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): December 11, 2006

ACADIA REALTY TRUST

(Exact name of registrant as specified in its charter)

Maryland	1-12002	23-2715194
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1311 Mamaroneck Avenue
Suite 260
White Plains, New York 10605
(Address of principal executive offices) (Zip Code)

(914) 288-8100
(Registrant's telephone number, including area code)

(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:

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

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

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

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

Item 1.01 Entry into a Material Definitive Agreement.

3.75% Convertible Notes due 2026

On December 5, 2006, Acadia Realty Trust, a Maryland real estate investment trust (the "Company"), entered into a Purchase Agreement (the "Purchase Agreement") with Lehman Brothers Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Initial Purchasers") for the sale by the Company and the purchase by the Initial Purchasers of a $100 million aggregate principal amount of 3.75% Convertible Notes due 2026 (the "Notes"). The Purchase Agreement also granted the Initial Purchasers a 30-day option to purchase up to an additional $15 million aggregate principal amount of the Notes.

The closing ("Closing") of the sale of the Notes occurred on December 11, 2006. The net proceeds from the offering, after deducting the Initial Purchasers' discount and the estimated offering expenses, are estimated to be approximately $97.3 million (or approximately $112.0 million if the Initial Purchaser exercise their option to purchase additional Notes in full). The Company intends to use $71.3 million of the proceeds from the sale of the Notes to repay its outstanding secured indebtedness and $26.0 million of the proceeds to fund a portion of its capital commitment to Acadia Strategic Opportunity Fund II, LLC ("Fund II") and Acadia Mervyn Investors II, LLC ("Mervyns II") from time to time, as required. If the Initial Purchasers exercise their option to purchase additional Notes in full, the Company will use $10.6 million of such net proceeds to fund the balance of its capital commitment to Fund II and Mervyns II from time to time, as required, and will use the remainder of such proceeds, if any, for general corporate purposes.

The Notes were issued under the Indenture, dated as of December 11, 2006, between the Company and U.S. Bank National Association, as trustee (the "Trustee"), as supplemented by the First Supplemental Indenture, dated as of December 11, 2006, between the Company and the Trustee. A copy of the Indenture is filed herewith as Exhibit 4.1. The terms of the Notes were established pursuant to the First Supplemental Indenture and the form of the Notes attached thereto, a copy of which is filed herewith as Exhibit 4.2.

Additional information pertaining to the Notes is contained in Item 2.03 of this report and is incorporated herein by reference. The Notes and the common shares of beneficial interest of the Company ("Common Shares") issuable under certain circumstances upon conversion of the Notes have not been registered under the Securities Act of 1933, as amended (the "Securities Act"). The Company offered and sold the Notes to the Initial Purchasers in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers then sold the Notes only to qualified institutional buyers in the United States in reliance upon the exemption from registration provided by Rule 144A under the Securities Act.

Registration Rights Agreement

At the Closing, the Company entered into a Registration Rights Agreement (the "Registration Rights Agreement") with the Initial Purchasers. Under the Registration Rights Agreement, the Company has agreed, for the benefit of the holders of the Notes, to file a shelf registration statement providing for the resale of all of the Notes and the Common Shares, if any, issuable upon conversion of the Notes (the "Registrable Securities") by holders who satisfy certain conditions (the "Selling Security Holders"), by the 120th day after the original issuance of the Notes and to use its reasonable best efforts to cause such shelf registration statement to be declared effective under the Securities Act as promptly as practicable but in any event by the 210th day after the original issuance of the Notes or otherwise make available for use by the Selling Security Holders an effective shelf registration statement no later than such date. The Company also has agreed to use its reasonable best efforts to keep the registration statement continuously effective under the Securities Act until there are no Registrable Securities outstanding.

The Company will be required to pay specified additional interest to the holders of the Notes if it fails to comply with its obligations to register the Notes and the Common Shares issuable upon conversion of the Notes within specified time periods, or if the registration statement ceases to be effective or the use of the prospectus is suspended for specified time periods. The Company will not be required to pay additional interest with respect to

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any Note after it has been converted for any Common Shares. A copy of the Registration Rights Agreement is filed herewith as Exhibit 4.3. The description of the Registration Rights Agreement in this report is a summary and is qualified in its entirety by the terms of the Registration Rights Agreement.

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

On December 5, 2006, the Company issued a $100 million aggregate principal amount of the Notes. The Notes are unsecured obligations of the Company.

The terms of the Notes include:

Maturity. December 15, 2026.

Interest. Interest on the Notes at the rate of 3.75% per year is payable semi-annually on June 15 and December 15 of each year, beginning on June 15, 2007.

Conversion Rights. Holders may convert the Notes at the initial conversion rate for each $1,000 principal amount of the Notes of 32.4002 of the Common Shares, payable in cash or, if the conversion value is greater than the principal return (as defined in the offering memorandum), in cash with respect to the amount equal to the principal return, and with respect to any portion in excess of the principal return, cash, the Common Shares or a combination of cash and the Common Shares, at the option of the Company, prior to the close of business on the second business day prior to the stated maturity date at any time on or after December 15, 2025 and also under the following circumstances:

(a) Exchange Upon Satisfaction of Market Price Condition. A holder may surrender any of its Notes for conversion during any calendar quarter beginning after December 31, 2006 (and only during such calendar quarter), if, and only if, the closing sale price of the Common Shares for at least 20 trading days (whether or not consecutive) in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter as determined by the Company is more than 130% of the conversion price per Common Share in effect on the applicable trading day;

(b) Exchange Upon Satisfaction of Trading Price Condition. A holder may surrender any of its Notes for conversion during the five consecutive trading-day period following any five consecutive trading-day period in which the trading price per $1,000 principal amount of Notes (as determined following a reasonable request by a holder of the Notes) was less than 98% of the product of the closing sale price of the Common Shares multiplied by the applicable conversion rate;

(c) Exchange Upon Notice of Redemption. A holder may surrender for conversion any of the Notes called for redemption at any time prior to the close of business on the second business day prior to the redemption date, even if the Notes are not otherwise convertible at such time.

(d) Conversion if Common Shares Are Not Listed. A holder may surrender any of its Notes for conversion at any time beginning on the first business day after the Common Shares have ceased to be listed on a U.S.

national or regional securities exchange for a 30 consecutive trading-day period.

(e) Conversion Upon Specified Transactions. A holder may surrender any of its Notes for conversion if the Company engages in certain specified corporate transactions, including a change in control (as defined in the Notes). Holders converting Notes in connection with certain change in control transactions occurring prior to December 20, 2011 may be entitled to receive additional Common Shares as a "make whole premium."

Redemption at the Option of the Company. The Company may not redeem any Notes prior to December 20, 2011, except to preserve its status as a real estate investment trust. After that time, the Company may redeem the Notes, in whole or in part, for cash equal to 100% of the principal amount of the Notes plus any accrued and unpaid interest (including additional interest, if any) to, but not including, the redemption date.

Purchase at Option of Holders on Certain Dates. Holders of the Notes may require the Company to repurchase their Notes, in whole or in part (in principal amounts of $1,000 and integrals thereof) on December 20, 2011, December 15, 2016, and December 15, 2021 for cash equal to 100% of the principal amount of the Notes to be repurchased plus any accrued and unpaid interest (including additional interest, if any) to, but not including, the repurchase date.

Default. Subject to the terms of the First Supplemental Indenture and the Notes, upon certain events of default, including, but not limited to, (i) default by the Company in the delivery when due of the conversion value, on the terms set forth in the Indenture and the Notes, upon exercise of a holder's conversion right in accordance with the Indenture and the continuation of such default for 10 days, and (ii) the failure of the Company to provide notice of the occurrence of a change of control when required under the Indenture, and such failure continues for 5 business days, the trustee or the holders of not less than 25% in principal amount of the outstanding Notes may declare the principal and accrued and unpaid interest on all of the Notes to be due and payable immediately by written notice thereof to the Company (and to the trustee if given by the holders). Upon certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of the Company, the Company's operating partnership, or any other significant subsidiary, the principal (or such portion thereof) of and accrued and unpaid interest on all of the Notes will become and be immediately due and payable without any declaration or other act on the part of the trustee or any holders.

The description of the Notes in this report is a summary and is qualified in its entirety by reference to Exhibits 4.1, 4.2 and 4.3.

Item 3.02 Unregistered Sales of Equity Securities.

3.75% Convertible Notes due December 15, 2026

On December 5, 2006, the Company entered into the Purchase Agreement to offer and sell $100 million aggregate principal amount of the Notes to the Initial Purchasers. The Purchase Agreement also granted the Initial Purchasers an option to purchase up to $15 million aggregate principal amount of the Notes to cover the option to purchase Additional Notes, if any. The Closing occurred on December 11, 2006. The net proceeds from the offering, after deducting the Initial Purchasers' discount and the Company's estimated offering expenses, are estimated to be approximately $97.3 million (or approximately $112.0 million if the Initial Purchaser exercise their option to purchase additional Notes in full).

Additional information pertaining to the Notes and Common Shares is contained in Item 2.03 of this report and is incorporated herein by reference.

The Company offered and sold the Notes to the Initial Purchasers in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers then sold the Notes only to qualified institutional buyers in the United States in reliance upon the exemption from registration provided by Rule 144A under the Securities Act. The Company relied on these exemptions from registration based in part on representations made by the Initial Purchasers in the Purchase Agreement.

The Notes and the underlying Common Shares issuable upon conversion of the Notes have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. This Current Report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

Item 9.01. Financial Statements, Pro Forma Financial Information and Exhibits.

(a) Financial Statements.

Not Applicable

(b) Pro Forma Financial Information.

Not Applicable

(c) Shell company transactions.

Not Applicable

(d) Exhibits.

Exhibit Number	Description
4.1	Indenture, dated as of December 11, 2006, between Acadia Realty Trust and U.S. Bank National Association, as trustee.
4.2	First Supplemental Indenture, dated as of December 11, 2006, between Acadia Realty Trust and U.S. Bank National Association, as trustee, including the Form of 3.75% Convertible Notes due 2026.
4.3	Registration Rights Agreement, dated as of December 11, 2006, among Acadia Realty Trust and Lehman Brothers Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

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.

ACADIA REALTY TRUST
(Registrant)

Date: December 11, 2006

By: /s/ Michael Nelsen
Name: Michael Nelsen
Title: Sr. Vice President and Chief Financial Officer

EXHIBIT INDEX

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4.3	Registration Rights Agreement, dated as of December 11, 2006, among Acadia Realty Trust and Lehman Brothers Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Exhibit 4.1

EXECUTION COPY

ACADIA REALTY TRUST,

Issuer,

and

U.S. Bank National Association,

Trustee

INDENTURE

Dated as of December 11, 2006

DEBT SECURITIES

Acadia Realty Trust

Reconciliation and tie showing the location in the Indenture dated as of December 11, 2006 of the provisions inserted pursuant to Sections 310 to 318(a), inclusive, of the Trust Indenture Act of 1939, as amended.

Trust Indenture Act Section	**Indenture Section**
Section 310 (a)(1)	609
(a)(2)	609
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	609
(b)	608 and 610(d)
(c)	Not Applicable
Section 311 (a)	613
(b)	613
(c)	Not Applicable
Section 312 (a)	701 and 702(a)
(b)	702(b)
(c)	702(c)
Section 313 (a)	703(a)
(b)	703(b)
(c)	703(a) and 703(b)
(d)	703(a) and 703(b)
Section 314 (a)	704
(b)	Not Applicable
(c)	102
(c)(1)	102
(c)(2)	102
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	102
(f)	Not Applicable
Section 315 (a)	601(a)
(b)	602
(c)	601(b)
(d)	601(c)
(d)(1)	601(a)(1)
(d)(2)	601(c)(2)
(d)(3)	601(c)(3)
(e)	514
Section 316 (a)(1)(A)	502 and 512
(a)(1)(B)	513

(a)(2)	Not Applicable
(b)	508
(c)	104
Section 317 (a)(1)	503
(a)(2)	504
(b)	1003
Section 318 (a)	107
(b)	Not Applicable
(c)	107

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NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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Exhibit A Form of Supplemental Indenture

INDENTURE dated as of December 11, 2006, between ACADIA REALTY TRUST, a real estate investment trust formed under the laws of Maryland (the “Issuer”) and U.S. Bank National Association, as Trustee (the “Trustee”).

RECITALS OF THE ISSUER

The Issuer may issue from time to time for its lawful purposes securities (the “Securities”) evidencing its unsecured indebtedness and the Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of the Securities, unlimited as to principal amount, to have such titles, to bear such rates of interest, to mature at such time or times and to have such other provisions as shall be fixed as hereinafter provided.

All things necessary to make this Indenture a valid agreement of the Issuer, in accordance with its terms, have been done, and the Issuer proposes to do all things necessary to make the Securities, when the Securities are executed by the Issuer, authenticated and delivered by the Trustee hereunder and duly issued by the Issuer, the valid and legally binding obligations of the Issuer, as hereinafter provided.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or series thereof, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. *Definitions.*

For all purposes of this Indenture and all Securities issued hereunder, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article One have the meanings assigned to them in this Article One and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States at the date or time of such computation; and

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

Certain terms, used principally in Article Three and Article Six, are defined in those Articles.

"*Act*", when used with respect to any Holder, has the meaning specified in Section 104.

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

"*Authenticating Agent*" means any Person authorized to authenticate and deliver Securities on behalf of the Trustee for the Securities of any series pursuant to Section 614.

"*Board of Directors*" means, as the case may be, the board of trustees, board of directors or equivalent governing body of the Issuer, or any duly authorized committee of such board or governing body.

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

"*Business Day*" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which commercial banks are authorized or required by law, regulation or executive order to close in The City of New York; *provided, however*, that with respect to LIBOR Securities, the day is also a London Business Day.

"*Certificate of a Firm of Independent Public Accountants*" means a certificate signed by any firm of independent public accountants of recognized standing selected by the Issuer. The term "independent" when used with respect to any specified firm of public accountants means such a firm which (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Issuer or in any other obligor upon the Securities of any series or in any Affiliate of the Issuer or of such other obligor, and (3) is not connected with the Issuer or such other obligor or any affiliate of the Issuer or of such other obligor, as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions, but such firm may be the regular auditors employed by the Issuer. Whenever it is herein provided that any Certificate of a Firm of Independent Public Accountants shall be furnished to the Trustee for Securities of any series, such Certificate shall state that the signer has read this definition and that the signer is independent within the meaning hereof.

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

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

"*Corporate Trust Office*" means the office of the Trustee for Securities of any series at which at any particular time its corporate trust business shall be principally administered, which office of the Trustee, at the date of the execution of this Indenture, is located at 60 Livingston Avenue, St. Paul, Minnesota 55107-2292, Attention: Corporate Trust Administration or such other address as the Trustee

may designate from time to time by notice to the Holders and the Issuer, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer).

"*corporation*" includes corporations, limited liability companies, associations, companies and business trusts.

"*Defaulted Interest*" has the meaning specified in Section 307.

"*Depositary*" means, with respect to the Securities of any series issuable or issued in the form of a Global Security, the Person designated as Depositary by the Issuer pursuant to Section 301 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "Depositary" as used with respect to the Securities of any such series shall mean the Depositary with respect to the Securities of that series.

"*Dollars*" and the sign "*$*" mean the currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

"*Encumbrance*" means any mortgage, lien, charge, pledge or security interest of any kind.

"*Event of Default*" has the meaning specified in Section 501.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, as in force at the date as of which this Indenture was executed; *provided, however,* that in the event the Securities Exchange Act of 1934 is amended after such date, "Exchange Act" means, to the extent required by any such amendment, the Securities Exchange Act of 1934 as so amended.

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

"Global Securities" means Securities in global form.

"*Government Obligations*" means securities which are (i) direct obligations of the United States (or the government which issued the currency in which the Securities of a particular series are payable) or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States (or the government which issued the currency in which the Securities of such series are payable), the payment of which is unconditionally guaranteed by such government, which, in either case, are full faith and credit obligations of the United States (or the government which issued the currency in which the Securities of such series are payable) and are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust issuer as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

"*Holder*" means the Person in whose name a Security is registered in the Security Register.

"*Identifying Numbers*" has the meaning specified in Section 204.

"*Incur*" means issue, create, assume, guarantee, incur or otherwise become liable for; and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing.

"*Indebtedness*" means, with respect to the Issuer or any of its Subsidiaries (without duplication) any indebtedness of the Issuer or any of its respective Subsidiaries, (i) in respect of borrowed money, (ii) evidenced by bonds, notes, debentures or similar instruments, (iii) secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Issuer or any of its Subsidiaries, (iv) consisting of letters of credit or amounts representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable, or (v) consisting of capitalized leases, and also includes, to the extent not otherwise included, any obligation by the Issuer or any of its Subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), indebtedness of another person (other than the Issuer or its Subsidiaries); it being understood that indebtedness shall be deemed to be incurred by the Issuer or any of its Subsidiaries whenever it or that Subsidiary

creates, assumes, guarantees or otherwise becomes liable in respect thereof. Indebtedness of any Subsidiary existing prior to the time it became a Subsidiary of the Issuer shall be deemed to be incurred at the time that Subsidiary becomes a Subsidiary of the Issuer; and Indebtedness of a Person existing prior to a merger or consolidation of that person with the Issuer or any of its Subsidiaries in which that Person is the successor to the Issuer or that Subsidiary shall be deemed to be incurred upon the consummation of that merger or consolidation. Notwithstanding the preceding sentences of this definition, the term Indebtedness shall not include any indebtedness that had been the subject of an "in substance" defeasance in accordance with GAAP.

"*Indenture*" means this Indenture as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of a particular series of Securities established as contemplated by Section 301.

"*interest*" means, when used with respect to an OID Security which by its terms bears interest only after Maturity, interest payable after Maturity.

"*Interest Payment Date*" means, when used with respect to any Security, the Stated Maturity of an installment of interest on such Security.

"*Issue Date*" means the date on which the Securities of a particular series are originally issued under this Indenture.

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

"*Issuer Request*" and "*Issuer Order*" mean a written request or order signed in the name of the Issuer by any of the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President and by any of the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary of the Issuer, and delivered to the Trustee for Securities of the applicable series.

"*LIBOR*" means, with respect to any series of Securities, the rate specified as LIBOR for such Securities in accordance with Section 301.

"*LIBOR Security*" means any Security which bears interest at a floating rate calculated with reference to LIBOR.

"*London Business Day*" means, with respect to any LIBOR Security, a day on which commercial banks are open for business, including dealings in the LIBOR Currency, in London.

"*Maturity*" means, when used with respect to any Security, the date on which the principal (or, if the context so requires, in the case of an OID Security, a lesser amount) of that Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, request for redemption, repayment at the option of the holder, pursuant to any sinking fund or otherwise.

"Non-Recourse Indebtedness" means Indebtedness of, or a guarantee of other Indebtedness by, the Operating Partnership consisting of (i) letters of credit and trade payables incurred in the ordinary course of business, (ii) Indebtedness or a guarantee of Indebtedness as to which (A) the Operating Partnership does not provide credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) and is not directly or indirectly liable (as a guarantor or otherwise), except to the extent of the lender's or lenders' recourse against the specified property or properties securing such indebtedness, and (B) the lenders have been notified in writing that they will have recourse only against such property or properties and not to any other assets or equity interests of the Operating Partnership; provided, with respect to any Indebtedness described in this clause (ii), that recourse obligations or liabilities of the Operating Partnership arising solely in respect of customary indemnities (including, without limitation, indemnities for "bad boy" acts and environmental indemnities), covenants or warranties or representations in respect of any Indebtedness will not prevent such Indebtedness from being classified as Non-Recourse Indebtedness if other conditions described above are satisfied and (iii) non-recourse mezzanine loans secured by the direct and indirect ownership interests in the property-owning entity.

"*Notice of Default*" has the meaning specified in Section 501(3).

"*Obligations*" means the principal of (and premium, if any) and interest, if any, on the Securities and all other obligations of the Issuer, including, but not limited to, additional amounts due under Section 1011 and sinking fund payments, under the Indenture.

"*Officers' Certificate*" means a certificate signed by any of the Chairman of the Board of Directors, a Vice Chairman of the Board of the Directors, the Chief Executive Officer, the President or a Vice President, and by any of the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary of the Issuer, and delivered to the Trustee for the Securities of the applicable series.

"*Opinion of Counsel*" means a written opinion of counsel, who may be an employee of, or counsel to, the Issuer.

"*OID Security*" means a Security which provides for an amount (excluding any amounts attributable to accrued but unpaid interest thereon) less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502.

"*Operating Partnership*" means Acadia Realty Limited Partnership, a Delaware limited partnership, until a successor Person shall have become such pursuant to the applicable provisions of the Indenture, and thereafter "Operating Partnership" shall mean such successor Person.

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

(1) Securities theretofore cancelled by the Trustee for such Securities or delivered to such Trustee for cancellation;

(2) Securities or portions thereof for whose payment or redemption money in the necessary amount and in the required currency or currency unit has been theretofore deposited with the Trustee for such Securities or any Paying Agent (other than the Issuer or any other obligor upon the Securities) in trust or set aside and segregated in trust by the Issuer or any other obligor upon the Securities (if the Issuer or any other obligor upon the Securities shall act as its own Paying Agent) for the Holders of such Securities; *provided, however*, that, if such Securities or portions thereof are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture, or provision therefor satisfactory to such Trustee has been made; and

(3) Securities which have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented proof satisfactory to the Trustee for such Securities that any such Securities are held by a bona fide holder in due course;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders for quorum purposes, (a) Securities owned by the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee for such Securities shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of Trustee actually knows to be so owned shall be so disregarded (Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of such Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or of such other obligor), (b) the principal amount of an OID Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration pursuant to Section 502, and (c) the principal amount of a Security denominated in one or more foreign currencies or currency units shall be the Dollar equivalent, determined in the manner provided as contemplated by Section 301 on the date of original issuance of such Security, of the principal amount (or, in the case of an OID Security, the Dollar equivalent on the date of original issuance of such Security of the amount determined as provided in Clause (b) above) of such Security.

"*Paying Agent*" means U.S. Bank National Association or any other Person authorized by the Issuer to pay the principal of (and premium, if any) or interest, if any, on any Securities of any series on behalf of the Issuer.

"*Person*" means any individual, firm, corporation, partnership, association, joint venture, tribunal, limited liability company, trust, government or political subdivision or agency or instrumentality thereof, or any other entity or organization.

"*Place of Payment*" means, when used with respect to the Securities of any particular series, the place or places where the principal of (and premium, if any) and interest, if any, on the Securities of that series are payable, as contemplated by Section 301 and 1002.

"*Predecessor Security*" means, with respect to any particular Security, every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security, and, for the

purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Security.

"*Redemption Date*" means, when used with respect to any Security to be redeemed in whole or in part, the date fixed for such redemption by or pursuant to this Indenture.

"*Redemption Price*" means, when used with respect to any Security to be redeemed, the price at which it is to be redeemed pursuant to the terms of the Indenture or in any Security issued thereunder.

"*Regular Record Date*" means, with respect to the interest payable on any Interest Payment Date on the Securities of any series, the date, if any, specified for that purpose as contemplated by Section 301 whether or not a Business Day.

"*Responsible Officer*" means, when used with respect to the Trustee for any series of Securities, (i) any vice president, assistant vice president, assistant secretary, assistant treasurer or any trust officer of the Trustee or (ii) any other officer of the Corporate Trust Department of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject and who is charged with the administration of this Indenture and who shall have responsibility for the administration of this Indenture.

"*Securities*" means securities evidencing unsecured indebtedness of the Issuer authenticated and delivered under this Indenture.

"*Security Register*" and "*Security Registrar*" have the respective meanings specified in Section 305.

"*series*" of Securities means all Securities denoted as part of the same series authorized by or pursuant to a particular Board Resolution of the Issuer.

"*Significant Subsidiary*" means any Subsidiary of the Issuer which is a "significant subsidiary" (as defined in Article I, Rule 1-02 of Regulation S-X, promulgated under the Securities Act of 1933, as amended).

"*Special Record Date*" means, with respect to the payment of any Defaulted Interest on the Securities of any series, a date fixed by the Trustee for such series pursuant to Section 307.

"*Stated Maturity*" means, when used with respect to any Security or any installment of principal thereof or interest thereon, the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"*Subsidiary*" means, as to any person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of stock of such corporation shall have or might have voting power by reason of the lapse of time or the happening of any contingency) is at the time owned by such person directly or indirectly through Subsidiaries, and (b) any partnership, association, joint venture, limited liability company, trust or other entity in which such person directly or indirectly through Subsidiaries has more than a 50% equity interest or 50% Capital Percentage at any time. For the purpose of this definition, "Capital Percentage" means, with respect to the interest of the Issuer or one of its Subsidiaries in any partnership, association, joint venture, limited

liability company, trust or other entity, the percentage interest of such partnership, association, joint venture, limited liability company, trust or other entity based on the aggregate amount of net capital contributed by the Issuer or such Subsidiary in such partnership, association, joint venture, limited liability company, trust or other entity at the time of determination relative to all capital contributions made in such partnership, association, joint venture, limited liability company, trust or other entity at such time of determination.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, as in force at the date as of which this Indenture was executed; *provided, however*, that in the event the Trust Indenture Act is amended after such date, "Trust Indenture Act" means, to the extent required by any 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 Indenture and, subject to the provisions of Article Six hereof, shall also include its successors and assigns as Trustee hereunder. If there shall be at one time more than one Trustee hereunder, "*Trustee*" means each such Trustee and shall apply to each such Trustee only with respect to those series of Securities with respect to which it is serving as Trustee.

"*United States*" means, unless otherwise specified with respect to Securities of any series, the United States of America (including the states and the District of Columbia), its territories, its possessions (which include, at the date of this Indenture, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands) and other areas subject to its jurisdiction.

"*United States Alien*" has the meaning specified in Section 1011.

"*Yield to Maturity*" means, when used with respect to any OID Security, the yield to maturity, if any, set forth on the face thereof.

Section 102. *Compliance Certificates and Opinions.*

Upon any application or request by the Issuer to the Trustee for any series of Securities to take any action under any provision of this Indenture or any supplement hereto, the Issuer shall furnish to such Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate (other than certificates provided pursuant to Section 1004) or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;

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

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

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 103. *Form of Documents Delivered to Trustee.*

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Issuer may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, or a certificate or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the opinion, certificate or representations with respect to matters upon which his certificate or opinion is based are erroneous.

Any such Opinion of Counsel or certificate or representations may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Issuer, stating that the information with respect to such factual matters is in the possession of the Issuer unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 104. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing. Except as otherwise expressly provided herein or therein, such action shall become effective when such instrument or instruments are delivered to the Trustee for the appropriate series of Securities and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee for the appropriate series of Securities and the Issuer and any agent of such Trustee or the Issuer, if made in the manner provided in this Section 104. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1306.

The Issuer may at its discretion set a record date for purposes of determining the identity of Holders of Securities entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, but the Issuer shall have no obligation to do so. If not set by the Issuer prior to the first solicitation of Holders of Securities of a particular series made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be 30 days prior to the first solicitation of such vote or consent. Upon the fixing of such a record date, those persons who were Holders of Securities at such record date (or their duly designated proxies), and only those persons, shall be entitled with respect to such Securities to take such action by vote or consent

or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

(b) The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee for the appropriate series of Securities deems reasonably sufficient.

(c) The principal amount and serial numbers of Securities held by any Person, and the date of holding the same, shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee for such Securities, the Security Registrar, any Paying Agent or the Issuer in reliance thereon, whether or not notation of such action is made upon such Security.

Section 105. *Notices, Etc. to Trustee and the Issuer.*

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other documents provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee for a series of Securities by any Holder or by the Issuer shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with such Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, or if sent by facsimile transmission, to a facsimile number provided by the Trustee, with a copy mailed, first class postage prepaid to the Trustee addressed to it as provided above, or

(2) the Issuer by such Trustee or by any Holder shall be sufficient for every purpose hereunder (except as provided in paragraphs (3), (4) and (5) of Section 501) if furnished in writing and mailed, first class postage prepaid, addressed to the Issuer at the address of its principal office specified in the first paragraph of this Indenture or at any other address previously furnished in writing to such Trustee by the Issuer, or if sent by facsimile transmission, to a facsimile number provided to the Trustee by the Issuer, with a copy mailed, first class postage prepaid, to the Issuer addressed to it as provided above.

Section 106. *Notice to Holders; Waiver.*

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) to Holders of Securities if in writing and mailed, first class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice.

In any case where notice to Holders of Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Security shall affect the sufficiency of such notice with respect to other Holders of Securities. Any notice mailed in the manner prescribed by this Indenture shall be conclusively deemed to have been given whether or not received by any particular Holder. 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 of Securities by mail, then such

notification as shall be made with the reasonable approval of the Trustee for such Securities shall constitute a sufficient notification for every purpose hereunder.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee for such Securities, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 107. *Conflict with Trust Indenture Act.*

If any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 through 317, inclusive, of the Trust Indenture Act through the operation of Section 318(c) thereof, such imposed duties shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the provision shall be deemed to apply to the Indenture as so modified or excluded, as the case may be.

