant to the Registration Rights Agreement dated September 29, 2009 between the Company and Apollo Principal Holdings I, L.P. and ACREFI Co-Investors, L.P.

(vv) *No Stabilization.* Neither the Company nor its affiliates has taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(ww) *Forward-Looking Statements*. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(xx) *Statistical and Market Data*. Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included in the Registration Statement, the Pricing Disclosure Package and the Prospectus is not based on or derived from sources that are reliable and accurate in all material respects.

(yy) *Apollo-Related Data*. Any financial or other data regarding Apollo and its direct and indirect subsidiaries, including, but not limited to, the Manager, included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, is derived from Apollo's accounting or other applicable records and is accurate in all material respects.

(zz) *Sarbanes-Oxley Act*. The Company and the Manager have taken all necessary action to enable the Company, upon effectiveness of the Registration Statement, to be in compliance with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith that are then in effect and with which the Company is then required to comply.

(aaa) *Status under the Securities Act*. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or any offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Securities and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405 under the Securities Act.

4. Representations and Warranties of the Manager. The Manager represents and warrants to each Underwriter that:

(a) *Manager-Related Disclosure*. Any financial or other data regarding the Manager and its direct and indirect subsidiaries, included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, is derived from the Manager's accounting or other applicable records and is accurate in all material respects.

(b) *Organization and Good Standing*. The Manager is an indirect subsidiary of Apollo and does not have any subsidiaries. The Manager has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, is duly qualified to do business and is in good standing in each jurisdiction in which its ownership or lease of property or the conduct of its business requires such qualification, and has all power and authority necessary to own or hold its respective properties and to conduct the business in which it is engaged and in which it proposes to be engaged as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, results of operations or prospects of the Manager and its subsidiaries taken as a whole (a "**Manager Material Adverse Effect**").

(c) *Manager Ownership Interests*. The ownership interests of the Manager are owned indirectly by Apollo, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

(d) *Due Authorization*. The Manager has full right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the consummation by it of the transactions contemplated hereby has been duly and validly taken.

(e) *The Management Agreement*. The Management Agreement has been duly authorized, executed and delivered by the Manager, and constitutes a valid and legally binding agreement of the Manager enforceable against the Manager in accordance with its terms, subject to the Enforceability Exceptions.

(f) *Underwriting Agreement*. This Agreement has been duly authorized, executed and delivered by the Manager.

(g) *No Violation or Default*. Neither the Manager nor any of its subsidiaries is (i) in violation of its certificate of formation or limited liability company agreement or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Manager or any of its subsidiaries is a party or by which the Manager or any of its subsidiaries is bound or to which any of the property or assets of the Manager or any of its subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Manager Material Adverse Effect.

(h) *No Conflicts.* The execution, delivery and performance by the Manager of this Agreement and the performance by the Manager of the Management Agreement and the consummation of the transactions contemplated hereby and thereby will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Manager or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Manager or any of its subsidiaries is a party or by which the Manager or any of its subsidiaries is bound or to which any of the property or assets of the Manager or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the certificate of formation or limited liability company agreement or similar organizational documents of the Manager or any of its subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, have a Manager Material Adverse Effect.

(i) *No Consents Required*. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, no consent, approval, authorization, order, license, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Manager of this Agreement or the performance by the Manager of the Management Agreement or the consummation of the transactions contemplated by this Agreement or the Management Agreement.

(j) *No Material Adverse Change*. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since its formation, there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, results of operations or prospects of the Manager or that could prevent the Manager from carrying out its obligations under this Agreement or the Management Agreement.

(k) *Legal Proceedings*. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Manager is or may be a party or to which any property of the Manager may be the subject that, individually or in the aggregate, if determined adversely to the Manager or any of its subsidiaries, could reasonably be expected to have a Manager Material Adverse Effect; no such investigations, actions, suits or proceedings are, to the knowledge of the Manager, threatened or contemplated by any governmental or regulatory authority or threatened by others.

(l) *Employee Matters*. The Manager has not been notified that any of the Manager's officers, investment committee members, investment professionals or other key persons named in the Registration Statement, the Pricing Disclosure Package and the Prospectus plans to terminate his or her employment or association with the Manager. Neither the Manager nor any

of the Manager's officers, investment committee members or other key persons named in the Pricing Disclosure Package is subject to any non-competition, non-disclosure, confidentiality, employment, consulting or similar agreement that would be violated by the business activities of the Company or the Manager as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(m) *Investment Advisers Act*. The Manager is not prohibited by the Investment Advisers Act of 1940, as amended, or the rules and regulations thereunder, from performing its obligations under the Management Agreement as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(n) *Free Writing Prospectus*. The Manager (including its agents and representatives, other than the Underwriters in their capacity as such) has not prepared, used, authorized, approved or referred to and will not prepare, use, authorize, approve or refer to any "written communication" (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or solicitation of an offer to buy the Securities.

(o) *No Stabilization*. Neither the Manager nor any of its affiliates has taken, directly or indirectly, any action designed to, or that could reasonably be expected to, cause or result in any stabilization or manipulation of the price of the Securities.

(p) *No Unlawful Payments*. The Manager has not (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment.

(q) *Compliance with Money Laundering Laws*. The operations of the Manager are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Manager conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Manager Anti-Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Manager with respect to the Manager Anti-Money Laundering Laws is pending or, to the knowledge of the Manager, threatened.

(r) Compliance with OFAC.

1. The Manager is not owned or controlled by a Person that is

(a) the subject of any Sanctions; nor

(b) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Crimea, Sudan and Syria).

2. Since its inception, the Manager has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

5. Further Agreements of the Company. The Company covenants and agrees with each Underwriter that:

(a) *Required Filings.* The Company will file the final Prospectus with the Commission within the time periods specified by Rule 424(b) and Rule 430A, 430B or 430C under the Securities Act, will file any Issuer Free Writing Prospectus (including the term sheet substantially in the form of Annex C hereto) to the extent required by Rule 433 under the Securities Act; and will furnish copies of the Prospectus and each Issuer Free Writing Prospectus (to the extent not previously delivered) to the Underwriters in New York City prior to 10:00 A.M., New York City time, on the business day next succeeding the date of this Agreement, or such time as otherwise agreed by the Representatives, in such quantities as the Representatives may reasonably request.

(b) *Delivery of Copies.* The Company will deliver, without charge, (i) to the Representatives, six signed copies of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith; and (ii) to each Underwriter through the Representatives (A) a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) and (B) during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto, all documents incorporated by reference therein and each Issuer Free Writing Prospectus) as the Representatives may reasonably request. As used herein, the term "**Prospectus Delivery Period**" means such period of time after the first date of the public offering of the Securities as in the opinion of counsel for the Underwriters a prospectus relating to the Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Securities by any Underwriter or dealer.

(c) *Amendments or Supplements, Issuer Free Writing Prospectuses*. Before using or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement or the Prospectus, the Company will furnish to the Representatives and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not use or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Representatives reasonably object.

(d) *Notice to the Representatives.* The Company will advise the Representatives promptly, and confirm such advice in writing, (i) when the Registration Statement has become effective; (ii) when any amendment to the Registration Statement has been filed or becomes effective; (iii) when any supplement to the Prospectus or any Issuer Free Writing Prospectus or

any amendment to the Prospectus has been filed; (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information; (v) of the issuance by the Commission of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus, any of the Pricing Disclosure Package or the Prospectus or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A of the Securities Act; (vi) of the occurrence of any event within the Prospectus Delivery Period as a result of which the Prospectus, the Pricing Disclosure Package or any Issuer Free Writing Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the Pricing Disclosure Package or any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; and (vii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its best efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus, any of the Pricing Disclosure Package or the Prospectus or suspending any such qualification of the Securities and, if any such order is issued, will obtain as soon as possible the withdrawal thereof.

(e) *Ongoing Compliance.* (1) If during the Prospectus Delivery Period (i) any event shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Prospectus to comply with law, the Company will promptly notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission and furnish to the Underwriters and to such dealers as the Representatives may designate such amendments or supplements to the Prospectus as may be necessary so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law and (2) if at any time prior to the Closing Date (i) any event shall occur or condition shall exist as a result of which the Pricing Disclosure Package as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Pricing Disclosure Package is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Pricing Disclosure Package to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representatives may designate such amendments or supplements to the Pricing Disclosure Package as may be necessary so that the statements in the Pricing Disclosure Package as so amended or supplemented will not, in the light of the circumstances existing when the Pricing Disclosure Package is delivered to a purchaser, be misleading or so that the Pricing Disclosure Package will comply with law.

(f) *Blue Sky Compliance*. The Company will use its reasonable best efforts to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request and will continue such qualifications in effect so long as required for distribution of the Securities; provided that the Company shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(g) *Earning Statement*. The Company will make generally available to its security holders and the Representatives as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the "effective date" (as defined in Rule 158) of the Registration Statement.

(h) *Clear Market*. For a period of 45 days after the date of the Prospectus, the Company will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, or file any registration statement with respect to, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, without the prior written consent of the Representatives, other than: (A) the registration, offer and sale of the Securities as contemplated hereunder, (B) the issuance of any shares of Common Stock upon the exercise of options granted under the Company Stock Plans and/or any shares of Common Stock issued upon final vesting of restricted stock units granted under the Company Stock Plans, (C) the issuance of any shares of Common Stock or restricted stock units of the Company issued under the Company's 2009 Equity Incentive Plan, (D) the issuance or other transfers of shares of Common Stock by the Company to the Manager (in whose hands such shares of Common Stock will be locked up pursuant to Section 6(b) below) in connection with the payment of any tax withholding obligations incurred by the Company's officers and personnel of the Manager in relation to the vesting of restricted shares of Common Stock issued pursuant to the Company Stock Plans, (E) the filing of a registration statement in respect of a dividend reinvestment plan of the Company and any shares of Common Stock issued pursuant thereto, (F) transfers of Common Stock required by Article VII of the charter of the Company and (G) the issuance of shares of Common Stock pursuant to that certain ATM Equity Offering Sales Agreement among the Company, the Manager, Merrill Lynch, Pierce, Fenner & Smith Incorporated and JMP Securities LLC dated May 7, 2013.

(i) *Use of Proceeds*. The Company will apply the net proceeds from the sale of the Securities as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the heading "Use of Proceeds".

(j) *No Stabilization*. The Company will not take, and will cause its subsidiaries and affiliates not to take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(k) *Underlying Securities*. The Company will reserve and keep available at all times, free of pre-emptive rights, shares of Common Stock for the purpose of enabling the Company to satisfy all obligations to issue the Underlying Securities upon conversion of the Securities. The Company will use its best efforts to cause the Underlying Securities to be listed on the Exchange.

(l) *Reports.* During the period from two years from the date of this Agreement, so long as the Securities are outstanding, the Company will furnish to the Representatives, as soon as they are available, copies of all reports or other communications (financial or other) furnished to holders of the Securities, and copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange or automatic quotation system; provided that the Company will be deemed to have furnished such reports and financial statements to the Representatives to the extent they are filed on the Commission's Electronic Data Gathering, Analysis, and Retrieval system.

(m) *Record Retention*. The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

(n) *Filings.* The Company will file with the Commission such reports as may be required by Rule 463 under the Securities Act.

(o) *Qualification and Taxation as a REIT*. The Company will use its best efforts to meet the requirements for qualification and taxation as a REIT under the Code for its taxable year ending December 31, 2017, and the Company will use its best efforts to continue to qualify for taxation as a REIT under the Code unless the Company's Board of Directors determines in good faith that it is no longer in the best interest of the Company and its stockholders to be so qualified.

6. Further Agreements of the Manager. The Manager covenants and agrees with each Underwriter that:

(a) *No Stabilization*. The Manager will not take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(b) *Manager Lock-Up.* The Manager will not, during the period beginning on the date hereof and ending 45 days after the date of the Prospectus, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or such other securities or any securities convertible into or exercisable or exchangeable for Common Stock (including without limitation, Common Stock, or such other securities, which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Commission and securities which may be issued upon exercise of

a stock option or warrant), or publicly disclose the intention to make any offer, sale, pledge or disposition, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise or (3) make any demand for or exercise any right with respect to the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock without the prior written consent of the Representatives, in each case other than transfers of shares of Common Stock or securities convertible into shares of Common Stock or exercisable or exchangeable to members or personnel of the Manager; provided that in the case of any such transfer, each transferee shall execute and deliver to the Representatives a lock-up letter in the form of this paragraph; and provided, further, that in the case of any such transfer, no filing by any party (transferor or transferee) under the Exchange Act, or other public announcement shall be required or shall be made voluntarily in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 45-day period referred to above). In addition, this Section 6(b) shall not apply to (1) the sale pursuant to any contract, instruction or plan in effect on the date hereof that satisfies the requirements of Rule 10b5-1(c)(1)(i)(B) (a "**Plan**") or (2) the establishment of any Plan after the date hereof, provided that no sales of Common Stock shall be made pursuant to such a Plan prior to the expiration of the 45-day period.

7. Certain Agreements of the Underwriters. Each Underwriter hereby represents and agrees that:

(a) It has not used, authorized use of, referred to or participated in the planning for use of, and will not use, authorize use of, refer to or participate in the planning for use of, any "free writing prospectus", as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (i) a free writing prospectus not required to be filed by the Company with the Commission that contains no "issuer information" (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Preliminary Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Annex B or prepared pursuant to Section 3(c) or Section 5(c) above (including any electronic road show), or (iii) any free writing prospectus prepared by such underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (i) or (iii), an "**Underwriter Free Writing Prospectus**").

(b) It has not and will not, without the prior written consent of the Company, use any free writing prospectus that contains the final terms of the Securities unless such terms have previously been included in a free writing prospectus filed with the Commission.

(c) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

8. Conditions of Underwriters' Obligations. The obligation of each Underwriter to purchase the Underwritten Securities on the Closing Date or the Option Securities on the

Additional Closing Date, as the case may be, as provided herein is subject to the performance by the Company and the Manager of their covenants and other obligations hereunder and to the following additional conditions:

(a) *Registration Compliance; No Stop Order.* No order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of an Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 5(a) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representatives.

(b) *Representations and Warranties.* The respective representations and warranties of the Company and the Manager contained herein, unless otherwise provided herein, shall be true and correct on the date hereof, as of the Applicable Time and on and as of the Closing Date or the Additional Closing Date, as the case may be; and the respective statements of the Company and the Manager and their respective officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date or the Additional Closing Date, as the case may be.

(c) *No Downgrade.* Subsequent to the earlier of (A) the Applicable Time and (B) the execution and delivery of this Agreement, if there are any debt securities or preferred stock of, or guaranteed by, the Company or any of its subsidiaries that are rated by a "nationally recognized statistical rating organization," as such term is defined under Section 3(a)(62) of the Exchange Act, (i) no downgrading shall have occurred in the rating accorded any such debt securities or preferred stock and (ii) no such organization shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of any such debt securities or preferred stock (other than an announcement with positive implications of a possible upgrading).

(d) *No Material Adverse Change.* No event or condition of a type described in Section 3(i) or Section 4(j) hereof shall have occurred or shall exist, which event or condition is not described in the Pricing Disclosure Package (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the Closing Date or the Additional Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Pricing Disclosure Package and the Prospectus.

(e) *Company Officer's Certificate.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, a certificate of the chief financial officer or chief accounting officer of the Company and one additional senior executive officer of the Company who is satisfactory to the Representatives (i) confirming that such officers have carefully reviewed the Registration Statement, the Pricing Disclosure Package and the Prospectus and, to the knowledge of such officers, the representations set forth in Sections 3(b) and 3(d) hereof are true and correct, (ii) confirming that the other representations and

warranties of the Company in this Agreement are true and correct and that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date or the Additional Closing Date, as the case may be, and (iii) to the effect set forth in paragraphs (a), (c) and (d) above.

(f) *Manager Officer's Certificate.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, a certificate of the chief financial officer or chief accounting officer of the Manager and one additional senior executive officer of the Manager who is satisfactory to the Representatives (i) confirming that the representations and warranties of the Manager in this Agreement are true and correct and that the Manager has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date or the Additional Closing Date, as the case may be, and (ii) to the effect set forth in paragraph (d) above.

(g) *Comfort Letters.* On the date of this Agreement and on the Closing Date or the Additional Closing Date, as the case may be, Deloitte & Touche LLP shall have furnished to the Representatives, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information of the Company and its subsidiaries and AMTG and its subsidiaries contained or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus; provided that the letters delivered on the Closing Date or the Additional Closing Date, as the case may be, shall use a "cut-off" date no more than three business days prior to such Closing Date or such Additional Closing Date, as the case may be.

(h) *Opinions of Counsel for the Company*. At the request of the Company, (i) Venable LLP, Maryland counsel for the Company, shall have furnished to the Representatives their written opinion, dated the Closing Date or the Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex A-1 hereto, (ii) Clifford Chance US LLP, special counsel for the Company, shall have furnished to the Representatives their written opinion (which written opinion shall include a 10b-5 opinion), dated the Closing Date or the Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex A-2 hereto, and (iii) Clifford Chance US LLP, counsel for the Company, shall have furnished to the Representatives their written tax opinion, dated the Closing Date or the Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex A-3 hereto.