Section 108. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 109. *Successors and Assigns.*

All covenants and agreements in this Indenture by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 110. *Separability Clause.*

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 111. *Benefits of Indenture.*

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Security Registrar, an Authenticating Agent and their successors hereunder and the Holders of Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 112. *Governing Law.*

This Indenture and the Securities shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 113. *Non-Business Day.*

Unless otherwise stated with respect to Securities of any series, in any case where any Interest Payment Date, Redemption Date or Stated Maturity of a Security of any particular series shall not be a Business Day at any Place of Payment with respect to Securities of that series, then (notwithstanding any other provision of this Indenture or of the Securities) payment of principal of (and premium, if any) and

interest, if any, with respect to such Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

Section 114. *Immunity of Incorporators, Limited Partners, Shareholders, Trustees, Directors and Officers.*

No recourse shall be had for the payment of the principal of (and premium, if any), or the interest, if any, on any Security of any series, or for any claim based thereon, or upon any obligation, covenant or agreement of this Indenture, against any incorporator, limited partner, shareholder, trustee, director, officer or employee, as such, past, present or future, of the Issuer or of any successor entity to the Issuer, either directly or indirectly through the Issuer or any successor entity to the Issuer, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment of penalty or otherwise; it being expressly agreed and understood that this Indenture and all the Securities of each series are solely obligations of the Issuer, and that no personal liability whatever shall attach to, or is incurred by, any incorporator, limited partner, shareholder, trustee, director, officer or employee, past, present or future, of the Issuer or of any successor entity to the Issuer, either directly or indirectly through the Issuer or any successor corporation to the Issuer, because of the incurring of the indebtedness hereby authorized or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the Securities of any series, or to be implied herefrom or therefrom; and that all such personal liability is hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this Indenture and the issuance of the Securities of each series.

ARTICLE TWO

SECURITY FORMS

Section 201. *Forms of Securities.*

The Securities of each series shall be in such form or forms (including global form) as shall be established by or pursuant to a Board Resolution of the Issuer, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as the Issuer may reasonably deem appropriate and as may be required to comply with any law, with any rule or regulation made pursuant thereto, with any rules of any securities exchange, automated quotation system or clearing agency or to conform to usage, as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of such Securities. If temporary Securities of any series are issued in global form as permitted by Section 304, the form thereof shall be established as provided in the preceding sentence.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution thereof.

Section 202. *Form of Trustee's Certificate of Authentication.*

Subject to Section 614, the Certificate of Authentication on all Securities shall be in substantially the following form:

"This is one of the Securities of the series designated therein described in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By_____
Authorized Signatory

Section 203. *Securities in Global Form.*

If any Security of a series is issuable in global form, such Security may provide that it shall represent the aggregate amount of Outstanding Securities from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, of Outstanding Securities represented thereby shall be made by the Trustee and in such manner as shall be specified in such Security. Any instructions by the Issuer with respect to a Security in global form, after its initial issuance, shall be in writing but need not comply with Section 102.

Unless otherwise provided with respect to any series of Securities as contemplated by Section 301, Global Securities shall be issuable only in registered form without coupons, and may be issued in either temporary or permanent form.

Any Security issued in global form shall bear the following legend:

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN CERTIFICATED FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. [***If a Global Security is to be held by The Depository Trust Company, then insert:*** UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.]

Section 204. *CUSIP Numbers.*

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

ARTICLE THREE

THE SECURITIES

Section 301. *Title; Payment and Terms.*

The aggregate principal amount of Securities which may be authenticated and delivered and Outstanding under this Indenture is unlimited. The Securities may be issued up to the aggregate principal amount of Securities from time to time authorized by or pursuant to Board Resolutions of the Issuer.

The Securities may be issued in one or more series, each of which shall be issued pursuant to Board Resolutions of the Issuer. There shall be established in one or more Board Resolutions or pursuant to one or more Board Resolutions of the Issuer and, subject to Section 303, set forth in, or determined in the manner provided in, an Officers' Certificate of the Issuer, or established in one or more supplemental indentures hereto, prior to the issuance of Securities of any series all or any of the following, as the case may be (each of which, if so provided, may be determined from time to time by the Issuer with respect to unissued Securities of that series and set forth in the Securities of that series when issued from time to time):

(1) the title of the Securities of that series (which shall distinguish the Securities of that series from all other series of Securities);

(2) any limit upon the aggregate principal amount of the Securities of that series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of that series pursuant to Section 304, 305, 306, 906 or 1107) and whether additional Securities of that series may be issued without the consent of Holders of outstanding Securities of that series or any other series; in the event that additional Securities of such series may be so issued, the terms thereof shall indicate whether any such additional Securities shall have the same terms as the prior Securities of such series or whether the Issuer may establish additional or different terms with respect to such additional Securities;

(3) the date or dates (or manner of determining the same) on which the principal of the Securities of that series is payable (which, if so provided in such Board Resolutions, may be determined by the Issuer from time to time and set forth in the Securities of the series issued from time to time);

(4) the rate or rates (or the manner of calculation thereof) at which the Securities of that series shall bear interest (if any), the date or dates from which such interest shall accrue, the

Interest Payment Dates on which such interest shall be payable (or manner of determining the same) and the Regular Record Date (or the method by which such date shall be determined) for the interest payable on any Securities on any Interest Payment Date, the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months and the extent to which, or the manner in which, any interest payable on any temporary Global Security on an Interest Payment Date, shall be paid if other than in the manner provided in Section 307;

(5) the place or places where, subject to the provisions of Section 1002, the principal of (and premium, if any) and interest, if any, on Securities of that series shall be payable, any Securities of that series may be surrendered for registration of transfer, any Securities of that series may be surrendered for exchange, and notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served;

(6) the period or periods within which (or manner of determining the same), the price or prices at which (or manner of determining the same), and the terms and conditions upon which Securities of that series may be redeemed, in whole or in part, at the option of the Issuer, if the Issuer is to have the option;

(7) the obligation, if any, of the Issuer to redeem, repay or purchase Securities of that series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof, and the period or periods within which (or manner of determining the same), the price or prices at which (or manner of determining the same), the currency or currency unit in which, and the terms and conditions upon which, Securities of that series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(8) if other than denominations of $1,000 and integral multiples of $1,000 in excess thereof, the denominations in which any Securities of that series shall be issuable;

(9) the percentage or other principal amount at which Securities of that series shall be issued and, if other than the principal amount thereof, the portion of the principal amount of Securities of that series which shall be payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502;

(10) the inapplicability of any Event of Default or covenant set forth in Article Ten hereof to the Securities of that series, or the applicability of any other Events of Defaults or covenants in addition to the Events of Default or covenants set forth herein to Securities of that series;

(11) if a Person other than U.S. Bank National Association is to act as Trustee for the Securities of that series, the name and location of the Corporate Trust Office of such Trustee;

(12) the currency, currencies or currency units in which payment of the principal of (and premium, if any) and interest, if any, on any Securities of that series shall be payable if other than Dollars and the manner of determining the equivalent thereof in Dollars for any purpose, including for purposes of the definition of "Outstanding" in Section 101;

(13) if the principal of (or premium, if any) or interest, if any, on any Securities of that series is to be payable, at the election of the Issuer or a Holder thereof, in one or more currencies or currency units other than that or those in which the Securities are stated to be payable, the currency, currencies or currency units in which payment of the principal of (and premium, if any) and interest, if any, on Securities of such series as to which such election is made shall be

payable, and the periods within which and the terms and conditions upon which such election is to be made;

(14) if the amount of payments of principal of (or premium, if any) or interest on the Securities of such series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts shall be determined;

(15) if the Securities of that series do not bear interest, the applicable dates for purposes of Section 701;

(16) if other than as set forth in Article Four, provisions for the satisfaction and discharge of this Indenture with respect to the Securities of that series;

(17) the date as of which any Global Security representing Outstanding Securities of that series shall be dated if other than the date of original issuance of the first Security of that series to be issued;

(18) whether the Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities and, in such case, for such Global Security or Securities, whether such global form shall be permanent or temporary;

(19) if Securities of the series are to be issuable initially in the form of a temporary Global Security, the circumstances under which the temporary Global Security can be exchanged for definitive Securities;

(20) the extent and manner, if any, to which payment on or in respect of Securities of that series shall be subordinated to the prior payment of other liabilities and obligations of the Issuer;

(21) whether and under what circumstances, if any, the Issuer shall pay additional amounts as contemplated by Section 1011 on the Securities of the series to any Holder who is not a United States person (including any modification to the definition of such term) in respect of any tax, assessment or governmental charge and, if so, whether the Issuer shall have the option to redeem such Securities rather than pay such additional amounts (and the terms of any such option);

(22) whether and under what circumstances, if any, Securities of that series are convertible into common shares of the Issuer or are convertible into or exchangeable for other securities of the Issuer or another issuer;

(23) whether Securities of that series are to be issuable in bearer form and any additions or changes to any of the provisions of this Indenture as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons;

(24) the applicability, if any, of Sections 402 and/or 403 to the Securities of the series and any provisions in modification of, in addition to or in lieu of any of the provisions of Article Four; and

(25) any other terms of that series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any particular series shall be substantially identical except as to denomination and the date from which interest, if any, shall accrue, and except as may otherwise be provided in or pursuant to such Board Resolutions and set forth in such Officers' Certificate relating thereto or provided in or pursuant to any supplemental indenture hereto. The terms of such Securities, as set forth above, may be determined by the Issuer from time to time if so provided in or established pursuant to the authority granted in Board Resolutions. All Securities of any one series need not be issued at the same time, and unless otherwise provided, a series may be reopened for issuance of additional Securities of such series.

Prior to the delivery of a Security of any series in any such form to the Trustee for the Securities of such series for authentication, the Issuer shall deliver to such Trustee the following:

(1) The Board Resolutions of the Issuer by or pursuant to which such form of Security have been approved and, if applicable, the supplemental indenture by or pursuant to which such form of Security has been approved;

(2) An Officers' Certificate of the Issuer dated the date such Certificate is delivered to such Trustee satisfying the requirements of Sections 102 and 103, and stating that all conditions precedent provided for in this Indenture relating to the authentication and delivery of Securities in such forms have been complied with; and

(3) An Opinion of Counsel satisfying the requirements of Sections 102 and 103 substantially to the effect that Securities in such forms, when (a) completed by appropriate insertions and executed and delivered by the Issuer to such Trustee for authentication in accordance with this Indenture, (b) authenticated and delivered by such Trustee in accordance with this Indenture, and (c) issued by the Issuer in the manner and subject to the conditions specified in such Opinion of Counsel, shall constitute the legal, valid and binding obligations of the Issuer, subject to the effects of applicable bankruptcy, reorganization, fraudulent conveyance, moratorium, insolvency and other similar laws generally affecting creditors' rights, to general equitable principles, to an implied covenant of good faith and fair dealing and to such other qualifications as such counsel shall conclude do not materially affect the rights of Holders of such Securities.

Section 302. *Denominations.*

Unless otherwise provided with respect to any series of Securities as contemplated by Section 301, Securities shall be issuable only in registered form without coupons. Unless otherwise provided with respect to any series of Securities as contemplated by Section 301, any Securities of a series other than Global Securities (which may be of any denomination) shall be issuable in denominations of $1,000 and integral multiples of $1,000 in excess thereof.

Section 303. *Execution, Authentication, Delivery and Dating.*

The Securities shall be executed on behalf of the Issuer by the Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, or the President, Chief Executive Officer or one of the Vice Presidents of the Issuer, under the seal of the Issuer reproduced thereon. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Issuer shall bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Securities of any series, executed by the Issuer to the Trustee for the Securities of such series for authentication, together with an Issuer Order for the authentication and delivery of such Securities, which Issuer Order shall set forth the number of separate Securities certificates, the principal amount of each of the Securities to be authenticated, the date on which the original issue of Securities is to be authenticated, the registered holder or each of such Securities and delivery instructions, and such Trustee, in accordance with the Issuer Order, shall authenticate and deliver such Securities. If any Security shall be represented by a permanent Global Security, then,

for purposes of this Section 303 and Section 304, the notation of a beneficial owner's interest therein upon original issuance of such Security or upon exchange of a portion of a temporary Global Security shall be deemed to be delivery in connection with the original issuance of such beneficial owner's interest in such permanent Global Security. If all the Securities of any one series are not to be issued at one time and if a Board Resolution of the Issuer relating to such Securities shall so permit, such Issuer Order may set forth procedures acceptable to the Trustee for the issuance of such Securities, including, without limitation, procedures with respect to interest rate, Stated Maturity, date of issuance and date from which interest, if any, shall accrue.

Notwithstanding any contrary provision herein, if all Securities of a series are not to be originally issued at one time, it shall not be necessary for the Issuer to deliver the Board Resolution, Officers' Certificate and Opinion of Counsel otherwise required pursuant to Sections 102 and 301 at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein manually executed by the Trustee for such Security or on its behalf pursuant to Section 614, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

In case any Securities shall have been authenticated, but not delivered, by the Trustee or the Authenticating Agent for such series then in office, any successor by merger, conversion or consolidation to such Trustee, or any successor Authenticating Agent, as the case may be, may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee or successor Authenticating Agent had itself authenticated such Securities.

Each Depositary designated pursuant to Section 301 for a Global Security in registered form must, at the time of its designation and at all times while it serves as Depositary, be a clearing agency registered under the Exchange Act and any other applicable statute or regulation.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section 303 if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

Section 304. *Temporary Securities and Exchange of Securities.*

Pending the preparation of definitive Securities of any particular series, the Issuer may execute, and upon Issuer Order the Trustee for the Securities of such series shall authenticate and deliver, in the manner specified in Section 303, temporary Securities which are printed, lithographed, typewritten, photocopied or otherwise produced, in any denomination, with like terms and conditions as the definitive

Securities of like series in lieu of which they are issued in registered form, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities. Any such temporary Securities may be in global form, representing such of the Outstanding Securities of such series as shall be specified therein.

If temporary Securities of any particular series are issued, the Issuer shall cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of such definitive Securities, the temporary Securities of such series shall be exchangeable for such definitive Securities of a like Stated Maturity and with like terms and provisions upon surrender of the temporary Securities of such series at the office or agency of the Issuer in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any particular series, the Issuer shall execute and (in accordance with an Issuer Order delivered at or prior to the authentication of the first definitive Security of such series) the Trustee for the Securities of such series shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series and of a like Stated Maturity and with like terms and provisions. Until exchanged as hereinabove provided, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series and with like terms and conditions, except as to payment of interest, if any, authenticated and delivered hereunder.

Any temporary Global Security and any permanent Global Security shall, unless otherwise provided therein, be delivered to the Depositary designated pursuant to Section 301.

Section 305. *Registration, Registration of Transfer and Exchange.*

The Issuer shall cause to be kept at the Corporate Trust Office of the Trustee for the Securities of each series a register (the register maintained in such office being herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the

registration of Securities and of transfers of Securities. The Trustee for the Securities of each series is hereby initially appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities of such series as herein provided.

Upon surrender for registration of transfer of any Security of any particular series at the office or agency of the Issuer in a Place of Payment for that series, the Issuer shall execute, and the Trustee for the Securities of each series shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations, and of a like Stated Maturity and of a like series and aggregate principal amount and with like terms and conditions.

Except as set forth below, at the option of the Holder, Securities of any particular series may be exchanged for other Securities of any authorized denominations, and of a like Stated Maturity and of a like series and aggregate principal amount and with like terms and conditions upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Issuer shall execute, and the Trustee for such Securities shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding any other provision of this Section 305 or Section 304, unless and until it is exchanged in whole or in part for Securities in definitive form, a Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

If at any time the Depositary for Securities of a series notifies the Issuer that it is unwilling or unable to continue as Depositary for the Securities of such series or if at any time the Depositary for the Securities of such series shall no longer be eligible under Section 303, the Issuer shall appoint a successor Depositary with respect to the Securities for such series. If (i) a successor Depositary for the Securities of such series is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, (ii) the Issuer delivers to the Trustee for Securities of such series an Issuer Order stating that the Securities of such series shall be exchangeable, or (iii) an Event of Default under Section 501 hereof has occurred and is continuing with respect to the Securities of such series, the Trustee, upon receipt of an Issuer Order for the authentication and delivery of definitive Securities of such series, shall authenticate and deliver Securities of such series in definitive form in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such series in exchange for such Global Security or Securities.

The Issuer may at any time and in its sole discretion determine that the Securities of any series issued in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In such event the Issuer shall execute, and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of definitive Securities of such series, shall authenticate and deliver, Securities of such series in definitive form and in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such series in exchange for such Global Security or Securities.

Upon the exchange of a Global Security for Securities in definitive form representing the aggregate principal amount of such Global Security, such Global Security shall be cancelled by the Trustee. Securities issued in exchange for a Global Security pursuant to this Section 305 shall be registered in such names and in such authorized denominations as the Depositary for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee in writing. The Trustee shall deliver such Security to the persons in whose names such Securities are so registered.

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

Every Security presented or surrendered for registration of transfer or exchange shall (if so required by the Issuer or the Trustee for such Security) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Security Registrar for such series duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 906 or 1107 not involving any transfer.

The Issuer shall not be required (i) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption under Section 1104 and ending at the close of business on the day of the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Security so selected for redemption as a whole or in part, except the unredeemed portion of any Security being redeemed in part.

Section 306. *Mutilated, Destroyed, Lost and Stolen Securities.*

If (i) any mutilated Security is surrendered to the Trustee for such Security or the Issuer and the Trustee for a Security receive evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) there is delivered to the Issuer and such Trustee such security or indemnity as may be required by either of them to save each of them and any agent of either of them harmless from any loss or liability which any of them may suffer if a Security is replaced and subsequently presented or claimed for payment, then, in the absence of notice to the Issuer or such Trustee that such Security has been acquired by a bona fide purchaser, the Issuer shall execute and upon its request such Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security or in exchange for such mutilated Security a new Security of the same series and in a like principal amount and of a like Stated Maturity and with like terms and conditions, and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Security, pay such Security (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Issuer and the Trustee for such Security such security or indemnity as may be required by either of them to save each of them harmless from any loss or liability which either of them may suffer if a Security is replaced and subsequently presented or claimed for payment, and in case of destruction, loss or theft, evidence satisfactory to the Issuer and such Trustee and any agent of any of them of the destruction, loss or theft of such Security and the ownership thereof.

Upon the issuance of any new Security under this Section 306, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including all fees and expenses of the Trustee for such Security) connected therewith.

Every new Security of any series issued pursuant to this Section 306 in lieu of any destroyed, lost or stolen Security or in exchange for any mutilated Security shall constitute an original additional contractual obligation of the Issuer whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and each such new Security shall be at any time enforceable by anyone, and each such new Security shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder.

The provisions of this Section 306 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 307. *Payment of Interest; Interest Rights Preserved.*

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall, if so provided in such Security, be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest payment.

Unless otherwise provided with respect to the Securities of any series, payment of interest may be made at the Corporate Trust Office or, at the option of the Issuer may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer of funds to the Person entitled thereto at a bank account maintained within the United States.

Any interest on any Security of any particular series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called “Defaulted Interest”) shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Issuer at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of that series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee for the Securities of such series in writing of the amount of Defaulted Interest proposed to be paid on each Security of that series and the date of the proposed payment, and at the same time the Issuer shall deposit with such Trustee an amount of money in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series), equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to such Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon such Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which

shall not be more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by such Trustee of the notice of the proposed payment. Such Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of that series at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Securities of that series (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

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

Subject to the foregoing provisions of this Section 307 and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 308. *Persons Deemed Owners.*

Prior to due presentment of a Security for registration of transfer, the Issuer, the Trustee for such Security and any agent of the Issuer or such Trustee may treat the Person in whose name any such Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 307) interest, if any, on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and none of the Issuer, such Trustee or any agent of the Issuer or such Trustee shall be affected by notice to the contrary.

None of the Issuer, the Trustee, any Paying Agent or the Security Registrar 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 Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 309. *Cancellation.*

All Securities surrendered for payment, redemption, registration of transfer or exchange, or delivered in satisfaction of any sinking fund payment, shall, if surrendered to any Person other than the Trustee for such Securities, be delivered to such Trustee and shall be promptly cancelled by it. The Issuer may at any time deliver to the Trustee for Securities of a series for cancellation any Securities previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by such Trustee. Notwithstanding any other provision of this Indenture to the contrary, in the case of a series, all the Securities of which are not to be originally issued at one time, a Security of such series shall not be deemed to have been Outstanding at any time hereunder if and to the extent that, subsequent to the authentication and delivery thereof, such Security is delivered to the Trustee for such Security for cancellation by the Issuer or any agent thereof upon the failure of the original purchaser thereof to make payment therefor against delivery thereof, and any Security so delivered to such Trustee shall be promptly cancelled by it. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 309, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee for such Securities shall be disposed of by such Trustee in accordance with its standard procedures and a certificate of disposition evidencing such disposition of Securities shall be provided to the Issuer, upon its written request therefor, by such Trustee.

Section 310. *Computation of Interest.*

Except as otherwise specified as contemplated by Section 301 for Securities of any particular series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE FOUR

SATISFACTION AND DISCHARGE

Section 401. *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Issuer may, at the option of its Board of Directors evidenced by a Board Resolution set forth in an Officers' Certificate, at any time, with respect to the Securities of any series, elect to have either Section 402 or 403 be applied to all of the Outstanding Securities of that series upon compliance with the conditions set forth below in this Article Four.

Section 402. *Legal Defeasance and Discharge.*

Upon the Issuer's exercise under Section 401 of the option applicable to this Section 402, the Issuer shall be deemed to have been discharged from its obligations with respect to all Outstanding Securities of the particular series on the date the conditions set forth below are satisfied with respect to that series (hereinafter, "Legal Defeasance"). For this purpose, such Legal Defeasance means that the Issuer shall be deemed to have paid and discharged all the obligations relating to the Outstanding Securities of that series and the Securities of that series shall thereafter be deemed to be "outstanding"

only for the purposes of Section 406, Section 408 and the other Sections of this Indenture referred to below in this Section 402, and to have satisfied all of its other obligations under such Securities and this Indenture with respect to that series and cured all then existing Events of Default (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of Outstanding Securities of the particular series to receive payments in respect of the principal of (and premium, if any) and interest, if any, on such Securities when such payments are due or on the Redemption Date solely out of the trust created pursuant to this Indenture; (b) the Issuer's obligations with respect to such Securities concerning issuing temporary Securities of that series, or, where relevant, registration of such Securities, mutilated, destroyed, lost or stolen Securities of that series and the maintenance of an office or agency for payment and money for Security payments held in trust; (c) the rights, powers, trusts, duties and immunities of the Trustee for the Securities of that series, and the Issuer's obligations in connection therewith; (e) the payment of additional amounts, if any, on such Securities as contemplated by Section 1011; and (f) this Article Four and the obligations set forth in Section 406 hereof.

Subject to compliance with this Article Four, the Issuer may exercise its option under Section 402 notwithstanding the prior exercise of its option under Section 403 with respect to the Securities of a particular series.

Section 403. *Covenant Defeasance.*

Upon the Issuer's exercise under Section 401 of the option applicable to this Section 403, (i) the Issuer shall be released from any obligations under the covenants contained in Section 704, Section 801, Sections 1004 through 1009, inclusive, and such other obligations as shall be set forth in any supplemental indenture for the Securities of a series and (ii) the occurrence of any event specified in Sections 501(3), 501(4) (with respect to any of Section 704, Section 801, Sections 1004 through 1009, inclusive, and such other obligations as shall be set forth in any supplemental indenture for the Securities of that series), 501(5) and 501(8) shall be deemed not to be or result in an Event of Default, in each case, with respect to the Outstanding Securities of the particular series, on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Securities of that series shall thereafter be deemed not "Outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "Outstanding" for all other purposes hereunder (it being understood that such Securities shall not be deemed outstanding for accounting purposes). For this purpose, such Covenant Defeasance means that, with respect to the Outstanding Securities of that series, the Issuer may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or Event of Default under subsection 501(3) but, except as specified above, the remainder of this Indenture and the Securities of that series shall be unaffected thereby.

Section 404. *Conditions to Legal or Covenant Defeasance.*

The following shall be the conditions to the application of either Section 402 or Section 403 to the Outstanding Securities of a particular series:

(a) the Issuer must irrevocably deposit, or cause to be irrevocably deposited, with the Trustee for the Securities of that series, in trust, for the benefit of the Holders of the Securities of that series, cash in the currency or currency unit in which the Securities of that series are payable

(except as otherwise specified pursuant to Section 301 for the Securities of that series), Government Obligations or a combination thereof in such amounts as shall be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay (i) the principal of (and premium, if any) and interest, if any, due on the outstanding Securities of that series, or on the applicable Redemption Date, as the case may be, with respect to the outstanding Securities of that series; and (ii) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities;

(b) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee for the Securities of that series an Opinion of Counsel in the United States reasonably acceptable to such Trustee confirming that, subject to customary assumptions and exclusions, (1) the Issuer has received from, or there has been published by, the U.S. Internal Revenue Service a ruling or (2) since the Issue Date, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel in the United States shall confirm that, subject to customary assumptions and exclusions, the Holders of the Outstanding Securities of that series shall not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and shall be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee for the Securities of that series an Opinion of Counsel in the United States reasonably acceptable to such Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Outstanding Securities of that series shall not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and shall be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Event of Default or event which with the giving of notice or the lapse of time, or both, would become an Event of Default with respect to the Securities of that series shall have occurred and be continuing on the date of such deposit and no Event of Default under Section 501(5) or Section 501(6) shall have occurred and be continuing on the 123rd day after such date;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any material agreement or instrument to which the Issuer is a party or by which the Issuer is bound; and

(f) the Issuer shall have delivered to the Trustee for the Securities of that series an Officers' Certificate and an Opinion of Counsel in the United States (which opinion of counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 405. *Satisfaction and Discharge of Indenture.*

This Indenture shall be discharged and shall cease to be of further effect as to all Securities of any particular series issued hereunder when either (i) all Securities of that series theretofore authenticated and delivered (except (A) lost, stolen or destroyed Securities which have been replaced or paid as provided in Section 306, and (B) Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer or discharged from such trust, as provided in the last paragraph of Section

1003) have been delivered to the Trustee for the Securities of that series for cancellation or (ii) (A) all Securities of that series not theretofore delivered to the Trustee for cancellation are due and payable by their terms within one year or have become due and payable by reason of the making of a notice of redemption and the Issuer has irrevocably deposited or caused to be deposited with such Trustee as trust funds in trust an amount of cash in any combination of currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay and discharge the entire indebtedness on such Securities delivered to the Trustee for the Securities of that series for cancellation for principal (and premium, if any) and accrued and unpaid interest, if any, to the Stated Maturity or Redemption Date, as the case may be; (B) no Event of Default or event which with the giving of notice or the lapse of time, or both, would become an Event of Default shall have occurred and be continuing on the date of such deposit and no Event of Default under Section 501(5) or Section 501(6) shall have occurred and be continuing on the 123rd day after such date; (C) the Issuer has paid, or caused to be paid, all sums payable by it under this Indenture; and (D) the Issuer has delivered irrevocable instructions to the Trustee for the Securities of that series under this Indenture to apply the deposited money toward the payment of such Securities at the Stated Maturity or the Redemption Date, as the case may be. In addition, the Issuer must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee for the Securities of that series stating that all conditions precedent to satisfaction and discharge have been satisfied.

Section 406. *Survival of Certain Obligations.*

Notwithstanding the satisfaction and discharge of this Indenture and of the Securities of a particular series referred to in Sections 401, 402, 404, or 405, the respective obligations of the Issuer and the Trustee for the Securities of a particular series under Sections 303, 304, 305, 309, 407, 408, 409, 410, and 508, Article Six, and Sections 701, 702, 1002, 1003 and 1005, shall survive with respect to Securities of that series until the Securities of that series are no longer outstanding, and thereafter the obligations of the Issuer and the Trustee for the Securities of a particular series with respect to that series under Sections 407, 408, 409, and 410 shall survive such satisfaction and discharge. Nothing contained in this Article Four shall abrogate any of the obligations or duties of the Trustee of any series of Securities under this Indenture.

Section 407. *Acknowledgment of Discharge by Trustee.*

Subject to Section 410, after (i) the conditions of Section 404 or 405 have been satisfied with respect to the Securities of a particular series, (ii) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer and (iii) the Issuer has delivered to the Trustee for the Securities of that series an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent referred to in clause (i) above relating to the satisfaction and discharge of this Indenture have been complied with, the Trustee for the Securities of that series upon written request shall acknowledge in writing the discharge of all of the Issuer's obligations under this Indenture except for those surviving obligations specified in this Article Four.

Section 408. *Application of Trust Moneys.*

All money and Government Obligations deposited with the Trustee for the Securities of a particular series pursuant to Section 404 or 405 in respect of the Securities of that series shall be held in trust and applied by it, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of the Securities of all sums due and to become due thereon for principal (and premium, if any) and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee for the Securities of a particular series against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 404 or 405 with respect to the Securities of that series or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of outstanding Securities of that series.

Section 409. *Repayment to the Issuer; Unclaimed Money.*

The Trustee and any Paying Agent for a series of Securities shall promptly pay or return to the Issuer upon Issuer Order any cash or Government Obligations held by them at any time that are not required for the payment of the principal of (and premium, if any) and interest, if any, on the Securities for which cash or Government Obligations have been deposited pursuant to Section 404 or 405.

Any money deposited with the Trustee or any Paying Agent for the Securities of any series, or then held by the Issuer, in trust for the payment of the principal of (and premium, if any) and interest, if any, on any Security of any particular series and remaining unclaimed for two years after such principal (and premium, if any) and interest, if any, has become due and payable shall, unless otherwise required by mandatory provisions of applicable escheat, or abandoned or unclaimed property law, be paid to the Issuer on Issuer Request or (if then held by the Issuer) shall be discharged from such trusts; and the Holder of such Security shall, thereafter, as an unsecured general creditor, look only to the Issuer for payment thereof, and all liability of such Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; *provided, however*, that such Trustee or such Paying Agent, before being required to make any such repayment may give written notice to the Holder of such Security in the manner set forth in Section 106, that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining shall, unless otherwise required by mandatory provisions of applicable escheat, or abandoned or unclaimed property law, be repaid to the Issuer, as the case may be.

Section 410. *Reinstatement.*

If the Trustee or Paying Agent for a series of Securities is unable to apply any cash or Government Obligations, as the case may be, in accordance with Section 402, 403, 404 or 405 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Securities of that series shall be revived and reinstated as though no deposit had occurred pursuant to Section 402, 403, 404 or 405 until such time as the Trustee or Paying Agent for that series is permitted to apply all such cash or Government Obligations in accordance with Section 402, 403, 404 or 405; *provided, however*, that if the Issuer has made any payment of principal (and premium, if any) and interest, if any, on any Securities because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the cash or Government Obligations, as the case may be, held by such Trustee or Paying Agent.

ARTICLE FIVE

REMEDIES

Section 501. *Events of Default.*

"Event of Default" means, wherever used herein with respect to any particular series of Securities, any one of the following events and such other events as may be established with respect to the Securities of such series as contemplated by Section 301 (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any installment of interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; or

(2) default in the payment of the principal of (or premium, if any, on) any Security of that series at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of any Security of that series; or

(4) default in the performance of, or breach of, any covenant or warranty of the Issuer in respect of any Security of that series contained in this Indenture or in such Securities (other than a covenant a default in whose performance or whose breach is elsewhere in this Section 501 specifically dealt with) and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Issuer by the Trustee for the Securities of such series or to the Issuer and such Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) a default under any bond, debenture, note or other evidence of indebtedness of the Issuer or under any mortgage, indenture or other instrument of the Issuer (including a default with respect to Securities of any series other than that series) under which there may be issued or by which there may be secured any indebtedness of the Issuer (or by any of its Subsidiaries, the repayment of which the Issuer have guaranteed or for which the Issuer are directly responsible or liable as obligor or guarantor), whether such indebtedness now exists or shall hereafter be created, which default shall constitute a failure to pay an aggregate principal amount exceeding $25,000,000 of such indebtedness when due and payable which shall continue after the expiration of any applicable grace period with respect thereto or shall have resulted in such indebtedness in an aggregate principal amount exceeding $25,000,000 becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 30 days after there shall have been given, by registered or certified mail, to the Issuer by the Trustee or to the Issuer and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default and requiring the Issuer to cause such indebtedness to be discharged or cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(6) the Issuer or any of the Significant Subsidiaries of the Issuer shall commence any case or proceeding seeking to have an order for relief entered on its behalf as debtor or to

adjudicate it as bankrupt or insolvent or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts or any other relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or the Issuer or any of the Significant Subsidiaries of the Issuer shall apply for a receiver, custodian or trustee (other than any trustee appointed as a mortgagee or secured party in connection with the issuance of indebtedness for borrowed money of the Issuer) of it or for all or a substantial part of its property; or the Issuer or any of the Significant Subsidiaries of the Issuer shall make a general assignment for the benefit of creditors; or the Issuer or any of the Significant Subsidiaries of the Issuer shall take any corporate action in furtherance of any of the foregoing; or

(7) an involuntary case or other proceeding shall be commenced against the Issuer or any of the Significant Subsidiaries of the Issuer with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect seeking the appointment of a trustee, receiver, liquidator, custodian or similar official of the Issuer or any of the Significant Subsidiaries of the Issuer or any substantial part of their respective property; and such case or other proceeding (A) results in the entry of an order for relief or a similar order against the Issuer or any of the Significant Subsidiaries of the Issuer or (B) shall continue unstayed and in effect for a period of 60 consecutive days; or

(8) any other Event of Default provided with respect to Securities of that series.

Section 502. *Acceleration of Maturity; Rescission and Annulment.*

If an Event of Default with respect to any particular series of Securities occurs and is continuing (other than an Event of Default described in Section 501(6) or (7) with respect to the Issuer or any Significant Subsidiary of the Issuer), then and in every such case either the Trustee for the Securities of such series or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the entire principal amount (or, in the case of OID Securities, such lesser amount as may be provided for in the terms of that series) of all the Securities of that series, to be due and payable immediately, by a notice in writing to the Issuer (and to such Trustee if given by Holders), and upon any such declaration of acceleration such principal or such lesser amount, as the case may be, together with accrued interest and all other amounts owing hereunder, shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.

If any Event of Default specified in Section 501(6) or (7) occurs with respect to the Issuer or any Significant Subsidiary of the Issuer, all of the unpaid principal amount (or, if the Securities of any series then outstanding are OID Securities, such lesser amount as may be provided for in the terms of that series) and accrued interest on all Securities of each series then outstanding shall *ipso facto* become and be immediately due and payable without any declaration or other act by the Trustee or any Holder.

At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee for the Securities of any series as hereinafter provided in this Article Five, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Issuer and such Trustee, may rescind and annul such declaration and its consequences if:

(1) the Issuer has paid or deposited with such Trustee a sum sufficient to pay in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series):

(A) all overdue interest on all Securities of that series;

(B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon from the date such principal became due at a rate per annum equal to the rate borne by the Securities of such series (or, in the case of OID Securities, the Securities' Yield to Maturity), to the extent that the payment of such interest shall be legally enforceable;

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at a rate per annum equal to the rate borne by the Securities of such series (or, in the case of OID Securities, the Securities' Yield to Maturity); and

(D) all sums paid or advanced by such Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of such Trustee, its agents and counsel and all other amounts due to such Trustee under Section 607;

and

(2) all Events of Default with respect to the Securities of such series, other than the nonpayment of the principal of Securities of that series which has become due solely by such acceleration, have been cured or waived as provided in Section 513. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

The Issuer covenants that if:

(1) default is made in the payment of any interest upon any Security of any series when such interest becomes due and payable and such default continues for a period of 30 days; or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security of any series at its Maturity;

the Issuer shall, upon demand of the Trustee for the Securities of such series, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest, if any, with interest upon the overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest at a rate per annum equal to the rate borne by such Securities (or, in the case of OID Securities, the Securities' Yield to Maturity); and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of such Trustee, its agents and counsel and all other amounts due to such Trustee under Section 607.

If the Issuer fails to pay such amounts forthwith upon such demand, such Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding against the Issuer for the collection of the sums so due and unpaid, and may prosecute such proceedings to judgment or final decree, and may enforce the same against the Issuer or any other obligor upon the Securities of such series and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer or any other obligor upon the Securities of such series, wherever situated.

If an Event of Default with respect to Securities of any particular series occurs and is continuing, the Trustee for the Securities of such series may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of that series by such appropriate judicial proceedings as such Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 504. *Trustee May File Proofs of Claim.*

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relating to the Issuer or any other obligor upon the Securities of any series or the property of the Issuer or of such other obligor or their creditors, the Trustee for the Securities of such series (irrespective of whether the principal (or, if the Securities of such series are OID Securities, such amount as may be due and payable with respect to such Securities pursuant to a declaration in accordance with Section 502) of any Security of such series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether such Trustee shall have made any demand on the Issuer for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of principal (or, if the Securities of such series are OID Securities, such amount as may be due and payable with respect to such Securities pursuant to a declaration in accordance with Section 502) (and premium, if any) and interest, if any, owing and unpaid in respect of the Securities of such series and to file such other papers or documents as may be necessary or advisable in order to have the claims of such Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of such Trustee, its agents and counsel and all other amounts due to such Trustee under Section 607) and of the Holders of the Securities of such series allowed in such judicial proceeding; and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Holder of Securities to make such payments to such Trustee, and in the event that such Trustee shall consent to the making of such payments directly to the Holders of Securities, to pay to such Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of such Trustee, its agents and counsel, and any other amounts due such Trustee under Section 607.

Nothing herein contained shall be deemed to authorize the Trustee for the Securities of any series to authorize or consent to or accept or adopt on behalf of any Holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities of such series or the rights of any Holder thereof, or to authorize the Trustee for the Securities of any series to vote in respect of the claim of any Holder in any such proceeding for the election of a trustee in bankruptcy or other person performing similar functions.

Section 505. *Trustee May Enforce Claims Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee for the Securities of any series without the possession of any of the Securities of such series or the production thereof in any proceeding relating thereto, and any such

proceeding instituted by such Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of such Trustee, its agents and counsel and all other amounts due to such Trustee under Section 607, be for the ratable benefit of the Holders of the Securities of such series in respect of which such judgment has been recovered.

Section 506. *Application of Money Collected.*

Any money collected by the Trustee for the Securities of any series pursuant to this Article Five with respect to the Securities of such series shall be applied in the following order, at the date or dates fixed by such Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, if any, upon presentation of the Securities of such series, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due such Trustee under Section 607;

SECOND: To the payment of the amounts then due and unpaid upon the Securities of such series for principal of (and premium, if any) and interest, if any, on such Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, if any, respectively; and

THIRD: The balance, if any, to the Issuer.

Section 507. *Limitation on Suits.*

No Holder of any Security of any particular series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) an Event of Default with respect to that series shall have occurred and be continuing and such Holder shall have previously given written notice to the Trustee for the Securities of such series of such default and the continuance thereof;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee for the Securities of such series to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to such Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) such Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to such Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more Holders of Securities of that series shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect,

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disturb or prejudice the rights of any other Holders of Securities of that series, or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders of Securities of that series.

Section 508. *Unconditional Right of Holders to Receive Principal (and Premium, if any) and Interest, if any.*

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and (subject to Section 307) interest, if any, on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. In addition, in the case of Securities of any series that is convertible or exchangeable, anything in the Indenture or such Securities to the contrary notwithstanding, the holder of any Security of that series, without the consent of either the Trustee or the holder of any other Security, in its own behalf and for its own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, its rights of conversion or exchange as provided in the Indenture or such Securities.

Section 509. *Restoration of Rights and Remedies.*

If the Trustee for the Securities of any series or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to such Trustee or to such Holder, then and in every such case the Issuer, such Trustee and the Holders of Securities shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of such Trustee and such Holders shall continue as though no such proceeding had been instituted.

Section 510. *Rights and Remedies Cumulative.*

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee for the Securities of any series or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. *Delay or Omission Not Waiver.*

No delay or omission of the Trustee for the Securities of any series or of any Holder of any Security of such series to exercise any right or remedy accruing upon any Event of Default with respect to the Securities of such series shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article Five or by law to such Trustee for the Securities of any series or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by such Trustee or by the Holders, as the case may be.

Section 512. *Control by Holders.*

The Holders of a majority in principal amount of the Outstanding Securities of any particular series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee for the Securities of such series with respect to the Securities of that series or exercising any trust or power conferred on such Trustee with respect to such Securities, *provided* that:

(1) such direction shall not be in conflict with any rule of law or with this Indenture;

(2) such Trustee may take any other action deemed proper by such Trustee which is not inconsistent with such direction; and

(3) such Trustee need not take any action which might expose it to personal liability, without the prior receipt of reasonable indemnity (as determined by the Trustee in its reasonable discretion) from Holders requesting such action, or be unduly prejudicial to the Holders of Securities of such series not joining therein.

Section 513. *Waiver of Past Defaults.*

The Holders of not less than a majority in principal amount of the Outstanding Securities of any particular series may on behalf of the Holders of all the Securities of that series waive any past default hereunder with respect to that series and its consequences, except:

(1) a default in the payment of the principal of (or premium, if any) or interest, if any, on any Security of that series; or

(2) a default with respect to a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of that series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 514. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for the Securities of any series 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; but the provisions of this Section 514 shall not apply to any suit instituted by the Trustee for the Securities of any series, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any particular series or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on any Security of such series on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).

Section 515. *Waiver of Stay or Extension Laws.*

The Issuer covenants (to the extent that they may lawfully do so) that they shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not hinder, delay or impede the execution of any power herein granted to the Trustee for any series of Securities, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE SIX

THE TRUSTEE

Section 601. *Certain Duties and Responsibilities.*

(a) Except during the continuance of an Event of Default with respect to the Securities of any series for which the Trustee is serving as such,

(1) such Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against such Trustee and permissive rights of the Trustee hereunder shall not constitute performance duties; and

(2) in the absence of gross negligence, bad faith or willful misconduct on its part, such Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to such Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to such Trustee, such Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(b) In case an Event of Default with respect to a series of Securities has occurred and is continuing, the Trustee for the Securities of such series shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section 601;

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

(3) such Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any particular series, determined as provided in Section 512, relating to the time, method and place of conducting any proceeding for any remedy available to such Trustee, or exercising any trust or power conferred upon such Trustee, under this Indenture with respect to the Securities of that series; and

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

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee for any series of Securities shall be subject to the provisions of this Section 601.

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

Section 602. *Notice of Defaults.*

Within 90 days after the occurrence of any default hereunder with respect to Securities of any particular series, the Trustee for the Securities of such series shall give to Holders of Securities of that series, in the manner set forth in Section 106, notice of such default known to such Trustee, unless such default shall have been cured or waived; *provided*, *however*, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest, if any, on any Security of that series, or in the deposit of any sinking fund payment with respect to Securities of that series, such Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or Responsible Officers of such Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Securities of that series. For the purpose of this Section 602, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of that series.

Section 603. *Certain Rights of Trustee.*

Except as otherwise provided in Section 601:

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

(b) any request or direction of the Issuer mentioned herein shall be sufficiently evidenced by an Issuer Request or Issuer Order (other than delivery of any Security to the Trustee for authentication and delivery pursuant to Section 303 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors of the Issuer may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such Trustee (unless other evidence be herein specifically prescribed) may request and, in the absence of bad faith on its part, rely upon an Officers' Certificate or an Opinion of Counsel;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities of any series pursuant to this Indenture for which it is acting as Trustee, unless such Holders shall have offered to such Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, discretion, consent, order, bond, debenture or other paper or document, but such Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters at it may see fit, and, if such Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability of any kind by reason of such inquiry or investigation;

(g) the Trustee may employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and shall not be responsible for any misconduct on the part of any of them;

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

(i) the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

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

(k) the Trustee may request that the Issuer deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this

Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(l) the Trustee shall not be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss or profit) irrespective of

whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(m) the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunction of utilities, computer (hardware or software) or communication services; labor disputes; acts of civil or military authorities and governmental actions.

Section 604. *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication thereof, shall be taken as the statements of the Issuer, and neither the Trustee for any series of Securities, nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee for any series of Securities makes no representations as to the validity or sufficiency of this Indenture or of the Securities of any series, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities, and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Issuer are true and correct, subject to the qualifications set forth therein. Neither the Trustee for any series of Securities nor any Authenticating Agent shall be accountable for the use or application by the Issuer of Securities or the proceeds thereof.

Section 605. *May Hold Securities.*

The Trustee for any series of Securities, any Authenticating Agent, Paying Agent, Security Registrar or any other agent of the Issuer or such Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 608 and 613, may otherwise deal with the Issuer with the same rights it would have if it were not such Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Section 606. *Money Held in Trust.*

Money held by the Trustee for any series of Securities in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee for any series of Securities shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer in writing, as the case may be.

Section 607. *Compensation and Reimbursement.*

The Issuer agrees:

(1) to pay to the Trustee for any series of Securities as the Issuer and the Trustee shall agree in writing from time to time such compensation in Dollars for all services rendered by it hereunder as shall be agreed upon in writing from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee for any series of Securities in Dollars upon its request for all reasonable expenses, disbursements and advances incurred or made by such Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel),

except any such expense, disbursement or advance as shall be determined to have been caused by its own negligence, bad faith or willful misconduct; and

(3) to indemnify such Trustee and its agents in Dollars for, and to hold them harmless against, any loss, damage, claims, liability or expense incurred without negligence, bad faith or willful misconduct on their part, arising out of or in connection with the acceptance or administration of this

trust, including the costs and expenses of defending themselves against any claim, whether asserted by the Issuer or any Holder or any other Person, or liability in connection with the exercise or performance of any of their powers or duties hereunder.

As security for the performance of the obligations of the Issuer under this Section 607, the Trustee for any series of Securities shall have a lien prior to the Securities upon all property and funds held or collected by such Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest, if any, on particular Securities.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(5) or Section 501(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

The benefits of this Section 607 shall survive termination of this Indenture and resignation or removal of the Trustee.

Section 608. *Disqualification; Conflicting Interests.*

The Trustee for the Securities shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time required thereby. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the penultimate paragraph of Section 310(b) of the Trust Indenture Act. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded Securities of any particular series of Securities other than that series.

Section 609. *Corporate Trustee Required; Different Trustees for Different Series; Eligibility.*

There shall at all times be a Trustee hereunder which shall be:

(i) a corporation or banking company organized and doing business under the laws of the United States of America, any state thereof, or the District of Columbia, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by Federal or State authority; or

(ii) a corporation or other Person organized and doing business under the laws of a foreign government that is permitted to act as Trustee pursuant to a rule, regulation, or other order of the Commission, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustee, having a combined capital and surplus of at least $150,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 609, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(iii) None of the Issuer or any Person directly or indirectly controlling, controlled by, or under the common control of the Issuer shall serve as Trustee for the Securities. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 609, it shall resign immediately in the manner and with the effect hereunder specified in this Article Six.

Section 610. *Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee for the Securities of any series and no appointment of a successor Trustee pursuant to this Article Six shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 611.

(b) The Trustee for the Securities of any series may resign at any time with respect to the Securities of such series by giving written notice thereof to the Issuer. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee for the Securities of such series within 60 days after the giving of such notice of resignation, the resigning Trustee may petition at the expense of the Issuer any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee for the Securities of any series may be removed at any time with respect to the Securities of such series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to such Trustee and to the Issuer. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee for the Securities of such series within 60 days after the giving of such notice of removal, the removed Trustee may petition at the expense of the Issuer any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(d) If at any time:

(1) the Trustee for the Securities of any series shall fail to comply with Section 310(b) of the Trust Indenture Act pursuant to Section 608 hereof after written request therefor by the Issuer or by any Holder who has been a bona fide Holder of a Security of such series for at least six months, unless the Trustee's duty to resign is stayed in accordance with the provisions of Section 310(b) of the Trust Indenture Act; or

(2) such Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Issuer or by any such Holder; or

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

then, in any such case, (i) the Issuer by a Board Resolution may remove such Trustee and appoint a successor Trustee or (ii) subject to Section 514, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such Trustee and the appointment of a successor Trustee.

(e) If the Trustee for the Securities of any series shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for the Securities of any series for any cause,

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the Issuer, by a Board Resolution, shall promptly appoint a successor Trustee with respect to the Securities of such series and shall comply with the applicable requirements of Section 611. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of such series shall have not been appointed by the Issuer pursuant to this Section 610, then a successor Trustee may be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Issuer and the retiring Trustee. If no successor Trustee for the Securities of such series shall have been so appointed by the Issuer or the Holders and shall have accepted appointment in the manner required by Section 611, and if such Trustee to be replaced is still incapable of acting, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Issuer shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series in the manner and to the extent provided in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of that series and the address of its Corporate Trust Office.

Section 611. *Acceptance of Appointment by Successor.*

(a) Every such successor Trustee appointed hereunder with respect to the Securities of any series shall execute, acknowledge and deliver to the Issuer and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Issuer or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Issuer, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the

rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Issuer or any successor Trustee, such retiring Trustee shall duly

assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in Subsections (a) or (b) of this Section 611, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee for the Securities of any series shall be qualified and eligible under this Article Six.

Section 612. *Merger, Conversion, Consolidation or Succession to Business.*

Any corporation into which the Trustee for the Securities of any series may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of such Trustee, shall be the successor of such Trustee hereunder, *provided* such corporation shall be otherwise qualified and eligible under this Article Six, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee or the Authenticating Agent for such series then in office, any successor by merger, conversion or consolidation to such authenticating Trustee or Authenticating Agent, as the case may be, may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee or successor Authenticating Agent had itself authenticated such Securities.

Section 613. *Preferential Collection of Claims Against the Issuer.*

The Trustee is subject to Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent indicated.

Section 614. *Authenticating Agents.*

At any time when any of the Securities of any series remain Outstanding, the Trustee for the Securities of such series may, subject to its sole discretion, appoint one or more Authenticating Agents with respect to the Securities of such series, which may include the Issuer or any Affiliate of the Issuer, with power to act on the Trustee's behalf and subject to its discretion in the authentication and delivery of Securities of such series in connection with transfers and exchanges under Sections 304, 305 and 1107 as fully to all intents and purposes as though such Authenticating Agent had been expressly authorized by those Sections of this Indenture to authenticate and deliver Securities of such series. For all purposes of this Indenture, the authentication and delivery of Securities of such series by an Authenticating Agent for such Securities pursuant to this Section 614 shall be deemed to be authentication and delivery of such Securities "by the Trustee" for the Securities of such series. Any such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $150,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or the requirements of such supervising or examining authority, then for the purposes of this Section 614 the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent for any series of Securities shall cease to be eligible in accordance with the provisions of this Section 614, such

Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 614.

Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor corporation is otherwise eligible under this Section 614, without the execution or filing of any paper or any further act on the part of the parties hereto or the Authenticating Agent or such successor corporation.

Any Authenticating Agent for any series of Securities may resign at any time by giving written notice of resignation to the Trustee for such series and to the Issuer. The Trustee for any series of Securities may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Issuer in the manner set forth in Section 105. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent for any series of Securities shall cease to be eligible under this Section 614, the Trustee for such series may appoint a successor Authenticating Agent, shall give written notice of such appointment to the Issuer and shall give written notice of such appointment to all Holders of Securities of such series in the manner set forth in Section 106. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 614.

If an appointment with respect to one or more series of Securities is made pursuant to this Section 614, the Securities of such series may have endorsed thereon, in addition to the Trustee's certification of authentication, an alternate certificate of authentication in the following form:

"This is one of the Securities of the series designated therein described in the within-mentioned Indenture.

_____, as Trustee

By_____ By_____
As Authenticating Agent Authorized Signatory"

ARTICLE SEVEN

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND THE ISSUER

Section 701. *Issuer to Furnish Trustee Names and Addresses of Holders.*

With respect to each particular series of Securities, the Issuer shall furnish or cause to be furnished to the Trustee for the Securities of such series,

(a) semi-annually, not more than 15 days after each Regular Record Date relating to Securities of each series at the time Outstanding (or, if there is no Regular Record Date relating to that series, on June 30 and December 31), a list, in such form as such Trustee may reasonably require, containing all the information in the possession or control of the Issuer or any of its Paying Agents other than such Trustee as to the names and addresses of the Holders of that series as of such dates, and

(b) at such other times as such Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

excluding from any such list names and addresses received by such Trustee in its capacity as Security Registrar for the Securities of such series, if so acting.

Section 702. *Preservation of Information; Communications to Holders.*

(a) The Trustee for each series of Securities shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of the Securities of such series contained in the most recent lists furnished to such Trustee as provided in Section 701 and the names and addresses of Holders of the Securities of such series received by such Trustee in its capacity as Security Registrar for such series, if so acting. The Trustee for each series of Securities may destroy any list relating to such series of Securities furnished to it as provided in Section 701 upon receipt of a new list relating to such series so furnished.

(b) If three or more Holders of Securities of any particular series (hereinafter referred to as "applicants") apply in writing to the Trustee for the Securities of any such series, and furnish to such Trustee reasonable proof that each such applicant has owned a Security of that series for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of that series with respect to their rights under this Indenture or under the Securities of that series and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then such Trustee shall, within five Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by such Trustee in accordance with Section 702(a); or

(ii) inform such applicants as to the approximate number of Holders of Securities of that series whose names and addresses appear in the information preserved at the time by

such Trustee in accordance with Section 702(a), and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If any such Trustee shall elect not to afford such applicants access to that information, such Trustee shall, upon the written request of such applicants, mail to each Holder of Securities of that series whose name and address appears in the information preserved at the time by such Trustee in accordance with Section 702(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to such Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, such Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of such Trustee, such mailing would be contrary to the best interests of the Holders of Securities of that series or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, such Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry

of such order and the renewal of such tender; otherwise such Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities of each series, by receiving and holding the same, agrees with the Issuer and the Trustee for the Securities of such series that none of the Issuer, such Trustee or their respective agents shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of the Securities of such series in accordance with Section 702(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 702(b).

Section 703. *Reports by Trustee.*

(a) Within 60 days after May 15 of each year, the Trustee for the Securities of each series shall mail to each Holder of the Securities a brief report dated as of such date that complies with Section 313(a) of the Trust Indenture Act. The Trustee for the Securities of each series shall also comply with Sections 313(b), 313(c) and 313(d) of the Trust Indenture Act.

(b) At the time that the Trustee for the Securities of each series mails such a report to the Holders of Securities of such series, each such Trustee shall file a copy of that report with the Commission and with each stock exchange on which the Securities of that series are listed. The Issuer shall provide notice to the appropriate Trustee when the Securities of any series are listed on any stock exchange.

Section 704. *Reports by Issuer.*

So long as any of the Securities remain outstanding, the Issuer shall (1) within 15 days of filing with the Commission file with the Trustee for each series of Securities copies of all annual reports, quarterly reports and other documents (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which the Issuer is required to file with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act. If the Issuer is not subject to the requirements of such Section 13(a) or 15(d), the Issuer shall nevertheless continue to (1) file such reports and other documents with the Commission (unless the Commission will not accept such filings) on or prior to the respective dates (the “Required Filing Dates”) by which the Issuer would have been required so to file such documents if it were so subject, (2) within 15 days of the Required Filing Dates, (A) transmit by mail to all Holders, as their names and addresses appear in the Security Register, without cost to such Holders and (B) file with the Trustee for each series of Securities copies of such reports and other documents and (3) promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such reports and other documents to any prospective Holder.

The Issuer shall also file with the Trustee for each series of Securities and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

Delivery of such reports, information and documents to the Trustee shall be for information purposes only and the Trustee’s receipt of such shall not, in the absence of gross negligence, bad faith or willful misconduct on its part, constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers’ Certificates).

ARTICLE EIGHT

CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 801. *Issuer May Consolidate, Etc., Only on Certain Terms.*

The Issuer shall not consolidate with or merge into any other Person or convey, lease or transfer all or substantially all of its assets to any Person unless:

(1) either the Issuer shall be the continuing entity or the entity (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or the Person which acquires by conveyance, lease or transfer all or substantially all of the assets of the Issuer shall be a Person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee for each series of Securities, in form reasonably satisfactory to each such Trustee, the due and punctual payment of the principal of (and premium, if any) and interest, if any, (including all additional amounts, if any, payable pursuant to Section 1011) on all the Securities and the performance of every covenant of this Indenture on the part of the Issuer to be performed or observed;

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

(3) the Issuer has delivered to the Trustee for each series of Securities an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, conveyance, lease or transfer and such supplemental indenture comply with this Article Eight and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 802. *Successor Person Substituted for the Issuer.*

Upon any consolidation or merger, or any conveyance, lease or transfer of all or substantially all of the assets of the Issuer in accordance with Section 801, the successor Person formed by such consolidation or into which the Issuer is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein and thereafter the predecessor Person shall be relieved of all obligations and covenants under this Indenture, the Securities and, in the event of any such consolidation, merger, conveyance, lease or transfer, the Issuer as the predecessor Person may thereupon or at any time thereafter be dissolved, wound up, or liquidated.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 901. *Supplemental Indentures Without Consent of Holders.*

Without the consent of any Holders of Securities, the Issuer, when authorized by a Board Resolution, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Issuer and the assumption by any such successor of the covenants of the Issuer herein and in the Securities; or

(2) to add to the covenants of the Issuer for the benefit of the Holders of all or any particular series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series), or to surrender any right or power herein conferred upon the Issuer; or

(3) to add any additional Events of Default with respect to any or all series of Securities (and, if any such Event of Default applies to fewer than all series of Securities, stating each series to which such Event of Default applies); *provided*, *however*, that in respect of any such additional Events of Default, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may limit the remedies available to the Trustee upon such default or may limit the right of Holders of a majority in aggregate principal

amount of that or those series of Securities to which such additional Events of Default apply to waive such default; or

(4) to change or eliminate any of the provisions of this Indenture, *provided*, *however*, that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or

(5) to pledge property to the trustee as security or the Securities; or

(6) to add guarantees with respect to the Securities; or

(7) to evidence and provide for the acceptance of appointment hereunder of a Trustee other than U.S. Bank National Association as Trustee for a series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 609; or

(8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11(b); or

(9) to establish the form or terms of Securities of any series as permitted by Sections 202 and 301; or

(10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; or

(11) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Sections 401, 402 and 403; *provided*, *however*, that any such action shall not adversely affect the interests of the Holders of Securities of such series or any other series of Securities in any material respect; or

(12) to add to or change or eliminate any provisions of this Indenture as shall be necessary or desirable in accordance with any amendments to the Trust Indenture Act or to maintain the qualification of this Indenture under the Trust Indenture Act; or

(13) subject to Section 301, to provide for the issuance of any additional Securities of a series, which shall have terms substantially identical in all material respects to the Securities of that series (in each case, other than with respect to the date of issuance, issue price and amount of interest payable on the first Interest Payment Date applicable thereto), as the case may be, and which shall be treated together with any outstanding Securities and any previously issued additional Securities of that series, as a single issue of Securities.

Any supplemental indenture authorized by the provisions of this Section 901 may be executed by the Issuer and the Trustee without the consent of the Holders of any of the Securities at the time outstanding, notwithstanding any of the provisions of Section 902.

Section 902. *Supplemental Indentures With Consent of Holders.*

The Issuer, when authorized by a Board Resolution, may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture, but only (i) as provided in Section 901 or (ii) with the consent of the Holders of more than 50% in aggregate principal amount of the Outstanding Securities of each series of Securities then Outstanding affected thereby, in each case by Act of said Holders of Securities of each such series delivered to the Issuer and the Trustee for Securities of each such series; *provided*, *however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon, if any (or, in the case of OID Securities; or

(2) reduce the rate of accretion of original issue discount, or any premium payable upon the redemption thereof, or change any obligation of the Issuer to pay additional amounts pursuant to Section 1011 (except as contemplated by Section 801(1) and permitted by Section 901(1)) or reduce the amount

of the principal of an OID Security that would be due and payable upon a declaration of acceleration of the Maturity thereof, or provable in bankruptcy; or

(3) change the Place of Payment, or the currency or currency unit in which any Security or the principal or interest thereon is payable, or impair the right to institute suit for the

enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date); or

(4) reduce or alter the method of computation of any amount payable upon redemption, repayment or purchase of any Securities by the Issuer (or the time when such redemption, repayment or purchase may be made);

(5) reduce the percentage in principal amount of the Outstanding Securities of any particular series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the requirement of Section 1304 for quorum or voting; or

(6) modify any of the provisions of this Section 902 or Section 513 or 1011, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby; *provided, however*, that this clause shall not be deemed to require the consent of any Holder of a Security with respect to changes in the references to "the Trustee" and concomitant changes in this Section 902 and Section 1011, or the deletion of this proviso, in accordance with the requirements of Sections 609, 61l(b), 901(8) and 901(9).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders under this Section 902 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. *Execution of Supplemental Indentures.*

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article Nine or the modifications thereby of the trusts created by this Indenture, the Trustee for any series of Securities shall be provided with, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee for any series of Securities may, but shall not be obligated to, enter into any such supplemental indenture which affects such Trustee's own rights, liabilities, duties or immunities under this Indenture or otherwise.