(i) *Opinion and 10b-5 Statement of Counsel for the Underwriters.* The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, an opinion and 10b-5 statement of Latham & Watkins LLP, counsel for the Underwriters, with respect to such matters as the Representatives may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(j) *No Legal Impediment to Issuance.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Securities; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or the Additional Closing Date, as the case may be, prevent the issuance or sale of the Securities.

(k) *Good Standing*. The Representatives shall have received on and as of the Closing Date or the Additional Closing Date, as the case may be, satisfactory evidence of the good standing of the Company, the Manager and their respective subsidiaries in their respective jurisdictions of organization and their good standing as foreign entities in such other jurisdictions as the Representatives may reasonably request, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(l) *Exchange Listing*. An application for the listing of the Underlying Securities shall have been submitted to the Exchange.

(m) *Lock-up Agreements*. The "lock-up" agreements, each substantially in the form of Exhibit A hereto, between you and the persons and entities listed on Annex D hereto relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be full force and effect on the Closing Date or Additional Closing Date, as the case may be.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

9. Indemnification and Contribution.

(a) *Indemnification of the Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors, selling agents and officers and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses reasonably incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, (ii) or any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus, any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act or any Pricing Disclosure Package (including any Pricing Disclosure Package that has subsequently been amended), or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of,

or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below.

(b) *Indemnification of the Company.* Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Underwriter furnished to the Company in writing by such Underwriter expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Pricing Disclosure Package, it being understood and agreed upon that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter: the concession information appearing in the third paragraph of text under the caption "Underwriting" and the information contained in the eleventh and twelfth paragraphs of text under the caption "Underwriting."

(c) *Notice and Procedures*. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such person (the "**Indemnified Person**") shall promptly notify the person against whom such indemnification may be sought (the "**Indemnifying Person**") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under paragraph (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under paragraph (a) or (b) above. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. It is understood and

agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be paid or reimbursed as they are incurred. Any such separate firm for any Underwriter, its affiliates, directors and officers and any control persons of such Underwriter shall be designated in writing by the Representatives and any such separate firm for the Company, its directors, its officers who signed the Registration Statement and any control persons of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by the Indemnifying Person of such request and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) *Contribution*. If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters on the other, from the offering of the Securities or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company, on the one hand, and the Underwriters on the other, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters on the other, shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Securities and the total underwriting discounts and commissions received by the Underwriters in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Securities. The relative fault of the Company, on the one hand, and the Underwriters on the other, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability*. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 9, in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Securities exceeds the principal amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 9 are several in proportion to their respective purchase obligations hereunder and not joint.

(f) *Non-Exclusive Remedies*. The remedies provided for in this Section 9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

10. Effectiveness of Agreement. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

11. Termination. This Agreement may be terminated in the absolute discretion of the Representatives, by notice to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date or, in the case of the Option Securities, prior to the Additional Closing Date (i) trading generally shall have been suspended or materially limited on or by any of the New York Stock Exchange, the NASDAQ Stock Market or the Chicago Board Options Exchange; (ii) trading of any securities issued or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representatives, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the Closing Date or the Additional Closing Date, as the case may be, on the terms and in the manner contemplated by this Agreement, the Pricing Disclosure Package and the Prospectus.

12. Defaulting Underwriter.

(a) If, on the Closing Date or the Additional Closing Date, as the case may be, any Underwriter defaults on its obligation to purchase the Securities that it has agreed to purchase

hereunder on such date, the non-defaulting Underwriters may in their discretion arrange for the purchase of such Securities by other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase such Securities on such terms. If other persons become obligated or agree to purchase the Securities of a defaulting Underwriter, either the non-defaulting Underwriters or the Company may postpone the Closing Date or the Additional Closing Date, as the case may be, for up to five full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement and the Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement and the Prospectus that effects any such changes. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule 1 hereto that, pursuant to this Section 12, purchases Securities that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate principal amount of Securities that remain unpurchased on the Closing Date or the Additional Closing Date, as the case may be, does not exceed one-eleventh of the aggregate principal amount of Securities to be purchased on such date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the principal amount of Securities that such Underwriter agreed to purchase hereunder on such date plus such Underwriter's pro rata share (based on the principal amount of Securities that such Underwriter agreed to purchase on such date) of the Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate principal amount of Securities that remain unpurchased on the Closing Date or the Additional Closing Date, as the case may be, exceeds one-eleventh of the aggregate principal amount of Securities to be purchased on such date, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement or, with respect to any Additional Closing Date, the obligation of the Underwriters to purchase Securities on the Additional Closing Date shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 12 shall be without liability on the part of the Company, except that the provisions of Section 9 hereof shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

13. Payment of Expenses.

(a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all

costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement, the Preliminary Prospectus, any Issuer Free Writing Prospectus, any Pricing Disclosure Package and the Prospectus (including all exhibits, amendments and supplements thereto) and the distribution thereof; (iii) the costs of reproducing and distributing this Agreement; (iv) the fees and expenses of the Company's counsel and independent accountants; (v) the fees and expenses incurred in connection with the registration or qualification of the Securities and determination of eligibility for investment of the Securities under the state or foreign securities or blue sky laws of such jurisdictions as the Representatives may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the reasonable fees and expenses of counsel for the Underwriters in connection therewith); (vi) fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (vii) if required all expenses and application fees, incurred in connection with the review by, any filing with, and clearance of the offering by, FINRA (including filing fees and fees and expenses of counsel for the Underwriters relating to the clearance of the offering by FINRA) and the approval of the Securities for book entry transfer by DTC; (viii) all expenses incurred by the Company in connection with any "road show" presentation to potential investors; (ix) all expenses and application fees related to the listing of the Underlying Securities on the Exchange; and (x) all fees and expenses in connection with the registration of the Securities under the Exchange Act. It is understood, however, that, except as otherwise provided in this Agreement, the Underwriters will pay all fees and expenses of counsel for the Underwriters.

(b) If (i) this Agreement is terminated pursuant to Section 11, (ii) the Company for any reason fails to tender the Securities for delivery to the Underwriters or (iii) the Underwriters decline to purchase the Securities for any reason permitted under this Agreement (other than a termination of this Agreement pursuant to Section 12(c) hereof), the Company agrees to reimburse the Underwriters for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby.

14. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and any controlling persons referred to in Section 9 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from any Underwriter shall be deemed to be a successor merely by reason of such purchase.

15. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of the Company, the Manager and the Underwriters contained in this Agreement or made by or on behalf of the Company, the Manager or the Underwriters pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Company or the Underwriters.

16. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term "**affiliate**" has the meaning set forth in Rule 405 under the Securities Act; (b) the term "**business day**" means any day other than a day on which banks are permitted or required to be closed in New York City; and (c) the term "**subsidiary**" has the meaning set forth in Rule 405 under the Securities Act.

17. Miscellaneous.

(a) *Authority of the Representatives*. Any action by the Underwriters hereunder may be taken by the Representatives on behalf of the Underwriters, and any such action taken by the Representatives shall be binding upon the Underwriters.

(b) *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives c/o Morgan Stanley & Co. LLC, 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department; c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Bryant Park, New York, NY 10036, Facsimile: (646) 855 3073, Attention: Syndicate Department, with a copy to: Facsimile: (212) 230-8730, Attention: ECM Legal; c/o Citigroup Global Markets Inc., 388 Greenwich Street, New York, NY 10013, Facsimile: (646) 291 1469, Attention: General Counsel; and c/o J.P. Morgan Securities LLC, 383 Madison Avenue, New York, NY 10179, Facsimile: (212) 622-8358, Attention: Equity Syndicate Desk. Notices to the Company or the Manager shall be given to it at Apollo Commercial Real Estate Finance, Inc. c/o Apollo Global Management, LLC, 9 West 57th Street, 43rd Floor, New York, New York 10019, Facsimile: (212) 515-3251, Attention: John J. Suydam.

(c) *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in such state.

(d) *Counterparts*. This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(e) *Amendments or Waivers*. No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

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

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

Apollo Commercial Real Estate Finance, Inc.

By: /s/ Stuart Rothstein
Name: Stuart Rothstein
Title: Authorized Person

ACREFI Management, LLC

By: /s/ Jessica L. Lomm
Name: Jessica L. Lomm
Title: Vice President

(Signature Page to Underwriting Agreement)

Accepted: August 15, 2017

Morgan Stanley & Co. LLC

For itself and on behalf of the
several Underwriters listed
in Schedule 1 hereto.

By: /s/ Serkan Savasoglu
Name: Serkan Savasoglu
Title: Managing Director

(Signature Page to Underwriting Agreement)

Accepted: August 15, 2017

Merrill Lynch, Pierce, Fenner & Smith
Incorporated

For itself and on behalf of the
several Underwriters listed
in Schedule 1 hereto.

By: /s/ Jack Vissicchio
Name: Jack Vissicchio
Title: Managing Director, Co-Head of Americas
Real Estate Investment Banking

(Signature Page to Underwriting Agreement)

Accepted: August 15, 2017

Citigroup Global Markets Inc.

For itself and on behalf of the
several Underwriters listed
in Schedule 1 hereto.

By: /s/ Guy Dorsainvil II
Name: Guy Dorsainvil II
Title: Director

(Signature Page to Underwriting Agreement)

Accepted: August 15, 2017

J.P. Morgan Securities LLC

For itself and on behalf of the
several Underwriters listed
in Schedule 1 hereto.

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

(Signature Page to Underwriting Agreement)

Schedule 1

Underwriter		Principal Amount of Securities
Morgan Stanley & Co. LLC		$ 56,000,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated		$ 40,000,000
Citigroup Global Markets Inc.		$ 40,000,000
J.P. Morgan Securities LLC		$ 40,000,000
Deutsche Bank Securities Inc.		$ 8,000,000
JMP Securities LLC		$ 8,000,000
Keefe, Bruyette & Woods, Inc.		$ 8,000,000
	Total	$ 200,000,000

Schedule 2

SIGNIFICANT SUBSIDIARIES OF THE COMPANY

1. ACREFI Operating, LLC
2. ACREFI Holdings DB Member, LLC
3. ACREFI Holdings DB, LLC
4. ACREFI Holdings DB-Series II
5. ACREFI Holdings DB-Series III
6. ACREFI Holdings DB-Series IV
7. ACREFI Holdings DB-Series V
8. ACREFI Holdings DB-Series VI
9. ACREFI Holdings DB-Series VII
10. ACREFI Holdings DB-Series VIII
11. ACREFI Currency, LLC
12. ACREFI Lender, LLC
13. ACREFI I TRS, Inc
14. ACREFI II TRS, Ltd.
15. ACREFI Mezzanine, LLC
16. ACREFI Holdings J-II, LLC
17. ACREFI Mortgage Lending, LLC
18. ACREFI Insurance Services, LLC
19. PEM Kent Holdings, LLC
20. ACREFI Holdings U-1, LLC
21. ACREFI Holdings J-1, LLC
22. ACREFI Cash Management, LLC
23. ARM Operating, LLC

24. ARM I, LLC

25. ARM I WL, LLC

26. ARM II, LLC

27. ARM II SPE, LLC

28. ARM I QRS, Inc.

29. ARM Cash Management, LLC

30. ARM TRS, LLC

31. ARWL 2013-1 Trust

32. ARWL 2013-1 REO Trust

33. ARWL 2014-1 Trust

34. Apollo Residential Mortgage Loans, LLC

35. Apollo Residential Mortgage Securities, LLC

Form of Opinion of Venable LLP

Form of Opinion of Clifford Chance US LLP

Form of Tax Opinion of Clifford Chance US LLP

1. Pricing Term Sheet in the form of Annex C

Filed pursuant to Rule 433
Registration No. 333-203971
Relating to the
Preliminary Prospectus Supplement
dated August 15, 2017
(To Prospectus dated May 7, 2015)

PRICING TERM SHEET
Dated August 15, 2017

Apollo Commercial Real Estate Finance, Inc.
Offering of
$200,000,000 aggregate principal amount of
4.75% Convertible Senior Notes due 2022

The information in this pricing term sheet supplements Apollo Commercial Real Estate Finance, Inc.'s preliminary prospectus supplement, dated August 15, 2017 (the "Preliminary Prospectus Supplement"), and supersedes the information in the Preliminary Prospectus Supplement to the extent inconsistent with the information in the Preliminary Prospectus Supplement. Terms used, but not defined, in this pricing term sheet have the respective meanings set forth in the Preliminary Prospectus Supplement. Unless the context requires otherwise, references in this pricing term sheet to the "Company," "we," "our" and "us" refer only to Apollo Commercial Real Estate Finance, Inc. and not to its subsidiaries.

Issuer	Apollo Commercial Real Estate Finance, Inc., a Maryland corporation.
Ticker / Exchange for Common Stock	ARI / The New York Stock Exchange ("NYSE").
Trade Date	August 16, 2017.
Settlement Date	August 21, 2017.
Securities Offered	4.75% Convertible Senior Notes due 2022 (the "Notes").
Aggregate Principal Amount Offered	$200,000,000 aggregate principal amount of Notes (or $230,000,000, if the underwriters fully exercise their option to purchase additional Notes).
Issue Price	99% of principal amount, plus accrued interest, if any, from the Settlement Date.

Maturity	August 23, 2022, unless earlier repurchased, redeemed or converted.
Interest Rate	4.75% per annum.
Interest Payment Dates	February 15 and August 15 of each year, beginning on February 15, 2018. However, the final Interest Payment Date will occur on August 23, 2022, and no Interest Payment Date will occur on August 15, 2022.
Record Dates	February 1 and August 1.
Price to Underwriters	97.75%.
NYSE Last Reported Sale Price of the Issuer's Common Stock on August 15, 2017	$18.10 per share.
Conversion Premium	Approximately 10% above the NYSE Last Reported Sale Price of the Issuer's Common Stock on August 15, 2017.
Initial Conversion Price	Approximately $19.91 per share.
Initial Conversion Rate	50.2260 shares of the Issuer's common stock per $1,000 principal amount of Notes.
Net Proceeds after Expenses	$195.2 million (or $224.6 million, if the underwriters fully exercise their option to purchase additional Notes), after deducting the underwriting discount and the Issuer's estimated offering expenses.
Use of Proceeds	The Issuer intends to use all or a portion of the net proceeds from the offering to acquire or originate its target assets, which include commercial first mortgage loans, subordinate financings, CMBS and other commercial real estate-related debt investments, and for working capital and other general corporate purposes. Pending such uses, the Issuer may use a portion of the net proceeds from the offering to temporarily reduce borrowings under its repurchase agreements (excluding repurchase agreements secured by its CMBS portfolio). An affiliate of J.P. Morgan Securities LLC, an

	underwriter in this offering, is the lender under the Issuer's master repurchase agreement with JPMorgan Chase Bank, N.A. (the "JP Morgan Facility"). As such, an affiliate of J.P. Morgan Securities LLC may receive a portion of the net proceeds of this offering, to the extent the JP Morgan Facility is repaid. See "Use of Proceeds" in the Preliminary Prospectus Supplement.
Joint Book-Running Managers	Morgan Stanley & Co. LLC Merrill Lynch, Pierce, Fenner & Smith Incorporated Citigroup Global Markets Inc. J.P. Morgan Securities LLC
Co-Managers	Deutsche Bank Securities Inc. JMP Securities LLC Keefe, Bruyette & Woods *A Stifel Company*
Listing	The Notes will not be listed on any securities exchange.
CUSIP Number	03762U AB1.
ISIN Number	US03762UAB17.
Repurchase at the Option of Holders upon a Fundamental Change	Following a "fundamental change" (as defined in the Preliminary Prospectus Supplement), subject to certain conditions, holders may require the Issuer to repurchase for cash all or part of their Notes at a repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date.
Redemption of Notes to Preserve REIT Status	The Issuer may not redeem the Notes prior to their maturity, except to the extent, and only to the extent, necessary to preserve its status as a real estate investment trust ("REIT") for U.S. federal income tax purposes. If the Issuer determines that redeeming the Notes is necessary to preserve its status as a REIT, then it may redeem all or part of the Notes at a cash redemption price equal to the

principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

Increase in Conversion Rate Upon Conversion Upon a Make-whole Fundamental Change

The following table sets forth the number of additional shares by which the conversion rate will be increased per $1,000 principal amount of Notes for each stock price and effective date set forth below:

	Stock Price										
Effective Date	**$18.10**	**$18.40**	**$18.70**	**$19.00**	**$19.30**	**$19.60**	**$19.91**	**$20.20**	**$20.50**	**$20.80**	**$21.10**
August 21, 2017	5.0226	4.2908	3.6016	2.9574	2.3606	1.8138	1.3054	0.8866	0.5185	0.2293	0.0403
August 23, 2018	5.0226	4.2016	3.4947	2.8353	2.2269	1.6740	1.1662	0.7559	0.4059	0.1462	0.0000
August 23, 2019	5.0226	4.0864	3.3620	2.6884	2.0710	1.5143	1.0100	0.6119	0.2873	0.0721	0.0000
August 23, 2020	5.0226	3.9446	3.2000	2.5121	1.8870	1.3311	0.8373	0.4589	0.1678	0.0014	0.0000
August 23, 2021	5.0226	3.6891	2.9091	2.1989	1.5684	1.0265	0.5701	0.2515	0.0478	0.0000	0.0000
August 23, 2022	5.0226	4.1218	3.2499	2.4056	1.5875	0.7944	0.0000	0.0000	0.0000	0.0000	0.0000

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- 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 shares by which the conversion rate will be increased will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365- or 366-day year, as applicable;

- if the stock price is greater than $21.10 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate; and

- if the stock price is less than $18.10 per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.