Section 904. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article Nine, this Indenture shall be modified in accordance therewith and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 905. *Conformity With Trust Indenture Act.*

Every supplemental indenture executed pursuant to this Article Nine shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 906. *Reference in Securities to Supplemental Indentures.*

Securities of any particular series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article Nine may, and shall if required by the Trustee for the Securities of such series, bear a notation in form approved by such Trustee as to any matter provided for in such supplemental indenture. If the Issuer shall so determine, new Securities of any series so modified as to conform, in the opinion the Board of Directors of the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and such

Securities may be authenticated and delivered by such Trustee in exchange for Outstanding Securities of such series.

ARTICLE TEN

COVENANTS

Section 1001. *Payment of Principal (and Premium, if any) and Interest, if any.*

The Issuer agrees, for the benefit of each particular series of Securities, that it shall duly and punctually pay in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) the principal of (and premium, if any) and interest, if any, on that series of Securities in accordance with the terms of the Securities of such series and this Indenture. The interest, if any, due in respect of any temporary or permanent Global Security, together with any additional amounts payable in respect thereof, as provided in the terms and conditions of such Security, shall be payable, subject to the conditions set forth in Section 1011, only upon presentation of such Security to the Trustee thereof for notation thereon of the payment of such interest.

Section 1002. *Maintenance of Office or Agency.*

The Issuer shall maintain in each Place of Payment for Securities of a series an office or agency where Securities of that series may be presented or surrendered for payment, an office or agency where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer with respect to the Securities of that series and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee for the Securities of that series of the location, and any change in the location, of any such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency in respect of any series of Securities or shall fail to furnish the Trustee for the Securities of that series with the address thereof, such presentations (to the extent permitted by law), and surrenders of Securities of that series may be made and notices and demands may be made or served at the Corporate Trust Office of such Trustee.

The Issuer may also from time to time designate one or more other offices or agencies (in or outside the Place of Payment) where the Securities of one or more series may be presented or surrendered for any or all of the purposes specified above in this Section 1002 and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in each Place of Payment for such purpose. The Issuer shall give prompt written notice to the Trustee for the Securities of each series so affected of any

such designation or rescission and of any change in the location of any such office or agency. Unless otherwise specified with respect to any Securities pursuant to Section 301 with respect to a series of Securities, the Issuer hereby designates as a Place of Payment for each series of Securities the office or agency of the Issuer in the Borough of Manhattan, the City of New York, and initially appoints the Trustee at its Corporate Trust Office as Paying Agent in such city and as its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 301, if and so long as the Securities of any series (i) are denominated in a currency other than Dollars or (ii) may be payable in a currency other than Dollars, or so long as it is required under any other provision of the Indenture, then the Issuer shall maintain with respect to each such series of Securities, or as so required, a Currency Determination Agent.

Section 1003. *Money for Securities Payments To Be Held in Trust.*

If the Issuer shall at any time act as its own Paying Agent with respect to any particular series of Securities, it shall, on or before each due date of the principal of (and premium, if any) or interest, if any, on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay the principal (and premium, if any) and interest, if any, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and shall promptly notify the Trustee for the Securities of such series of its action or failure so to act.

Whenever the Issuer shall have one or more Paying Agents for any particular series of Securities, it shall, prior to each due date of the principal of (and premium, if any) or interest, if any, on any such Securities, deposit with a Paying Agent for the Securities of such series a sum (in the currency or currency unit described in the preceding paragraph) sufficient to pay the principal (and premium, if any) and interest, if any, so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto, and (unless such Paying Agent is the Trustee for the Securities of such series) the Issuer shall promptly notify such Trustee of its action or failure so to act.

The Issuer shall cause each Paying Agent for any particular series of Securities other than the Trustee for the Securities of such series to execute and deliver to such Trustee an instrument in which such Paying Agent shall agree with such Trustee, subject to the provisions of this Section 1003, that such Paying Agent shall:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest, if any, on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give such Trustee notice of any default by the Issuer (or any other obligor upon the Securities) in the making of any payment of principal (or premium, if any) and interest, if any, on Securities of that series; and

(3) at any time during the continuation of any such default, upon the written request of such Trustee, forthwith pay to such Trustee all sums so held in trust by such Paying Agent.

The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee for the Securities of any series all sums held in trust by the Issuer or such Paying Agent, such sums to be

held by such Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to such Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Section 1004. *Statements as to Compliance.*

The Issuer shall deliver to the Trustee for each series of Securities, within 120 days after the end of each fiscal year, a written statement signed by the principal executive officer, principal financial officer or principal accounting officer of the Issuer stating that:

(1) a review of the activities of the Issuer during such year and of performance under this Indenture has been made under their supervision; and

(2) to the best of his knowledge, based on such review, the Issuer is in compliance with all conditions and covenants under this Indenture.

For purposes of this Section 1004, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

Section 1005. *Existence.*

Subject to Article Eight, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (declaration and statutory) and franchises; *provided, however*, that the Issuer shall not be required to preserve any right or franchise if the Board of Directors of the Issuer shall determine that the preservation thereof is no longer necessary or desirable in the conduct of the business of the Issuer and that the loss of that right or franchise is not disadvantageous in any material respect to the Holders.

Section 1006. *Limitations on Incurrence of Indebtedness.*

The Issuer will not permit the Operating Partnership, directly or indirectly, to incur or guarantee any Indebtedness other than Non-Recourse Indebtedness, unless prior to or concurrently with such incurrence or guarantee, the Operating Partnership executes and delivers to the Trustee a supplemental indenture, substantially in the form attached hereto as Exhibit A, pursuant to which the Operating Partnership shall fully, unconditionally and irrevocably guarantee, as primary obligor and not merely as surety, to each Holder of the Securities and the Trustee the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the Obligations, including an equal and ratable lien on any assets securing such Indebtedness or guarantee to the extent such Indebtedness or guarantee is secured but is not Non-Recourse Indebtedness.

Section 1007. *Maintenance of Properties.*

The Issuer shall cause all of its material properties used or useful in the conduct of their businesses or the business of any of its Subsidiaries to be maintained and kept in good condition, repair and working order, all as in the judgment of the Issuer may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided, however*, notwithstanding anything in this Section 1007 to the contrary, that, subject to Article Eight hereof, the Issuer and its Subsidiaries may sell or otherwise dispose of any of their properties for value in the ordinary course of business.

Section 1008. *Insurance.*

The Issuer shall cause each of their properties and each of the properties of its Subsidiaries to be insured against loss of damage with insurers of recognized responsibility, in commercially reasonable amounts and types and with insurers having a specified rating from a recognized insurance rating service.

Section 1009. *Payment of Taxes and Other Claims.*

The Issuer shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent (i) all taxes, assessments and governmental charges levied or imposed upon the Issuer or any of its Subsidiaries, or upon the income, profits or property of the Issuer or any of its Subsidiaries, and (ii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon property of the Issuer or its Subsidiaries; *provided*, *however*, notwithstanding anything herein to the contrary, that the Issuer shall not be required to pay or discharge or cause to be paid or discharged any tax, assessment, charge or claim whose amount or applicability is being contested in good faith.

Section 1010. *Waiver of Certain Covenants.*

The Issuer may omit in any particular instance to comply with any covenant or condition set forth in Sections 1004 to 1009, inclusive, if before or after the time for such compliance the Holders of more than 50% in principal amount of the Outstanding Securities of each series of Securities affected by the omission shall, in each case by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Issuer and the duties of the Trustee for the Securities of each series with respect to any such covenant or condition shall remain in full force and effect.

Section 1011. *Payment of Additional Amounts.*

If specified pursuant to, and subject to, Section 301, the provisions of this Section 1011 shall be applicable to Securities of any series.

The Issuer shall, subject to the exceptions and limitations set forth below, pay to the Holder of any Security who is a United States Alien such additional amounts as may be necessary so that every net payment on such Security, after deduction or withholding by the Issuer or any of its Paying Agents for or on account of any present or future tax, assessment or other governmental charge imposed upon or as a result of such payment by the United States (or any political subdivision or taxing authority thereof or therein), shall not be less than the amount provided in such Security to be then due and payable. However, the Issuer shall not be required to make any payment of additional amounts for or on account of:

(a) any tax, assessment or other governmental charge that would not have been so imposed but for (i) the existence of any present or former connection between such Holder or the beneficial owner of such Security (or between a fiduciary, settler or beneficiary of, or a person holding a power over, such Holder or such beneficial owner, if such Holder or such beneficial owner is an estate or trust, or a member or shareholder of such Holder or such beneficial owner, if such Holder or such beneficial owner is a partnership or corporation) and the United States, including, without limitation, such Holder or such beneficial owner (or such fiduciary, settler, beneficiary, person holding a power, member or shareholder) being or having been a citizen, resident or treated as a resident thereof or being or having been engaged in trade or business or present therein or having or having had a permanent establishment therein, or (ii) such Holder’s or such beneficial owner’s present or former status as a personal holding company, foreign

personal holding company, controlled foreign corporation or passive foreign investment company with respect to the United States or as a corporation that accumulates earnings to avoid United States federal income tax;

(b) any tax, assessment or other governmental charge which would not have been so imposed but for the presentation by the Holder of such Security for payment on a date more than 30 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;

(c) any estate, inheritance, gift, sales, transfer, personal property tax or any similar tax, assessment or other governmental charge;

(d) any tax, assessment or other governmental charge required to be withheld by any Paying Agent from any payment in respect of any Security, if such payment can be made without such withholding by at least one other Paying Agent;

(e) any tax, assessment or other governmental charge which is payable otherwise than by withholding from payments in respect of such Security;

(f) any tax, assessment or other governmental charge imposed on a Holder or beneficial owner of any tax, assessment or other governmental charge imposed on a Holder or beneficial owner of a Security or coupon that (i) actually or constructively owns 10 percent or more of the capital or profits interests of the Company or that

is a controlled foreign corporation related to the Company through stock ownership or (ii) is a bank described in Section 881(c)(3)(A) of the Code;

(g) any tax, assessment or other governmental charge imposed as a result of the failure to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connection with the United States of the Holder or beneficial owner of a Security or coupon, if such compliance is required by statute or by regulation of the United States, as a precondition to relief or exemption from such tax, assessment or other governmental charge; or

(h) any combination of items (a), (b), (c), (d), (e), (f), and (g);

nor shall additional amounts be paid with respect to any payment on any such Security to a Holder who is a fiduciary or partnership or other than the sole beneficial owner of such payment to the extent such payment would be required by the laws of the United States (or any political subdivision thereof) to be included in the income for federal income tax purposes of a beneficiary or settler with respect to such fiduciary or a member of such partnership or a beneficial owner who would not have been entitled to payment of the additional amounts had beneficiary, settler, member or beneficial owner been the Holder of such Security.

The term "United States Alien" means any corporation, partnership, individual or fiduciary that is, as to the United States, a foreign corporation, a nonresident alien individual, a nonresident fiduciary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, as to the United States, a foreign corporation, a nonresident alien individual or a nonresident fiduciary of a foreign estate or trust.

Whenever in this Indenture there is mentioned, in any context, the payment of the principal of (and premium, if any) and interest, if any, on any Security, such mention shall be deemed to include mention of the payment of additional amounts provided for in the terms of such Securities and this Section 1011 to the extent that, in such context, additional amounts are, were or would be payable in

respect thereof pursuant to the provisions of this Section 1011 and express mention of the payment of additional amounts (if applicable) in any provisions hereof shall not be construed as excluding additional amounts in those provisions hereof where such express mention is not made.

If the Securities of a series provide for the payment of additional amounts as contemplated by Section 301(20), at least 10 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series shall not bear interest prior to maturity, the first day on which a payment of principal and any premium is made), and at least 10 days prior to each date of payment of principal (and premium, if any) and interest, if any, if there has been any change with respect to the matters set forth in the below mentioned Officers' Certificate, the Issuer shall furnish the Trustee for that series of Securities and the Issuer's principal Paying Agent or Paying Agents, if other than such Trustee, with an Officers' Certificate instructing such Trustee and such Paying Agent or Paying Agents whether such payment of principal of (and premium, if any) and interest, if any, on the Securities of that series shall be made to Holders of Securities of that series who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge referred to above or described in the Securities of that series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities and the Issuer shall pay to the Trustee for such series of Securities or such Paying Agent such additional amounts as may be required pursuant to the terms applicable to such series. The Issuer covenants to indemnify the Trustee for such series of Securities and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without gross negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section 1011.

Section 1012. *Calculation of Original Issue Discount*

If applicable, the Issuer shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

Section 1013. *Statement by Officers as to Default*

The Issuer shall, so long as any of the Securities are outstanding, deliver to the Trustee for each series of Securities upon becoming aware of (1) an Event of Default or an event that is, or with the passage of time or the giving of notice or both would be, an Event of Default in the performance of a covenant or agreement or condition contained in this Indenture or (2) any Event of Default or event that is, or with the passage of time or the giving of notice or both would be, an Event of Default of the type provided for herein specifying such default or Event of Default, notice of such default or Event of Default.

ARTICLE ELEVEN

Section 1101. *Applicability of Article Eleven.*

Redemption of Securities of any series (whether by operation of a sinking fund or otherwise) as permitted or required by any form of Security issued pursuant to this Indenture shall be made in

accordance with such form of Security and this Article Eleven; *provided, however*, that if any provision of any such form of Security shall conflict with any provision of this Article Eleven, the provision of such form of Security shall govern.

Section 1102. *Election to Redeem; Notice to Trustee.*

The election of the Issuer to redeem any Securities of any series shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Issuer of less than all of the Securities of any particular series, the Issuer shall, at least 60 days prior to the Redemption Date fixed by the Issuer (unless a shorter notice shall be satisfactory to the Trustee for the Securities of such series) notify such Trustee by Issuer Request of such Redemption Date and of the principal amount of Securities of that series to be redeemed and shall deliver to such Trustee such documentation and records as shall enable such Trustee to select the Securities to be redeemed pursuant to Section 1103. In the case of any redemption of Securities of any series prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Issuer shall furnish the Trustee for Securities of such series with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction.

Section 1103. *Selection by Trustee of Securities to Be Redeemed.*

If less than all the Securities are to be redeemed, the Issuer may select the series to be redeemed, and if less than all the Securities of any series are to be redeemed, the particular Securities of that series to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee for the Securities of such series, from the Outstanding Securities of that series not previously called for redemption, by such method as such Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series, or any integral multiple thereof) of the principal amount of Securities of that series of a denomination larger than the minimum authorized denomination for Securities of that series pursuant to Section 302 in the currency or currency unit in which the Securities of such series are denominated.

The Trustee for the Securities of any series to be redeemed shall promptly notify the Issuer in writing of the Securities of such series selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 1104. *Notice of Redemption.*

Notice of redemption shall be given in the manner provided in Section 106 not later than 30 days and not earlier than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed.

All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price;

(3) if less than all Outstanding Securities of a particular series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities to be redeemed, including the Identifying Number of such Securities;

(4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Holder shall

receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed;

(5) that on the Redemption Date the Redemption Price shall become due and payable upon each such Security or portion thereof, and that interest thereon, if any (or in the case of OID Securities, original issue discount), shall cease to accrue on and after said date;

(6) the place or places where such Securities are to be surrendered for payment of the Redemption Price; and

(7) that the redemption is for a sinking fund, if such is the case.

Notice of redemption of Securities to be redeemed at the election of the Issuer shall be given by the Issuer or, at the Issuer's request made at least 45 days prior to the redemption date, by the Trustee for such Securities in the name and at the expense of the Issuer.

Section 1105. *Deposit of Redemption Price.*

Prior to the opening of business on any Redemption Date, the Issuer shall deposit with the Trustee for the Securities to be redeemed or with a Paying Agent for such Securities (or, if the Issuer is acting as its own Paying Agent for such Securities, segregate and hold in trust as provided in Section 1003) an amount of money in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such Series) sufficient to pay the principal amount of (and premium, if any, thereon), and (except if the Redemption Date shall be an Interest Payment Date) any accrued interest on, all the Securities which are to be redeemed on that date.

Section 1106. *Securities Payable on Redemption Date.*

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified in the currency or currency unit in which the Securities of such series are payable (except as otherwise provided pursuant to Section 301 for the Securities of such series) and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of such Security for redemption in accordance with said notice, such Security or specified portions thereof shall be paid by the Issuer at the Redemption Price; *provided*, *however*, that unless otherwise specified as contemplated by Section 301, installments of interest on Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal thereof (and premium, if any, thereon) shall, until paid, bear interest from the Redemption Date at a rate per annum equal to the rate borne by the Security (or, in the case of OID Securities, the Security's Yield to Maturity).

Section 1107. *Securities Redeemed in Part.*

Any Security which is to be redeemed only in part shall be surrendered at the Place of Payment (with, if the Issuer or the Trustee for such Security so requires, due endorsement by, or a written Indenture of transfer in form satisfactory to the Issuer, and the Security Registrar for such Security duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Issuer shall execute and such Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, of the same series and having the same terms and provisions and in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE TWELVE

SINKING FUNDS

Section 1201. *Applicability of This Article Twelve.*

Redemption of Securities through operation of a sinking fund as permitted or required by any form of Security issued pursuant to this Indenture shall be made in accordance with such form of Security and this Article Twelve; *provided*, *however*, that if any provision of any such form of Security shall conflict with any provision of this Article Twelve, the provision of such form of Security shall govern.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any particular series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of any particular series is herein referred to as an

"optional sinking fund payment". If provided for by the terms of Securities of any particular series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any particular series as provided for by the terms of Securities of that series.

Section 1202. *Satisfaction of Sinking Fund Payments With Securities.*

The Issuer (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Issuer pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; *provided*, *however*, that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee for such Securities at the principal amount thereof and the amount of such sinking fund payment shall be reduced accordingly.

Section 1203. *Redemption of Securities for Sinking Fund.*

Not less than 60 days prior to each sinking fund payment date for any particular series of Securities, the Issuer shall deliver to the Trustee for the Securities of such series an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash in the currency or currency unit in which the Securities of that series are payable (except as otherwise specified pursuant to Section 301 for the Securities of that series) and the portion thereof, if any, which is to be satisfied by

delivering and crediting Securities of that series pursuant to Section 1202 and shall state the basis for such credit and that such Securities have not previously been so credited and shall also deliver to such Trustee any Securities to be so delivered. Such Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Issuer in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN

MEETINGS OF HOLDERS OF SECURITIES

Section 1301. *Purposes for Which Meetings May Be Called.*

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article Thirteen to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

Section 1302. *Call, Notice and Place of Meetings.*

(a) The Trustee for any series of Securities may at any time call a meeting of the Holders of Securities of such series for any purpose specified in Section 1301, to be held at such time and at such place in the Borough of Manhattan, The City of New York as such Trustee shall determine. Notice of every meeting of Holders of Securities of such series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 20 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Issuer, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Securities of any such series shall have requested the Trustee for any such series to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1301, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and such Trustee shall not have made the first publication of the notice of such meeting within 30 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuer or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section 1302.

Section 1303. *Persons Entitled to Vote at Meetings.*

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee for such series and its counsel and any representatives of the Issuer and their respective counsels.

Section 1304. *Quorum; Action.*

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Subject to Section 1305(d), notice of the reconvening of any adjourned meeting shall be given as provided in Section 1302(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly that Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series shall constitute a quorum.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; *provided*, *however*, that except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage which is less than a majority in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section 1304 shall be binding on all the Holders of Securities of such series, whether or not present or represented at the meeting.

Notwithstanding the foregoing provisions of this Section 1304, if any action is to be taken at a meeting of Holders of Securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of all Outstanding Securities affected thereby, or of the Holders of such series and one or more additional series:

(1) there shall be no minimum quorum requirement for such meeting; and

(2) the principal amount of the Outstanding Securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under this Indenture.

Section 1305. *Determination of Voting Rights; Conduct and Adjournment of Meetings.*

(a) Notwithstanding any other provision of this Indenture, the Trustee for any series of Securities may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of such series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters

concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(b) The Trustee for any series of Securities shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Holders of Securities as provided in Section 1302(b), in which case the Issuer or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

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

(d) Any meeting of holders of Securities of any series duly called pursuant to Section 1302 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 1306. *Counting Votes and Recording Action of Meetings.*

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities of any series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1302 and, if applicable, Section 1304. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuer, and another to the Trustee for such series of Securities to be preserved by such Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

* * *

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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture dated as of December 11, 2006 to be duly executed, all as of December 11, 2006.

ACADIA REALTY TRUST,
as Issuer

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Richard Prokosh
Name: Richard Prokosh
Title: Vice Presisdent

EXHIBIT A

FORM OF SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture") dated as of [ ], among ACADIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (the "Guarantor"), ACADIA REALTY TRUST, a real estate trust formed under the laws of Maryland (the "Issuer"), and [ ], as trustee under the indenture referred to below (the "Trustee").

RECITALS

WHEREAS the Issuer and the Trustee have heretofore executed (1) an Indenture (as amended, supplemented or otherwise modified, the "Indenture"), dated as of December 11, 2006, relating to the Issuer's unsecured debt securities authenticated and delivered under the Indenture and (2) the First Supplemental Indenture, dated December 11, 2006 providing for the issuance of the Issuer's 3.75% Convertible Notes due 2026 (the "Notes"), initially in the aggregate principal amount of $100,000,000;

WHEREAS Section 1006 of the Indenture provides that under certain circumstances the Issuer is required to cause the Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the Guarantor shall unconditionally guarantee all the Issuer's obligations under the Notes on the terms and conditions set forth herein; and

WHEREAS pursuant to Section 901 of the Indenture, the Trustee, the Issuer and the Guarantor are authorized to execute and deliver this Supplemental Indenture;

NOW THEREFORE, in consideration of the foregoing and mutual covenants herein contained and intending to be legally bound, the Guarantor, the Issuer, and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of the Notes as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined. The words "herein," "hereof" and hereby and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

2. Agreement to Guarantee. The Guarantor hereby fully, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, to each Holder of the Securities and to the Trustee the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the Obligations. The Guarantor further agrees (to the extent permitted by law) that the Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it shall remain bound under this Supplemental Indenture notwithstanding any extension or renewal of any Obligation.

The Guarantor waives presentation to, demand of payment from and protest to the Issuer of any of the Obligations and also waives notice of protest for nonpayment. The Guarantor waives notice of any default under the Securities or the Obligations. The obligations of the Guarantor hereunder shall not be affected by (a) the failure of any Holder to assert any claim or

demand or to enforce any right or remedy against the Issuer or any other person under the Indenture, the Securities or any other agreement or otherwise; (b) any extension or renewal of any thereof; (c) any rescission, waiver, amendment or modification of any of the terms or provisions of the Indenture, the Securities or any other agreement; (d) the release of any security held by any Holder or the Trustee for the Obligations or any of them; or (e) any change in the ownership of the Issuer.

The Guarantor further agrees that the Guarantee herein constitutes a guarantee of payment when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder to any security held for payment of the Obligations.

The obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder to assert any claim or demand or to enforce any remedy under this Indenture, the Securities or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantor or would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

The Guarantor further agrees that the Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of (and premium, if any) or interest, if any, on any of the Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuer or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against the Guarantor by virtue hereof, upon the failure of the Issuer to pay any of the Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, the Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders an amount equal to the sum of (i) the unpaid amount of such Obligations then due and owing and (ii) accrued and unpaid interest on such Obligations then due and owing (but only to the extent not prohibited by law).

The Guarantor further agrees that, as between itself, on the one hand, and the Holders, on the other hand, (x) the maturity of the Obligations guaranteed hereby may be accelerated as provided in the Indenture for the purposes of the Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby and (y) in the event of any such declaration of acceleration of such Obligations, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purposes of this Guarantee.

The Guarantor also agrees to pay any and all reasonable costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or the Holders in enforcing any rights under this Supplemental Indenture.

3. No Subrogation. Notwithstanding any payment or payments made by the Guarantor hereunder, the Guarantor shall not be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Issuer or any collateral security or guarantee or right of offset held by the Trustee or any Holder for the payment of the Obligations, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from the Issuer in respect of payments made by the Guarantor hereunder, until all amounts owing to the Trustee and the Holders by the Issuer on account of the Obligations are paid in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by the Guarantor in trust for the Trustee and the Holders, segregated from other funds of the Guarantor, and shall, forthwith upon receipt by the Guarantor, be turned over to the Trustee in the exact form received by the Guarantor (duly indorsed by the Guarantor to the Trustee, if required), to be applied against the Obligations.

4. Consideration. The Guarantor has received, or shall receive, direct or indirect benefits from the making of the Guarantee.

5. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

6. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

7. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

8. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

9. Effect of Headings. The Section headings herein are for convenience only and shall not effect the construction thereof.

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

ACADIA REALTY LIMITED PARTNERSHIP

By:_____
Name:
Title:

ACADIA REALTY TRUST

By:_____
Name:
Title:

[TRUSTEE], as Trustee

By:_____
Name:

Exhibit 4.2

EXECUTION COPY

ACADIA REALTY TRUST,
Issuer

and

U.S. Bank National Association,
Trustee

FIRST SUPPLEMENTAL INDENTURE
Dated as of December 11, 2006

3.75% Convertible Notes due 2026

FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE (this "**First Supplemental Indenture**"), is entered into as of December 11, 2006, between ACADIA REALTY TRUST, a Maryland real estate investment trust (the "**Company**" or the "**Issuer**"), having its principal offices at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and U.S. Bank National Association, an association duly organized and existing under the laws of the United States, as Trustee hereunder (the "**Trustee**"), having its Corporate Trust Office at 60 Livingston Avenue, St. Paul, Minnesota 55107-2292.

WHEREAS, the Company and the Trustee entered into that certain Indenture dated as of December 11, 2006 (the "**Original Indenture**"), relating to the Company's unsecured debt securities authenticated and delivered under the Indenture;

WHEREAS, pursuant to Section 901 of the Original Indenture, the Company and the Trustee may enter into supplemental indentures to establish the form or terms of a series of Securities issued pursuant to the Original Indenture;

WHEREAS, pursuant to Section 301 of the Original Indenture, the Company and the Trustee desire to establish the terms of a series of Securities entitled the "3.75% Convertible Notes due 2026" of the Company (the "**Notes**"); and

WHEREAS, the Company and the Trustee have duly authorized the execution and delivery of this instrument to establish the terms of the Notes set forth herein and have done all things necessary to make this instrument (together with the Original Indenture, the "**Indenture**") a valid agreement of the parties hereto, in accordance with its terms;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, and for other good and valuable consideration the receipt of which is hereby acknowledged, and for the equal and proportionate benefit of the Holders of the Notes, the Company and the Trustee agree as follows:

ARTICLE ONE
DEFINITIONS

Section 1.01. Definitions. (a) Capitalized terms used in this instrument and not otherwise defined herein shall have the meanings assigned to such terms in the Original Indenture or in the form of Note attached as Exhibit A hereto.

"**Additional Notes**" has the meaning provided in Section 2.02 hereof.

"**Additional Interest**" has the meaning specified in the Registration Rights Agreement.

"**Additional Interest Notice**" has the meaning specified in Section 2.28.

"**Additional Shares**" has the meaning specified in Section 2.10.

"**Applicable Conversion Period**" means, with respect to a conversion of Notes, the 20 consecutive Trading-Day period commencing on the third Trading Day following the date the Notes are tendered for conversion.

"**Applicable Consideration**" has the meaning specified in Section 2.11 hereof.

"**Average Price**" means, with respect to a conversion of Notes, an amount equal to the average of the Closing Sale Prices of Company Common Shares for each Trading Day in the Applicable Conversion Period. If the Notes have become convertible into securities or property other than Company Common Shares, the "Average Price" means an amount equal to the average of the closing sale prices of such securities for each Trading Day in the Applicable Conversion Period or, in the case of other, property, the fair market value thereof as determined in good faith by the Board of Trustees.