* * *

Notwithstanding the foregoing, in no event will the conversion rate be increased pursuant to the provisions described in the Preliminary Prospectus Supplement under the caption "Description of Notes—Conversion Rights—Increase in Conversion Rate Upon Conversion Upon a Make-whole Fundamental Change" to exceed 55.2486 shares of common stock per $1,000 principal amount of Notes, subject to adjustment in the same manner as the conversion rate as described in the Preliminary Prospectus Supplement under the caption "Description of Notes—Conversion Rights—Conversion Rate Adjustments."

The Issuer has filed a registration statement (including a prospectus), and the Preliminary Prospectus Supplement, with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and the

Preliminary Prospectus Supplement and other documents the Issuer has filed with the SEC for more complete information about the Issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, the Issuer, any underwriter, or any dealer participating in the offering will arrange to send you the prospectus if you request it by contacting Morgan Stanley, 180 Varick Street, 2nd Floor, New York, New York 10014, Attention: Prospectus Department, Telephone: (866) 718-1649; BofA Merrill Lynch, 222 Broadway, New York, New York 10038, Attention: Prospectus Department, Telephone (800) 294-1322, Email: dg.prospectus_requests@baml.com; Citigroup, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, New York 11717, Telephone: (800) 831-9146, Email: batprospectusdept@citi.com; or J.P. Morgan, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, New York 11717, Telephone: (866) 803-9204.

You should rely on the information contained or incorporated by reference in the Preliminary Prospectus Supplement and in the related registration statement, as supplemented by this pricing term sheet, in making an investment decision with respect to the Notes.

Neither this pricing term sheet nor the Preliminary Prospectus Supplement nor the related registration statement constitutes an offer to sell or a solicitation of an offer to buy any Notes in any jurisdiction where it is unlawful to do so, where the person making the offer is not qualified to do so or to any person who cannot legally be offered the Notes.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

PERSONS AND ENTITIES SUBJECT TO LOCK-UP AGREEMENTS

1. Apollo Principal Holdings I, L.P.

2. Jeffrey Gault

3. Mark C. Biderman

4. Robert A. Kasdin

5. Eric L. Press

6. Scott S. Prince

7. Michael E. Salvati

8. Stuart A. Rothstein

9. Jai Agarwal

10. Scott Weiner

11. Cindy Michel

Exhibit A

FORM OF LOCK-UP AGREEMENT

August 15, 2017

Morgan Stanley & Co. LLC
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Citigroup Global Markets Inc.
J.P. Morgan Securities LLC
As Representatives (the "**Representatives**") of the
several Underwriters listed in Schedule 1 hereto
c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Re: APOLLO COMMERCIAL REAL ESTATE FINANCE, INC. – Public Offering Convertible Senior Notes

Ladies and Gentlemen:

The undersigned understands that you, as Representatives of the several Underwriters, propose to enter into an Underwriting Agreement (the "**Underwriting Agreement**") with Apollo Commercial Real Estate Finance, Inc., a Maryland corporation (the "**Company**"), providing for the public offering (the "**Public Offering**") by the several Underwriters named in Schedule 1 to the Underwriting Agreement (the "**Underwriters**"), of the Company's 4.75% Convertible Senior Notes due 2022 (the "**Securities**"), which are convertible into shares of common stock, par value $0.01 per share, of the Company (the "**Common Stock**"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Underwriting Agreement.

In consideration of the Underwriters' agreement to purchase and make the Public Offering of the Securities, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned hereby agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, the undersigned will not, subject to the exceptions set forth in this letter agreement, during the period beginning on the date hereof and ending 45 days after the date of the prospectus supplement relating to the Public Offering (the "**Prospectus**"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or such other securities or any securities convertible into or exercisable or exchangeable for Common Stock (including without limitation, Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant), or publicly disclose the intention to make any offer, sale, pledge or

disposition, (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise or (3) make any demand for or exercise any right with respect to the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock without the prior written consent of the Representatives, in each case other than (A) transfers of shares of Common Stock as a bona fide gift or gifts, (B) transfers of shares of Common Stock to members, partners, stockholders or other equity holders of the undersigned, (C) transfers to family members or trusts for the benefit of the undersigned's family members or (D) transfers of shares of Common Stock or restricted stock units to the Company to pay any tax withholding obligations incurred by the undersigned in connection with the vesting of shares of restricted Common Stock or restricted stock units issued pursuant to Company Stock Plans held by the undersigned; provided that in the case of any transfer pursuant to clause (A), (B) or (C), each donee or transferee shall execute and deliver to the Representatives a lock-up letter in the form of this paragraph; and provided, further, that in the case of any transfer pursuant to clause (A), (B) or (C), no filing by any party (donor, donee, transferor or transferee) under the Securities Exchange Act of 1934, as amended, or other public announcement shall be required or shall be made voluntarily in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 45-day period referred to above). In addition, this letter agreement shall not apply to (1) the sale pursuant to any contract, instruction or plan in effect on the date hereof that satisfies the requirements of Rule 10b5-1(c)(1)(i)(B) (a "**Plan**") or (2) the establishment of any Plan after the date hereof, provided that no sales of Common Stock shall be made pursuant to such a Plan prior to the expiration of the 45-day period.

In furtherance of the foregoing, the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this letter agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this letter agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that, if the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, the undersigned shall be released from, all obligations under this letter agreement. The undersigned understands that the Underwriters are entering into the Underwriting Agreement and proceeding with the Public Offering in reliance upon this letter agreement.

This letter agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

By: _____
Name:
Title:

Exhibit A-3

Exhibit 4.2

APOLLO COMMERCIAL REAL ESTATE FINANCE, INC.

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

as Trustee

SECOND SUPPLEMENTAL INDENTURE

Dated as of August 21, 2017

to

INDENTURE

Dated as of March 17, 2014

4.75% Convertible Senior Notes due 2022

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This Second Supplemental Indenture, dated as of August 21, 2017 (this "**Supplemental Indenture**"), to the Indenture, dated as of March 17, 2014 (as amended, modified or supplemented from time to time in accordance therewith, the "**Base Indenture**" and, as amended, modified and supplemented by this Supplemental Indenture, the "**Indenture**"), between Apollo Commercial Real Estate Finance, Inc., a Maryland corporation, as issuer (the "**Company**," subject to Section 1.01), and Wells Fargo Bank, National Association, a national banking association, as trustee (the "**Trustee**," subject to Section 1.01).

W I T N E S S E T H:

WHEREAS, the Company executed and delivered the Base Indenture to the Trustee to provide, among other things, for the issuance, from time to time, of Securities (as defined in the Base Indenture), in an unlimited aggregate principal amount, in one or more series to be established by the Company under, and authenticated and delivered as provided in, the Base Indenture;

WHEREAS, Section 9.01(3) of the Base Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Base Indenture to establish the form and terms of Securities of any series as contemplated by Article Two of the Base Indenture without the consent of Holders of any Securities; and

WHEREAS, the Company desires to provide for a single series of Securities designated as its 4.75% Convertible Senior Notes 2022 (the "**Notes**"), initially in an aggregate principal amount not to exceed $230,000,000, and to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered in this Supplemental Indenture.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE I
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 the Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. Terms defined herein and in the Base Indenture shall have the meaning set forth in this Section 1.01. Capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Base Indenture.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 6.03.

"**Additional Shares**" shall have the meaning specified in Section 12.03(a).

"**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.

"**Applicable Procedures**" means, with respect to any payment, tender, redemption, transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary that apply to such payment, tender, redemption, transfer or exchange.

"**Averaging Period**" shall have the meaning specified in Section 12.04(e).

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

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

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

"**Cash Settlement**" shall have the meaning specified in Section 12.02(a).

"**Charter**" means the Company's Articles of Amendment and Restatement, as amended and supplemented.

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

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

"**Combination Settlement**" shall have the meaning specified in Section 12.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the common stock of the Company, par value $0.01 per share.

"**Common Stock Change Event**" shall have the meaning specified in Section 12.06(a).

"**Company**" shall have the meaning specified in the first paragraph of this Supplemental Indenture, and subject to the provisions of Article X, shall include its successors and assigns.

"**Company Order**" means a written order of the Company, signed by the Company's Chief Executive Officer, Chief Financial Officer, President, Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President") and delivered to the Trustee.

"**Conversion Agent**" shall have the meaning specified in Section 4.02.

"**Conversion Date**" means, with respect to a Note to be converted pursuant to Article XII, the date that the Holder of such Note has complied with the requirements set forth in Section 12.02(c).

"**Conversion Obligation**" means the Company's obligation, as provided in, and subject to, Article XII, to deliver the Conversion Settlement Consideration with respect to any Note to be converted.

"**Conversion Rate**" means, initially, 50.2260 shares of Common Stock per $1,000 principal amount of Notes; *provided*, *however*, that the Conversion Rate shall be subject to adjustment as provided in Article XII.

"**Conversion Settlement Consideration**" has the meaning specified in Section 12.02(b).

"**Corporate Trust Office**" means the office of the Trustee at which at any time its corporate trust business in relation to the Indenture shall be administered, which at the date hereof (i) for purposes of transfers, exchanges or surrender of the Notes or for presentment of Notes for final payment thereon, is at Wells Fargo Bank, National Association, as Trustee and Registrar MAC N9303-121, 6th & Marquette Avenue, Minneapolis, MN 55479 and (ii) for all other purposes, is at Wells Fargo Bank, National Association, Corporate Trust Services, 150 East 42nd Street, 40th Floor, New York, NY 10017 – Corporate Trust Services – Administrator for Apollo Commercial Real Estate Finance, Inc.

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

"**Daily Conversion Value**" means, for each of the 25 consecutive Trading Days during the applicable Observation Period, one-25th of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP on such Trading Day.

"**Daily Measurement Value**" means the applicable Specified Dollar Amount (if any), *divided by* 25.

"**Daily Settlement Amount**," for each of the 25 consecutive Trading Days during the applicable Observation Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and

(b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

"**Daily VWAP**" means, for each of the 25 consecutive Trading Days during the relevant Observation Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "ARI UN<equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The "**Daily VWAP**" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

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

"**Defaulted Amounts**" means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, Redemption Price, principal and interest) that are payable but are not punctually paid or duly provided for.

"**Deferral Exception**" means any deferral of an adjustment to the Conversion Rate pursuant to Section 12.04(l).

"**Depositary**" means, with respect to each Global Note, the Person as the depositary with respect to such Global Note, until a successor shall have been appointed and become such pursuant to the applicable provisions of the Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Dividend Threshold Amount**" has the meaning ascribed to "DTA" in the formula set forth in Section 12.04(d).

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

"**Effective Date**," (i) for purposes of Section 12.03, shall have the meaning specified in Section 12.03(c); and (ii) for purposes of adjustments to the Conversion Rate pursuant to Section 12.04(a) with respect to a stock split or stock dividend, means the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant stock split or stock combination, as applicable.

"**Event of Default**" shall have the meaning specified in Section 6.01.

"**Expiration Date**" shall have the meaning specified in Section 12.04(e).

"**Expiration Time**" shall have the meaning specified in Section 12.04(e).

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

"**Ex-Dividend Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for these purposes.

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" in substantially the form attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Fundamental Change Repurchase Notice**" means the "Form of Fundamental Change Repurchase Notice" in substantially the form attached as Attachment 2 to the form of Note attached hereto as Exhibit A.

"**Form of Note**" shall mean the "Form of Note" attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" in substantially the form attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Fundamental Change**" shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries and the Company's and its Subsidiaries' employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the Voting Power of the Company's Common Equity;

(b) the consummation of (I) any recapitalization, reclassification or change of the Common Stock (other than a change only in par value, from par value to no par value or from no par value to par value, or changes resulting from a subdivision or combination of the Common Stock) as a result of which the Common Stock would be converted into, or exchanged for, or represent solely the right to receive, stock, other securities, other property or assets; (II) any statutory share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into, or exchanged for, or represent solely the right to receive, stock, other securities, other property or assets; or (III) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any person other than one of the Company's Wholly Owned Subsidiaries; *provided*, *however*, that neither (x) a transaction described in clause (I) or (II) above in which the holders of all classes of the Company's Common Equity immediately prior to such transaction "beneficially own" (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, more than 50% of all classes of Common Equity of

the continuing or surviving entity or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction nor (y) any merger of the Company solely for the purpose of changing the Company's jurisdiction of incorporation that results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity shall be a Fundamental Change pursuant to this clause (b);

(c) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors);

provided, *however*, that a transaction or transactions described in clause (a) or (b) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by the common stockholders of the Company (excluding cash payments for fractional shares or pursuant to dissenters' appraisal rights) in connection with such transaction or transactions consists of shares of common stock or Common Equity interests that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors), or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions, and as a result of such transaction or transactions the Notes become convertible (assuming Physical Settlement) into such consideration, excluding cash payments for fractional shares (subject to Section 12.02); *provided*, *further*, that any transaction or event that constitutes a Fundamental Change under both clause (a) and clause (b) above will be deemed to constitute a Fundamental Change solely under clause (b) above.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 13.01(d).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 13.01(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 13.01(b)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 13.01(a).

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Holder**" means any Person in whose name one or more Notes is registered on the Register.

"**Indenture**" has the meaning specified in the first paragraph of this Supplemental Indenture.

"**Interest Payment Date**" means each February 15 and August 15 of each year, beginning on February 15, 2018 (or such other date as may be specified in the certificate representing the

applicable Note); *provided*, *however*, that the final Interest Payment Date will occur on August 23, 2022, and no Interest Payment Date will occur on August 15, 2022 (and, for the avoidance of doubt, interest will accrue on all outstanding Notes for the period from, and including, August 15, 2022 to, but excluding, August 23, 2022).

"**Last Reported Sale Price**" means, on any date, the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "Last Reported Sale Price" will be the last quoted bid price per share for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group, Inc. or a similar organization. If the Common Stock is not so quoted, the Last Reported Sale Price will be the average of the mid-point of the last bid and ask prices per share for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The Last Reported Sale Price will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to subclause (x) of the *proviso* in clause (b) of the definition thereof).

"**Market Disruption Event**" means (i) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session; or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means August 23, 2022.

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

"**Notice of Conversion**" shall have the meaning specified in Section 12.02(c).

"**Observation Period**" means, with respect to any Note surrendered for conversion, (i) subject to clause (ii) below, if the relevant Conversion Date occurs prior to May 15, 2022, the 25 consecutive Trading Day period beginning on, and including, the second Trading Day immediately succeeding such Conversion Date; (ii) if the relevant Conversion Date occurs on or after the date the Company has sent a Redemption notice calling such Note for Redemption and before the related Redemption Date, the 25 consecutive Trading Day period beginning on, and including, the 26th Scheduled Trading Day immediately preceding such Redemption Date; and

(iii) subject to clause (ii) above, if the relevant Conversion Date occurs on or after May 15, 2022, the 25 consecutive Trading Days beginning on, and including, the 26th Scheduled Trading Day immediately preceding the Maturity Date.

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

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

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

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or 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 unless proof satisfactory to the Trustee is presented that any such Notes are held by any protected purchasers;

(d) Notes converted pursuant to Article XII and required to be cancelled pursuant to Section 2.08; and

(e) Notes repurchased pursuant to the penultimate sentence of Section 2.09.

Notwithstanding anything to the contrary in the Indenture or the Notes, this definition of the term "outstanding" shall apply to the Notes in lieu of Section 2.10 of the Base Indenture (other than the second sentence thereof).

"**Paying Agent**" shall have the meaning specified in Section 4.02.

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

"**Physical Settlement**" shall have the meaning specified in Section 12.02(a).

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

"**Prospectus Supplement**" means the preliminary prospectus supplement dated August 15, 2017, as supplemented by the Pricing Term Sheet dated August 15, 2017, relating to the offering and sale of Notes pursuant to the Underwriting Agreement.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

"**Redemption**" means any redemption of the Notes pursuant to Article XIV.

"**Redemption Date**" shall have the meaning specified in Section 14.01.

"**Redemption Price**" shall have the meaning specified in Section 14.01.

"**Reference Property**" shall have the meaning specified in Section 12.06(a).

"**Reference Property Unit**" shall have the meaning specified in Section 12.06(a).

"**Register**" shall have the meaning specified in Section 2.05(a).

"**Regular Record Date**" means (a) with respect to any Interest Payment Date occurring on February 15, the immediately preceding February 1 (whether or not such day is a Business Day); and (b) with respect to any Interest Payment Date occurring on August 15 or the Maturity Date, the immediately preceding August 1 (whether or not such day is a Business Day).

"**Reporting Obligations**" has the meaning specified in Section 6.03.

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

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

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

"**Settlement Method**" means Physical Settlement, Cash Settlement or Combination Settlement.

"**Significant Subsidiary**" has the meaning set forth in Rule 1-02(w) of Regulation S-X under the Exchange Act.

"**Specified Dollar Amount**" means the maximum cash amount per $1,000 principal amount of Notes to be received upon conversion (excluding cash in lieu of any fractional share of Common Stock) as specified in the notice specifying the Company's chosen Settlement Method or as otherwise deemed to have been specified by the Company.

"**Spin-Off**" shall have the meaning specified in Section 12.04(c).