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

"**Change of Control**" means the occurrence at any time of any of any of the following events: (1) consummation of any transaction or event (whether by means of a share exchange or tender offer applicable to Company Common Shares, a liquidation, consolidation, recapitalization, reclassification, combination or merger of the Company or a sale, lease or other transfer of all or substantially all of the consolidated assets of the Company) or a series of related transactions or events pursuant to which all of the outstanding Company Common Shares are exchanged for or converted into the right to receive cash, securities or other property; (2) any "person" or "group" (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act, whether or not applicable), other than the Company, the Operating Partnership or any majority-owned subsidiary of the Company or any employee benefit plan of the Company, the Operating Partnership or such subsidiary, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power in the aggregate of all classes of shares of beneficial interest of the Company then outstanding entitled to vote generally in elections of trustees; (3) during any period of 12 consecutive months after the date of original issuance of the Notes, persons who at the beginning of such 12-month period constituted the Board of Trustees of the Company, together with any new persons whose election, appointment, designation or nomination was approved by a vote of a majority of the persons then still comprising the Board of Trustees of the Company who were either members of the Board of Trustees of the Company at the beginning of such period or whose election, appointment, designation or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board of Trustees of the Company; or (4) the Company ceases to be the general partner of the Operating Partnership. Notwithstanding the foregoing, even if any of the events specified in the preceding clauses (1) through (4) have occurred, except as specified in clause (x), a Change of Control shall not be deemed to have occurred if either: (x) the Closing Sale Price per Company Common Share for any five Trading Days within (i) the period of 10 consecutive Trading Days ending immediately after the later of the Change of Control or the public announcement of the Change of Control, in the case of a Change of Control relating to an acquisition of shares of beneficial interest, or (ii) the period of 10 consecutive Trading Days ending immediately after the Change of Control, in the case of a

Change of Control relating to a merger, consolidation, asset sale, lease or other transfer equals or exceeds 105% of the Conversion Price applicable to the Notes in effect on each of those Trading Days; *provided*, *however*, that the exception to the definition of "Change of Control" specified in this clause (x) shall not apply in the context of a Change of Control for purposes of Section 2.10 or Section 2.11(d); or (y) at least 90% of the consideration paid for Company Common Shares (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in a merger, consolidation or other transaction otherwise constituting a Change of Control consists of shares of common stock (or depositary receipts or other certificates representing or evidencing common equity interests) traded on a national securities exchange or quoted on an established automated over-the-counter trading market in the United States (or will be so traded or quoted immediately following such merger, consolidation or other transaction) and as a result of the merger, consolidation or other transaction the Notes become convertible into such shares of common stock (or depositary receipts or other certificates representing or evidencing common equity interests). For the purposes of this definition, "person" includes any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

"**Change of Control Purchase Date**" has the meaning provided in Section 2.09 hereof.

"**Change of Control Purchase Notice**" has the meaning provided in Section 2.09 hereof.

"**Change of Control Purchase Price**" has the meaning provided in Section 2.09 hereof.

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

"**Company**" has the meaning provided in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of the Indenture, and thereafter "Company" shall mean such successor Person.

"**Company Common Shares**" means common shares of beneficial interest, par value $0.001 per share, of the Company.

"**Company Notice**" has the meaning provided in Section 2.09 hereof.

"**Conversion Agent**" means the office or agency designated by the Company where the Notes may be presented for conversion.

"**Conversion Price**" means, as of any date of determination, for $1,000 principal amount of Notes, the quotient of $1,000 divided by the Conversion Rate in effect as of such date, rounded to the nearest $0.01, with $0.005 rounded upward.

"**Conversion Rate**" means the number of Company Common Shares by reference to which the Conversion Value shall be determined, which shall be initially 32.4002 Company Common Shares for each $1,000 principal amount of Notes and as the same shall be adjusted from time to time in accordance with the provisions hereof and of the Notes.

"**Conversion Value**" means, for each $1,000 principal amount of Notes, the product of (a) the applicable Conversion Rate, multiplied by (b) the Average Price.

"**Daily Share Amount**" has the meaning provided in Section 2.12 hereof.

"**Depositary**" has the meaning provided in Section 2.03 hereof.

"**Effective Date**" has the meaning specified in Section 2.10.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Expiration Time**" has the meaning specified in Section 2.14.

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

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

"**Indenture**" has the meaning provided in the preamble of this instrument.

"**Interest Payment Date**" has the meaning provided in Section 2.05 hereof.

"**Net Amount**" has the meaning provided in Section 2.12 hereof.

"**Net Cash Amount**" has the meaning provided in Section 2.12 hereof.

"**Net Shares**" has the meaning provided in Section 2.12 hereof.

"**Notes**" has the meaning provided in Section 2.01 hereof which shall be substantially in the form attached as Exhibit A hereto.

"**Operating Partnership**" means Acadia Realty Limited Partnership, a Delaware limited partnership, until a successor Person shall have become such pursuant to the applicable provisions of the Indenture, and thereafter "Operating Partnership" shall mean such successor Person.

"**Optional Repurchase Date**" has the meaning provided in Section 2.08 hereof.

"**Optional Repurchase Notice**" has the meaning provided in Section 2.08 hereof.

"**Optional Repurchase Price**" has the meaning provided in Section 2.08 hereof.

"**PORTAL[SM] Market**" means The PORTAL Market operated by the Nasdaq Stock Market or any successor thereto.

"**Principal Return**" has the meaning provided in Section 2.12 hereof.

"**Purchase Agreement**" means the Purchase Agreement, dated December 5, 2006, among the Company and the Initial Purchasers.

"**Redemption Date**" means, with respect to any Note or portion thereof to be redeemed in accordance with the provisions of Section 2.07 hereof, the date fixed for such redemption in accordance with the provisions of Section 2.07 hereof.

"**Redemption Price**" has the meaning provided in Section 2.07 hereof.

"**Reference Dividend**" has the meaning specified in Section 2.14, subject to adjustment as provided in Section 2.14.

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of December 11, 2006, among the Company and the Initial Purchasers, as amended from time to time in accordance with its terms.

"**Regular Record Date**" has the meaning provided in Section 2.05 hereof.

"**Restricted Securities**" has the meaning specified in Section 2.25.

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

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Spin-Off**" has the meaning specified in Section 2.14.

"**Stock Price**" has the meaning specified in Section 2.10.

"**Trading Day**" means a day during which trading in securities generally occurs on the New York Stock Exchange or, if Company Common Shares are not then listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which Company Common Shares are then traded.

"**Trading Price**" means, with respect to the Notes on any date of determination, the average of the secondary market bid quotations per $1,000 principal amount of Notes obtained by the Trustee for a $2,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from two independent nationally recognized

securities dealers selected by the Company, which may include one or more of the Initial Purchasers or any successor to such entities. If at least two such bids cannot reasonably be obtained by the Trustee, but one such bid can reasonably be obtained by the Trustee, then one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for a $2,000,000 principal amount of Notes from a nationally recognized securities dealer or, in the reasonable judgment of the Company, the bid quotations are not indicative of the secondary market value of the Notes, then the Trading Price per $1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Closing Sale Price of Company Common Shares and the Conversion Rate on such determination date.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended.

(b) References to "interest" in the Indenture shall be deemed to include Additional Interest, if any, payable in respect of the Notes, except to the extent otherwise provided or where the context otherwise requires.

ARTICLE TWO
TERMS

Section 2.01. Title. The Notes shall constitute a series of Securities designated as the "3.75% Convertible Notes due 2026" of the Company.

Section 2.02. Aggregate Principal Amount. The aggregate principal amount of Notes which may be authenticated and delivered under the Indenture is initially limited in aggregate principal amount to $100,000,000 (or up to $115,000,000 if the Initial Purchasers' exercise in full their option to purchase additional Notes described in the Purchase Agreement), except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 304, 305, 306, 906, 1107 or 1203 of the Original Indenture and except for any Notes which, pursuant to Section 303 of the Original Indenture, are deemed never to have been authenticated and delivered thereunder; provided that the Company may from time to time, without the consent of the Holders of the Notes, subject to compliance with the terms of the Indenture, increase the principal amount of the Notes by issuing additional Securities in the future (the "**Additional Notes**") having the same terms and ranking equally and ratably with the Notes in all respects and with the same CUSIP

number as the Notes, except for the difference in the issue price and interest accrued prior to the issue date of such Additional Notes, provided that such Additional Notes constitute part of the same issue as the Notes for U.S. federal income tax purposes. Any Additional Notes shall be treated as a single series with the Notes under the Indenture and shall have the same terms as to status, redemption, repurchase, exchange and otherwise as the Notes. For clarity, the limitations in this Section 2.02, including the limitation on the aggregate principal amount of the Notes which may be authenticated and delivered under the Indenture, shall not apply or be construed to apply to any series of Securities, other than the Notes, that may be authenticated and delivered under the Indenture.

Section 2.03. Registered Securities in Book-Entry Form. The Notes shall be issuable initially in the form of one or more global Securities registered in the name of The Depository Trust Company's nominee, and shall be deposited with, or on behalf of, The Depository Trust Company, New York, New York (the "**Depositary**"). The Notes may be

surrendered for registration of transfer and for exchange pursuant to Section 305 of the Indenture at the office or agency of the Company (including the Trustee) maintained for such purpose in the Borough of Manhattan, The City of New York, or at any other office or agency maintained by the Company for such purpose.

Section 2.04. Stated Maturity of Principal. The Stated Maturity of the principal of the Notes shall be December 15, 2026.

Section 2.05. Interest. The Notes shall bear interest at the rate of 3.75% per annum from December 11, 2006 or from the most recent Interest Payment Date to which interest has been paid or provided for, as the case may be, and shall be payable semi-annually in arrears on June 15 and December 15 of each year (each, an "**Interest Payment Date**"), commencing on June 15, 2007, until the principal thereof is paid or duly made available for payment, to the Persons in whose names such Notes are registered at the close of business on the June 1 or December 1 (whether or not a Business Day) immediately preceding the applicable Interest Payment Date (each, a "**Regular Record Date**"). Interest payable on each Interest Payment Date shall equal the amount of interest accrued for the period commencing on and including the immediately preceding Interest Payment Date in respect of which interest has been paid (or commencing on and including December 11, 2006, if no interest has been paid) and ending on and including the day preceding such Interest Payment Date. Interest on the Notes shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

If the Company shall redeem the Notes in accordance with the provisions of Section 2.07 hereof, or if a Holder shall surrender a Note for repurchase by the Company in accordance with the provisions of 2.08 or 2.09 hereof, subject to the next succeeding sentence, accrued and unpaid interest (including Additional Interest, if any) shall be payable to the Holder that shall have surrendered such Note for redemption or repurchase, as the case may be. However, if an Interest Payment Date shall fall on or prior to the Redemption Date or Optional Repurchase Date or Change of Control Purchase Date, as the case may be, for a Note, and after the related Regular Record Date, accrued and unpaid interest (including Additional Interest, if any) due on such Interest Payment Date shall be payable instead to the Person in whose name such Note is registered at the close of business on the related Regular Record Date.

Section 2.06. Place of Payment**.** The principal of and the interest on the Notes shall be payable at the office or agency of the Company (including the Trustee) maintained for such purpose in the Borough of Manhattan, The City of New York in the in the manner specified in the Indenture.

Section 2.07. Redemption**.** The Company shall not have the right to redeem any Notes prior to December 20, 2011, except to preserve the Company's status as a real estate investment trust for U.S. federal income tax purposes. If, at any time, the Company determines it is necessary to redeem the Notes in order to preserve the Company's status as a real estate investment trust for U.S. federal income tax purposes, the Company may, upon not less than 30 nor more than 60 days' prior written notice by mail to the Holders of the Notes, redeem the Notes in whole or in part, for cash equal to 100% of the principal amount of the Notes to be redeemed plus accrued and unpaid interest (including Additional Interest, if any) to, but not including, the Redemption Date. In such case, the Company shall provide the Trustee with an

Officers' Certificate evidencing that the Board of Trustees of the Company has, in good faith, made the determination that it is necessary to redeem the Notes in order to preserve the Company's status as a real estate investment trust for U.S. federal income tax purposes.

The Company shall have the right to redeem the Notes, in whole or in part at any time or from time to time, on or after December 20, 2011 upon not less than 30 nor more than 60 days' prior written notice by mail to the Holders of the Notes, at a redemption price ("**Redemption Price**") for cash equal to 100% of the principal amount of the Notes to be redeemed plus accrued and unpaid interest (and Additional Interest, if any) to, but not including, the Redemption Date. If less than all the Notes are to be redeemed, the Trustee shall select the Notes to be redeemed (in principal amounts of $1,000 and integral multiples thereof) on a *pro rata* basis or by such other method the Trustee considers fair and appropriate. The Trustee shall make the selection at least 30 days but

not more than 60 days before the Redemption Date from Outstanding Notes not previously called for redemption. Notes and portions of the principal amount thereof selected for redemption shall be in integral multiples of $1,000. The Trustee shall notify the Company promptly of the Notes or portions of the principal amount thereof to be redeemed. If the Trustee selects a portion of a Note for partial redemption and a Holder converts a portion of the same Note in accordance with the provisions of Section 2.11 hereof before termination of the conversion right with respect to the portion of the Note so selected, the converted portion of such Note shall be deemed to be from the portion selected for redemption. Notes that have been converted pursuant to Section 2.11 hereof during a selection of Notes to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

In the event of any redemption in part, the Company shall not be required to: (i) issue or register the transfer or conversion of any Note pursuant to Section 305 of the Original Indenture during a period beginning at the opening of business 15 days before any selection of Notes for redemption and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of Notes to be so redeemed, or (ii) register the transfer or conversion pursuant to Section 305 of the Original Indenture of any Note so selected for redemption, in whole or in part, except the unredeemed portion of any Note being redeemed in part.

In addition to those matters set forth in Section 1104 of the Original Indenture, a notice of redemption sent to the Holders of Notes to be redeemed in accordance with the provisions of the two preceding paragraphs shall state:

(a) the name and address of the Trustee, the Paying Agent and Conversion Agent;

(b) the then current Conversion Rate;

(c) that Notes called for redemption may be converted pursuant to Section 2.11 hereof at any time prior to the close of business on the second Business Day immediately preceding the Redemption Date; and

(d) that Holders who wish to convert Notes pursuant to Section 305 of the Original Indenture must comply with the procedures relating thereto specified in Section 2.13 hereof.

Section 2.08. Repurchase Rights**.** A Holder of Notes shall have the right to require the Company to repurchase such Holder's Notes, in whole or in part (in principal amounts of $1,000 or an integral multiple thereof), on each of December 20, 2011, December 15, 2016 and December 15, 2021 (each, an "**Optional Repurchase Date**") for cash equal to 100% of the principal amount of the Notes to be repurchased plus accrued and unpaid interest (including Additional Interest, if any,) to, but not including, the Optional Repurchase Date (such amount, the "**Optional Repurchase Price**"), subject to satisfaction by or on behalf of the Holder of the requirements set forth below.

On or before the 20th Business Day prior to each Optional Repurchase Date, the Company shall provide a written notice by first-class mail to the Trustee, any Paying Agent and all Holders (and to beneficial owners as required by applicable law). The notice shall include a form of Optional Repurchase Notice to be completed by the Holder and shall state:

(a) the date by which the Optional Repurchase Notice must be delivered to the Paying Agent;

(b) the Optional Repurchase Date;

(c) the Optional Repurchase Price;

(d) the name and address of the Trustee, the Paying Agent and the Conversion Agent;

(e) that Notes must be surrendered to the Paying Agent to collect payment of the Optional Repurchase Price and the procedures that holders must follow to require the Company to repurchase their Notes;

(f) that the Optional Repurchase Price for any Note as to which an Optional Repurchase Notice has been duly given shall be paid within two Business Days after the later of the Optional Repurchase Date or the time at which such Notes are surrendered for repurchase;

(g) that, unless the Company defaults in making payment of the Optional Repurchase Price, interest on Notes surrendered for repurchase shall cease to accrue on and after the Optional Repurchase Date;

(h) that Notes in respect of which an Optional Repurchase Notice is provided by a Holder shall not be convertible in accordance with their terms and pursuant to Section 2.11 hereof even if otherwise convertible unless such Holder validly withdraws such Optional Repurchase Notice in accordance with the provisions of this Section 2.08; and

(i) the CUSIP number of the Notes.

The Company shall also disseminate a press release through Dow Jones & Company, Inc. or Bloomberg Business News containing the information specified in such notice or publish such information in a newspaper of general circulation in The City of New York, or through such other public medium as the Company shall deem appropriate at such time. In addition, the Company shall post any such press release on its website or disseminate it through any other appropriate public medium.

A Holder may exercise its rights specified in this Section 2.08 by delivery of a written notice of repurchase (an "**Optional Repurchase Notice**") to the Paying Agent during the period beginning at any time from the opening of business on the date that is 20 Business Days prior to the applicable Optional Repurchase Date until the close of business on the second Business Day prior to such Optional Repurchase Date, stating:

(a) if such Notes are in certificated form, the certificate number(s) of the Notes which the Holder shall deliver to be repurchased;

(b) the portion of the principal amount of the Notes to be repurchased, in integral multiples of $1,000, provided that the remaining principal amount of Notes is in an authorized denomination; and

(c) that such Notes shall be repurchased pursuant to the applicable provisions hereof and the Notes.

The Paying Agent shall promptly notify the Company in writing of the receipt by it of any Optional Repurchase Notice.

Book-entry transfer of Notes in book-entry form in compliance with appropriate procedures of the Depositary or delivery of Notes in certificated form, together with all necessary endorsements, to the Paying Agent on or prior to the Optional Repurchase Date at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Optional Repurchase Price therefor. The Company shall pay the Optional Repurchase Price within two Business Days after the later of the Optional Repurchase Date or the time of such transfer or delivery of the Notes.

An Optional Repurchase Notice may be withdrawn in whole or in part by a Holder by means of a written notice of withdrawal delivered to the office of the Paying Agent prior to the close of business on the second Business Day prior to the Optional Repurchase Date specifying:

(a) the Holder's name;

(b) the principal amount of Notes in respect of which the Optional Repurchase Notice is being withdrawn, which must be an integral multiple of $1,000;

(c) if the Notes subject to the notice of withdrawal are in certificated form, the certificate number(s) of all Notes subject to the notice of withdrawal; and

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

If Notes subject to the notice of withdrawal are in book-entry form, the above notices must also comply with the applicable procedures of the Depositary.

On or before 10:00 a.m. (New York City time) on the Optional Repurchase Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the Company is acting as the Paying Agent, shall segregate and hold in trust) money sufficient to pay the aggregate Optional Repurchase Price of the Notes to be purchased pursuant to this Section 2.08. If the Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Optional Repurchase Price of such Notes on the Optional Repurchase Date, then on and after such date, such Notes shall cease to be Outstanding and interest on such Notes shall cease to accrue, and all rights of the Holder of such Notes shall terminate (other than the right to receive the Optional Repurchase Price after delivery or transfer of the Notes). Such shall be the case whether or not book-entry transfer

of the Notes in book-entry form is made and whether or not Notes in certificated form, together with the necessary endorsements, are delivered to the Paying Agent.

Notwithstanding the foregoing, no Notes may be purchased by the Company in accordance with the provisions of this Section 2.08 if there has occurred and is continuing an Event of Default with respect to the Notes (other than a default in the payment of the Optional Repurchase Price).

To the extent legally required in connection with a repurchase of Notes, the Company shall comply with the provisions of Rule 13e-4 and other tender offer rules under the Exchange Act then applicable, if any, and shall file a Schedule TO or any other schedule required under the Exchange Act.

The Company may arrange for a third party to purchase Notes for which the Company has received a valid Optional Repurchase Notice that has not been properly withdrawn, in the manner and otherwise in compliance with the requirements set forth herein and in the Notes. If a third party purchases any Notes under such circumstances, then interest shall continue to accrue on the Notes and such Notes shall continue to be Outstanding after the Optional Repurchase Date for all purposes of the Indenture and, subject to compliance with applicable law, shall be fungible with all other Notes then Outstanding.

Section 2.09. Repurchase at Option of Holders upon a Change of Control**.** If a Change of Control occurs at any time prior to December 20, 2011, a Holder of Notes shall have the right to require the Company to repurchase such Holder's Notes, in whole or in part (in principal amounts of $1,000 or an integral multiple thereof) for cash equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest (including Additional Interest, if any) to, but not including, the Change of Control Purchase Date (such amount, the "**Change of Control Purchase Price**"), subject to satisfaction by or on behalf of the Holder of the requirements set forth below. If a Change of Control occurs on or after December 20, 2011, Holders of Notes shall not have any right to require the Company to repurchase their Notes, except in accordance with Section 2.08.

Within 20 days after the occurrence of a Change of Control, the Company shall mail a written notice of Change of Control and of the repurchase right arising as a result of the Change of Control (the "**Company Notice**") by first-class mail to the Trustee, any Paying Agent and to each Holder (and to beneficial owners as required by applicable law). The notice shall include a form of Change of Control Purchase Notice to be completed by the Holder and shall state:

(a) the events causing a Change of Control and the date of such Change of Control;

(b) the date by which the Change of Control Purchase Notice must be delivered to the Paying Agent;

(c) the date on which the Company shall repurchase Notes upon a Change of Control, which must be not less than 15 days nor more than 30 days after the date of the Company Notice (such date, the "**Change of Control Purchase Date**");

(d) the Change of Control Purchase Price;

(e) the name and address of the Trustee, the Paying Agent and the Conversion Agent;

(f) that Notes must be surrendered to the Paying Agent to collect payment of the Change of Control Purchase Price and the procedures that Holders must follow to require the Company to repurchase their Notes;

(g) that the Change of Control Purchase Price for any Note as to which a Change of Control Purchase Notice has been duly given shall be paid within two Business Days after the later of the Change of Control Purchase Date or the time at which such Notes are surrendered for repurchase;

(h) that, unless the Company defaults in making payment of the Change of Control Purchase Price, interest on Notes surrendered for repurchase shall cease to accrue on and after the Change of Control Purchase Date;

(i) that Notes in respect of which a Change of Control Purchase Notice is provided by a Holder shall not be convertible pursuant to Section 2.11 of the First Supplemental Indenture unless such Holder validly withdraws such Change of Control Purchase Notice in accordance with the provisions of this Section 2.09; and

(j) the CUSIP number of the Notes.

The Company shall also disseminate a press release through Dow Jones & Company, Inc. or Bloomberg Business News announcing the occurrence of such Change of Control or publish such information in a newspaper of general circulation in The City of New York, or through such other public medium as the Company

shall deem appropriate at such time. In addition, the Company shall post any such press release on its website or disseminate it through any other appropriate medium.

A Holder may exercise its rights specified in this Section 2.09 upon delivery of a written notice of such Holder's exercise of its repurchase right (a "**Change of Control Purchase Notice**") to the Paying Agent at any time prior to the close of business on the third Business Day prior to the Change of Control Purchase Date, stating:

(a) if such Notes are in certificated form, the certificate number(s) of the Notes which the Holder shall deliver to be repurchased;

(b) the portion of the principal amount of the Notes to be repurchased, in multiples of $1,000, provided that the remaining principal amount of Notes is in an authorized denomination; and

(c) that such Note shall be repurchased pursuant to the applicable provisions hereof and of the Notes.

The Paying Agent shall promptly notify the Company in writing of the receipt by it of any Change of Control Purchase Notice.

Book-entry transfer of Notes in book-entry form in compliance with appropriate procedures of the Depositary or delivery of Notes in certificated form (together with all necessary endorsements) to the Paying Agent on or after the Change of Control Purchase Date at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Change of Control Purchase Price therefor. Holders electing to require the Company to repurchase Notes must effect such transfer or delivery to the Paying Agent on or prior to the Change of Control Purchase Date to receive payment of the Change of Control Purchase Price on or within two Business Days after the Change of Control Purchase Date. The Company shall pay the Change of Control Purchase Price within two Business Days after the later of the Change of Control Purchase Date or the time of such transfer or delivery of the Notes.

A Change of Control Purchase Notice may be withdrawn in whole or in part by a Holder by means of a written notice of withdrawal delivered to the office of the Paying Agent prior to the close of business on the third Business Day prior to the Change of Control Purchase Date specifying:

(a) the Holder's name;

(b) the principal amount of Notes in respect of which the Change of Control Purchase Notice is being withdrawn, which must be an integral multiple of $1,000;

(c) if the Notes subject to the notice of withdrawal are in certificated form, the certificate number(s) of all Notes subject to the notice of withdrawal; and

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

If Notes subject to the notice of withdrawal are in book-entry form, the above notices must also comply with the applicable procedures of the Depositary.

On or before 10:00 a.m. (New York City time) on the Change of Control Purchase Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the Company is acting as the Paying Agent, shall segregate and hold in trust) money sufficient to pay the aggregate Change of Control Purchase Price of the Notes to be purchased pursuant to this Section 2.09. If the Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Change of Control Purchase Price of such Notes on the Change of Control Purchase Date, then, on and after such date, such Notes shall cease to be Outstanding and interest on such Notes shall cease to accrue and all rights of the Holders of such Notes shall terminate (other than the right to receive the Change of Control Purchase Price after delivery or transfer of the Notes). Such shall be the case whether or not book-entry transfer of the Notes in book-entry form is made and whether or not Notes in certificated form, together with the necessary endorsements, are delivered to the Paying Agent.

Notwithstanding the foregoing, no Notes may be repurchased by the Company in accordance with the provisions of this Section 2.09 if there has occurred and is continuing an Event of Default with respect to the Notes (other than a default in the payment of the Change of Control Purchase Price).

To the extent legally required in connection with a repurchase of Notes, the Company shall comply with the provisions of Rule 13e-4 and other tender offer rules under the Exchange Act then applicable, if any, and will file a Schedule TO or any other schedule required under the Exchange Act.

The Company may arrange for a third party to purchase Notes for which the Company has received a valid Change of Control Purchase Notice that has not been properly withdrawn, in the manner and otherwise in compliance with the requirements set forth herein and in the Notes. If a third party purchases any Notes under such circumstances, then interest shall continue to accrue on the Notes and such Notes shall continue to be Outstanding after the Change of Control Purchase Date for all purposes of the Indenture and shall be fungible with all other Notes then Outstanding.

Section 2.10. Make Whole Amount**.** If a Change of Control occurs prior to December 20, 2011 as a result of a transaction or event described in clauses (1) or (2) of the definition of Change of Control and a Holder elects to convert its Notes in connection with such Change of Control pursuant to Section 2.11(d), the Company shall increase the applicable Conversion Rate for such Notes surrendered for conversion by a number of additional Company Common Shares (the "**Additional Shares**") as specified below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such a Change of Control if the notice of conversion of the Notes is received by the Conversion Agent on any date from and including the date that is the Effective Date (as defined below) of such Change of Control up to and including the 30th Business Day following the Effective Date of such Change of Control or, if applicable, the related Change of Control Repurchase Date.

The number of Additional Shares shall be determined by reference to the table below and is based on the date on which such Change of Control transaction becomes effective (the "**Effective Date**") and the price (the "**Stock Price**") paid per Company Common Share in such Change of Control transaction. If holders of Company Common Shares receive only cash

in a Change of Control transaction described in clause (1) of the definition of such term, the Stock Price shall be the cash amount paid per Company Common Share. In all other cases, the Stock Price shall be the average of the Closing Sale Prices of Company Common Shares on the 10 consecutive Trading Days up to but excluding the Effective Date.

The Stock Prices set forth in the first row of the table (i.e., the column headers) shall be adjusted as of any date on which the Conversion Rate of the Notes is 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 the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. In addition, the number of Additional Shares shall be subject to adjustment in the same manner as the Conversion Rate in accordance with the provisions of Section 2.14 hereof.

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

	Stock Price										
Effective Date	**$25.72**	**$30.86**	**$35.00**	**$40.00**	**$45.00**	**$50.00**	**$55.00**	**$60.00**	**$65.00**	**$70.00**	**$75.00**
December 11, 2006	6.4800	3.3287	2.0157	1.1708	0.7290	0.4816	0.3312	0.2322	0.1629	0.1126	0.0751
December 15, 2007	6.4800	3.1631	1.8196	1.0011	0.6016	0.3913	0.2682	0.1885	0.1325	0.0913	0.0603
December 15, 2008	6.4001	2.8631	1.5243	0.7749	0.4471	0.2891	0.2004	0.1428	0.1012	0.0698	0.0455
December 15, 2009	6.2659	2.4521	1.1394	05105	0.2836	0.1874	0.1346	0.0985	0.0711	0.0492	0.0318
December 15, 2010	6.1717	1.8377	0.6186	0.2235	0.1290	0.0932	0.0710	0.0538	0.0397	0.0278	0.0180
December 20, 2011	—	—	—	—	—	—	—	—	—	—	—

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

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

(b) if the Stock Price is equal to or in excess of $75.00 per Company Common Share (subject to adjustment as specified in the second preceding paragraph), no Additional Shares shall be issued upon a conversion of Notes;

(c) if the Stock Price is less than $25.72 per Company Common Share (subject to adjustment as specified in the second preceding paragraph), no Additional Shares shall be issued upon a conversion of Notes.

Notwithstanding the foregoing, in no event shall the Conversion Rate (including any Additional Shares) issuable upon a conversion of Notes exceed 38.8802 shares per $1,000 principal amount of Notes, subject to adjustment in the same manner as the Conversion Rate

pursuant to Section 2.14 hereof. All calculations under this Section 2.10 shall be the responsibility of the Company.

Section 2.11. Conversion Rights.

Subject to the restrictions on ownership of Company Common Shares as set forth in Section 2.15 hereof and to the conditions set forth herein, Holders may surrender their Notes for conversion for cash and Company Common Shares or a combination of cash and Company Common Shares, at the Company's option, at the applicable Conversion Rate prior to the close of business on the second Business Day immediately preceding the Stated Maturity of the Notes either (x) at any time on or after December 15, 2025 or (y) under any of the other circumstances set forth in this Section 2.11.

(a) *Conversion Upon Satisfaction of Market Price Condition*. A Holder may surrender any of its Notes for conversion during any calendar quarter beginning after December 31, 2006 (and only during such calendar quarter) if, and only if, the Closing Sale Price of Company Common Shares for at least 20 Trading Days (whether or not consecutive) in the period of 30 consecutive Trading Days ending on the last Trading Day of the preceding calendar quarter as determined by the Company is more than 130% of the Conversion Price per Company Common Share in effect on the applicable Trading Day. The Board of Trustees of the Company shall make appropriate adjustments, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the ex-dividend date of the event occurs, during that 30 consecutive trading-day period.

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

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

(c) *Conversion Upon Notice of Redemption*. A Holder may surrender for conversion any of the Notes called for redemption at any time prior to the close of business on the second Business Day prior to the Redemption Date, even if the Notes are not otherwise convertible at such time. The right to convert Notes called for redemption pursuant

to this clause (c) shall expire after the close of business on the second Business Day prior to the Redemption Date unless the Company defaults in making the payment due upon redemption.

(d) *Conversion Upon Specified Transactions*. If the Company elects to:

(i) distribute to all holders of Company Common Shares rights entitling them to purchase, for a period expiring within 45 days, Company Common Shares at less than the Closing Sale Price of Company Common Shares on the Trading Day immediately preceding the declaration date of the distribution; or

(ii) distribute to all holders of Company Common Shares assets, debt securities or rights to purchase securities of the Company or those of the Operating Partnership, which distribution has a per share value exceeding 15% of the Closing Sale Price of Company Common Shares on the Trading Day immediately preceding the declaration date of such distribution,

the Company must notify the Holders of the Notes in writing at least 25 Business Days prior to the ex-dividend date for such distribution. Following the giving of such notice, Holders may surrender their Notes for conversion at any time until the earlier of the close of business on the Business Day prior to the ex-dividend date or an announcement that such distribution shall not take place; *provided, however*, that a Holder may not exercise this

right to convert if the Holder may participate, on an as-converted basis, in the distribution without a conversion of Notes. The ex-dividend date is the first date upon which a sale of the Company Common Shares does not automatically transfer the right to receive the relevant distribution from the seller of Company Common Shares to its buyer.

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

If a Change of Control occurs as a result of a transaction described in clauses (1) or (2) of the definition of "Change of Control", a Holder shall have the right to convert its Notes at any time from and including the Effective Date of such transaction up to and including the 30th Business Day following the Effective Date of the transaction, provided that, if a Holder has already delivered an Optional Repurchase Notice or a Change of Control Purchase Notice with respect to a Note, such Holder may not surrender such Note for conversion until it has withdrawn such notice in accordance with the applicable provisions of Section 2.08 or 2.09 hereof, as the case may be. The Company shall notify Holders as promptly as practicable following the date that it publicly announces such Change of Control (but in no event later than five Business Days prior to the Effective Date of such Change of Control).

If the Company is a party to a consolidation, merger, binding share exchange or a sale, lease or other transfer of all or substantially all of the consolidated assets of the Company pursuant to which all of the Company Common Shares are exchanged for cash, securities or other property, then from and after the effective time of the transaction, any conversion of Notes, including the Conversion Value and Net Shares deliverable in connection with such conversion, shall be based on, and without limiting the obligation to pay the Principal Return in cash, the Holders shall be entitled to receive for any Net Shares, the kind and amount of cash, securities or other property (the "**Applicable Consideration**") that the Holder would have received if such Holder had converted its Notes for Company Common Shares immediately prior to the effective time of the transaction. For purposes of the foregoing, where a consolidation, merger, binding share exchange or a sale, lease or other transfer of all or substantially all of the consolidated assets of the Company involves a transaction that causes Company Common Shares to be converted into the right to receive more than a single type of consideration based upon any form of shareholder election, the Applicable Consideration shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Company Common Shares that affirmatively make such an election. At the time of any transaction described in this paragraph, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) providing that each Note shall be convertible into the Applicable Consideration. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided in this First Supplemental Indenture.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder of Notes, at its address appearing on the Security Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions shall similarly apply to successive reclassifications, changes, consolidations, mergers, binding share exchanges, combinations, sales and transfers.

If a Change of Control occurs prior to December 20, 2011 as a result of a transaction described in clauses (1) or (2) of the definition thereof, the Company shall adjust the Conversion Rate for Notes tendered for conversion in connection with such a Change of Control transaction, as described in Section 2.10 hereof.

(e) *Conversion Upon Delisting of Company Common Shares*. A Holder of Notes may surrender any of its Notes for conversion at any time beginning on the first Business Day after the Company Common Shares have ceased to be listed on a U.S. national or regional securities exchange for a 30 consecutive Trading Day period.

(f) *Partial Conversions and Withdrawal of Purchase Notices*. A Holder may convert fewer than all of its Notes so long as the Notes converted are an integral multiple of $1,000 principal amount and the remaining principal amount of Notes is in an authorized denomination. If a Holder has delivered an Optional Repurchase Notice or a Change of Control Purchase Notice with respect to a Note, such Holder may not surrender such Note for

conversion until it has withdrawn such notice in accordance with the applicable provisions of Section 2.08 or 2.09 hereof, as the case may be.

Section 2.12. Conversion Settlement**.** Upon a conversion of Notes, the Company shall deliver, in respect of each $1,000 principal amount of Notes tendered for conversion in accordance with their terms:

(a) cash in an amount (the "**Principal Return**") equal to the lesser of (1) the principal amount of the Notes surrendered for conversion and (2) the Conversion Value, and

(b) if the Conversion Value is greater than the Principal Return, an amount (the "**Net Amount**") in cash or Company Common Shares or a combination of cash or Company Common Shares with an aggregate value equal to the difference between the Conversion Value and the Principal Return.

The Company may elect to deliver any portion of the Net Amount in cash (the "**Net Cash Amount**") or Company Common Shares, and any portion of the Net Amount the Company elects to deliver in Company Common Shares (the "**Net Shares**") shall be the sum of the Daily Share Amounts (calculated as described below in this paragraph (b)) for each Trading Day during the Applicable Conversion Period. Prior to the close of business on the second Trading Day following the date on which Notes are tendered for conversion, the Company shall inform Holders of such Notes of its election to pay cash for all or a portion of the Net Amount and, if applicable, the portion of the Net Amount that shall be paid in cash and the portion that shall be delivered in the form of Net Shares.

The Company shall deliver cash in lieu of any fractional Company Common Shares issuable in connection with payment of the Net Shares based upon the Average Price.

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

(a) zero; and

(b) a number of Company Common Shares determined by the following formula:

$$\frac{(CSP \times CR)-(\$1{,}000 + \text{the Net Cash Amount, if any})}{20 \times CSP}$$

where

CSP = the Closing Sale Price of Company Common Shares on such Trading Day; provided that if the Notes have become convertible into securities or property other than our Common Shares, "CSP" is equal to the average of the closing sale prices of such securities for each Trading Day in the Applicable Conversion Period or, in the case of other, property, the fair market value thereof as determined in good faith by the Board of Trustees, and

CR = the applicable Conversion Rate

The Company shall determine the Conversion Value, Principal Return, Net Amount, Net Cash Amount and the number of Net Shares, as applicable, promptly after the end of the Applicable Conversion Period. The Company shall pay the Principal Return and cash in lieu of fractional shares, and deliver Net Shares or pay the Net Cash Amount, or a combination thereof, as applicable, no later than the third Business Day following the last Trading Day of the Applicable Conversion Period.

Section 2.13. Conversion Procedures**.** To convert Notes, a Holder must satisfy the requirements set forth in this Section 2.13.

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

Notes in respect of which a Holder has delivered an Optional Repurchase Notice or Change of Control Purchase Notice may be converted only if such notice is withdrawn in accordance with the terms of Section 2.08 or Section 2.09, as the case may be.

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, without charge to such holder, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the portion of the surrendered Notes not surrendered for conversion. A Holder may convert fewer than all

of such Holder's Notes so long as the Notes converted are an integral multiple of $1,000 principal amount and the remaining principal amount of the Notes is in an authorized denomination.

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

Upon conversion of a Note, a Holder shall not receive any cash payment representing accrued and unpaid interest on such Note. Instead, upon a conversion of Notes, the Company shall deliver to tendering Holders only the consideration specified in Section 2.12. Delivery of cash and Company Common Shares, if any, upon a conversion of Notes shall be deemed to satisfy the Company's obligation to pay the principal amount of the Notes and any

accrued and unpaid interest, except as otherwise provided herein. Accordingly, upon a conversion of Notes, except as otherwise provided herein, any accrued and unpaid interest shall be deemed paid in full rather than cancelled, extinguished or forfeited. In no event shall the Conversion Rate be adjusted to account for accrued and unpaid interest on the Notes.

Holders of Notes at the close of business on a Regular Record Date for an interest payment shall receive payment of interest payable on the corresponding Interest Payment Date notwithstanding the conversion of such Notes at any time after the close of business on the applicable Regular Record Date. Notes tendered for conversion by a Holder after the close of business on any Regular Record Date for an interest payment and on or prior to the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest that such Holder is to receive on such Notes on such Interest Payment Date; *provided, however*, that no such payment shall be required to be made (1) if such Notes have been called for redemption on a Redemption Date that is after such Regular Record Date and on or prior to the second Business Day following such Interest Payment Date or (2) with respect to overdue interest (including Additional Interest), if any overdue interest exists at the time of conversion with respect to such Notes.

Upon conversion of a Note, the Company, if it elects to deliver Net Shares, shall pay any documentary, stamp or similar issue or transfer tax due on the issue of the Net Shares upon the conversion, if any, unless the tax is due because the Holder requests the shares to be issued or delivered to a person other than the Holder, in which case the Holder must pay the tax due prior to the delivery of such Net Shares. Certificates representing or evidencing Company Common Shares shall not be issued or delivered unless all taxes and duties, if any, payable by the Holder have been paid.

A Holder of Notes, as such, shall not be entitled to any rights of a holder of Company Common Shares. Such Holder shall only acquire such rights upon the delivery by the Company, at its option, of Net Shares in accordance with the provisions of Section 2.12 in connection with the conversion by a Holder of Notes.

If a Holder converts more than one Note at the same time, the number of Net Shares, if any, issuable upon the conversion shall be based on the total principal amount of the Notes surrendered for conversion.

The Company shall, prior to issuance of any Notes hereunder, and from time to time as may be necessary, reserve out of its authorized but unissued Company Common Shares a sufficient number of Company Common Shares to permit the conversion of the Notes at the applicable Conversion Rate, assuming an election by the Company to satisfy the entire Net Amount by the delivery of Company Common Shares. Any Company Common Shares delivered upon a conversion of Notes shall be newly issued shares or treasury shares, shall be duly and validly issued and fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company shall endeavor promptly to comply with all federal and state securities laws regulating the issuance and delivery of Company Common Shares, if any, upon a conversion of Notes and, prior to delivering any Company Common Shares upon a conversion of

the Notes, shall cause to have listed or quoted all such Company Common Shares on each U.S. national securities exchange or over-the-counter or other domestic market on which the Company Common Shares are then listed or quoted.

Except as set forth herein, no other payment or adjustment for interest shall be made upon conversion of Notes.

Section 2.14. Conversion Rate Adjustments**.** The Conversion Rate shall be adjusted from time to time as follows:

(a) If the Company issues Company Common Shares as a dividend or distribution on Company Common Shares to all holders of Company Common Shares, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$CR_1 = CR_0 \times (OS_1/OS_0)$

where

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

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

OS_0 = the number of Company Common Shares outstanding immediately prior to such event

OS_1 = the number of Company Common Shares outstanding immediately after such event.

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

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

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

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where

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

CR_1 = the new Conversion Rate taking such event into account

OS_0 = the number of Company Common Shares outstanding immediately prior to such event

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

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

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

For purposes of this paragraph (b), in determining whether any rights, warrants, options, other securities or convertible securities entitle the holders to subscribe for or purchase, or exercise a conversion right for, Company Common Shares at less than the applicable Closing Sale Price of Company Common Shares, and in determining the aggregate exercise or conversion price payable for such Company Common Shares, there shall be taken into account any consideration received by the Company for such rights, warrants, options, other securities or convertible securities and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined by the Board of Trustees of the Company.

If any right, warrant, option, other security or convertible security described in this paragraph (b) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such right, warrant, option, other security or convertible security had not been so issued.

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

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

(ii) dividends or distributions paid exclusively in cash, and

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

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

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

where

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

CR_1 = the new Conversion Rate taking such event into account

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

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

An adjustment to the Conversion Rate made pursuant to the immediately preceding paragraph shall be made successively whenever any such distribution is made and shall become effective on the day immediately after the date fixed for the determination of holders of Company Common Shares entitled to receive such distribution.

If the Company distributes to all holders of Company Common Shares, capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit of the Company (a "**Spin-Off**"), the Conversion Rate shall be adjusted based on the following formula:

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

where

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

CR_1 = the new Conversion Rate taking such event into account

FMV_0 = the value, based on the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of

Company Common Shares over the first 10 consecutive Trading Days after the effective date of the Spin-Off applicable to one Company Common Share

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

An adjustment to the Conversion Rate made pursuant to the immediately preceding paragraph shall occur on the 10th Trading Day after the effective date of the Spin-Off.

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

(d) If the Company makes any cash dividend or distribution during any of its quarterly fiscal periods (without regard to when paid) to all holders of Company Common Shares in an aggregate amount that, together with other cash dividends or distributions made in respect of that quarterly fiscal period, exceeds the product of $0.20 (the "**Reference Dividend**") multiplied by the number of Company Common Shares outstanding on the record date for such distribution, the Conversion Rate shall be adjusted based on the following formula:

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

where

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

CR_1 = the new Conversion Rate taking such event into account

SP_0 = the average of the Closing Sale Prices of Company Common Shares for the 10 consecutive Trading Days prior to the business day immediately preceding the earlier of the record date or the day prior to the ex-dividend date for such distribution

RD= the Reference Dividend

C = the amount in cash per Company Common Share that the Company distributes to holders of Company Common Shares in respect of such quarterly fiscal period.

An adjustment to the Conversion Rate made pursuant to this paragraph (d) shall become effective on the date immediately after the date fixed for the determination of holders of Company Common Shares entitled to receive such dividend or distribution. If any dividend or distribution described in this paragraph (d) is declared but not so paid or made, the new

Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if an adjustment to the Conversion Rate is required to be made as a result of a dividend or distribution that is not a quarterly dividend or distribution either in whole or in part, the Reference Dividend shall be deemed to be zero for purposes of determining the adjustment to the Conversion Rate as a result of such dividend or distribution.

The Reference Dividend shall be subject to adjustment in a manner that is inversely proportional to adjustments to the Conversion Rate; provided that no adjustment shall be made to the Reference Dividend for any adjustment made to the Conversion Rate pursuant to this paragraph (d).

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

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

where

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

CR_1 = the new Conversion Rate taking such event into account

AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Trustees of the Company) paid or payable for Company Common Shares purchased in such tender or exchange offer

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

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

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

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

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

(f) Notwithstanding the foregoing, in the event of an adjustment to the Conversion Rate pursuant to paragraph (d) or (e) above, in no event shall the Conversion Rate exceed 38.8802, subject to adjustment pursuant to paragraphs (a), (b) and (c) above.

(g) If the Company has in effect a rights plan while any Notes remain Outstanding, Holders of Notes shall receive, upon a conversion of Notes in respect of which the Company has elected to deliver Net Shares, in addition to such Net Shares, rights under any shareholder rights agreement the Company may then have in effect unless, prior to conversion, the rights have expired, terminated or been redeemed or unless the rights have separated from the Company Common Shares. If the rights provided for in the rights plan adopted by the Company have separated from the Company Common Shares in accordance with the provisions of the applicable shareholder rights agreement so that Holders of Notes would not be entitled to receive any rights in respect of Company Common Shares into which Notes are convertible, the Conversion Rate shall be adjusted at the time of separation as if the Company had distributed to all holders of Company Common Shares capital stock, evidences of indebtedness or other assets or property pursuant to paragraph (c) above, subject to readjustment upon the subsequent expiration, termination or redemption of the rights.

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

If, in connection with any adjustment to the Conversion Rate as set forth in this Section 2.14, a Holder shall be deemed for U.S. federal tax purposes to have received a distribution or other income from the Company, the Company may set off any withholding tax it or the Company reasonably believes it is required to collect with respect to any such deemed distribution or payment against cash payments of interest in accordance with the provisions of Section 2.05 hereof or from cash and Company Common Shares, if any, otherwise deliverable to

a Holder upon a conversion of Notes in accordance with the provisions of Section 2.12 hereof or a redemption or repurchase of a Note in accordance with the provisions of Section 2.07, 2.08 or 2.09 hereof.

The Company shall not make any adjustment to the Conversion Rate if Holders of the Notes are permitted to participate, on an as-converted basis, in the transactions described above without converting their Notes.

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

(i) the issuance of Company Common Shares pursuant to any public or private follow-on offering;

(ii) the issuance of any Company Common Shares pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in Company Common Shares under any plan;

(iii) the issuance of any Company Common Shares or options or rights to purchase those shares pursuant to any present or future employee, trustee or consultant benefit plan, employee agreement or arrangement or program of the Company;

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

(v) a change in the par value of Company Common Shares;

(vi) accumulated and unpaid dividends or distributions;

(vii) as a result of a tender offer solely to holders of less than 100 Company Common Shares; and

(viii) the issuance of limited partnership units by the Operating Partnership for cash or property and the issuance of Company Common Shares for cash or property or the payment of cash upon redemption thereof; *provided* that the acquisition of property upon the issuance of limited partnership units will not result in any anti-dilution adjustments.

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

adjustments not previously made shall be made on the 10th Business Date preceding the applicable Redemption Date.

Whenever the Conversion Rate is adjusted as herein provided, the Company shall as promptly as reasonably practicable file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. 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 the Holders of the Notes upon request within 20 Business Days of the Effective Date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

For purposes of this Section 2.14, the number of Company Common Shares at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of Company Common Shares.

Notwithstanding anything in this Section 2.14 to the contrary, in no event shall the Conversion Rate be adjusted so that the Conversion Price would be less than $0.01.

Section 2.15. Ownership Limit; Withholding. Notwithstanding any other provision of the Notes or the instructions contained herein, no Person may own, or be deemed to own by virtue of the attribution rules of the Code, more than 9.8% in value or number, whichever is more restrictive, of Company Common Shares or the issued and outstanding shares of any of the Company's other classes or series of shares of beneficial interest. Notwithstanding any other provision of the Notes or the instructions contained herein, no Holder of Notes shall be entitled to convert such Notes for Company Common Shares to the extent that receipt of such shares would cause such Holder (together with such Holder's affiliates) to exceed the ownership limit contained in the Declaration of Trust of the Company as in effect from time to time.

At the Maturity of the principal of the Notes, whether at Stated Maturity or upon earlier redemption or repurchase of Notes or otherwise, and as otherwise required by law, the Company may deduct and withhold from the amount of consideration otherwise deliverable to such Holder the amount required to be deducted and withheld under applicable law.

Section 2.16. Merger, Consolidation or Sale. Solely for purposes of the Notes, Section 801 of the Indenture is hereby modified and amended to include, in addition to clauses (1), (2) and (3), the following additional clause:

"(4) if as a result of such transaction the Notes become convertible into common stock or other securities issued by a third party, such third party shall assume or fully and unconditionally guarantee all obligations under the Notes and the Indenture."

Section 2.17. Satisfaction and Discharge. The provisions of Sections 401, 402, 403 and 404 of the Original Indenture shall not be applicable to the Notes. This Indenture shall be discharged and shall cease to be of further effect as to all Notes when either (i) all Notes

theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid as provided in Section 306 of the Original Indenture) have been delivered to the Trustee for the Notes for cancellation or (ii) (A) all Notes have not theretofore been delivered to the Trustee for cancellation, after the Notes have become due and payable, whether on the date of the Stated Maturity of the principal amount of the Notes, any Redemption Date, Optional Repurchase Date or Change of Control Repurchase Date or upon conversion or otherwise, the Company has irrevocably deposited or caused to be deposited with such Trustee as trust funds in trust an amount of cash in any combination of currency or currency unit in which the Notes are payable (except as otherwise specified pursuant to Section 301 of the Original Indenture for the Notes) and/or Company Common Shares sufficient to pay and discharge the entire indebtedness on such Notes for principal (and premium, if any) and accrued and unpaid interest, if any, and pay all other sums payable on, and securities deliverable in respect of, the Notes and under the Indenture in respect of such Notes; (B) no Event of Default or event which with the giving of notice or the lapse of time, or both, would become an Event of Default shall have occurred and be continuing on the date of such deposit and no Event of Default under Section 501(5) or Section 501(6) of the Original Indenture shall have occurred and be continuing on the 123rd day after such date; (C) the Company has paid, or caused to be paid, all sums payable by it under the Indenture in respect of the Notes; and (D) the Company has delivered irrevocable instructions to the Trustee for the Notes under the Indenture to apply the deposited money and Company Common Shares toward the payment of such Notes. In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee for the Notes stating that all conditions precedent to satisfaction and discharge have been satisfied.

Section 2.18. Events of Default; Waiver of Past Defaults.

(a) Section 501 of the Original Indenture is modified and amended for purposes of the Notes to add the following Events of Default:

"default in the delivery when due of the Conversion Value, on the terms set forth herein and in the Notes, upon exercise of a Holder's conversion right in accordance with the terms hereof and of the Notes and the continuation of such default for 10 days;"

– and –

"failure of the Company to provide a Company Notice within 20 days after the occurrence of a Change of Control as provided in Section 2.09 of the First Supplemental Indenture and the continuation of such default for five (5) Business Days."

(b) Section 513 of the Original Indenture is modified and amended for purposes of the Notes to add the following as clause (3):

"(3) in respect of the failure by the Company to convert any Notes in accordance with the provisions of this Indenture."

Section 2.19. Modification. Section 902 of the Original Indenture, as modified by this Section 2.19, shall apply solely to the Notes, and Section 902 of the Original Indenture,

other than as modified by this Section 2.19, shall not apply to the Notes. As modified by this Section 2.19 with respect to the Notes, Section 902 of the Original Indenture is as follows:

"With the consent of the Holders of a majority in principal amount of all Outstanding Notes affected by such supplemental indenture (voting together as a single class), by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the

rights of the Holders of Notes under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Note affected thereby:

(a) change the Stated Maturity of the principal of, or any installment interest (including Additional Interest, if any) on, the Notes;

(b) reduce the principal amount of, the rate of interest (including Additional Interest, if any) on, or change the timing or reduce the amount payable on the redemption of, the Notes;

(c) make any change that impairs or adversely affects the rights of a Holder to convert Notes in accordance herewith;

(d) change the Place of Payment, or the coin or currency, for payment of principal of, or interest (including Additional Interest, if any) on, the Notes;

(e) reduce or alter the method of computation of any amount payable upon redemption, repayment or purchase of any Notes by the Company (or the time when such redemption, repayment or purchase may be made);

(f) impair the right to institute suit for the enforcement of any payment on or with respect to Notes or the delivery of the Conversion Value as required by the Indenture upon a conversion of Notes;

(g) reduce the percentage in principal amount of the Outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver with respect to the Outstanding Notes (or compliance with specified provisions of the Indenture or specified defaults and consequences thereunder) or to reduce the quorum or voting requirements set forth in the Indenture; or

(h) modify any of the provisions of this Section 902, Section 513 or Section 1013 of the Original Indenture, except to increase the required percentage to effect such action or to provide that specified other provisions of the Indenture which may not be modified or waived without the consent of the Holders of each Outstanding Note affected thereby.

It shall not be necessary for any Act of Holders under this Section 2.19 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series."

Section 2.20. [Intentionally omitted].

Section 2.21. [Intentionally omitted].

Section 2.22. Calculations in Respect of the Notes. Except as otherwise specifically stated herein or in the Notes, all calculations to be made in respect of the Notes shall be the obligation of the Company. All calculations made by the Company or its agent as contemplated pursuant to the terms hereof and of the Notes shall be made in good faith and be final and binding on the Company and the Holders absent manifest error. The Company shall provide a schedule of calculations to the Trustee, and the Trustee shall be entitled to rely upon the accuracy of the calculations by the Company without independent verification. The Trustee shall forward calculations made by the Company to any Holder of Notes upon request within 20 Business Days after the effective date of any adjustment.

Section 2.23. Authorized Denominations. The Notes shall be issued in denominations of $1,000 and integral multiples thereof and payments of principal and interest (including Additional Interest) on the Notes shall be made in U.S. dollars.

Section 2.24. Conversion Agent, Paying Agent and Securities Registrar. U.S. Bank National Association is hereby appointed as Conversion Agent, Paying Agent and the Security Registrar for the Notes. The Security Register for the Notes shall be maintained by the Security Registrar in the Borough of Manhattan, The City of New York. The rights, privileges, protections, immunities and benefits given to the Trustee pursuant to the Indenture, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities with respect to the Notes.

Section 2.25. Restrictions on Transfer. (a) Every Note (and all Notes issued in exchange therefor or in substitution thereof) that bears or is required under this Section 2.25(a) to bear the legend set forth in this Section 2.25(a) (together with any Company Common Shares issued upon conversion of such Notes, collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.25(a) (including those set forth in the legend below) unless such restrictions on transfer shall be waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.25(a), the term "transfer" means any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

Until the expiration of the holding period applicable to sales of Restricted Securities under Rule 144(k) under the Securities Act (or any successor provision), any certificate evidencing a Restricted Security shall bear a legend in substantially the following form, unless such Restricted Security has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or sold pursuant to Rule 144 under the Securities Act or any similar provision then in force, or unless otherwise agreed by the Company in writing, with written notice thereof to the Trustee:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER:

(1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IS AWARE THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT AND IS PURCHASING THIS SECURITY IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;

(2) AGREES THAT IT SHALL NOT, WITHIN TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUANCE OF THIS SECURITY AND THE LAST DATE ON WHICH ACADIA REALTY TRUST OR AN AFFILIATE THEREOF WAS THE OWNER OF THIS SECURITY, RESELL OR OTHERWISE TRANSFER THIS SECURITY OR THE ACADIA COMMON SHARES ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO ACADIA REALTY TRUST OR ANY OF ITS SUBSIDIARIES, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND

(3) AGREES THAT IT SHALL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED PURSUANT TO CLAUSE 2(B) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE OF THIS SECURITY AND THE LAST DATE ON WHICH ACADIA REALTY TRUST OR AN AFFILIATE THEREOF WAS THE OWNER OF THIS SECURITY, THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS SECURITY TO THE TRUSTEE. IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 2(C) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS ACADIA REALTY TRUST OR THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO,

THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND SHALL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 2(C) OR 2(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE LATER OF THE ORIGINAL ISSUE DATE OF THIS SECURITY AND THE LAST DATE ON WHICH ACADIA REALTY TRUST OR AN AFFILIATE THEREOF WAS THE OWNER OF THIS SECURITY.

Each share certificate representing Company Common Shares issued upon conversion of Notes bearing a legend will bear a comparable legend (except that the legend will indicate that the two-year period commenced on the original issuance of the Notes) until it is removed in conformity with applicable securities laws.

Any Notes that are Restricted Securities and as to which such restrictions on transfer shall have expired in accordance with their terms or as to conditions for removal of the foregoing legend set forth therein have been satisfied may, upon surrender of such Note for exchange to the Securities Registrar in accordance with the provisions of this Section 2.25, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.25(a). If such Restricted Security

surrendered for exchange is represented by a global Note bearing the legend set forth in this Section 2.25(a), the principal amount of the legended global Note shall be reduced by the appropriate principal amount and the principal amount of a global Note without the legend set forth in this Section 2.25(a) shall be increased by an equal principal amount. If a global Note without the legend set forth in this Section 2.25(a) is not then outstanding, the Company shall execute and the Trustee shall authenticate and deliver an unlegended global Note to the Depositary.

In the event Rule 144(k) under the Securities Act (or any successor provision) is amended to shorten the two-year period under Rule 144(k), then, the references in the restrictive legends set forth above to "TWO YEARS," and in the corresponding transfer restrictions described above, and in the Notes and the Company Common Shares shall be deemed to refer to such shorter period, from and after receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel to that effect. As soon as reasonably practicable after the public announcement of the effectiveness of any such amendment to shorten the two-year period under Rule 144(k), unless such changes would otherwise be prohibited by, or would cause a violation of, the federal securities laws applicable at the time, the Company shall provide to the Trustee an Officers' Certificate and an Opinion of Counsel as to the effectiveness of such amendment and the effectiveness of such change to the restrictive legends and transfer restrictions.

Any Restricted Securities, prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate and shall be surrendered to the Trustee for cancellation. Upon expiration of the holding period applicable Restricted Securities under Rule 144(k) under the Securities Act (or any successor provision), the Notes may, to the extent permitted by applicable law, be reissued or sold or may be surrendered to the Trustee for cancellation. Any Notes surrendered for cancellation may not be reissued or resold and shall be cancelled promptly by the Trustee.

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

Section 2.26. Rule 144A Information Requirement. If at any time during the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision) the Company is not subject to Section 13 or 15(d) under the Exchange Act, the Company covenants and agrees that it shall make available to any holder or beneficial holder of Notes or any Company Common Shares issued upon conversion thereof which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of Notes or such Company Common Shares designated by such holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any holder or beneficial holder of the Notes or such Company Common Shares, all to the extent required to enable such holder or beneficial holder to sell its Notes or Company Common Shares without registration under the Securities Act within the limitation of the exemption provided by Rule 144A unless a resale shelf registration statement in respect of the Notes and the Company Common Shares is available.

Section 2.27. Provision of Financial Information. (a) So long as the Notes are outstanding and whether or not required by the Commission, the Company will furnish to the Trustee within 15 days of the time periods specified in the Commission's rules and regulations: (i) all annual and quarterly financial information that would be required to be contained in filings with the SEC on Forms 10-K and 10-Q if the Company were required to file those filings, including a related "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Company's certified independent accountants; and (ii) all current reports that would be required to be filed with the SEC on Form 8-K if we were required to file such reports.

(b) If the Company is not subject to Sections 13 and 15(d) of the Exchange Act, the Company will (A) furnish to the holders of the Notes, without cost to such holders, a copy of the information and reports referred to in clause (a) above within 15 days of the time periods specified in the Commission's rules and regulations, and (B) upon written request and payment of the reasonable cost of duplication and delivery, promptly supply to any prospective holder of the debt securities a copy of the information and reports referred to in clause (a).

In addition, whether or not required by the Commission, the Company will file a copy of the information and reports referred to above with the Commission for public availability within the time periods specified in the Commission's rules and regulations (unless the Commission will not accept such a filing).