"**Stock Price**" shall have the meaning specified in Section 12.03(c).

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"**Successor Company**" shall have the meaning specified in Section 10.01(a).

"**Supplemental Indenture**" shall have the meaning specified in the first paragraph of this Supplemental Indenture.

"**Trading Day**" shall have the following meaning: (i) for the purposes of determining amounts due upon conversion only, Trading Day means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock 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 U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading; *provided*, *however*, that if the Common Stock is not so listed or admitted for trading, Trading Day means, for these purposes, a Business Day; and (ii) for all other purposes, Trading Day means a day on which (x) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading and (y) a Last Reported Sale Price for the Common Stock is available; *provided*, *however*, that if the Common Stock is not listed or traded on any exchange or other market, Trading Day means, for these purposes, a Business Day.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Supplemental Indenture; *provided*, *however*, that in the event 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 the Person named as the "**Trustee**" in the first paragraph of this Supplemental Indenture until a successor trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, "**Trustee**" shall mean or include each Person who is then a Trustee under the Indenture.

"**Underwriting Agreement**" means that certain Underwriting Agreement, dated as of August 15, 2017, among the Company, ACREFI Management, LLC and, as representatives of the underwriters named in Schedule 1 thereto, Morgan Stanley & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities LLC.

"**Valuation Period**" shall have the meaning specified in Section 12.04(c).

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 1.02 *Rules of Construction*.

(a) Unless the context otherwise requires:

(i) the term "or" is not exclusive;

(ii) "including" means "including without limitation"; and

(iii) words in the singular include the plural, and in the plural include the singular;

(iv) references to currency shall mean U.S. dollars; and

(v) the words "herein," "hereof," "hereunder," and words of similar import, refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision of this Supplemental Indenture.

(b) Unless otherwise noted, references to "Articles" or "Sections" in this Supplemental Indenture are to the Articles and Sections of this Supplemental Indenture. Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in the Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

(c) If any provision of this Supplemental Indenture or the Notes conflicts with any provision of the Base Indenture, then (except as otherwise provided in any supplement to the Base Indenture or this Supplemental Indenture executed and delivered after the date hereof) the terms of this Supplemental Indenture or the Notes shall, to the extent of such conflict, govern with respect to the Notes.

(d) Whenever this Supplemental Indenture provides that any article, section or other part hereof shall apply to the Notes in lieu of any article, section or other part of the Base Indenture, such article, section or other part of the Base Indenture shall, for purposes of interpreting the Base Indenture as it relates to the Notes, be deemed to be replaced with such article, section or other part hereof, *mutatis mutandis*.

ARTICLE II

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the "4.75% Convertible Senior Notes 2022." The aggregate principal amount of Notes that may be authenticated and delivered under the Indenture is initially limited to $230,000,000, subject to Section 2.09 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.05, Section 2.06, Section 2.07, Section 12.02 and Section 13.03.

Section 2.02 *Form of Notes*. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Supplemental Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of the Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

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

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with the Indenture. Payment of principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts*. (a) 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 such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Register at the Close of Business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest shall be payable at the office or agency of the Company maintained by the Company for such purposes in New York City, New York, which shall initially be the Corporate Trust Office, or any other office or agency located in the United States of America so designated by the Trustee. The Company shall pay interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $5,000,000, either by check mailed to such Holders or, upon written application by such a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee in accordance with Applicable Procedures.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the Close of Business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 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 Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts 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 Amounts as in this clause provided. Thereupon the Company shall fix a special record

date for the payment of such Defaulted Amounts which shall be not more than 15 calendar days and not less than 10 calendar days prior to the date of the proposed payment, and not less than 10 calendar days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be sent to each Holder at its address as it appears in the Register, not less than 10 calendar days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so sent, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the Close of Business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c).

(ii) The Company may make payment of any Defaulted Amounts 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 written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 2.03(c) shall apply to the Notes in lieu of Section 2.13 of the Base Indenture.

Section 2.04 *Execution, Authentication and Delivery of Notes*. At any time and from time to time after the execution and delivery of this Supplemental Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

Notwithstanding anything to the contrary in Section 2.01(b) of the Base Indenture, 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 an authorized officer of the Trustee (or an authenticating agent appointed by the Trustee in accordance with the Indenture), shall be entitled to the benefits of the 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 Company 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 the Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated (upon receipt of a Company Order) and delivered or disposed of as though the Person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the

Company by such Persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Supplemental Indenture or the Base Indenture any such Person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary*. (a) The Company shall cause to be kept at the office of the Registrar a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the "**Register**") in which, subject to such reasonable procedures as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such Register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby appointed the Registrar for the purpose of registering Notes and transfers of Notes as provided in the Indenture. The Company may appoint one or more co-Registrars in accordance with Section 4.02.

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

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 Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

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

No service charge shall be imposed by the Company, the Trustee, the Registrar, any co-Registrar or any Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or other similar governmental charge required by law or permitted pursuant to Section 12.02(e) or Section 12.02(f).

None of the Company, the Trustee, the Registrar or any co-Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, (x) surrendered for repurchase (and not withdrawn) in accordance with Article XIII; or (y) selected for Redemption.

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

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 2.05(a) shall apply to the Notes in lieu of Section 2.08 of the Base Indenture.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fifth paragraph of this Section 2.05(b) all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or a nominee of the Depositary. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with the Indenture and the procedures of the Depositary therefor.

Notwithstanding anything to the contrary in the Indenture or the Notes, a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Depositary (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Depositary in accordance with customary procedures of the Depositary and in compliance with this Section 2.05(b).

The Depositary shall be a clearing agency registered under the Exchange Act. The Company appoints DTC to act as initial Depositary with respect to each Global Note. Each Note to be issued on the date hereof shall initially be issued in the form of one or more Global Notes, and each such Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co. Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

Transfers and exchanges of the Notes will be effected through the Depositary in accordance with the Applicable Procedures.

Unless the Company and the beneficial owner of the relevant Note agree otherwise, if, and only if, (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 calendar days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 calendar days, or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to

the principal amount of such Note corresponding such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(b) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with standing procedures and existing instructions between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on the Schedule of Exchanges of such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee nor any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Notes) 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, the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements of the Indenture.

(c) In connection with any proposed transfer of any Physical Note, the Company or the Depositary, shall, as required by law, provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on information provided to it and shall have no responsibility to verify or ensure the accuracy of such information, except as required by law.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and

upon its written request by Company Order, the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver a new Note, bearing a registration 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 Company, 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 from 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 Company, 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.

The Trustee or such authenticating agent may authenticate upon receipt of a Company Order any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Registrar, any co-Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article XII shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, 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, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of 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 Company, 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) the 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 conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding (to the extent prohibited by the same) any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion of negotiable instruments or other securities without their surrender.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 2.06 shall apply to the Notes in lieu of Section 2.09 of the Base Indenture.

Section 2.07 *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company by Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company 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 Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company 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 the Indenture as Physical Notes authenticated and delivered hereunder.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 2.07 shall apply to the Notes in lieu of Section 2.11 of the Base Indenture.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc*. The Company shall cause all Notes surrendered for the purpose of payment, repurchase, Redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including the Company or the Company's agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled in accordance with its customary procedures, and no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of the Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request in a Company Order. If the Company or any of its Subsidiaries 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. Any Notes surrendered for cancellation shall not be reissued or resold and shall be promptly cancelled.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 2.08 shall apply to the Notes in lieu of Section 2.12 of the Base Indenture.

Section 2.09 *Additional Notes; Repurchases*. The Company may, without the consent of the Holders and notwithstanding Section 2.01, reopen the original issuance under the Indenture and issue additional Notes hereunder with the same terms and the same CUSIP number as the Notes initially issued hereunder (other than differences in the issue price and interest accrued prior to the issue date of such additional Notes) in an unlimited aggregate principal amount; *provided*, *however*, that if any such additional Notes are not fungible with any other Notes then outstanding for U.S. federal income tax purposes, then such additional Notes will

have a separate CUSIP number. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officers' Certificate and an Opinion of Counsel, such Officers' Certificate and Opinion of Counsel to cover such matters required by Section 12.05 of the Base Indenture and that the form and terms of such Notes has been established in conformity with the provisions of the Indenture and that such Notes, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith, fair dealing and unconscionability), regardless of whether considered in a proceeding in equity or law. In addition, the Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives, in each case without prior notice to the Holders. Any Notes repurchased by the Company (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) shall be surrendered to the Trustee for cancellation in accordance with Section 2.08, but shall not be reissued or resold by the Company and shall no longer be considered outstanding upon their repurchase.

ARTICLE III
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge*. The Company's obligations under the Notes, and its obligations under the Indenture with respect to the Notes, shall, upon request of the Company contained in an Officers' Certificate, cease to be of further effect, and the Trustee, at the expense and written request of the Company, shall execute proper instruments acknowledging satisfaction and discharge of such obligations, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.06 have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Fundamental Change Repurchase Date or Redemption Date, upon conversion or otherwise, cash, or, solely to satisfy outstanding conversions, cash or shares of Common Stock (or other Reference Property), as applicable, sufficient to pay or convert all of the outstanding Notes and all other sums due and payable under the Indenture by the Company; and (b) the Company 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 such obligations have been complied with. Notwithstanding the satisfaction and discharge of such obligations, the obligations of the Company to the Trustee under Section 7.07 of the Base Indenture shall survive. Notwithstanding anything to the contrary in the Base Indenture or the Notes, the Company's obligations under the Notes, and its obligations under the Indenture with respect to the Notes, may not be satisfied and discharged pursuant to Article Eight of the Base Indenture; *provided*, *however*, that nothing herein shall affect the manner by which satisfaction and discharge with respect to any series of Securities other than the Notes may be affected.

ARTICLE IV
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Interest*. The Company covenants and agrees that it will pay or cause to be paid the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 4.01 shall apply to the Notes in lieu of Section 4.01 of the Base Indenture.

Section 4.02 *Maintenance of Office or Agency*. The Company will maintain an office or agency in New York, New York, or any other office or agency in the United States of America so designated by the Trustee, where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and the Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company 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 or the office or agency of the Trustee in New York City, New York, or any other office or agency in the United States of America so designated by the Trustee as a place where Notes may be presented for payment or for registration of transfer.

The Company may also from time to time designate as co-Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office in New York City, New York, or any other office or agency in the United States of America so designated by the Trustee as a place for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby designates the Trustee as the initial Paying Agent, Registrar, Custodian and Conversion Agent, and the Corporate Trust Office and the office of the Trustee in New York City, New York, or any other office or agency in the United States of America so designated by the Trustee, each shall be considered as one such office or agency of the Company for each of the aforesaid purposes.

Section 4.03 *Provisions as to Paying Agent*. (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company 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 4.03, that

(i) it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) 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 Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided*, *however*, that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, or accrued and unpaid 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 (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) or accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Notwithstanding anything to the contrary in this Section 4.03, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of the Company's obligations under the Notes, and its obligations under the Indenture with respect to the Notes, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.03, such sums or amounts to be held by the Trustee upon the trusts herein contained, and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Any money and shares of Common Stock (or other Reference Property) deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, accrued and unpaid interest on, or Conversion Settlement Consideration with respect to, any Note and remaining unclaimed for two years after the same has become due and payable shall be paid or delivered, as applicable, to the Company on request of the Company contained in an Officers' Certificate, or (if then held by the Company) shall be discharged from

such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease.

(e) The Company shall be responsible for making calculations called for under the Notes, including determinations of the Last Reported Sale Prices of the Common Stock, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes, the Conversion Rate and any other amounts due on the Notes. The Company will make all these calculations in good faith and, absent manifest error, such calculations will be final and binding on Holders. The Company shall provide a schedule of such calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent is entitled to rely conclusively upon the accuracy of such calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder upon the written request of such Holder.

Section 4.04 *Reports*. (a) The Company shall provide to the Trustee within 15 calendar days after the same are required to be filed with the Commission (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (excluding any such information, documents or reports, or portions thereof, subject to confidential treatment and any correspondence with the Commission). Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee for purposes of this Section 4.04(a) at the time such documents are filed via the EDGAR system (or any successor thereto), it being understood that the Trustee shall not be responsible for determining whether such filings have been made. Upon request by any Holder, the Trustee shall provide such Holder with a copy any such documents or reports it has actually received pursuant to this Section 4.04

(b) Delivery of the reports and documents described in subsection (a) above to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officers' Certificate). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provision of the Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein. The Trustee shall no responsibility or duty whatsoever to ascertain or determine whether the above referenced filings with the Commission on EDGAR (or any successor system) has occurred. In addition, the Company shall comply with Section 314(a) of the Trust Indenture Act.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 4.04 shall apply to the Notes in lieu of Section 4.02 of the Base Indenture.

Section 4.05 *Compliance Certificate; Statements as to Defaults*. The Company shall deliver to the Trustee within 120 calendar days after the end of each fiscal year of the Company

(beginning with the fiscal year ending December 31, 2017) an Officers' Certificate stating whether or not the signers thereof have knowledge of any Default that occurred during such fiscal year and, if so, specifying each such Default and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 calendar days after the Company becomes aware of the occurrence of any Event of Default or Default, an Officers' Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 4.05 shall apply to the Notes in lieu of Section 4.04 of the Base Indenture.

Section 4.06 *Further Instruments and Acts*. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the Indenture.

ARTICLE V
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders*. For so long as there are any Physical Notes, the Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 calendar days after each February 15 and August 15 in each year, beginning with February 15, 2018, and at such other times as the Trustee may request in writing, within 30 calendar days after receipt by the Company 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 as of a date not more than 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 so long as the Trustee is acting as Registrar.

Section 5.02 *Preservation and Disclosure of Lists*. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Registrar, 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.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. In lieu of the Events of Default enumerated in Section 6.01 of the Base Indenture, an "**Event of Default**" is deemed to occur with respect to the Notes if and only if:

(a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 calendar days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any Redemption or required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with the Indenture upon exercise of a Holder's conversion right, and such failure continues for a period of five Business Days;

(d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 13.01(d) when due;

(e) failure by the Company to comply with its obligations under Article X;

(f) failure by the Company for 60 calendar days after written notice from the Trustee to the Company, or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Notes then outstanding, has been received to comply with any of the Company's other agreements contained in the Notes or the Indenture;

(g) default by the Company or any of its Subsidiaries with respect to any mortgage, agreement or other instrument under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed (other than non-recourse debt of a Subsidiary of the Company) in excess of $25.0 million (or its foreign currency equivalent) in the aggregate, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within 30 calendar days after written notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least 25% in principal amount of the Notes then outstanding;

(h) a final judgment for the payment of $25.0 million (or its foreign currency equivalent) or more (excluding any amounts covered by insurance) rendered against the Company or any of its Subsidiaries, which judgment is not discharged or stayed within 60 calendar days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced or (ii) the date on which all rights to appeal have been extinguished; and

(i) (x) the Company or any of its Significant Subsidiaries (A) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or such 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 Company or such Significant Subsidiary or any substantial part of its property; (B) shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or (C) shall make a general assignment for the benefit of creditors, or (y) the Company or any of its Significant Subsidiaries shall admit in writing of the inability of the Company or any of its Significant Subsidiaries to pay its debts generally as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any of its Significant Subsidiaries seeking liquidation, reorganization or other relief with respect to the Company or such 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 Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive calendar days.

Section 6.02 *Acceleration; Rescission and Annulment*. If one or more Events of Default shall have occurred and be continuing (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), then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding (determined, for the avoidance of doubt, in accordance with Section 8.04), by written notice to the Company (and to the Trustee if given by Holders), may, and the Trustee, at the written request of such Holders, shall, declare 100% of the principal of, and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, notwithstanding anything to the contrary in the Notes or the Indenture. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of 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, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under the Indenture with respect to the Notes, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Indenture with respect to the Notes; but 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. Notwithstanding anything to the contrary in the Indenture or the Notes, no such rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase Notes when required, (iii) a failure to pay or deliver, as the case may be, the Conversion Settlement Consideration due upon conversion of the Notes or (iv) any other provision that requires the consent of each affected Holder to amend.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 6.02 shall apply to the Notes in lieu of Section 6.02 of the Base Indenture.

Section 6.03 *Additional Interest in Lieu of Reporting Default*. Notwithstanding anything to the contrary in the Indenture or the Notes, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.04(a) or its obligation set forth in Section 314(a)(1) of the Trust Indenture Act (such obligations, collectively, "**Reporting Obligations**") shall, for the first 180 calendar days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to (i) 0.25% per annum of the principal amount of the Notes outstanding for each day during the first 90 calendar days after the occurrence of such Event of Default and (ii) 0.50% per annum of the principal amount of the Notes outstanding from, and including, the 91st calendar day through, and including, the 180th calendar day following the occurrence of such Event of Default, during which such Event of Default is continuing. Such Additional Interest, if any, shall accrue from, and including, the date on which such an Event of Default first occurs. If the Company duly so elects, such Additional Interest shall be payable in the same manner and on the same dates as regular interest on the Notes. On the 181st calendar day after such Event of Default (if the Event of Default relating to the Company's failure to comply with the Reporting Obligations is not cured or waived prior to such 181st calendar day), the Notes will be subject to acceleration as provided in Section 6.02 (and, for the avoidance of doubt, Additional Interest will cease to accrue). In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elects to make such payment but does not pay the Additional Interest when due, the Notes shall be subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 calendar days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify in writing all Holders of the Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 180-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02. Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 6.03 shall not affect the rights of Holders in the event of the occurrence of any Event of Default other than an Event of Default relating to the Company's failure to comply with the Reporting Obligations.