Section 2.28. Additional Interest Notice. In the event that the Company is required to pay Additional Interest to Holders of Notes pursuant to the Registration Rights Agreement, the Company shall provide written notice ("**Additional Interest Notice**") to the Trustee of its obligation to pay Additional Interest no later than fifteen (15) calendar days prior

to the proposed payment date for Additional Interest, and the Additional Interest Notice shall set forth the amount of Additional Interest to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any Holder of Notes to determine the Additional Interest, or with respect to the nature, extent or calculation of the amount of Additional Interest when made, or with respect to the method employed in such calculation of the Additional Interest.

ARTICLE THREE
FORM OF NOTES

Section 3.01. Form of Notes. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A hereto. Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends, endorsements or changes as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of the Indenture, or as may be required by the Depositary or by the National Association of Securities Dealers, Inc. in order for the Notes to be tradable on The PORTAL^{SM} Market or as may be required for the Notes to be tradable on any other market developed for trading of securities pursuant to Rule 144A or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Notes are subject.

ARTICLE FOUR
MISCELLANEOUS

Section 4.01. Relation to Original Indenture. This First Supplemental Indenture supplements the Original Indenture, as amended and supplemented, and shall be a part and subject to all the terms thereof. Except as supplemented hereby, all of the terms, provisions and conditions of the Original Indenture, as amended and supplemented, and the Securities issued thereunder shall continue in full force and effect.

Section 4.02. Concerning the Trustee. The Trustee shall not be responsible for any recital herein (other than the second and fourth recitals as they appear and as they apply to the Trustee) as such recitals shall be taken as statements of the Company, or the validity of the execution by the Company of this First Supplemental Indenture. The Trustee makes no representations as to the validity or sufficiency of this instrument.

Section 4.03. Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 4.04. Counterparts. This instrument may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

Section 4.05. Governing Law. This instrument shall be governed by and construed in accordance with the laws of the State of New York.

[signature pages follow]

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

ACADIA REALTY TRUST,
as Issuer of the Notes

By: /s/ Robert Masters
Name: Robert Masters
Title: Senior Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Richard Prokosh
Name: Richard Prokosh
Title: Vice President

Exhibit A

[FORM OF NOTE]

[Include only for Global Notes]

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN CERTIFICATED FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

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

[Include only for Notes that are Restricted Securities]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER:

(1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), IS AWARE THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT AND IS PURCHASING THIS SECURITY IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;

(2) AGREES THAT IT SHALL NOT, WITHIN TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUANCE OF THIS SECURITY AND THE LAST DATE ON WHICH ACADIA REALTY TRUST OR AN AFFILIATE THEREOF WAS THE OWNER OF THIS SECURITY, RESELL OR OTHERWISE TRANSFER THIS SECURITY OR THE ACADIA COMMON SHARES ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO ACADIA REALTY TRUST OR ANY OF ITS SUBSIDIARIES, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED

EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND

(3) AGREES THAT IT SHALL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED PURSUANT TO CLAUSE 2(B) ABOVE A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE OF THIS SECURITY AND THE LAST DATE ON WHICH ACADIA REALTY TRUST OR AN AFFILIATE THEREOF WAS THE OWNER OF THIS SECURITY, THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS SECURITY TO THE TRUSTEE. IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 2(C) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE, SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS ACADIA REALTY TRUST OR THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND SHALL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE 2(C) OR 2(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE LATER OF THE ORIGINAL ISSUE DATE OF THIS SECURITY AND THE LAST DATE ON WHICH ACADIA REALTY TRUST OR AN AFFILIATE THEREOF WAS THE OWNER OF THIS SECURITY. THE HOLDER OF THIS SECURITY IS ENTITLED TO THE BENEFITS OF A REGISTRATION RIGHTS AGREEMENT (AS SUCH TERM IS DEFINED IN THE INDENTURE REFERRED TO ON THE REVERSE

HEREOF) AND, BY ITS ACCEPTANCE HEREOF, AGREES TO BE BOUND BY AND TO COMPLY WITH THE PROVISIONS OF SUCH REGISTRATION RIGHTS AGREEMENT.

NO. PRINCIPAL AMOUNT
CUSIP NO. 004239 AA 7 $_____

ACADIA REALTY TRUST

3.75% Convertible Note due 2026

ACADIA REALTY TRUST, a Maryland real estate investment trust (the "Company" or the "Issuer," which terms shall include any successor under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or its registered assigns, the principal sum of _____ Dollars ($_____) on December 15, 2026 unless redeemed, repurchased or converted prior to such date in accordance with the terms hereof and of the Indenture.

This Note shall bear interest as specified on the reverse hereof. This Note is convertible for the consideration specified on the reverse hereof. This Note is subject to redemption by the Company at its option and to repurchase by the Company at the option of the Holder as specified on the reverse hereof.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Note shall not be entitled to the benefits of the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by an authorized signatory.

Dated:

ACADIA REALTY TRUST,
as Issuer

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

[REVERSE OF NOTE]

ACADIA REALTY TRUST

3.75% Convertible Note due 2026

This Note is one of a duly authorized issue of notes, debentures, bonds, or other evidences of indebtedness of the Company (hereinafter called the "Securities") of the series hereinafter specified, all issued or to be issued under and pursuant to an Indenture, dated as of December 11, 2006 (as amended and supplemented by the First Supplemental Indenture, dated as of December 11, 2006 and as further amended or supplemented from time to time, the "Indenture"), duly executed and delivered by the Company to U.S. Bank National Association, as trustee (the "Trustee," which term includes any successor trustee under the Indenture with respect to the series of Securities of which this Notes is a part), and reference is hereby made to the Indenture, and all modifications and

amendments and indentures supplemental thereto relating to the Notes, 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 and the terms upon which the Notes are authenticated and delivered. The Securities may be issued in one or more series, which different series may be issued in various aggregate principal amounts, may mature at different times, may accrue interest (if any) at different rates or formulas and may otherwise vary as provided in the Indenture. This Note is one of a series of Securities designated as the "3.75% Convertible Notes due 2026" of the Company, initially limited (except as permitted under the Indenture) in aggregate principal amount to $100,000,000 (or up to $115,000,000 if the Initial Purchasers' over-allotment option described in the Purchase Agreement is exercised). Terms used herein without definition and which are defined in the Indenture have the meanings assigned to them in the Indenture.

1. INTEREST

The Notes shall bear interest at the rate of 3.75% per annum from December 11, 2006 or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, as the case may be, payable semi-annually in arrears on June 15 and December 15 of each year (each, an "Interest Payment Date"), commencing on June 15, 2007, until the principal hereof is paid or duly made available for payment. Interest payable on each Interest Payment Date shall equal the amount of interest accrued for the period commencing on and including the immediately preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or commencing on and including December 11, 2006, if no interest has been paid or duly provided for) and ending on and including the day preceding such Interest Payment Date. Interest on the Notes shall be computed on the basis of a 360-day year consisting of twelve 30-day months

2. METHOD OF PAYMENT

Except as provided in the Indenture, the Company shall pay interest on the Notes to the Persons who are Holders of record of Notes at the close of business (whether or not a Business Day) on the June 1 and December 1 immediately preceding the applicable Interest Payment Date (each, a "Regular Record Date"). Holders must surrender Notes to a Paying Agent and comply with the other terms of the Indenture to collect the principal amount,

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Redemption Price, Optional Repurchase Price or Change of Control Purchase Price of the Notes, plus, if applicable, accrued and unpaid interest (including Additional Interest, if any) payable as herein provided at maturity, upon redemption at the Company's option or repurchase at the Holder's option. The Company shall pay, in money of the United States that at the time of payment is legal tender for payment of public and private debts, all amounts due in cash with respect to the Notes on the dates and in the manner provided in this Note and the Indenture.

3. PAYING AGENT, CONVERSION AGENT AND SECURITY REGISTRAR

Initially, the Trustee shall act as Paying Agent, Conversion Agent and Security Registrar. The Company hereby initially designates the Corporate Trust Office of the Trustee in New York, New York as the office to be maintained by it where this Note may be presented for payment, registration of transfer or conversion, where notices or demands to or upon the Company in respect of this Note or the Indenture may be served and where the Notes may be surrendered for conversion in accordance with the provisions of paragraph 6 hereof and the Indenture. The Company may appoint and change any Paying Agent, Conversion Agent, Security Registrar or co-registrar or approve a change in the office through which any Paying Agent acts without notice, other than notice to the Trustee.

4. REDEMPTION BY THE COMPANY

The Company shall not have the right to redeem any Notes prior to December 20, 2011, except to preserve the status of the Company as a real estate investment trust. If the Company determines it is necessary to redeem the Notes in order to preserve the status of the Company as a real estate investment trust, the Company may redeem the Notes then Outstanding, in whole or in part, at 100% of the principal amount of the Notes to be redeemed plus accrued and unpaid interest (including Additional Interest, if any) to, but not including, the Redemption Date.

The Company shall have the right to redeem the Notes for cash, in whole or in part at any time or from time to time, on or after December 20, 2011 at 100% of the principal amount of the Notes to be redeemed plus accrued and unpaid interest (including Additional Interest, if any) to, but not including, the Redemption Date (the "Redemption Price").

Notice of redemption at the option of the Company shall be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at the Holder's registered address. Notes in denominations larger than $1,000 principal amount may be redeemed in part but only in integral multiples of $1,000 principal amount.

5. OPTIONAL REPURCHASE RIGHTS; REPURCHASE AT OPTION OF HOLDER UPON A CHANGE OF CONTROL

(a) Subject to the terms and conditions of the Indenture, a Holder shall have the right to require the Company to repurchase all of its Notes, or any portion of the principal amount thereof that is equal to $1,000 or an integral multiple thereof, on each of December 20, 2011, December 15, 2016 and December 15, 2021 (each, an "Optional Repurchase Date") for cash equal to 100% of the principal amount of the Notes to be repurchased plus accrued and

unpaid interest (including Additional Interest, if any) to, but not including, such Optional Repurchase Date (the "Optional Repurchase Price"), upon delivery to the Paying Agent of an Optional Repurchase Notice containing the information set forth in the Indenture, from the opening of business on the date that is 20 business days prior to such Optional Repurchase Date until the close of business on the second Business Day prior to such Optional Repurchase Date and upon compliance with the other terms of the Indenture.

(b) If a Change of Control occurs at any time prior to December 20, 2011, a Holder shall have the right, at such Holder's option and subject to the terms and conditions of the Indenture, to require the Company to repurchase all or any of such Holder's Notes having a principal amount equal to $1,000 or an integral multiple thereof on the date (the "Change of Control Purchase Date") specified by the Company in the Company Notice (which date shall be no earlier than 15 days and no later than 30 days after the date of such Company Notice) for cash equal to the 100% of the principal amount of the Notes to be repurchased plus accrued and unpaid interest (including Additional Interest, if any) to, but not including, the Change of Control Purchase Date (the "Change of Control Purchase Price").

(c) Holders have the right to withdraw any Optional Repurchase Notice or Change of Control Purchase Notice, as the case may be, by delivery to the Paying Agent of a written notice of withdrawal in accordance with the provisions of the Indenture.

(d) If the Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Optional Repurchase Price or Change of Control Purchase Price of such Notes on the Optional Repurchase Date or Change of Control Purchase Date, as the case may be, then, on and after such date, such Notes shall cease to be Outstanding and interest on such Notes shall cease to accrue, and all other rights of the Holder shall terminate (other than the right to receive the Optional Repurchase Price or Change of Control Purchase Price upon delivery or transfer of the Notes).

6. CONVERSION

The Notes shall be convertible into the consideration specified in the Indenture at such times, upon compliance with such conditions and upon such terms as are set forth in the Indenture.

The initial Conversion Rate shall be 32.4002 Company Common Shares per $1,000 principal amount of Notes, subject to adjustment in certain circumstances as specified in the Indenture. Notes tendered for conversion by a Holder after the close of business on any Regular Record Date for an interest payment and on or prior to the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest that such Holder is to receive on such Notes on such Interest Payment Date; *provided*, *however*, that no such payment shall be required (1) if such Notes have been called for redemption on a Redemption Date that is after such Regular Record Date and on or prior to the second Business Day following such Interest Payment Date or (2) with respect to overdue interest (including Additional Interest), if any overdue interest exists at the time of conversion with respect to such Notes.

To convert this Note, the Holder must (a) complete and manually sign the irrevocable conversion notice set forth below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent at the office maintained by the Conversion Agent for such purpose, (b) if this Note is in certificated form, surrender such Note to the Conversion Agent, or, if the Notes are in book-entry form, comply with the appropriate procedures of the Depositary, (c) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (d) pay any transfer or similar tax, if required. The date on which the Holder satisfies all such requirements shall be deemed to be the date on which this Note shall have been tendered for conversion.

If the Holder has delivered an Optional Repurchase Notice or a Change of Control Purchase Notice requiring the Company to repurchase all or a portion of this Note pursuant to paragraph 5 hereof, then this Note (or portion hereof subject to such Optional Repurchase Notice or Change of Control Purchase Notice) may be converted only if the Optional Repurchase Notice or Change of Control Purchase Notice is withdrawn in accordance with the terms of the Indenture.

7. RANKING

The Notes are unsecured obligations of the Company and shall rank pari passu in right of payment with all other unsecured unsubordinated indebtedness of the Company from time to time outstanding.

8. DEFAULTED INTEREST

Except as otherwise specified herein or in the Indenture, any Defaulted Interest on this Note shall forthwith cease to be payable to the Holder hereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company as provided for in Section 307 of the Indenture.

9. DENOMINATIONS; TRANSFER; EXCHANGE

This Note is issuable only in fully registered form, without coupons, in denominations of $1,000 and integral multiples thereof. This Note may be exchanged for a like aggregate principal amount of Notes of other authorized denominations at the office or agency of the Company in The City of New York, in the manner and subject to the limitations provided herein and in the Indenture, but without the payment of any charge except for any tax or other governmental charge imposed in connection therewith. Upon due presentment for registration of transfer of this Note at the office or agency of the Company in The City of New York, one or more new Notes of authorized denominations in an equal aggregate principal amount shall be issued to the transferee in exchange therefor, and bearing such restrictive legends as may be required by the Indenture, but without payment of any charge except for any tax or other governmental charge imposed in connection therewith. In the event of any redemption in part, the Company shall not be required to: (i) issue or register the transfer or exchange of any Note during a period beginning at the opening of business 15 days before any selection of Notes for redemption and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of Notes to be so redeemed, or (ii)

register the transfer or exchange of any Note so selected for redemption, in whole or in part, except the unredeemed portion of any Note being redeemed in part.

10. PERSONS DEEMED OWNERS

The Holder of this Note may be treated as the owner of this Note for all purposes, and none of the Company or the Trustee nor any authorized agent of the Company or the Trustee shall be affected by any notice to the contrary, except as required by law.

11. ADDITIONAL RIGHTS OF HOLDERS

In addition to the rights provided to Holders of Notes under the Indenture, Holders shall have all the rights set forth in the Registration Rights Agreement, dated as of December 11, 2006, among the Company and the Initial Purchasers named therein.

12. MODIFICATION AND AMENDMENT; WAIVER

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in principal amount of the Notes affected thereby (voting together as a single class). The Indenture also provides that certain amendments or modifications may not be made without the consent of each Holder to be affected thereby while other amendments or modifications may be made without the consent of the holders. Furthermore, provisions in the Indenture permit the Holders of not less than a majority in principal amount of Notes, in certain instances, to waive, on behalf of all of the Holders of Securities of such series, certain past defaults under the Indenture and their consequences. Any such waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and other Notes issued upon the registration of transfer hereof or in exchange hereof, or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

13. DEFAULTS AND REMEDIES

If an Event of Default occurs and is continuing, the Trustee, or the Holders of not less than 25% in aggregate principal amount of the Notes at the time Outstanding, may declare the principal amount and any accrued and unpaid interest, of all the Notes to be due and payable in the manner and with the effect provided in the Indenture; provided that if certain events default relating to bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of the Company, the Operating Partnership, or any other significant subsidiary of the Company or the Operating Partnership or any of properties owned by these entities occurs and is continuing, the principal (or such portion thereof) of and accrued and unpaid interest on all of the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

Events of Default in respect of the Notes are set forth in Section 501 of the Indenture. Holders may not enforce the Indenture or the Notes except as provided in the Indenture.

14. CONSOLIDATION, MERGER, AND SALE OF ASSETS

In the event of a consolidation or merger of the Company or a sale, lease or conveyance of all or substantially all of the assets of the Company as described in ARTICLE EIGHT of the Indenture, the successor entity to the Company shall succeed to and be substituted for the Company and may exercise the rights and powers of the Company under the Indenture and thereafter, except in the case of a lease, the Company shall be relieved of all obligations and covenants under the Indenture and the Notes.

15. TRUSTEE AND AGENT DEALINGS WITH THE COMPANY

The Trustee, Paying Agent, Conversion Agent and Securities Registrar under the Indenture, each in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Registrar.

16. CALCULATIONS IN RESPECT OF THE NOTES

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

17. IMMUNITY OF INCORPORATORS, LIMITED PARTNERS, SHAREHOLDERS, TRUSTEES, DIRECTORS AND OFFICERS.

No recourse shall be had for the payment of the principal of (and premium, if any), or the interest, if any, on any Note, or for any claim based thereon, or upon any obligation, covenant or agreement of the Indenture, against any incorporator, limited partner, shareholder, trustee, director, officer or employee, as such, past, present or future, of the Company or of any successor entity to the Company, either directly or indirectly through the Company or any successor entity to the Company, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment of penalty or otherwise; it being expressly agreed and understood that the Indenture and all the Notes are solely obligations of the Company, and that no personal liability whatever shall attach to, or is incurred by, any incorporator, limited partner, shareholder, trustee, director, officer or employee, past, present or future, of the Company or of any successor entity to the Company, either directly or indirectly through the Company or any successor corporation to the Company, because of the incurring of the indebtedness hereby authorized or under or by reason of any of the obligations, covenants or agreements contained in the Indenture or in any of the Notes, or to be implied herefrom or therefrom; and that all such personal liability is hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of the Indenture and the issuance of the Notes.

18. GOVERNING LAW

The Indenture and this Note shall be governed by and construed in accordance with the laws of the State of New York.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(Please print or Typewrite Name and Address Including Postal Zip Code of Assignee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

to transfer said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the Note prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision) (other than any transfer pursuant to a

registration statement that has been declared effective under the Securities Act), the undersigned confirms that such Note is being transferred:

- o To the Company or any of its subsidiaries; or
- o To a "qualified institutional buyer" in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- o Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended; or
- o Pursuant to a Registration Statement which has been declared effective under the Securities Act of 1933, as amended, and which continues to be effective at the time of transfer.

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

Dated:

Signature Guaranteed

NOTICE: Signature must be guaranteed by an eligible Guarantor Institution (banks, stockbrokers, 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.

NOTICE: The signature to this Assignment must correspond with the name as written upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.

CONVERSION NOTICE

To convert this Note as provided in the Indenture, check the box: o

To convert only part of this Note, state the principal amount to be converted (must be $1,000 or an integral multiple of $1,000): $___.

If, in the event the Company delivers Net Shares and you want the stock certificate made out in another person's name, fill in the form below:

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

(Print or type assignee's name, address and zip code)

Your Signature:

Date:

(Sign exactly as your name appears on the other side of this Note)

Signature guaranteed by: [1]

By:

[1] Signature must be guaranteed by an eligible Guarantor Institution (banks, stockbrokers, 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.

Exhibit 4.3

EXECUTION COPY

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "*Agreement*") is made and entered into as of December 11, 2006 among ACADIA REALTY TRUST, a Maryland real estate investment trust (the "*Company*") and LEHMAN BROTHERS INC. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as the initial purchasers (the "*Initial Purchasers*") named in Schedule A to the Purchase Agreement (as defined below).

This Agreement is made pursuant to the Purchase Agreement dated December 5, 2006 (the "*Purchase Agreement*") among the Company and the Initial Purchasers, which provides for, among other things, the sale of 3.75% Convertible Notes Due 2026 (the "Notes") of the Company to the Initial Purchasers.

In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide to the Initial Purchasers and their respective direct and indirect transferees the registration rights set forth in this Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

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

"Additional Interest" has the meaning set forth in Section 2(e) hereof.

"*Advice*" has the meaning set forth in the last paragraph of Section 3 hereof.

"*Affiliate*" has the same meaning as given to that term in Rule 405 under the Securities Act or any successor rule thereunder.

"*Automatic Shelf Registration Statement*" means a registration statement filed by a Well-Known Seasoned Issuer, which shall become effective upon filing thereof pursuant to General Instruction I.D of Form S-3.

"*Business Day*" means any day other than a Saturday, a Sunday, or a day on which banking institutions in New York, New York are authorized or required by law or executive order to remain closed.

"*Common Shares*" means common shares of beneficial interest of the Company, par value $0.001 per share, issuable upon conversion of the Notes.

"*Company*" has the meaning set forth in the preamble to this Agreement and also includes the Company's successors and permitted assigns.

"*Effective Date*" means the date the initial Shelf Registration Statement becomes effective or, in the case of designation of an Automatic Shelf Registration Statement as the Shelf Registration Statement, the date a Prospectus is first made available thereunder for use by the Holders.

"*Effectiveness Deadline*" means (i) for purposes of Section 2(a)(i) hereof, the 210th day following the Issue Date, (ii) for purposes of the filing of any post-effective amendment pursuant to Section 2(a)(iii) hereof, the 30th day after the obligation to make such filing arises, (iii) for purposes of the filing of any Shelf Registration Statement pursuant to Section 2(a)(iii) hereof, the 60th day after the obligation to make such filing arises, and (iv) for purposes of any filing made pursuant to Section 2(a)(iv) hereof, the tenth Business Day after the obligation to make such filing arises.

"*Effectiveness Period*" has the meaning set forth in Section 2(a)(iv) hereof.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended from time to time.

"*Filing Deadline*" means (i) for purposes of Section 2(a)(i) hereof, the 120th day following the Issue Date, (ii) for purposes of Section 2(a)(iii) hereof, the tenth Business Day after the date of receipt by the Company of the information specified therein (or, if a Suspension Period is then in effect or initiated within five Business Days following the date of receipt of such information, the tenth Business Day following the end of such Suspension Period), and (iii) for purposes of Section 2(a)(iv) hereof, the tenth Business Day after the cessation of effectiveness of any Shelf Registration Statement (or, if a Suspension Period is then in effect or initiated within five Business Days following the date of receipt of such information, the tenth Business Day following the end of such Suspension Period).

"*Holder*" means each Initial Purchaser, for so long as such Initial Purchaser owns any Registrable Securities, and each of such Initial Purchaser's respective successors, assigns and direct and indirect transferees who become registered owners of Registrable Securities.

"*Indenture*" means the Indenture dated as of December 11, 2006, as supplemented by the First Supplemental Indenture dated December 11, 2006, by and between the Company and the Trustee, pursuant to which the Notes are being issued, and in accordance with which Common Shares may be issued, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof.

"*Initial Purchasers*" has the meaning set forth in the preamble to this Agreement.

"*Inspectors*" has the meaning set forth in Section 3(l) hereof.

"*Issue Date*" means December 11, 2006, being the date of original issuance of the Notes.

"*Majority Holders*" means the Holders collectively holding a majority of the aggregate principal amount of outstanding Notes or the number of outstanding Common Shares, as the context requires.

"*Notes*" has the meaning set forth in the preamble to this Agreement.

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

"*Prospectus*" means the prospectus included in a Shelf Registration Statement, including any preliminary prospectus, any issuer "free writing prospectus," as such term is defined in Rule 433 under the Securities Act, and any such prospectus as amended or supplemented by any prospectus supplement, including a prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by a Shelf Registration Statement, and by all other amendments and supplements to a prospectus, including post-effective amendments, and, in each case, including all documents incorporated by reference therein.

"*Purchase Agreement*" has the meaning set forth in the preamble to this Agreement.

"*Questionnaire*" has the meaning set forth in Section 2(a)(ii) hereof.

"*Records*" has the meaning set forth in Section 3(l) hereof.

"*Registrable Securities*" means the Notes and the Common Shares; *provided, however*, that (i) the Notes shall cease to be Registrable Securities upon the earlier of (1) a Shelf Registration Statement with respect to such Notes for the resale thereof having been declared effective under the Securities Act and such Notes having been disposed of pursuant to such Shelf Registration Statement, (2) such Notes having become eligible to be sold without restriction as contemplated by Rule 144(k) under the Securities Act by a Person who is not an Affiliate of the Company, or (3) such Notes having ceased to be outstanding, and (ii) the Common Shares shall cease to be Registrable Securities upon the earlier of (1) a Shelf Registration Statement with respect to such Common Shares for the resale thereof having been declared effective under the Securities Act and such Common Shares having been disposed of pursuant to such Shelf Registration Statement, (2) such Common Shares having become eligible to be sold without restriction as contemplated by Rule 144(k) under the Securities Act by a Person who is not an Affiliate of the Company, or (3) such Common Shares having ceased to be outstanding.

"*Registration Expenses*" means any and all expenses incident to performance of or compliance by the Company with this Agreement, including without limitation: (i) all SEC or National Association of Securities Dealers, Inc. (the "*NASD*") registration and filing fees, not including the fees and expenses of any "qualified independent underwriter" (and its counsel), (ii) all fees and expenses incurred in connection with compliance with state securities or blue sky laws (not including fees and disbursements of counsel for underwriters or Holders in connection with blue sky qualification of any of the Registrable Securities) and compliance with the rules of the NASD, (iii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing any Shelf Registration Statement, any Prospectus and any amendments or supplements thereto, and in preparing or assisting in preparing, printing and distributing any underwriting agreements, securities sales agreements and other documents

relating to the performance of and compliance with this Agreement, (iv) all rating agency fees, (v) the fees and disbursements of counsel for the Company and of the independent certified public accountants of the Company, including the expenses of any "comfort letters" required by or incident to the performance of and compliance with this Agreement, and (vi) the reasonable fees and expenses of any special experts retained by the Company in connection with the Shelf Registration Statement.

"*SEC*" means the Securities and Exchange Commission.

"*Securities*" means the Notes and the Common Shares.

"*Securities Act*" means the Securities Act of 1933, as amended from time to time.

"*Shelf Registration*" means a registration effected pursuant to Section 2(a) hereof.

"*Shelf Registration Statement*" means a "shelf" registration statement of the Company pursuant to the provisions of Section 2(a) hereof which covers all of the Registrable Securities on Form S-3 or, if not then available to the Company, on another appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all documents incorporated by reference therein.

"*Suspension Period*" has the meaning set forth in Section 2(a)(iv).

"*Trustee*" means the trustee with respect to the Securities under the Indenture.

"*Well-Known Seasoned Issuer*" has the meaning set forth in Rule 405 under the Securities Act.

2. *Registration Under the Securities Act.*

(a) *Shelf Registration.*

(i) The Company shall file or cause to be filed (or otherwise designate an existing Automatic Shelf Registration Statement previously filed with the SEC as) a Shelf Registration Statement providing for the resale by the Holders of all of the Registrable Securities, as promptly as reasonably practicable but in any event on or prior to the Filing Deadline. If the Shelf Registration Statement is not an Automatic Shelf Registration Statement, the Company shall use its reasonable best efforts to have such Shelf Registration Statement declared effective by the SEC as promptly as reasonably practicable after filing thereof, but in any event on or prior to the Effectiveness Deadline. If the Shelf Registration Statement is an Automatic Shelf Registration Statement, the Company shall use its reasonable best efforts to prepare and file a supplement to the Prospectus to cover resales of the Registrable Securities by the Holders as promptly as reasonably practicable after filing thereof, but in any event on or prior to the Effectiveness Deadline.

(ii) Notwithstanding any other provision hereof, no Holder of Registrable Securities shall be entitled to include any of its Registrable Securities in any Shelf Registration Statement pursuant to this Agreement unless and until such Holder agrees in writing to be bound by all of the provisions of this Agreement applicable to such Holder and the Holder furnishes to the Company a fully completed notice and questionnaire in the form attached as Annex A to the Offering Memorandum (the "*Questionnaire*") and such other information in writing as the Company may reasonably request in writing for use in connection with the Shelf Registration Statement or Prospectus included therein and in any application to be filed with or under state securities laws. The Company shall issue a press release through a reputable national newswire service (and post it on its website or disseminate it through other appropriate public medium) regarding its filing (or intention to designate an Automatic Shelf Registration Statement as) of the Shelf Registration Statement and of the anticipated Effective Date thereof. In order to be named as a selling security holder in the Prospectus at the time it is first made available for use, each Holder must furnish the completed Questionnaire and such other information that the Company may reasonably request in writing, if any, to the Company in writing no later than the tenth Business Day prior to the anticipated Effective Date as announced in the press release. Each Holder as to which any Shelf Registration is being effected agrees to furnish to the Company from time to time all information with respect to such Holder necessary to make the information previously furnished to the Company by such Holder not materially misleading.

(iii) From and after the Effective Date, upon receipt of a completed Questionnaire and such other information that the Company may reasonably request in writing, if any, the Company will use its reasonable best efforts to file as promptly as reasonably practicable but in any event on or prior to the Filing Deadline either (i) if then permitted by the Securities Act or the rules and regulations thereunder (or then-current SEC interpretations thereof), a supplement to the Prospectus naming such Holder as a selling security holder and containing such other information as necessary to permit such Holder to deliver the Prospectus to purchasers of the Holder's Securities, or (ii) if it is not then permitted under the Securities Act or the rules and regulations thereunder (or then-current SEC interpretations thereof) to name such Holder as a selling security holder in a supplement to the Prospectus, a post-effective amendment to the Shelf Registration Statement or an additional Shelf Registration Statement as necessary for such Holder to be named as a selling security holder in the Prospectus contained therein to permit such Holder to deliver the Prospectus to purchasers of the Holder's Registrable Securities (subject, in the case of either clause (i) or (ii), to the Company's right to suspend use of the Shelf Registration Statement as described in Section 2(a)(iv) hereof). If a post-effective amendment or additional Shelf Registration Statement is required to be filed, the Company shall use its reasonable best efforts to have such post-effective amendment or additional Shelf Registration Statement declared effective by the SEC as promptly as practicable after filing thereof, but in any event on or prior to the Effectiveness Deadline. The Company shall not be required to file more than three supplements to the Prospectus, two post-effective amendments or one additional Shelf Registration Statements in any fiscal quarter for all such Holders.