Section 6.04 *Payments of Notes on Default; Suit Therefor*. If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount of principal and interest, if any, then due and payable on the Notes, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.07 of the Base Indenture. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

All rights of action and of asserting claims under the Indenture with respect to the Notes, 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 compensation and reasonable 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 the Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders, and it shall not be necessary to make any Holders parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under the Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then, and in every such case, the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 *Priorities*. Any monies collected by the Trustee pursuant to this Article VI or Article Six of the Base Indenture with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies:

First, to the payment of all amounts due the Trustee and its agents and attorneys under the Base Indenture;

Second, to the Holders, for any amounts due and unpaid on the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, and accrued and unpaid interest on, and any cash Conversion Settlement Consideration due upon the conversion of, any Note, without preference or priority of any kind, according to such amounts due and payable on all of the Notes; and

Third, the balance, if any, to the Company or to such other party as a court of competent jurisdiction directs.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 6.05 shall apply to the Notes in lieu of Section 6.12 of the Base Indenture.

Section 6.06 *Proceedings by Holders*. Except to enforce the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price and Redemption Price) or interest when due, or the right to receive payment or delivery of the Conversion Settlement Consideration due upon conversion, no Holder of any Note shall have

any right by virtue of or by availing of any provision of the Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to the Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy under the Indenture, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made a written request to the Trustee to pursue such remedy hereunder;

(c) such Holders shall have offered to the Trustee such security or indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee, for 60 calendar days after its receipt of the request and offer of security or indemnity, shall not complied with such request; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09, 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 shall have any right in any manner whatever by virtue of or by availing of any provision of the Indenture to affect, disturb or prejudice the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders), or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under the Indenture, except in the manner provided in the Indenture and for the equal, ratable and common benefit of all Holders (except as otherwise provided in the Indenture). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding anything to the contrary in the Indenture or the Notes, the right of any Holder of any Note to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the Conversion Settlement Consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in the Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 6.06 shall apply to the Notes in lieu of Sections 6.07 and 6.08 of the Base Indenture.

Section 6.07 *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 the 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 the Indenture or in aid of the exercise of any power granted in the Indenture, or to enforce any other legal or equitable right vested in the Trustee by the Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing*. All powers and remedies given by this Article VI to the Trustee or to the Holders 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, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in the Indenture, and no delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article VI or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders*. The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding (determined, for the avoidance of doubt, in accordance with Section 8.04) 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 with respect to Notes; *provided*, *however*, that such direction shall not be in conflict with any rule of law or with the Indenture, and the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding (determined, for the avoidance of doubt, in accordance with Section 8.04) 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 accrued and unpaid interest, if any, on, or the principal (including any Fundamental Change Repurchase Price and Redemption Price, if applicable) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.02, (ii) a failure by the Company to pay or deliver, as the case may be, the Conversion Settlement Consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision of the Indenture that, under Article IX, cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights under the Indenture; 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 6.09, said Default or Event of Default shall for all purposes of the Notes and the Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 6.09 shall apply to the Notes in lieu of Sections 6.04 and 6.05 of the Base Indenture.

Section 6.10 *Undertaking to Pay Costs*. All parties to the 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 the 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*, *however*, that the provisions of this Section 6.10 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, or to any suit instituted by any Holder for the enforcement of the payment of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, or accrued and unpaid interest, if any, on any Note on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article XII.

Section 6.11 *Trustee May File Proofs of Claim.* The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 of the Base Indenture. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 of the Base Indenture out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding. The Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' committee or other similar committee.

ARTICLE VII
CONCERNING THE TRUSTEE

Section 7.01 *Amendments to Article Seven of the Base Indenture*.

(a) For purposes of the Notes, Section 7.01(a) of the Base Indenture is hereby amended to read as follows: "If an Event of Default has occurred and is continuing, the Trustee

shall be required in the exercise of its powers vested in it by the Indenture to use the degree of care that a prudent person would use in the conduct of its own affairs; *provided*, *however*, that the Trustee may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any Holder or that would involve the Trustee in personal liability."

(b) Each reference in Article Seven of the Base Indenture to Section 6.05 of the Base Indenture shall, for purposes of the Notes, be deemed to be a reference to Section 6.09 hereof.

(c) For purposes of the Notes, Section 7.01(e) of the Base Indenture is hereby amended to read as follows: "Prior to taking any action under the Indenture, the Trustee shall be entitled to indemnification reasonably satisfactory to it against any loss, liability or expense caused by taking or not taking such action. If an Event of Default occurs and is continuing, the Trustee shall be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the Holders of Notes unless such Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense."

(d) For purposes of the Notes, Section 7.05 of the Base Indenture is hereby amended to read as follows: "The Trustee shall, within 90 calendar days after it receives notice of the occurrence and continuance of a Default of which a Responsible Officer of the Trustee has actual knowledge, send to all Holders as the names and addresses of such Holders appear upon the Register, notice of all such Defaults, unless such Defaults shall have been cured or waived before the giving of such notice; *provided*, *however*, that, except in the case of a Default in the payment of the principal (including the Fundamental Change Repurchase Price and Redemption Price, if applicable) of, or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the Conversion Settlement Consideration due upon conversion of a Note, the Trustee shall be protected in withholding such notice if and so long as it in good faith determines that the withholding of such notice is in the interests of the Holders."

ARTICLE VIII
CONCERNING THE HOLDERS

Section 8.01 *Action by Holders*. Whenever in the Indenture it is provided that the Holders of a specified percentage of the 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 by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing. Whenever the Company solicits the taking of any action by the Holders of the Notes, the Company may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than 15 calendar days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders*. Subject to the provisions of Article VII hereof, Article Seven of the Base Indenture, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be reasonably satisfactory to the Trustee.

Section 8.03 *Who Are Deemed Absolute Owners*. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Registrar may deem the Person in whose name a Note shall be registered upon the 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 Company or any Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes under the Indenture; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in the Indenture or the Notes, following an Event of Default, any Holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of the Indenture.

Section 8.04 *Company-Owned Notes Disregarded*. Subject to the last sentence of Section 2.09, in determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under the Indenture, Notes that are owned by the Company or by an Affiliate of the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided*, *however*, 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 that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that 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 so act with respect to such Notes and that the pledgee is not the Company or an Affiliate of the Company. 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 reasonable request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Article Seven of the Base Indenture, 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. Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 8.04 shall apply to the Notes in lieu of Section 12.06 of the Base Indenture.

Section 8.05 *Revocation of Consents; Future Holders Bound*. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in the Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing

written notice with the Trustee at its Corporate Trust Office in New York, New York, and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE IX
SUPPLEMENTAL INDENTURES

Section 9.01 *Supplemental Indentures Without Consent of Holders*. The Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into indentures supplemental to the Indenture, or amend the Notes, without the consent of any Holder for one or more of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency that does not adversely affect any Holder, or to eliminate any conflict with the terms of the Trust Indenture Act (it being understood that the Trustee shall not be responsible for making any determination as to whether or not such change adversely affects any Holder or eliminates any such conflict);

(b) to provide for the assumption by a Successor Company of the Company's obligations under the Indenture and the Notes pursuant to Article X;

(c) to add guarantees with respect to the Notes;

(d) to secure the Notes;

(e) to add to the Company's covenants or to Events of Default for the benefit of the Holders or to surrender any right or power conferred upon the Company;

(f) to make any change that does not adversely affect the rights under the Indenture of any Holder (it being understood that the Trustee shall not be responsible for making any determination as to whether such adversely affects the rights of any Holder);

(g) to increase the Conversion Rate as provided in the Indenture;

(h) to provide for the issuance of additional Notes solely in accordance with the limitations set forth in the Indenture;

(i) to comply with requirements of the Commission in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;

(j) to provide for the acceptance of appointment by a successor trustee pursuant to Article Seven of the Base Indenture or to facilitate the administration of the trusts by more than one trustee;

(k) to irrevocably elect or eliminate a Settlement Method or a Specified Dollar Amount; *provided*, *however*, that no such election or elimination will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to Article XII;

(l) to comply with the Applicable Procedures of the Depositary for the Notes;

(m) enter into supplemental indentures to give effect to, and in compliance with, Section 12.06; or

(n) to conform the provisions of the Indenture or the Notes to the "Description of Notes" in the Prospectus Supplement, related to the offering of the Notes, as evidenced by an Officers' Certificate (which Officers' Certificate shall be delivered to the Trustee).

Upon the written request of the Company, accompanied by (i) a certified copy of resolutions of the Board of Directors authorizing the execution of any such supplemental indenture or such amendment to the Notes; (ii) an Officers' Certificate; and (iii) an Opinion of Counsel stating that the execution of such supplemental indenture or amendment is authorized or permitted by the Indenture, and an Opinion of Counsel in accordance with Section 12.05 of the Base Indenture and stating that such amended or supplemental indenture or amendment will be the legal, valid and binding obligation of the Company in accordance with its terms, the Trustee shall join with the Company in the execution of such supplemental indenture or such amendment, unless such supplemental indenture or amendment affects the Trustee's own rights, duties or immunities under the Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental Indenture.

Any supplemental indenture or amendment authorized by the provisions of this Section 9.01 may be executed by the Company 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.

Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 9.01 shall apply to the Notes in lieu of Section 9.01 of the Base Indenture.

Section 9.02 *Supplemental Indentures with Consent of Holders*. With the consent (evidenced as provided in Article VIII) of the Holders of at least a majority of the aggregate principal amount of Notes then outstanding (determined, for the avoidance of doubt, in accordance with Section 8.04 and including consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto or amend the Notes for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided*, *however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

(a) reduce the amount of Notes whose Holders must consent to an amendment or waiver;

(b) reduce the rate of or extend the stated time for payment of interest on any Note;

(c) reduce the principal of or extend the Maturity Date of any Note;

(d) make any change that adversely affects the conversion rights of any Notes;

(e) reduce the Redemption Price or Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's right to redeem the Notes or its obligation to offer to repurchase and repurchase the Notes, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(f) make any Note payable in money, or at a place of payment, other than that stated in the Note;

(g) change the ranking of the Notes;

(h) impair the right of any Holder to receive payment of principal and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Note; or

(i) make any change in this Article IX or the Notes that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09, if such change adversely affects the rights of the Holders.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 12.05 of the Base Indenture, the Trustee shall join with the Company in the execution of such supplemental indenture or amendment unless such supplemental indenture or amendment affects the Trustee's own rights, duties or immunities under the Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture or amendment.

Holders do not need, under this Section 9.02, to approve the particular form of any proposed supplemental indenture or amendment to the Notes. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture or amendment becomes effective, the Company shall mail to the Holders a notice briefly describing such supplemental indenture or amendment. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture or amendment.

Section 9.03 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture or amendment to the Notes pursuant to the provisions of this Article IX,

the Indenture and the Notes 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 the Indenture and the Notes of the Trustee, the Company and the Holders 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 or amendment shall be and be deemed to be part of the terms and conditions of the Indenture and the Notes for any and all purposes.

Section 9.04 *Evidence of Compliance of Supplemental Indenture to Be Furnished to Trustee*. In addition to the documents required by Section 12.05 of the Base Indenture, the Trustee shall receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture or amendment is authorized or permitted by the Indenture, and an Opinion of Counsel in accordance with Section 12.05 of the Base Indenture and stating that such supplemental indenture or amendment complies with the requirements of this Article IX and is permitted or authorized by the Indenture. Such Opinion of Counsel will also state that such supplemental indenture or amendment is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith, fair dealing and unconscionability), regardless of whether considered in a proceeding in equity or law.

ARTICLE X
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Notwithstanding anything to the contrary in the Indenture or the Notes, this Article X shall apply to the Notes in lieu of Article Five of the Base Indenture.

Section 10.01 *Company May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 10.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, all of the obligations of the Company under the Notes and the Indenture;

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under the Indenture; and

(c) the Trustee shall have received an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article X.

For the avoidance of doubt, a Maryland real estate investment trust that has a class of Capital Stock classified as "common stock" or "common shares of beneficial interest" shall, for purposes of this Article X, be deemed to be a "corporation."

Section 10.02 *Successor Corporation to Be Substituted*. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment or delivery, as applicable, of the principal of and accrued and unpaid interest on, and the Conversion Settlement Consideration with respect to, all of the Notes, and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in the Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under the Indenture as the Notes theretofore or thereafter issued in accordance with the terms of the Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article X the Person named as the "Company" in the first paragraph of this Supplemental Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article X) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under the Indenture with respect to the Notes and under 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.

ARTICLE XI
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 11.01 *Indenture and Notes Solely Corporate Obligations*. No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any Successor Company, either directly or through the Company or any Successor Company, 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 the Indenture and the issue of the Notes. Notwithstanding anything to the contrary in the Indenture or the Notes, this Section 11.01 shall apply to the Notes in lieu of Section 6.15 of the Base Indenture.

ARTICLE XII
CONVERSION OF NOTES

Section 12.01 *Conversion Privilege*. Subject to and upon compliance with the provisions of this Article XII, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Note, at any time prior to the Close of Business on the second Scheduled Trading Day immediately preceding the Maturity Date into Conversion Settlement Consideration in the manner provided in, and subject to, this Article XII.

Section 12.02 *Conversion Procedure; Settlement Upon Conversion*.

(a) *Settlement Method*. Upon the conversion of any Note, the Company shall settle such conversion by paying or delivering, as applicable and as provided in this Article XII, either (A) solely cash (a "**Cash Settlement**"); (B) shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in the proviso to Section 12.02(b) (a "**Physical Settlement**"); or (C) a combination of cash and shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in Section 12.02(b) (a "**Combination Settlement**"). The Company shall have the right to elect the Settlement Method applicable to any conversion of a Note; *provided*, *however*, that:

(i) all conversions of Notes whose Conversion Date occurs on or after May 15, 2022 will be settled using the same Settlement Method, and the Company shall send written notice of such Settlement Method, through the Conversion Agent, to Holders no later than May 15, 2022;

(ii) the Company shall use the same Settlement Method for all conversions of Notes whose Conversion Dates occur on the same day (and, for the avoidance of doubt, the Company shall not be obligated to use the same Settlement Method with respect to conversions of Notes whose Conversion Dates occur on different days, except as provided in clause (i) above);

(iii) if the Company elects a Settlement Method with respect to the conversion of any Note whose Conversion Date occurs before May 15, 2022, the Company shall send written notice of such Settlement Method to the Holder of such Note, through the Conversion Agent, no later no later than the Close of Business on the Trading Day immediately following such Conversion Date;

(iv) if the Company does not timely elect a Settlement Method with respect to the conversion of a Note, then the Company will be deemed to have elected Combination Settlement with a Specified Dollar Amount per $1,000 principal amount of such Note equal to $1,000;

(v) if the Company timely elects Combination Settlement with respect to the conversion of a Note but does not timely notify the Holder of such Note of the Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be $1,000 per $1,000 principal amount of such Note; and

(vi) notwithstanding anything to the contrary in clauses (i) through (v), inclusive, of Section 12.02(a), if the Company calls any Notes for Redemption, then (x) the Company will specify in the related Redemption notice the Settlement Method that will apply to all conversions with a Conversion Date that occurs on or after the date the Company sends such Redemption notice and before the related Redemption Date; and (y) if the related Redemption Date is on or after May 15, 2022, then such Settlement Method must be the same Settlement Method that applies to all conversions with a Conversion Date that occurs on or after May 15, 2022.

(b) *Conversion Settlement Consideration*. The type and amount of consideration (the "**Conversion Settlement Consideration**") due in respect of each $1,000 principal amount of a Note to be converted shall be as follows:

(i) if Physical Settlement applies to such conversion, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(ii) if Cash Settlement applies to such conversion, cash in an amount equal to the sum of the Daily Conversion Values for each of the 25 consecutive Trading Days in the Observation Period for such conversion; or

(iii) if Combination Settlement applies to such conversion, a settlement amount equal to the sum of the Daily Settlement Amounts for each of the 25 consecutive Trading Days in the Observation Period for such conversion;

provided, *however*, that if the total number of shares of Common Stock to be delivered with respect to the conversion of any Note is not a whole number, then the total number of shares so deliverable shall be rounded down to the nearest whole number and the Company shall deliver cash in lieu of the related fractional share in an amount equal to the product of such fraction and the Daily VWAP on the Conversion Date for such conversion (in the case of Physical Settlement) or the Daily VWAP on the last Trading Day of the Observation Period for such conversion (in the case of Combination Settlement).

The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(c) *Procedures to Convert a Note*. Subject to Section 12.02(f), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the Applicable Procedures of the Depositary in effect at that time (and any instruction to convert transmitted to the Depositary shall be irrevocable) and, if required, pay funds equal to interest payable on the next Interest Payment Date as set forth in Section 12.02(h) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver a notice (which shall be irrevocable) to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted (which must be an integral multiple of $1,000) and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, and (3) if required, pay funds equal to interest payable on the next Interest Payment Date as set forth in Section 12.02(h). The Trustee (and, if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article XII on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 13.02.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(d) *Delivery of the Conversion Settlement Consideration*. Subject to Section 12.03(b), Section 12.04(c), Section 12.04(e) and Section 12.06, the Company shall pay or deliver, as the case may be, the Conversion Settlement Consideration due in respect of the Conversion Obligation of a Note to be converted on the second Business Day immediately following the relevant Conversion Date (if the Company elects Physical Settlement) or on the second Business Day immediately following the last Trading Day of the relevant Observation Period (in the case of any other Settlement Method). If any shares of Common Stock are due to converting Holders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder's nominee or nominees, certificates or a book-entry transfer through the Depositary for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company's Conversion Obligation.

(e) *Partial Conversions*. In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or the Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(f) *Taxes*. If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

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

(h) *Treatment and Payment of Interest upon Conversion*. Upon conversion of a Note, the Holder of such Note shall not receive any separate cash payment for accrued and unpaid interest, if any, on such Note, except as set forth below. The Company's settlement of the related Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of such Note and accrued and unpaid interest, if any, on such Note to, but not including, the relevant Conversion Date. As a result, except as set forth below, accrued and unpaid interest, if any, to, but, not including, such Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the Close of Business on a Regular Record Date, Holders of such Notes as of the Close of Business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period after the Close of Business on any Regular Record Date to the Open of Business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable, on such Interest Payment Date, on the Notes so converted; *provided* that no such payment shall be required (1) for conversions following the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exist at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record as of the Close of Business on the Regular Record Date immediately preceding the Maturity Date shall receive the full interest payment due on the Maturity Date regardless of whether their Notes have been converted following such Regular Record Date.

(i) *Record Holders of Shares Due upon Conversion*. If any Note is converted, the Person in whose name the certificate for any shares of Common Stock deliverable upon such conversion is to be registered shall be treated as a stockholder of record of such shares as of the Close of Business on the relevant Conversion Date (in the case of Physical Settlement) or as of the Close of Business on the last Trading Day of the relevant Observation Period (in the case of Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

Section 12.03 *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes*. (a) If the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert any Note "in connection with" (as defined below) such Make-Whole Fundamental Change, the Company shall, under the circumstances set forth below, increase the Conversion Rate applicable to such Note by a number of additional shares of Common Stock (the "**Additional Shares**"), as set forth below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the relevant Notice of Conversion is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for subclause (x) of the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change). For these purposes, the Conversion Agent will be deemed to have received the Notice of Conversion with respect to a Note on the Conversion Date with respect to such Note.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change pursuant to this Section 12.03, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 12.02 based on the Conversion Rate as increased to reflect the Additional Shares pursuant to this Section 12.03; *provided*, *however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, then, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per $1,000 principal amount of converted Notes equal to the applicable Conversion Rate (including any adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation will be determined and shall be paid to Holders in cash on the second Business Day following the Conversion Date. The Company shall notify the Holders of Notes of the Effective Date of any Make-Whole Fundamental Change no later than five Business Days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") and the price (the "**Stock Price**") paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change. If the holders of the Common Stock receive in exchange for

their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 12.04.

(e) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per $1,000 principal amount of Notes pursuant to this Section 12.03 for each Stock Price and Effective Date set forth below:

	Stock Price										
Effective Date	**$18.10**	**$18.40**	**$18.70**	**$19.00**	**$19.30**	**$19.60**	**$19.91**	**$20.20**	**$20.50**	**$20.80**	**$21.10**
August 21, 2017	5.0226	4.2908	3.6016	2.9574	2.3606	1.8138	1.3054	0.8866	0.5185	0.2293	0.0403
August 23, 2018	5.0226	4.2016	3.4947	2.8353	2.2269	1.6740	1.1662	0.7559	0.4059	0.1462	0.0000
August 23, 2019	5.0226	4.0864	3.3620	2.6884	2.0710	1.5143	1.0100	0.6119	0.2873	0.0721	0.0000
August 23, 2020	5.0226	3.9446	3.2000	2.5121	1.8870	1.3311	0.8373	0.4589	0.1678	0.0014	0.0000
August 23, 2021	5.0226	3.6891	2.9091	2.1989	1.5684	1.0265	0.5701	0.2515	0.0478	0.0000	0.0000
August 23, 2022	5.0226	4.1218	3.2499	2.4056	1.5875	0.7944	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Effective Dates in the table above, the number of Additional Shares by which the Conversion Rate will be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365- or 366-day year, as applicable;

(ii) if the Stock Price is greater than $21.10 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $18.10 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased pursuant to this Section 12.03 to exceed 55.2486 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 12.05.

(f) Nothing in this Section 12.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 12.05 in respect of a Make-Whole Fundamental Change. For these purposes, if the Conversion Rate is to be adjusted in connection with a Make-Whole Fundamental Change pursuant to both Section 12.05 and this Section 12.03 with respect to any Note, then the adjustment pursuant to Section 12.05 shall be effected before any adjustment pursuant to this Section 12.03.

Section 12.04 *Adjustments to the Conversion Rate*. The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if each Holder participates (other than in the case of a stock split or stock combination), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 12.04, without having to convert its Notes, as if such Holder held a number of shares of Common Stock equal to the Conversion Rate *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on all or substantially all shares of Common Stock, or if the Company effects a stock split or stock combination (in each case, excluding a distribution solely pursuant to a Common Stock Change Event, as to which Section 12.06 will apply), the Conversion Rate will be adjusted based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the Effective Date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable;

OS_0 = the number of shares of the Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or Effective Date, as applicable; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination, as applicable.

Any adjustment made under this Section 12.04(a) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately after the Open of Business on the Effective Date for such stock split or stock combination, as applicable. If any dividend, distribution, stock split or stock combination of the type described in

this Section 12.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or effect such stock split or stock combination to the Conversion Rate that would then be in effect if such dividend or distribution or stock split or stock combination had not been declared or announced.

(b) If the Company issues to all or substantially all holders of Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance (other than rights issued or otherwise distributed pursuant to a preferred stock rights plan, as to which Section 12.04(c) and Section 12.09 will apply), the Conversion Rate will be increased based on the following formula:

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

where,

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

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

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

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

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

Any increase made under this Section 12.04(b) will be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the Open of Business on the Ex-Dividend Date for such issuance. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For the purpose of this Section 12.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at a price per share price that is less than such average of the Last Reported Sale Prices for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate price payable to exercise such rights, options or warrants, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire the Company's Capital Stock or other securities, to all or substantially all holders of Common Stock, excluding:

(i) dividends, distributions or issuances as to which an adjustment was effected (or would have been effected without regard to the Deferral Exception) pursuant to Section 12.04(a) or Section 12.04(b)

(ii) rights issued or otherwise distributed pursuant to a preferred stock rights plan, except to the extent provided in Section 12.09;

(iii) dividends or distributions paid exclusively in cash as to which an adjustment was effected (or would have been effected without regard to the Deferral Exception) pursuant to Section 12.04(d);

(iv) cash dividends that do not result in an adjustment to the Conversion Rate pursuant to Section 12.03(d);

(v) a distribution solely pursuant to a Common Stock Change Event, as to which Section 12.06 will apply; and

(vi) Spin-Offs as to which the provisions set forth below in this Section 12.04(c) shall apply,

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

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

where,

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

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

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

FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 12.04(c) above will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, or if any rights, options or warrants are not exercised before their expiration date, the Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared or on the basis of the rights, options or warrants actually exercised before their expiration date, as applicable. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), then, in lieu of the foregoing increase, each Holder shall receive, in respect of each $1,000 principal amount of Notes, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of such Capital Stock, evidences of indebtedness, other assets, property, rights, options or warrants that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Record Date for such distribution.

With respect to an adjustment pursuant to this Section 12.04(c) where there has been a payment of a dividend or other distribution on Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, and such Capital Stock or equity interest is, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

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

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date of such Spin-Off;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to Holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as if references in such definition to the Common Stock were instead to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of such Spin-Off (the "**Valuation Period**"); and

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

Any increase to the Conversion Rate under the preceding paragraph will be calculated as of the Close of Business on the last Trading Day of the Valuation Period but will be given effect as of immediately after the Open of Business on the Ex-Dividend Date of the Spin-Off. Because the Company will make the adjustment to the Conversion Rate with retroactive effect, the Company will delay the settlement of any conversion of Notes where the Conversion Date (in the case of Physical Settlement) or any Trading Day of the applicable Observation Period (in the case of Cash Settlement or Combination Settlement) occurs during the Valuation Period until the second Business Day after the last day of the Valuation Period. If any distribution of the type described in this Section 12.04(c) is declared but not so made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to make such distribution, to the Conversion Rate that would then be in effect if such distribution had not been declared.

(d) If any cash dividend or distribution is made to all or substantially all holders of Common Stock, to the extent that the aggregate of all such cash dividends or distributions paid in any calendar quarter exceeds the Dividend Threshold Amount for such calendar quarter, the Conversion Rate will be adjusted based on the following formula:

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

where,

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

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

SP_0 = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution;

DTA = the Dividend Threshold Amount, which shall initially be $0.46 per calendar quarter; and

C = the amount in cash per share the Company dividends or distributes to holders of the Common Stock in excess of the DTA.

The DTA is subject to adjustment on an inversely proportional basis whenever the Conversion Rate is adjusted, other than adjustments made pursuant to this Section 12.04(d).

Any increase to the Conversion Rate made pursuant to this Section 12.04(d) shall become effective immediately after the Open of Business on the Ex-Dividend Date for the dividend or distribution triggering such adjustment. If such dividend or distribution is not so paid, the Conversion Rate shall be readjusted, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), then, in lieu of the foregoing increase, each Holder shall receive, for each $1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Record Date for such cash dividend or distribution.

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

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

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Expiration Date;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the Expiration Date;

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

OS_0 = the number of shares of the Common Stock outstanding immediately prior to the time (the "**Expiration Time**") such tender or exchange offer expires (prior to giving effect to the purchase or exchange of all shares accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of the Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase or exchange of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period (the "**Averaging Period**") commencing on, and including, the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate under this Section 12.04(e) will be calculated as of the Close of Business on the last Trading Day of the Averaging Period but will be given effect as of immediately after the Close of Business on the Expiration Date. Because the Company will make the adjustment to the Conversion Rate with retroactive effect, the Company will delay the settlement of any conversion of Notes where the Conversion Date (in the case of Physical Settlement) or any Trading Day of the applicable Observation Period (in the case of Cash Settlement or Combination Settlement) occurs during the Averaging Period until the second Business Day after the last day of the Averaging Period.

To the extent such tender or exchange offer is announced but not consummated (including as a result of being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment pursuant to this Section 12.04(e) been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(f) Subject to the applicable listing standards of The New York Stock Exchange, the Company may (but is not required to) increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest. Subject to the applicable listing standards of The New York Stock Exchange, the Company also may (but is not required to) increase the Conversion Rate to avoid or diminish income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

(g) Notwithstanding anything to the contrary in this Section 12.04, if, in the case of any conversion of a Note to which Physical Settlement or Combination Settlement applies, any whole shares of Common Stock are deliverable in respect of such conversion (in the case of Physical Settlement) or in respect of any Trading Day during the Observation Period for such Note (in the case of Combination Settlement), and:

(i) the Record Date for any issuance, dividend or distribution, the Effective Date for any stock split or combination or the Expiration Date for any tender or exchange offer by the Company that, in each case, would require an adjustment to the Conversion Rate under clauses (a) through (e), inclusive, of this Section 12.04 occurs, but an adjustment to the Conversion Rate for such event has not yet become effective as of the relevant Conversion Date (in the case of Physical Settlement) or such Trading Day (in the case of Combination Settlement), as applicable; and

(ii) such shares that the Company will deliver to the converting Holder with respect of such conversion (in the case of Physical Settlement) or such Trading Day (in the case of Combination Settlement), as applicable, are not entitled to participate in the relevant event (because the converting Holder is not treated as the record holder of such shares on the related Record Date, Effective Date, Expiration Date or otherwise),

then, solely for purposes of such conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date (in the case of Physical Settlement) or such Trading Day (in the case of Combination Settlement). In such case, if the date the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will, solely to the extent necessary, be permitted to delay delivering such consideration until no later than the second Business Day immediately after such first date on which the amount of such adjustment can be determined.

(h) Notwithstanding anything to the contrary in the Indenture or the Notes, in respect of any Physical Settlement or Combination Settlement of any conversion, if any adjustment to the Conversion Rate set forth in clauses (a) through (e), inclusive, of this Section 12.04 becomes effective on any Ex-Dividend Date and a Holder that has converted its Notes would:

(i) receive shares of the Common Stock based on the Conversion Rate as so adjusted in respect of such conversion (in the case of Physical Settlement) or in respect of any Trading Day in the relevant Observation Period (in the case of Combination Settlement); and

(ii) be a record holder of such shares of the Common Stock on the Record Date for the dividend, distribution or other event giving rise to the adjustment,

then, in lieu of receiving shares of Common Stock at such adjusted Conversion Rate, such Holder shall receive a number of shares of the Common Stock based on the unadjusted Conversion Rate in respect of such conversion (in the case of Physical Settlement) or such Trading Day (in the case of Combination Settlement) and will participate in the related dividend, distribution or other event giving rise to the adjustment.

(i) Notwithstanding anything to the contrary in the Indenture or the Notes to the contrary, if the application of the adjustments set forth in clauses (a) through (e), inclusive, of this Section 12.04 would result in a decrease in the Conversion Rate, then no adjustment to the Conversion Rate shall be made (other than as a result of a stock combination pursuant to Section 12.04(a) or the reversal of an increase to the Conversion Rate where the relevant event did not occur, as expressly specified in this Supplemental Indenture).

(j) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities (including as consideration for a merger, purchase or similar transaction).

(k) Notwithstanding anything to the contrary in this Article XII, the Conversion Rate shall not be adjusted:

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

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

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

(iv) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described under Section 12.04(e);

(v) solely for a change in the par value of the Common Stock; or

(vi) for accrued and unpaid interest, if any.

All calculations and other determinations under this Article XII shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share.

(l) The Company shall not be required to make an adjustment pursuant to clauses (a) through (e) of this Section 12.04 unless such adjustment would result in a change of at least 1% of the then effective Conversion Rate. However, the Company shall carry forward any adjustment that the Company would otherwise have to make and take that adjustment into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made with respect to the Notes (i) annually on March 1 of each year, (ii) in connection with any subsequent adjustment to the Conversion Rate that, together with all carried-forward adjustments, would constitute a change of at least 1% in the then-effective Conversion Rate, (iii) if the Company has called any Notes for Redemption, and (iv) (x) on the Conversion Date for any Notes (in the case of Physical Settlement) and (y) on each Trading Day of any Observation Period (in the case of Cash Settlement or Combination Settlement).

(m) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Register of the Indenture. Failure to deliver such notice shall not affect the legality or validity of any such adjustment. Notwithstanding the foregoing, the Company shall not be required to file an Officers' Certificate or deliver a notice of adjustment in connection with any adjustment to the Conversion Rate pursuant to clause (iii) of Section 12.04(l), provided that the Company duly sends the related Redemption notice pursuant to and in accordance with Sections 14.01 and 14.02.

(n) For purposes of this Section 12.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 12.05 *Adjustments of Prices*. Whenever any provision of the Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including an Observation Period and the period for determining the Stock Price for purposes of a Make-Whole Fundamental Change), the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, at any time during the period when such Last Reported Sale Prices, Daily VWAPs, Daily Conversion Values or Daily Settlement Amounts are to be calculated.

Section 12.06 *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock*.

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than a change only in par value, from par value to no par value or from no par value to par value, or changes resulting from a subdivision or combination of the Common Stock),

(ii) any consolidation or merger involving the Company,

(iii) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole; or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, or represent solely the right to receive, stock, other securities, other property or assets (including cash or any combination thereof) (such stock, other securities, other property or assets, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one share of Common Stock would be entitled to receive on account of such transaction, a "**Reference Property Unit**") (and any such recapitalization, reclassification, change, consolidation, merger, sale, lease, transfer or exchange, a "**Common Stock Change Event**"), then, notwithstanding anything to the contrary in the Indenture or the Notes, at the effective time of such Common Stock Change Event, (x) the consideration due upon conversion of any Notes will be determined in the same manner as if each reference to any number of shares of Common Stock herein were instead a reference to the same number of Reference Property Units; (y) for

purposes of the definitions of "Record Date" and "Ex-Dividend Date," the term "Common Stock" will be deemed to refer to any class of securities forming part of such Reference Property; and (z) for purposes of the definition of "Fundamental Change" and "Make-Whole Fundamental Change," the terms "Common Stock" and "Common Equity" will be deemed to mean the Common Equity, if any, forming part of such Reference Property. For these purposes, the Daily VWAP or Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Common Stock Change Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then the composition of the Reference Property Unit will be deemed to be (i) the weighted average, per share of Common Stock, of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (ii) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. If the holders of Common Stock receive only cash in such Common Stock Change Event, then for all conversions of Notes that occur after the effective date of such Common Stock Change Event, (i) the consideration due upon conversion of each $1,000 principal amount of Notes shall, for the avoidance of doubt, be solely cash in an amount equal to the Conversion Rate in effect on the applicable Conversion Date (as, for the avoidance of doubt, may be increased pursuant to Section 12.03), multiplied by the price paid per share of Common Stock in such Common Stock Change Event and (ii) the Company shall satisfy its Conversion Obligations by paying cash to converting Holders on the second Business Day immediately following the applicable Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the weighted average as soon as practicable after such determination is made.