(iv) The Company agrees to use its reasonable best efforts to keep the Shelf Registration Statement continuously effective and the Prospectus usable for resales until there are no

Registrable Securities outstanding (the "*Effectiveness Period*"); *provided, however*, that for 30 days or less (whether or not consecutive) in any three-month

period, and for 90 days or less (whether or not consecutive) in any 12-month period, the Company shall be permitted, by giving written notice to the Holders of Registrable Securities, to suspend sales thereof if the Shelf Registration Statement is no longer effective or usable for resales due to circumstances relating to pending developments, public filings with the SEC and similar events, or because the Prospectus contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make statements therein not misleading (any period of suspension hereunder, a "*Suspension Period*"). If any Shelf Registration Statement ceases to be effective or usable for resales by Holders for any reason (other than by reason of any such Holder's failure to provide a Questionnaire, in which case the provisions of Section 2(a)(ii) or 2(a)(iii) hereof shall apply) at any time during the Effectiveness Period, the Company shall, subject to the proviso contained in the immediately preceding sentence, use its reasonable best efforts to promptly cause such Shelf Registration Statement to become effective under the Securities Act, and in any event shall, within ten Business Days of such cessation of effectiveness or usability, (i) file with the SEC one or more supplements to the Prospectus, post-effective amendments or reports under the Exchange Act in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration Statement, or (ii) file with the SEC an additional Shelf Registration Statement. If a post-effective amendment or an additional Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to (A) cause such post-effective amendment or Shelf Registration Statement to become effective under the Securities Act as promptly as reasonably practicable after such filing, but in no event later than the applicable Effectiveness Deadline, and (B) keep such post-effective amendment or Shelf Registration Statement continuously effective until the end of the Effectiveness Period.

(v) If the Shelf Registration Statement is not an Automatic Shelf Registration Statement, the Company shall not permit any securities other than (i) the Company's issued and outstanding securities currently possessing incidental or so-called "piggy-back" registration rights and (ii) the Registrable Securities to be included in the Shelf Registration. The Company will provide to each Holder named therein a reasonable number of copies of the Prospectus which is a part of the Shelf Registration Statement, notify each such Holder of the Effective Date and take such other actions as are required to permit unrestricted resales of the Registrable Securities by such Holder. The Company further agrees to supplement or amend the Shelf Registration Statement or supplement the Prospectus if and as required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or by the Securities Act or by any other rules and regulations thereunder for shelf registrations, and the Company agrees to furnish to the Holders of Registrable Securities copies of any such supplement or amendment as promptly as reasonably practicable after its being used or filed with the SEC.

(b) *Listing.* The Company shall use its reasonable best efforts to maintain the approval of the Common Shares for listing on the New York Stock Exchange during the Effectiveness Period.

(c) *Expenses.* The Company shall pay all Registration Expenses in connection with any Shelf Registration Statement filed pursuant to Section 2(a) hereof. Each Holder shall pay all expenses of its counsel, underwriting discounts and commissions and

transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Shelf Registration Statement.

(d) *Effective Shelf Registration Statement.* If, after the Effective Date the offering of Registrable Securities pursuant to a Shelf Registration Statement is interfered with by any stop order, injunction or other order or requirement of the SEC or any other governmental agency or court, such Shelf Registration Statement will be deemed not to have been effective during the period of such interference, until the offering of Registrable Securities pursuant to such Shelf Registration Statement may legally resume.

(e) *Additional Interest.* In the event that:

(i) a Shelf Registration Statement is not filed with the SEC or designated as such by the Company on or prior to the Filing Deadline pursuant to Section 2(a)(i), then additional interest ("*Additional Interest*") shall accrue on the principal amount of the Securities at a rate equal to 0.25% per year for the first 90-day period from the day following such Filing Deadline, and thereafter at a rate per year of 0.50% of the principal amount of the Securities;

(ii) (x) a Shelf Registration Statement is not declared effective by the SEC, or (y) if the Company shall have designated a previously filed and effective Automatic Shelf Registration Statement as the Shelf Registration Statement for purposes of this Agreement, the Company shall not have filed a supplement to the Prospectus to cover resales of the Registrable Securities by the Holders, in the case of either (x)

or (y), on or prior to the Effectiveness Deadline pursuant to Section 2(a)(i), then Additional Interest shall accrue on the principal amount of the Securities at a rate equal to 0.25% per year for the first 90-day period from the day following such Effectiveness Deadline, and thereafter at a rate per year of 0.50% of the principal amount of the Securities;

(iii) following the Effective Date, (A) the Company fails to make any filing required pursuant to Section 2(a)(iii) hereof prior to the Filing Deadline applicable thereto, or (B) in the event such filing is a post-effective amendment or additional Shelf Registration Statement, such post-effective amendment or Shelf Registration Statement fails to become effective on or prior to the Effectiveness Deadline applicable thereto, then Additional Interest shall accrue on the principal amount of the Securities at a rate equal to 0.25% per year for the first 90-day period from the day following such Filing Deadline or Effectiveness Deadline, as applicable, and thereafter at a rate per year of 0.50% of the principal amount of the Securities;

(iv) following the Effective Date, a Shelf Registration Statement ceases to be effective (without being succeeded immediately by an additional Shelf Registration Statement that is filed and immediately becomes effective) or usable for the offer and sale of the Registrable Securities, other than in connection with (A) a Suspension Period or (B) as a result of a requirement to file a post-effective amendment or supplement to the Prospectus to make changes to the information regarding selling security holders or the plan of distribution provided for therein, and the Company does not cure the lapse of effectiveness or usability within ten Business Days (or, if a Suspension Period is then in effect, within ten

Business Days following the expiration of such Suspension Period), then Additional Interest shall accrue on the principal amount of the Securities at a rate equal to 0.25% per year for the first 90-day period from the day following such tenth Business Day, and thereafter at a rate per year of 0.50% of the principal amount of the Securities;

(v) any Suspension Period or Periods exceed 30 days in any three-month period or 90 days in any 12-month period, then, commencing with the 31st day in such three-month period or the 91st day in such 12-month period, as the case may be, then Additional Interest shall accrue on the principal amount of the Securities at a rate equal to 0.25% per year for the first 90-day period from the day following the 31st or 91st day, as the case may be, and thereafter at a rate per year of 0.50% of the principal amount of the Securities; or

(vi) the Company fails to name as a selling security holder any Holder that had complied timely with its obligations hereunder in a manner to entitle such Holder to be so named in (A) any Shelf Registration Statement at the time it first becomes effective or (B) any Prospectus at the later of time of filing thereof or the time the Shelf Registration Statement of which the Prospectus forms a part becomes effective, then Additional Interest will accrue on the principal amount of Securities held by such Holder at a rate equal to 0.25% per year for the first 90-day period from the day following the effective date of such Shelf Registration Statement or the time of filing of such Prospectus, as the case may be, and thereafter at a rate per year of 0.50% of the principal amount of the Securities held by such Holder;

provided, *however*, that in no event shall Additional Interest accrue at a rate per year exceeding 0.50% of the principal amount of the Securities; and *provided*, *further*, that Additional Interest on the principal amount of the Securities as a result thereof shall cease to accrue:

(1) upon the filing or designation of a Shelf Registration Statement (in the case of clause (i) above);

(2) upon the Effective Date (in the case of clause (ii) above);

(3) upon the filing of a supplement to the Prospectus, a post-effective amendment or an additional Shelf Registration Statement (in the case of clause (iii)(A) above) or upon the Effective Date (in the case of clause (iii)(B) above);

(4) upon such time as the Shelf Registration Statement which had ceased to remain effective or usable for resales again becomes effective and usable for resales (in the case of clause (iv) above);

(5) upon such time as the Shelf Registration Statement which had ceased to remain effective or usable for resales again becomes effective and usable for resales (in the case of clause (v) above); or

(6) upon the time such Holder is permitted to sell its Registrable Securities pursuant to any Shelf Registration Statement and Prospectus in accordance with applicable law (in the case of clause (vi) above).

Any amounts of Additional Interest due pursuant to Section 2(e) will be payable semi-annually in arrears in cash on the next succeeding interest payment date to Holders entitled to receive such Additional Interest on the relevant record dates for the payment of interest.

Notwithstanding any provision in this Agreement, in no event shall Additional Interest accrue to holders of Common Shares issued upon conversion of the Notes. If any Note ceases to be outstanding during any period for which Additional Interest are accruing, the Company will prorate the Additional Interest payable with respect to such Note. Additional Interest shall represent the sole entitlement of the Holders to money damages relating to the failure of the Company to file or otherwise designate a Shelf Registration Statement with the SEC on or prior to the Filing Deadline.

(f) *Specific Enforcement.* Without limiting the remedies available to the Holders, the Company acknowledges that any failure by it to comply with its obligations under Section 2(a) hereof may result in material irreparable injury to the Holders for which there is no adequate remedy at law, that it would not be possible to measure damages for such injuries precisely and that, in the event of any such failure, any Holder may obtain such relief as may be required to specifically enforce the Company's obligations under Section 2(a) hereof.

3. Registration Procedures. In connection with the obligations of the Company with respect to the Shelf Registration Statement pursuant to Section 2(a) hereof and subject to Sections 5 and 6 hereof, the Company shall use its reasonable best efforts to:

(a) prepare and file with the SEC or designate a Shelf Registration Statement as prescribed by Section 2(a)(i) hereof within the relevant time period specified in Section 2(a)(i) hereof on the appropriate form under the Securities Act, which form shall (i) be selected by the Company, (ii) be available for the sale of the Registrable Securities by the selling Holders thereof, and (iii) comply as to form in all material respects with the requirements of the applicable form and include all financial statements required by the SEC to be filed therewith; the Company shall use its reasonable best efforts to cause such Shelf Registration Statement to become effective and remain effective and the Prospectus usable for resales in accordance with Section 2 hereof; *provided*, *however*, that, before filing any Shelf Registration Statement or Prospectus or any amendments or supplements thereto, upon request, the Company shall furnish to and afford the Holders of the Registrable Securities covered by such Shelf Registration Statement, their one designated counsel and the managing underwriters, if any, a reasonable opportunity to review copies of all such documents (including copies of any documents to be incorporated by reference therein and all exhibits thereto) proposed to be filed; and the Company shall not file any Shelf Registration Statement or Prospectus or any amendments or supplements thereto in respect of which the Holders must be afforded an opportunity to review prior to the filing of such document if the Majority Holders, their counsel or the managing underwriters, if any, shall reasonably object in a timely manner;

(b) prepare and file with the SEC such amendments and post-effective amendments to the Shelf Registration Statement as may be necessary to keep such Shelf Registration Statement effective for the Effectiveness Period, and cause each Prospectus to be supplemented, if so determined by the Company or requested by the SEC, by any required prospectus supplement and as so supplemented to be filed pursuant to Rule 424 (or any similar

provisions then in force) under the Securities Act, and comply with the provisions of the Securities Act, the Exchange Act and the rules and regulations promulgated thereunder applicable to it with respect to the disposition of all securities covered by a Shelf Registration Statement during the Effectiveness Period in accordance with the intended method or methods of distribution by the selling Holders thereof described in this Agreement;

(c) (i) furnish to each Holder of Registrable Securities included in the Shelf Registration Statement and to each underwriter of an underwritten offering of Registrable Securities, if any, without charge, as many copies of each Prospectus, including each preliminary prospectus, and any amendment or supplement thereto, and such other documents as such Holder or underwriter may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Securities and (ii) consent to the use of the Prospectus or any amendment or supplement thereto by each of the selling Holders of Registrable Securities included in the Shelf Registration Statement in connection with the offering and sale of the Registrable Securities covered by the Prospectus or any amendment or supplement thereto;

(d) register or qualify the Registrable Securities under all applicable state securities or "blue sky" laws of such jurisdictions by the time the applicable Shelf Registration Statement has become effective under the Securities Act as any Holder of Registrable Securities covered by a Shelf Registration Statement and each underwriter of an underwritten offering of Registrable Securities shall reasonably request in writing in advance of such date of effectiveness, and do any and all other acts and things which may be reasonably necessary or advisable to enable such Holder or such underwriter to consummate the disposition in each such jurisdiction of such Registrable Securities owned by such Holder; provided, however, that the Company shall not be required to (i) qualify as a foreign entity or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (ii) file any general consent to service of process in any jurisdiction where it would not otherwise be subject to such service of process or (iii) subject itself to taxation in any such jurisdiction if it is not then so subject;

(e) as promptly as reasonably practicable notify each Holder of Registrable Securities, their counsel and the managing underwriters, if any, and promptly confirm such notice in writing (i) when a Shelf Registration Statement has become effective and when any post-effective amendments thereto become effective, (ii) of any request by the SEC or any state securities authority for amendments and supplements to a Shelf Registration Statement or Prospectus or for additional information after the Shelf Registration Statement has become effective, (iii) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Shelf Registration Statement or the qualification of the Registrable Securities in any jurisdiction described in Section 3(d) hereof or the initiation of any proceedings for that purpose, (iv) if, between the Effective Date and the closing of any sale of Registrable Securities covered thereby, any of the representations and warranties of the Company contained in any purchase agreement, securities sales agreement or other similar agreement with respect to the Registrable Securities cease to be true and correct in all material respects, (v) of the happening of any event or the failure of any event to occur or the discovery of any facts, during the Effectiveness Period, (x) which makes any statement made in a Shelf Registration Statement untrue in any material respect or which causes such Shelf Registration Statement to omit to state a material fact which is required to be stated therein or which is

necessary in order to make the statements therein not misleading, or (y) which makes any statement made in a related Prospectus untrue in any material respect or which causes such Prospectus to omit to state a material fact which is required to be stated therein or which is necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (vi) of the reasonable determination of the Company that a post-effective amendment to the Shelf Registration Statement would be appropriate;

(f) obtain the withdrawal of any order suspending the effectiveness of the Shelf Registration Statement as promptly as reasonably practicable;

(g) upon request, furnish to each Holder of Registrable Securities included within the coverage of a Shelf Registration Statement, without charge, at least one conformed copy of the Shelf Registration Statement relating to such Shelf Registration and any post-effective amendment thereto (without documents incorporated therein by reference or exhibits thereto, unless requested);

(h) cooperate with the selling Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and registered in such names as the selling Holders or the underwriters may reasonably request at least two Business Days prior to the closing of any sale of Registrable Securities pursuant to the Shelf Registration Statement;

(i) as promptly as reasonably practicable after the occurrence of any event specified in Section 3(e)(ii), 3(e)(iii), 3(e)(v) (subject to the respective grace periods set forth in Section 2(a)(iv)) or 3(e)(vi) hereof, prepare a supplement or post-effective amendment to the Shelf Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities, such Prospectus will not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company a shall notify each Holder to suspend use of the Prospectus as promptly as reasonably practicable after the occurrence of such an event, and each Holder hereby agrees to suspend use of the Prospectus until the Company has amended or supplemented the Prospectus to correct such misstatement or omission;

(j) subject to Section 5 hereof, enter into such agreements (including underwriting agreements) as are customary in underwritten offerings and take all such other appropriate actions in connection therewith as are reasonably requested by the Holders collectively holding at least a majority in aggregate principal amount or number, as the context requires, of the Registrable Securities in order to expedite or facilitate the registration or the disposition of the Registrable Securities;

(k) whether or not an underwriting agreement is entered into and whether or not the registration is an underwritten registration, if requested by (x) any Initial Purchaser, in the case where such Initial Purchaser holds Securities acquired by it as part of its initial placement and (y) Holders collectively holding at least a majority in aggregate principal amount or number, as the context requires, of the Registrable Securities covered thereby: (i)

make such representations and warranties to Holders of such Registrable Securities and the underwriters, if any, with respect to the business of the Company and its subsidiaries as then conducted and with respect to the Shelf Registration Statement, Prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, as are customarily made by issuers to underwriters in underwritten offerings, and confirm the same if and when requested; (ii) obtain opinions of counsel to the Company and updates thereof (which may be in the form of a reliance letter) in form and substance reasonably satisfactory to the managing underwriters (if any) and the Holders collectively holding a majority in aggregate principal amount or number, as the context requires,

of the Registrable Securities being sold, addressed to each selling Holder and the underwriters (if any) covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such underwriters (it being agreed that the matters to be covered by such opinion may be subject to customary qualifications and exceptions); (iii) obtain "comfort letters" and updates thereof in form and substance reasonably satisfactory to the managing underwriters from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement), addressed to each of the underwriters, such letters to be in customary form and covering matters of the type customarily covered in "comfort letters" in connection with underwritten offerings and such other matters as reasonably requested by such underwriters; and (iv) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures no less favorable than those set forth in Section 4 hereof (or such other provisions and procedures acceptable to Holders collectively holding a majority in aggregate principal amount or number, as the context requires, of Registrable Securities covered by such Shelf Registration Statement and the managing underwriters) customary for such agreements with respect to all parties to be indemnified pursuant to said Section (including, without limitation, such underwriters and selling Holders); and in the case of an underwritten registration, the above requirements shall be satisfied at each closing under the related underwriting agreement or as and to the extent required thereunder;

(l) make reasonably available for inspection by any selling Holder of Registrable Securities who certifies to the Company that it has a current intention to sell Registrable Securities pursuant to the Shelf Registration, any underwriter participating in any such disposition of Registrable Securities, and any attorney, accountant or other agent retained by any such selling Holder or underwriter (collectively, the "*Inspectors*"), at the offices where normally kept, during the Company's normal business hours, all financial and other records, pertinent organizational and operational documents and properties of the Company and its subsidiaries (collectively, the "*Records*") as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the officers, trustees and employees of the Company and its subsidiaries to supply all relevant information in each case reasonably requested by any such Inspector in connection with such Shelf Registration Statement; provided that (x) Records and information which the Company, in good faith, determines to be confidential and any Records and information which the Company notifies the Inspectors are confidential shall not be disclosed to any Inspector except where (i) the disclosure of such Records or information is necessary to avoid or correct a material misstatement or omission in such Shelf Registration Statement, (ii) the release of such Records or information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction or is

necessary in connection with any action, suit or proceeding or (iii) such Records or information previously have been made generally available to the public; (y) each selling Holder of such Registrable Securities will be required to agree in writing that Records and information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it as the basis for any market transactions in the securities of the Company unless and until such Records or information are made generally available to the public through no fault of an Inspector or a selling Holder; and (z) each selling Holder of such Registrable Securities will be required to further agree in writing that it will, upon learning that disclosure of such Records or information is sought in a court of competent jurisdiction, or in connection with any action, suit or proceeding, give notice, to the extent permitted by applicable law, to the Company and allow the Company at its expense to undertake appropriate action to prevent disclosure of the Records and information deemed confidential;

(m) comply with all applicable rules and regulations of the SEC so long as any provision of this Agreement shall be applicable and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any twelve-month period (or 90 days after the end of any twelve-month period if such period is a fiscal year) (i) commencing at the end of any fiscal quarter in which Registrable Securities are sold to underwriters in a firm commitment or best efforts underwritten offering and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter of the Company after the Effective Date, which statements shall cover said twelve-month periods, provided that the obligations under this Section 3(m) shall be satisfied by the timely filing of quarterly and annual reports on Forms 10-Q and 10-K under the Exchange Act;

(n) reasonably cooperate with each seller of Registrable Securities covered by a Shelf Registration Statement and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the NASD;

(o) take all other steps necessary to effect the registration of the Registrable Securities covered by a Shelf Registration Statement contemplated hereby; and

(p) the Company may require each seller of Registrable Securities as to which any registration is being effected to furnish to it such information regarding such seller as may be required by the staff of the SEC to be included in a Shelf Registration Statement; the Company may exclude from such registration the Registrable Securities of any seller who fails to furnish such information within a reasonable time after receiving such request; and the Company shall have no obligation to register under the Securities Act the Registrable Securities of a seller who so fails to furnish such information.

Each Holder agrees that, upon receipt of any notice from the Company of the occurrence of any event specified in Section 3(e)(ii), 3(e)(iii), 3(e)(v) or 3(e)(vi) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to a Shelf Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3(i) hereof or until it is advised in writing (the "*Advice*") by

the Company that the use of the applicable Prospectus may be resumed, and, if so directed by the Company, such Holder will deliver to the Company (at its expense) all copies in such Holder's possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. If the Company shall give any such notice to suspend the disposition of Registrable Securities pursuant to a Shelf Registration Statement, the Company shall use its reasonable best efforts to file and have declared effective (if an amendment) as promptly as reasonably practicable after the resolution of the related matters an amendment or supplement to the Shelf Registration Statement and related Prospectus.

4. Indemnification and Contribution. (a) The Company hereby agrees to indemnify and hold harmless the Initial Purchasers, each Holder, each underwriter who participates in an offering of the Registrable Securities, each Person, if any, who controls any of such parties within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act and each of their respective directors, officers, employees and agents, as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of (x) any untrue statement or alleged untrue statement of a material fact contained in a Shelf Registration Statement (or any amendment thereto) or the omission or alleged omission from the Shelf Registration Statement (or any amendment thereto) of a material fact which is required to be stated therein or which is necessary in order to make the statements therein not misleading, or (y) any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto) or the omission or alleged omission from the Prospectus (or any amendment or supplement thereto) of a material fact which is required to be stated therein or which is necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, provided that (subject to Section 4(d) hereof) such settlement is effected with the prior written consent of the Company; and

(iii) against any and all expenses whatsoever, as incurred (including the reasonable fees and disbursements of one counsel chosen by the Initial Purchasers or such Holder), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) of this Section 4(a); *provided, however*, that this indemnity does not apply to any loss, liability, claim, damage or expense to the extent arising out of an untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished in writing to the Company by any Initial Purchaser through the Representative or such Holder or underwriter for use in the Shelf

Registration Statement (or any amendment thereto) or any Prospectus (or any amendment or supplement thereto).

(b) Each Holder and each underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its trustees and officers (including each officer of the Company who signed the Shelf Registration Statement), the Initial Purchasers, and each Person, if any, who controls the Company or any Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense whatsoever described in the indemnity contained in Section 4(a) hereof, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Shelf Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such Holder expressly for use in such Shelf Registration Statement (or any amendment thereto) or such Prospectus (or any amendment or supplement thereto); *provided, however*, that no Holder shall be liable for any claims hereunder in excess of the amount of net proceeds received by such Holder from the sale of Registrable Securities.

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability which it may have under this Section 4 to the extent that it is not materially prejudiced by such failure as a

result thereof, and in any event shall not relieve it from liability which it may have otherwise on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 4(a) or (b) above, counsel to the indemnified parties shall be a law firm of national standing selected by such parties. An indemnifying party may participate at its own expense in the defense of such action; *provided, however*, that counsel to the indemnifying party shall not (except with the consent of the indemnified party, which shall not be unreasonably withheld) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for the fees and expenses of more than one counsel (in addition to local counsel), separate from their own counsel, for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 4 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional written release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If at any time an indemnified party shall have validly requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 4(a)(ii) effected without its written consent if (i) such settlement is entered into more

than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement set forth in this Section 4 is for any reason held to be unenforceable by an indemnified party although applicable in accordance with its terms, the Company, on the one hand, and the Holders, on the other hand, shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement incurred by the Company and the Holders, as incurred; provided, however, that 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 that was not guilty of such fraudulent misrepresentation. As between the Company, on the one hand, and the Holders, on the other hand, such parties shall contribute to such aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement in such proportion as shall be appropriate to reflect the relative fault of the Company, on the one hand, and the Holders, on the other hand, with respect to the statements or omissions which resulted in such loss, liability, claim, damage or expense, or action in respect thereof, as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the Holders, on the other hand, 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, on the one hand, or by or on behalf of the Holders, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Holders of the Registrable Securities agree that it would not be just and equitable if contribution pursuant to this Section 4 were to be determined by pro rata allocation or by any other method of allocation that does not take into account the relevant equitable considerations. For purposes of this Section 4, each Affiliate of a Holder, and each director, officer and employee and Person, if any, who controls a Holder or such Affiliate within the meaning of Section 15 of the Securities Act shall have the same rights to contribution as such Holder, and each trustee and officer of the Company and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

5. Underwritten Registration; Participation Therein.Notwithstanding any provision of this Agreement to the contrary, and subject to Section 2(a)(iii) hereof, in no event will the method of distribution of the Registrable Securities take the form of an underwritten offering without the prior written consent of the Company. No Holder may participate in an underwritten registration hereunder unless such Holder (a) agrees to sell such Holder's Registrable Securities on the basis provided in the underwriting arrangement approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents reasonably required under the terms of such underwriting arrangements.

6. Selection of Underwriters. The Holders of Registrable Securities covered by the Shelf Registration Statement who desire to do so may sell the Securities covered by such Shelf Registration in an underwritten offering, subject to the provisions of Sections 3(l) and 5 hereof. In any such underwritten offering, the underwriter or underwriters and manager or managers that will administer the offering will be selected by the Holders of a

majority in aggregate principal amount or number, as the context requires, of the Registrable Securities included in such offering; provided, however, that such underwriters and managers must be reasonably satisfactory to the Company.

7. *Miscellaneous.*

(a) *Rule 144 and Rule 144A.* For so long as it is subject to the reporting requirements of Section 13 or 15 of the Exchange Act and any Registrable Securities remain outstanding, the Company will file the reports required to be filed by it under the Securities Act and Section 13(a) or 15(d) of the Exchange Act and the rules and regulations adopted by the SEC thereunder; *provided, however*, that if the Company ceases to be so required to file such reports, it will, upon the request of any Holder of Registrable Securities (a) make publicly available such information as is necessary to permit sales of its securities pursuant to Rule 144 under the Securities Act, (b) deliver such information to a prospective purchaser as is necessary to permit sales of its securities pursuant to Rule 144A under the Securities Act, and (c) take such further action that is reasonable in the circumstances, in each case, to the extent required from time to time to enable such Holder to sell its Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such rule may be amended from time to time, (ii) Rule 144A under the Securities Act, as such rule may be amended from time to time, or (iii) any similar rules or regulations hereafter adopted by the SEC. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

(b) *No Inconsistent Agreements.* The Company has not entered into, and will not enter into, any agreement which is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Company's other issued and outstanding securities under any such agreements.

(c) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of Holders of a majority in aggregate principal amount or number, as the context requires, of the outstanding Registrable Securities affected by such amendment, modification, supplement, waiver or departure; provided that no amendment, modification or supplement or waiver or consent to the departure with respect to the provisions of Section 4 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder of Registrable Securities. Notwithstanding the foregoing sentence, (i) this Agreement may be amended, without the consent of any Holder of Registrable Securities, by written agreement signed by the Company and the Initial Purchasers, to cure any

ambiguity, correct or supplement any provision of this Agreement that may be inconsistent with any other provision of this Agreement or to make any other provisions with respect to matters or questions arising under this Agreement which shall not be inconsistent with other provisions of this Agreement, (ii) this Agreement may be amended, modified or supplemented, and waivers and consents to departures from the provisions hereof may be given, by written agreement signed by the Company and the Initial Purchasers to the extent that any such amendment, modification, supplement, waiver or consent is, in their reasonable judgment, necessary or appropriate to comply with applicable law (including any interpretation of the Staff of the SEC) or any change therein and (iii) to the extent any provision of this Agreement relates to the Initial Purchasers, such provision may be amended, modified or supplemented, and waivers or consents to departures from such provisions may be given, by written agreement signed by the Initial Purchasers and the Company.

(d) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, telex, telecopier, or any courier guaranteeing overnight delivery (i) if to a Holder, at the most current address given by such Holder to the Company or by means of a notice given in accordance with the provisions of this Section 7(d), which address initially is, with respect to the Initial Purchasers, the respective addresses set forth in the Purchase Agreement; and (ii) if to the Company, initially at the Company's address set forth in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 7(d).

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt is acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

(e) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of the Initial Purchasers, including, without limitation and without the need for an express assignment, subsequent Holders; *provided, however*, that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture relating to the Notes or declaration of trust of the Company . If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by

operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities, such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof.

(f) *Mergers and other Change of Control Transactions*. Nothing in this Agreement shall restrict the ability of the Company to consummate a merger, reorganization or any transaction that is covered in the definition of the term "Change in Control" (as defined in the First Supplemental Indenture), and upon a Change in Control, all obligations of the Company in this Agreement shall terminate except that the Company and the successor, if any, shall remain obligated on those agreements of the Company in Section 4 hereof.

(g) *Third Party Beneficiaries.* Each Holder shall be a third party beneficiary of the agreements made hereunder among the Company and the Initial Purchasers, and the Initial Purchasers shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of Holders hereunder.

(h) *Counterparts*. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(i) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(j) *GOVERNING LAW.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE COURTS OF THE STATE OF NEW YORK OR THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA, IN EACH CASE SITTING IN THE CITY OF NEW YORK, IN ANY SUCH SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE MATTERS CONTEMPLATED HEREBY, IRREVOCABLY WAIVES ANY DEFENSE OF LACK OF PERSONAL JURISDICTION AND IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(k) *Severability.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other

respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(l) *Securities Held by the Company or its Affiliates.* Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or any Affiliates shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ACADIA REALTY TRUST

By: /s/ Robert Masters

Name: Robert Masters
Title: Senior Vice President

CONFIRMED AND ACCEPTED, as of the date first above written:

LEHMAN BROTHERS INC.

By: /s/ Lisa Beeson
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ Doug Sesler
Authorized Signatory