(b) In the event the Company shall execute a supplemental indenture pursuant to subsection (a) of this Section 12.06, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefor, the kind and amount of Reference Property constituting the Reference Property after the relevant Common Stock Change Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be sent to each Holder, at its address appearing on the Register provided for in the Indenture, within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Common Stock Change Event unless its terms are consistent with this Section 12.06. None of the foregoing provisions shall affect the right of a Holder to convert its Notes into cash, shares of Common Stock (or other Reference Property) or a combination of cash and shares of Common Stock (or other Reference Property), as applicable, as set forth in Section 12.01 and Section 12.02 prior to the effective date of such Common Stock Change Event.

(d) The above provisions of this Section shall similarly apply to successive Common Stock Change Events.

Section 12.07 *Certain Covenants*(a).

(a) The Company covenants that any shares of Common Stock issued upon conversion of Notes will be duly authorized, validly issued, fully paid and non-assessable and free from all taxes (other than taxes payable by a Holder pursuant to Section 12.02(f) and taxes payable by the Company pursuant to Section 15.02, liens and charges with respect to the issue thereof.

(b) The Company covenants that if at any time the Common Stock shall be listed on any national securities exchange or quoted on any automated quotation system, the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or so quoted on such automated quotation system, any Common Stock issuable upon conversion of the Notes.

(c) The Company 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 conversion of the Notes from time to time as such Notes are converted (assuming that at the time of computation of such number of shares, all such Notes would be converted by a single Holder, that Physical Settlement is applicable and that the maximum increase to the Conversion Rate pursuant to Section 12.03 applies).

Section 12.08 *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 12.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 12.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01 of the Base Indenture, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution

of any such supplemental indenture) with respect thereto. The Conversion Agent (if other than the Company or an Affiliate of the Company) shall have the same protection under this Section 12.08 as the Trustee.

Section 12.09 *Stockholder Rights Plans*. If the Company has a stockholder rights plan in effect at the time any Conversion Settlement Consideration is payable or deliverable, as applicable, upon conversion of any Notes, then each share of Common Stock, if any, so deliverable shall be accompanied with such number of rights as would be accompanied by such shares pursuant to such rights plan if such shares were issued in the circumstances set forth in such rights plan as would entitle such shares to be so accompanied by such rights. However, if prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan, then in such case, and only in such case, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire the Company's Capital Stock or other securities as provided in Section 12.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 12.10 *Ownership Limit*. Notwithstanding any other provision of the Indenture or the Notes, no Holder will be entitled to receive Common Stock following conversion of its Notes to the extent (but only to the extent) that receipt of such Common Stock would cause a violation of the restrictions on ownership and transfer of the Company's stock set forth in the Charter. If any delivery of shares of Common Stock owed to a Holder upon conversion of Notes is not made, in whole or in part, as a result of the ownership limit or the other restrictions on ownership and transfer of the Company's stock set forth in the Charter, the Company's obligation to make such delivery will not be extinguished, and the Company will deliver such shares as promptly as practicable after any such converting Holder gives notice to the Company that such delivery would not result in a violation of the restrictions on ownership and transfer of the Company's stock set forth in the Charter.

ARTICLE XIII
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 13.01 *Repurchase at Option of Holders Upon a Fundamental Change*. (a) If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion of the principal amount thereof that is equal to $1,000 or an integral multiple of $1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 calendar days or more than 35 calendar days following the date of the Fundamental Change Company Notice (or, if the Company fails to specify a Fundamental Change Repurchase Date, the 35th calendar day following the date of the Fundamental Change Company Notice) at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay, on or, at the

Company's election, before such Interest Payment Date, the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article XIII.

(b) Repurchases of Notes under this Section 13.01 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") substantially in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depositary's procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office of the Paying Agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor;

provided, *however*, that if such Notes are represented by Global Notes, the Holder thereof must comply with the Applicable Procedures.

(c) The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

(i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

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

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture; *provided*, *however*, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate Depositary procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 13.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 13.02.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(d) On or before the 10th calendar day after the occurrence of a Fundamental Change, the Company shall provide to all Holders of Notes, the Conversion Agent, the Trustee and the Paying Agent (in the case of a Paying Agent other than the Trustee) a written notice (the "**Fundamental Change Company Notice**") of the occurrence of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the Applicable Procedures of the Depositary. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the effective date of the Fundamental Change;

(iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article XIII;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

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

(vii) the Conversion Rate and, if applicable, any adjustments to the Conversion Rate resulting from such Fundamental Change;

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

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

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 13.01.

At the Company's written request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(e) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such

date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depositary shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(f) Notwithstanding the foregoing, the Company will not be required to make an offer to repurchase Notes pursuant to this Article XIII if a Person other than the Company makes an offer in the manner, at the times and otherwise in compliance with the requirements for an offer to repurchase Notes pursuant to this Article XIII made by the Company and such Person purchases all Notes properly tendered and not validly withdrawn under its offer in the same manner as the Company would have been required pursuant to this Article XIII.

Section 13.02 *Withdrawal of Fundamental Change Repurchase Notice*. (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with this Section 13.02 at any time prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted, which must be in principal amounts of $1,000 or an integral multiple thereof;

(ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and

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

provided, *however*, that if the Notes are Global Notes, the notice must comply with appropriate procedures of the Depositary.

Section 13.03 *Deposit of Fundamental Change Repurchase Price*. (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.03(b)) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date with respect to such Note (*provided* the Holder

has satisfied the conditions in Section 13.01) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 13.01 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Register; *provided*, *however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, with respect to Notes that have been properly surrendered for repurchase and have not been validly withdrawn in accordance with the provisions of the Indenture, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent), except as otherwise provided herein and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price or, to the extent provided herein, interest due on such Note on the next Interest Payment Date).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 13.01, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Note surrendered.

Section 13.04 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer, the Company will, if required:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;

(b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes,

in each case, so as to permit the rights and obligations under this Article XIII to be exercised in the time and in the manner specified in this Article XIII.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of the Indenture relating to the Company's obligations to purchase the Notes upon a Fundamental Change, the Company shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Article XIII by virtue of such conflict.

ARTICLE XIV
REDEMPTION

Subject to Section 1.02(c) and (d), Article Three of the Base Indenture, as supplemented by this Supplemental Indenture, shall apply to the Notes.

Section 14.01 *Right of the Company to Redeem the Notes*. Notwithstanding anything to the contrary in Article Three of the Base Indenture, the Company may not redeem the Notes at its option prior to the Maturity Date, except to the extent, and only to the extent, necessary to preserve the Company's status as a real estate investment trust for U.S. federal income tax purposes. If the Company determines that redeeming the Notes is necessary to preserve such status, then the Company may redeem, on a Business Day (the "**Redemption Date**") of the Company's choosing that is no more than 50, nor less than 30, Scheduled Trading Days after the date the related redemption notice is sent pursuant to Section 14.02, all or part (in a principal amount that is an integral multiple of $1,000) of the Notes at a cash price (the "**Redemption Price**") equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date; *provided*, *however*, that if the Redemption Date for a Note is after a Regular Record Date for the payment of interest and on or prior to the corresponding Interest Payment Date, then (x) the Company will pay, on or before such Interest Payment Date, the full amount of accrued and unpaid interest payable on such Note on such Interest Payment Date to the Holder of such note at the Close of Business on such Regular Record Date; and (y) the Redemption Price will not include such accrued and unpaid interest. Notwithstanding anything to the contrary in this Section 14.01, no Notes may be redeemed on any date if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the applicable Redemption Price with respect to such Notes). For purposes of the Notes, the phrase "appropriate redemption price, together with accrued interest to the redemption date" in Section 3.06 of the Base indenture will be deemed to be replaced with the term "Redemption Price" (as such term is defined in this Section 14.01).

Section 14.02 *Notice of Redemption*. Section 3.02 of the Base Indenture and the first and last two sentences of Section 3.04 of the Base Indenture will not apply to the Notes. The Company will send to the Trustee, the Paying Agent and each applicable Holder notice of any Redemption pursuant to Section 14.01 containing the information set forth in clauses (1) through (5), inclusive, and clause (7) of Section 3.04 of the Base Indenture and also containing (i) the current Conversion Rate (which, for the avoidance of doubt, will be after giving effect to clause (iii) of Section 12.04(l)); and (ii) any information required to be included in such Redemption notice pursuant to Section 12.02(a)(vi).

Section 14.03 *Partial Redemptions*. If only a portion of a Note is subject to redemption pursuant to Section 14.01 and such Note is converted in part, then the converted portion of such Note will be deemed to be from the portion of such Note that was subject to redemption.

Section 14.04 *No Sinking Fund*. Article Eleven of the Base Indenture will not apply to the Notes.

Section 14.05 *Effect of Redemption*. For purposes of the Notes, (i) the phrase ", subject to the right of Holders to convert any Notes called for redemption" will be deemed to be inserted immediately after the phrase "at the redemption price" in the first sentence of Section 3.05 of the Base Indenture; (ii) the phrases "redemption price, plus accrued and unpaid interest to the redemption date" and "redemption price, together with interest accrued to the redemption date" in Section 3.05 of the Base Indenture will be deemed to be replaced with the term "Redemption Price" (as such term is defined in Section 14.01); and (iii) the phrase "(except as provided in the proviso to the second sentence of Section 14.01 of the Supplemental Indenture)" will be deemed to be inserted immediately after the phrase "cease to accrue" in the second sentence of Section 3.05 of the Base Indenture.

Section 14.06 *No Holder's Right to Require Redemption*. Subject to Article XIII, Sections 3.07 and 3.08 of the Base Indenture will not apply to the Notes.

ARTICLE XV
MISCELLANEOUS PROVISIONS

Section 15.01 *Provisions Binding on Company's Successors*. All the covenants, stipulations, promises and agreements of the Company contained in the Indenture shall bind its successors and assigns whether so expressed or not.

Section 15.02 *Tax Withholding*. The Company is permitted to withhold, from interest payments and payments upon conversion, redemption or maturity of the Notes, any amounts the Company is required to withhold by law. If the Company pays withholding taxes on behalf of a Holder, the Company may, at its option, set off any such payment against payments of cash and Common Stock payable on the Notes (or against any payments on the Common Stock).

Section 15.03 *Official Acts by Successor Corporation*. Any act or proceeding by any provision of the Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 15.04 *Addresses for Notices, Etc*. Any notice or demand that by any provision of the Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Apollo Commercial Real Estate Finance, Inc., 9 West 57th Street, 43rd Floor, New York, New York 10019, Attention: Chief Executive Officer. 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 it is in writing and if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office or sent electronically in PDF format.

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

Any notice or communication mailed to a Holder shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Register and shall be sufficiently given to it if so mailed within the time prescribed; *provided* that notices given to Holders holding Notes in book-entry form may be given through the facilities of the Depository.

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

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 15.05 *Governing Law*. THE INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with the Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in New York, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court in personam, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with the Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 15.06 *Legal Holidays*. In any case where any Interest Payment Date, Fundamental Change Repurchase Date, Conversion Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue or be paid in respect of the delay.

Section 15.07 *No Security Interest Created*. Nothing in the 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.

Section 15.08 *Benefits of Indenture*. Nothing in the Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under the Indenture.

Section 15.09 *Table of Contents, Headings, Etc*. The table of contents and the titles and headings of the articles and sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 15.10 *Execution in Counterparts*. This Supplemental 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. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 15.11 *Severability*. In the event any provision of this Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 15.12 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 15.13 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, executive order, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 15.14 *USA PATRIOT Act*. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Supplemental Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first written above.

APOLLO COMMERCIAL REAL ESTATE FINANCE, INC.

By: /s/ Stuart A. Rothstein
Name: Stuart A. Rothstein
Title: President and Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Yana Klslenko
Name: Yana Klslenko
Title: Vice President

[Signature Page to Second Supplemental Indenture]

EXHIBIT A

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("**DTC**"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

Apollo Commercial Real Estate Finance, Inc.

4.75% Convertible Senior Note due 2022

No. [ ] [Initially][1] $[ ]
CUSIP No. [ ]

Apollo Commercial Real Estate Finance, Inc., a corporation duly organized and validly existing under the laws of the State of Maryland (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [Cede & Co.], or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][1] [of $[ ] ([ ] U.S. dollars)][2], and interest thereon as set forth below.

This Note shall accrue interest at the rate of 4.75% per year from, and including, [ ], or from the most recent date for which interest has been paid or provided for to, but excluding, the next scheduled Interest Payment Date. Accrued interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month. Interest is payable semi-annually in arrears on each February 15 and August 15, commencing on [ ], to Holders of record at the Close of Business on the preceding February 1 and August 1 (whether or not such day is a Business Day), respectively; *provided*, *however*, that the final Interest Payment Date will occur on August 23, 2022, and no Interest Payment Date will occur on August 15, 2022. Additional Interest will be payable as set forth in Section 6.03 of the within-mentioned Supplemental Indenture, and any reference to interest on, or in respect of, any Note herein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03 of the Supplemental Indenture, and any express mention of the payment of Additional Interest in any provision herein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Supplemental Indenture.

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds in lawful money of the United States at the time to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York City, New York, as a place where Notes may be presented for payment or for registration of transfer and exchange.

1 Include for a Global Note.
2 Include for a Physical Note.

Reference is made to the further provisions of this Note set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern to the extent of such conflict.

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

[Remainder of Page Intentionally Left Blank]

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

APOLLO COMMERCIAL REAL ESTATE FINANCE, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

Date: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series described in the within-mentioned Base Indenture and Supplemental Indenture.

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Dated: _____

[FORM OF REVERSE OF NOTE]

Apollo Commercial Real Estate Finance, Inc.

4.75% Convertible Senior Note due 2022

This Note is one of a duly authorized issue of Notes of the Company, designated as its 4.75% Convertible Senior Notes 2022 (the "**Notes**"), issued or to be issued under and pursuant to an Indenture (the "**Base Indenture**"), dated as of March 17, 2014, between the Company and Wells Fargo Bank, National Association (the "**Trustee**"), and the Second Supplemental Indenture (the "**Supplemental Indenture**"), dated as of August 21, 2017, between the Company and the Trustee. The Base Indenture, as amended, modified and supplemented by the Supplemental Indenture, is herein referred to as the "**Indenture**." Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In the event of certain Events of Default (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) of the Supplemental Indenture with respect to the Company) shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee (by notice to the Company) or by Holders of at least 25% in aggregate principal amount of the Notes then outstanding (by notice to the Company and the Trustee), and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

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

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as provided in the Indenture, to execute supplemental indentures modifying the terms of the Indenture and the Notes as set forth therein. The Indenture also provides that, subject to certain exceptions, 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 under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Fundamental Change Repurchase

Price and Redemption Price, if applicable) of, accrued and unpaid interest on, and the Conversion Settlement Consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money set forth in the Indenture.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. At the office or agency of the Company provided in the manner set forth in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

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

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

The Notes are subject to Redemption at the option of the Company only as provided in Article XIV of the Supplemental Indenture.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, subject to conditions specified in the Indenture, prior to the Close of Business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

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 = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

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

SCHEDULE A

SCHEDULE OF EXCHANGES OF NOTES[3]

Apollo Commercial Real Estate Finance, Inc.

4.75% Convertible Senior Notes 2022

The initial principal amount of this Global Note is $[ ] ([ ] U.S. dollars). The following increases or decreases in the principal amount of this Global Note have been made:

Date	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

[3] Include for a Global Note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

To: Apollo Commercial Real Estate Finance, Inc.

To: Wells Fargo Bank, National Association, 150 East 42nd Street, 40th Floor, New York, New York 10017, Attention: Corporate Trust Services – Administrator for Apollo Commercial Real Estate Finance, Inc.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 12.02(e) and Section 12.02(f) of the Indenture. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Dated: _____

_____

Signature(s)

_____

Signature Guarantee

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

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

_____

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

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

NOTICE: The above signature(s) 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.

Social Security or Other Taxpayer Identification Number

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: Apollo Commercial Real Estate Finance, Inc.

To: Wells Fargo Bank, National Association, 150 East 42nd Street, 40th Floor, New York, New York 10017, Attention: Corporate Trust Services – Administrator for Apollo Commercial Real Estate Finance, Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Apollo Commercial Real Estate Finance, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Article XIII of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or a multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

_____
Signature(s)

_____
Social Security or Other Taxpayer Identification Number

Principal amount to be repurchased by the Company (if less than all):
$,000

NOTICE: The above signature(s) 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.

ATTACHMENT 3

[FORM OF ASSIGNMENT AND TRANSFER]

Wells Fargo Bank, National Association
as Trustee and Registrar
DAPS Reorg MAC N9303-121
602 2nd Avenue South, Minneapolis, MN 55479
Telephone No.: (877) 872-4605
Fax No.: (866) 969-1290
Email: DAPSReorg@wellsfargo.com

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

Dated: _____

_____

_____

Signature(s)

_____

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

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

Exhibit 5.1

CLIFFORD
CHANCE

CLIFFORD CHANCE US LLP

31 WEST 52ND STREET
NEW YORK, NY 10019-6131

TEL +1 212 878 8000
FAX +1 212 878 8375

www.cliffordchance.com

August 21, 2017

Apollo Commercial Real Estate Finance, Inc.
c/o Apollo Global Management, LLC
9 West 57th Street, 43rd Floor
New York, NY 10019

Ladies and Gentlemen:

We have acted as counsel to Apollo Commercial Real Estate Finance, Inc., a Maryland corporation (the "**Company**"), in connection with a registration statement on Form S-3 (File No. 333-203971), as amended (the "**Registration Statement**"), filed by the Company with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**Securities Act**"). We are furnishing this letter to you in connection with the offer and sale by the Company of $230,000,000 aggregate principal amount of its 4.75% Convertible Senior Notes due 2022 (the "**Notes**") (which includes $30,000,000 aggregate principal amount subject to the underwriters' option to purchase additional Notes), for issuance pursuant to the Underwriting Agreement, dated August 15, 2017 (the "**Underwriting Agreement**"), among the Company, ACREFI Management, LLC, and Morgan Stanley & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities LLC, as representatives of the several underwriters named therein, and an Indenture, dated as of March 17, 2014, as supplemented by the Second Supplemental Indenture, dated as of August 21, 2017 (collectively, the "**Indenture**"), by and between the Company and Wells Fargo Bank, National Association (the "**Trustee**").

In rendering the opinion expressed below, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of the Registration Statement, the Indenture, the Notes and certain resolutions of the board of directors of the Company (the "**Board of Directors**") and of a pricing committee of the Board of Directors (the "**Pricing Committee**"), relating to the transactions contemplated by the Underwriting Agreement and other related matters. As to factual matters relevant to the opinion set forth below, we have relied upon certificates of officers of the Company and public officials and representations and warranties of the parties set forth in the Underwriting Agreement.

Based on, and subject to, the foregoing, the qualifications and assumptions set forth herein and such other examination of law as we have deemed necessary, we are of the opinion that (i) following the (a) issuance of the Notes pursuant to the terms of the Underwriting Agreement and (b) receipt by the Company of the consideration for the Notes specified in the resolutions of the Board of Directors and of the Pricing Committee, the Notes will be the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting enforcement of creditors' rights generally, or by general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law) and (ii) the shares of the Company's common stock, par value $0.01 per share, into which the Notes are convertible (the "**Conversion**

Shares") have been duly authorized by all necessary corporate action on the part of the Company and, if and when issued and delivered by the Company pursuant to the terms of the Notes and the Indenture upon conversion of the Notes, the Conversion Shares will be legally issued, fully paid and nonassessable.

The opinion set forth in this letter relates only to the laws of the State of New York and the Maryland General Corporation Law. We express no opinion as to the laws of another jurisdiction and we assume no responsibility for the applicability, or effect of the law of any other jurisdiction.

We consent to the filing of this opinion as Exhibit 5.1 to a Current Report on Form 8-K that shall be incorporated by reference into the Registration Statement and to the reference to us under the caption "Legal Matters" in the prospectus supplement which is a part of the Registration Statement. In giving this consent, we do not concede that we are within the category of persons whose consent is required under the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Clifford Chance US LLP

Exhibit 8.1

CLIFFORD
CHANCE

CLIFFORD CHANCE US LLP

31 WEST 52ND STREET
NEW YORK, NY 10019-6131

TEL +1 212 878 8000
FAX +1 212 878 8375

www.cliffordchance.com

August 21, 2017

Apollo Commercial Real Estate Finance, Inc.
c/o Apollo Global Management, LLC
9 West 57th Street, 43rd Floor
New York, NY 10019

Re: REIT Qualification of Apollo Commercial Real Estate Finance, Inc.

Ladies and Gentlemen:

We have acted as counsel to Apollo Commercial Real Estate Finance, Inc., a Maryland corporation (the "Company"), in connection with the issuance and sale by the Company of $230,000,000 aggregate principal amount of its 4.75% Convertible Senior Notes due 2022 (the "Notes") (which includes $30,000,000 aggregate principal amount of Notes that are subject to the underwriters' option to purchase additional Notes) pursuant to the Company's registration statement on Form S-3 (Registration No. 333-203971) (the Registration Statement"), the related prospectus included therein, dated May 7, 2015 (the "Base Prospectus"), the preliminary prospectus supplement, dated August 15, 2017 (the "Preliminary Prospectus Supplement" and together with the Base Prospectus, the "Preliminary Prospectus"), and the prospectus supplement dated August 15, 2017 (the "Prospectus Supplement," and together with the Base Prospectus, the "Prospectus"). Except as otherwise indicated, capitalized terms used in this opinion letter have the meanings given to them in the Registration Statement.

In rendering the opinions expressed herein, we have examined and, with your permission, relied on the following items:

1. the Articles of Amendment and Restatement of the Company;
2. the bylaws of the Company;
3. a Certificate of Representations, (the "Certificate of Representations") dated as of the date hereof, provided to us by the Company and ACREFI Management, LLC, a Delaware limited liability company (the "Manager");
4. the Registration Statement;
5. the Preliminary Prospectus;
6. the Prospectus; and
7. such other documents, records and instruments as we have deemed necessary in order to enable us to render the opinion referred to in this letter.

In our examination of the foregoing documents, we have assumed, with your consent, that (i) all documents reviewed by us are original documents, or true and accurate copies of original documents and

have not been subsequently amended, (ii) the signatures of each original document are genuine, (iii) all representations and statements set forth in such documents are true and correct, (iv) all obligations imposed by any such documents on the parties thereto have been performed or satisfied in accordance with their terms, and (v) the Company at all times has operated and will continue to operate in accordance with the method of operation described in its organizational documents, the Registration Statement and the Certificate of Representations. As of the date hereof, we are not aware of any facts inconsistent with the statements in the organizational documents, the Registration Statement or the Certificate of Representations.

For purposes of rendering the opinions stated below, we have assumed, with your consent, the accuracy of the representations contained in the Certificate of Representations provided to us by the Company and the Manager, and that each representation contained in such Certificate of Representations to the best of the Company's or the Manager's knowledge, intent or belief is accurate and complete without regard to such qualification as to the best of such entity's knowledge, intent or belief. These representations generally relate to the organization and method of operation of the Company as a REIT under the Code.

Based upon, subject to, and limited by the assumptions and qualifications set forth herein, we are of the opinion that:

1. Commencing with its taxable year ended December 31, 2009, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code"), and its proposed method of operation as described in the Registration Statement, the Preliminary Prospectus and the Prospectus and as set forth in the Certificate of Representations will enable the Company to continue to meet the requirements for qualification and taxation as a REIT under the Code; and

2. The statements included in the Registration Statement under the caption "U.S. Federal Income Tax Considerations," as modified and supplemented by the statements in the Preliminary Prospectus Supplement and the Prospectus Supplement under the caption "Additional U.S. Federal Income Tax Considerations," to the extent they describe applicable U.S. federal income tax law, are correct in all material respects.

The opinions set forth in this letter are based on relevant provisions of the Code, Treasury Regulations promulgated thereunder, interpretations of the foregoing as expressed in court decisions, legislative history, and existing administrative rulings and practices of the Internal Revenue Service ("IRS") (including its practices and policies in issuing private letter rulings, which are not binding on the IRS except with respect to a taxpayer that receives such a ruling), all as of the date hereof. These provisions and interpretations are subject to change, which may or may not be retroactive in effect, and which may result in modifications of our opinions. Our opinions do not foreclose the possibility of a contrary determination by the IRS or a court of competent jurisdiction, or of a contrary determination by the IRS or the Treasury Department in regulations or rulings issued in the future. In this regard, an opinion of counsel with respect to an issue represents counsel's best professional judgment with respect to the outcome on the merits with respect to such issue, if such issue were to be litigated, but an opinion is not binding on the IRS or the courts and is not a guarantee that the IRS will not assert a contrary position with respect to such issue or that a court will not sustain such a position asserted by the IRS.

The opinions set forth above represent our conclusions based upon the documents, facts, representations and assumptions referred to above. Any material amendments to such documents, changes in any significant facts or inaccuracy of such representations or assumptions could affect the opinions referred to herein. We assume no responsibility to inform any person of any change or inaccuracy that may come to our attention. Moreover, the Company's qualification as a REIT depends upon the ability of the Company to meet for each taxable year, through actual annual operating results, requirements under the Code regarding gross income, assets, distributions and diversity of stock ownership. We have not undertaken to review the Company's compliance with these requirements on a continuing basis. Accordingly, no assurance can be given that the actual results of the Company's operations for any single taxable year have satisfied or will satisfy the tests necessary to qualify as or be taxed as a REIT under the Code. In addition, the opinion set forth above does not foreclose the possibility that the Company may have to pay an excise or penalty tax, which could be significant in amount, in order to maintain the Company's REIT qualification. Although we have made such inquiries and performed such investigations as we have deemed necessary to fulfill our professional responsibilities as counsel, we have not undertaken an independent investigation of all of the facts referred to in this letter or the Certificate of Representations.

The opinions set forth in this letter are: (i) limited to those matters expressly covered and no opinion is expressed in respect of any other matter; (ii) as of the date hereof; and (iii) rendered by us at the request of the Company. We hereby consent to the filing of this opinion with the SEC as an exhibit to the Registration Statement and to the references therein to us. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/s/ Clifford Chance US LLP

Exhibit 12.1

Apollo Commercial Real Estate Finance, Inc.
Statement of Computation of Ratio of Earnings to Fixed Charges
(in thousands, except ratios)

	Six Months Ended 6/30/2017	For the Year Ended December 31, 2016	2015	2014	2013	2012
Fixed Charges						
Interest-Expensed	$ 25,513	$ 42,985	$ 30,149	$ 15,129	$ 3,727	$ 7,753
Interest-Expensed Convert	7,006	14,011	14,011	8,493	—	—
Interest-Capitalized	5,343	4,043	2,900	8,795	566	597
Interest-Capitalized TALF	—	—	—	—	—	—
Total Fixed Charges	$ 37,862	$ 61,039	$ 47,060	$ 32,417	$ 4,293	$ 8,350
Earnings						
Net Income	$ 83,360	$157,875	$ 91,372	$ 75,300	$45,045	$37,102
Less: Equity Investments Income	2,847	96	(3,464)	157	—	—
Adjusted Net Income	86,207	157,971	87,908	75,457	45,045	37,102
Add Back:						
Fixed Charges	37,862	61,039	47,060	32,417	4,293	8,350
Amortization of Capitalized Interest	3,716	6,503	4,700	2,918	866	1,962
Interest Capitalized	(5,343)	(4,043)	(2,900)	(8,795)	(566)	(597)
Total Earnings	$ 122,442	$221,470	$136,768	$101,997	$49,638	$46,817
Ratio of earnings to fixed charges	**3.23x**	**3.63x**	**2.91x**	**3.15x**	**11.56x**	**5.61x**

Apollo Commercial Real Estate Finance, Inc.
Statement of Computation of Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends
(in thousands, except ratios)

	Six Months Ended 6/30/2017	For the Year Ended December 31, 2016	2015	2014	2013	2012
Fixed Charges						
Interest-Expensed	$ 25,513	$ 42,985	$ 30,149	$ 15,129	$ 3,727	$ 7,753
Interest-Expensed Convert	7,006	14,011	14,011	8,493	—	—
Interest-Capitalized	5,343	4,043	2,900	8,795	566	597
Interest-Capitalized TALF	—	—	—	—	—	—
Preferred Stock Dividends	18,620	30,295	11,884	7,440	7,440	3,079
Total Fixed Charges	$ 56,482	$ 91,334	$ 58,945	$ 39,857	$11,733	$11,428
Earnings						
Net Income	$ 83,360	$157,875	$ 91,372	$ 75,300	$45,045	$37,102
Less: Equity Investments Income	2,847	96	(3,464)	157	—	—
Adjusted Net Income	86,207	157,971	87,908	75,457	45,045	37,102
Add Back:						
Fixed Charges	56,482	91,334	58,945	39,857	11,733	11,428
Amortization of Capitalized Interest	3,716	6,503	4,700	2,918	866	1,962
Interest Capitalized	(5,343)	(4,043)	(2,900)	(8,795)	(566)	(597)
Total Earnings	$141,062	$251,764	$148,653	$109,437	$57,078	$49,895
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends	**2.50x**	**2.76x**	**2.52x**	**2.75x**	**4.86x**	**4.37x**

Apollo Commercial Real Estate Finance, Inc.
Statement of Computation of Ratio of Pro Forma Ratio of Earnings to Fixed Charges
(in thousands, except ratios)

	Six Months Ended 6/30/2017	For the Year Ended December 31, 2016	2015	2014	2013	2012
Fixed Charges						
Interest-Expensed	$ 25,513	$ 42,985	$ 30,149	$ 15,129	$ 3,727	$ 7,753
Interest-Expensed Convert	7,006	14,011	14,011	8,493	—	—
Interest-Capitalized	5,343	4,043	2,900	8,795	566	597
Interest-Capitalized TALF	—	—	—	—	—	—
Interest Additional – 4.75% Convertible Senior Notes(1)	5,200	10,400	NA	NA	NA	NA
Interest Savings – JPMorgan Facility	(3,436)	(6,872)				
Total Fixed Charges	$ 39,626	$ 64,567	$ 47,060	$ 32,417	$ 4,293	$ 8,350
Earnings						
Net Income	$ 83,360	$157,875	$ 91,372	$ 75,300	$45,045	$37,102
Less: Equity Investments Income	2,847	96	(3,464)	157	—	—
Adjusted Net Income	86,207	157,971	87,908	75,457	45,045	37,102
Add Back:						
Fixed Charges	39,626	64,567	47,060	32,417	4,293	8,350
Amortization of Capitalized Interest	3,716	6,503	4,700	2,918	866	1,962
Interest Capitalized	(5,343)	(4,043)	(2,900)	(8,795)	(566)	(597)
Total Earnings	$ 124,206	$224,998	$136,768	$101,997	$49,638	$46,817
Pro Forma Ratio of earnings to fixed charges(2)	**3.13x**	**3.48x**	**NA**	**NA**	**NA**	**NA**

(1) Includes deferred financing costs.

(2) In calculating the pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends, we have assumed that the notes were issued on the first day of the applicable period. For purposes of these pro forma calculations, we have assumed proceeds are used to partially repay outstanding borrowings under our master repurchase agreement with JPMorgan Chase Bank, N.A., or the JP Morgan Facility, (approximately $794.4 million as of June 30, 2017); therefore, the pro forma ratio excludes the effect of the amount of the related interest expense under the JPMorgan Facility for the period. In addition, we have calculated the pro forma ratios incorporating the amortization of the underwriting discount and deferred financing costs as well as cash interest payments that we would have paid on the notes, assuming they were issued on the first day of the applicable period. Accordingly, the pro forma ratios do not reflect the additional interest expense we would incur for accounting purposes as a result of separating the notes into a liability and an equity component and amortizing the deemed debt discount into interest expense over the term of the notes in accordance with ASC 470-20.

Apollo Commercial Real Estate Finance, Inc.
Statement of Computation of Ratio of Pro Forma Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends
(in thousands, except ratios)

	Six Months Ended 6/30/2017	For the Year Ended December 31, 2016	2015	2014	2013	2012
Fixed Charges						
Interest-Expensed	$ 25,513	$ 42,985	$ 30,149	$ 15,129	$ 3,727	$ 7,753
Interest-Expensed Convert	7,006	14,011	14,011	8,493	—	—
Interest-Capitalized	5,343	4,043	2,900	8,795	566	597
Interest-Capitalized TALF	—	—	—	—	—	—
Preferred Stock Dividends	18,620	30,295	11,884	7,440	7,440	3,079
Interest Additional – 4.75% Convertible Senior Notes(1)	5,200	10,400	NA	NA	NA	NA
Interest Savings – JPMorgan Facility	(3,436)	(6,872)				
Total Fixed Charges	$ 58,246	$ 94,862	$ 58,945	$ 39,857	$11,733	$11,428
Earnings						
Net Income	$ 83,360	$157,875	$ 91,372	$ 75,300	$45,045	$37,102
Less: Equity Investments Income	2,847	96	(3,464)	157	—	—
Adjusted Net Income	86,207	157,971	87,908	75,457	45,045	37,102
Add Back:						
Fixed Charges	56,482	94,862	58,945	39,857	11,733	11,428
Amortization of Capitalized Interest	3,716	6,503	4,700	2,918	866	1,962
Interest Capitalized	(5,343)	(4,043)	(2,900)	(8,795)	(566)	(597)
Total Earnings	$ 142,826	$255,292	$148,653	$109,437	$57,078	$49,895
Pro Forma Ratio of earnings to fixed charges and Preferred Stock Dividends(2)	**2.45x**	**2.69x**	**NA**	**NA**	**NA**	**NA**

(1) Includes deferred financing costs.

(2) In calculating the pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends, we have assumed that the notes were issued on the first day of the applicable period. For purposes of these pro forma calculations, we have assumed proceeds are used to partially repay outstanding borrowings under the JP Morgan Facility, (approximately $794.4 million as of June 30, 2017); therefore, the pro forma ratio excludes the effect of the amount of the related interest expense under the JPMorgan Facility for the period. In addition, we have calculated the pro forma ratios incorporating the amortization of the underwriting discount and deferred financing costs as well as cash interest payments that we would have paid on the notes, assuming they were issued on the first day of the applicable period. Accordingly, the pro forma ratios do not reflect the additional interest expense we would incur for accounting purposes as a result of separating the notes into a liability and an equity component and amortizing the deemed debt discount into interest expense over the term of the notes in accordance with ASC 470-20.